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2013 MAR 18 PM 3:25  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

DR

4/2/13

140-CF  
30-CP-7

**COVER LETTER**

**TO:** Amendment Section  
Division of Corporations

**SUBJECT:** Bioplex Technologies, Inc

Name of Surviving Party

The enclosed Certificate of Merger and fee(s) are submitted for filing.

Please return all correspondence concerning this matter to:

David P. Fries

Contact Person

Bioplex Technologies, Inc

Firm/Company

755 19th Avenue North

Address

St. Petersburg, Florida 33704

City, State and Zip Code

dfries@bioplextechnologies.com

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

David P. Fries

Name of Contact Person

at ( 727 ) 480-5135

Area Code and Daytime Telephone Number



Certified copy (optional) \$30.00

**STREET ADDRESS:**

Amendment Section  
Division of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, FL 32301

**MAILING ADDRESS:**

Amendment Section  
Division of Corporations  
P. O. Box 6327  
Tallahassee, FL 32314

**Certificate of Merger  
For  
Florida Limited Liability Company**

FILED

2013 MAR 18 PM 3:25

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA  
10

The following Certificate of Merger is submitted to merge the following Florida Limited Liability Company(ies) in accordance with s. 608.4382, Florida Statutes.

**FIRST:** The exact name, form/entity type, and jurisdiction for each **merging** party are as follows:

<u>Name</u>	<u>Jurisdiction</u>	<u>Form/Entity Type</u>
VODA LLC	Florida	LLC
_____	_____	_____
_____	_____	_____
_____	_____	_____

**SECOND:** The exact name, form/entity type, and jurisdiction of the **surviving** party are as follows:

<u>Name</u>	<u>Jurisdiction</u>	<u>Form/Entity Type</u>
Bioplex Technologies Inc.	Florida	Corporation

**THIRD:** The attached plan of merger was approved by each domestic corporation, limited liability company, partnership and/or limited partnership that is a party to the merger in accordance with the applicable provisions of Chapters 607, 608, 617, and/or 620, Florida Statutes.

**FOURTH:** The attached plan of merger was approved by each other business entity that is a party to the merger in accordance with the applicable laws of the state, country or jurisdiction under which such other business entity is formed, organized or incorporated.

**FIFTH:** If other than the date of filing, the effective date of the merger, which cannot be prior to nor more than 90 days after the date this document is filed by the Florida Department of State:

**December 28, 2012.**

**SIXTH:** If the surviving party is not formed, organized or incorporated under the laws of Florida, the survivor's principal office address in its home state, country or jurisdiction is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SEVENTH:** If the survivor is not formed, organized or incorporated under the laws of Florida, the survivor agrees to pay to any members with appraisal rights the amount, to which such members are entitles under ss.608.4351-608.43595, F.S.

**EIGHTH:** If the surviving party is an out-of-state entity not qualified to transact business in this state, the surviving entity:

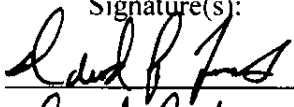
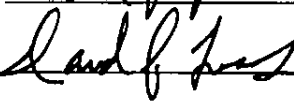
a.) Lists the following street and mailing address of an office, which the Florida Department of State may use for the purposes of s. 48.181, F.S., are as follows:

Street address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Mailing address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b.) Appoints the Florida Secretary of State as its agent for service of process in a proceeding to enforce obligations of each limited liability company that merged into such entity, including any appraisal rights of its members under ss.608.4351-608.43595, Florida Statutes.

**NINTH:** Signature(s) for Each Party:

Name of Entity/Organization:	Signature(s):	Typed or Printed Name of Individual:
Voda, LLC		David P. Fries
Bioplex Technologies, Inc.		David P. Fries

Corporations:	Chairman, Vice Chairman, President or Officer <i>(If no directors selected, signature of incorporator.)</i>
General partnerships:	Signature of a general partner or authorized person
Florida Limited Partnerships:	Signatures of all general partners
Non-Florida Limited Partnerships:	Signature of a general partner
Limited Liability Companies:	Signature of a member or authorized representative

<b><u>Fees:</u></b>	For each Limited Liability Company:	\$25.00
	For each Corporation:	\$35.00
	For each Limited Partnership:	\$52.50
	For each General Partnership:	\$25.00
	For each Other Business Entity:	\$25.00

<b><u>Certified Copy (optional):</u></b>	\$30.00
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**PLAN OF MERGER**

**FIRST:** The exact name, form/entity type, and jurisdiction for each merging party are as follows:

<u>Name</u>	<u>Jurisdiction</u>	<u>Form/Entity Type</u>
Voda LLC	Florida	LLC

**SECOND:** The exact name, form/entity type, and jurisdiction of the surviving party are as follows:

<u>Name</u>	<u>Jurisdiction</u>	<u>Form/Entity Type</u>
Bioplex Technologies, Inc.	Florida	Corporation

**THIRD:** The terms and conditions of the merger are as follows:

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*(Attach additional sheet if necessary)*

**FOURTH:**

A. The manner and basis of converting the interests, shares, obligations or other securities of each merged party into the interests, shares, obligations or others securities of the survivor, in whole or in part, into cash or other property is as follows:

**See Attached**

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*(Attach additional sheet if necessary)*

B. The manner and basis of converting rights to acquire the interests, shares, obligations or other securities of each merged party into rights to acquire the interests, shares, obligations or others securities of the survivor, in whole or in part, into cash or other property is as follows:

**See Attached**

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*(Attach additional sheet if necessary)*

**FIFTH:** Any statements that are required by the laws under which each other business entity is formed, organized, or incorporated are as follows:

**See Attached**

*(Attach additional sheet if necessary)*

**SIXTH:** Other provisions, if any, relating to the merger are as follows:

**See Attached**

*(Attach additional sheet if necessary)*



## ARTICLES OF MERGER

### VODA LLC

a Florida limited liability company

with and into

### BIOPLEX TECHNOLOGIES INC.

a Florida corporation

Pursuant to Florida Statutes Sections 607.1109 and 608.4382, the undersigned entities adopt the following Articles of Merger in order to merge the Florida limited liability company with and into the Florida corporation (the "Merger"):

**FIRST:** The "Merged LLC" is Voda LLC, a Florida limited liability company with its principal business address at 755 19th Avenue North, St. Petersburg, Florida 33704. The Merged LLC's Florida document number is L06000104268, and its Federal Employer Identification No. is 20-8579641. .

**SECOND:** The "Surviving Corporation" is Bioplex Technologies Inc., a Florida corporation with its principal business address at 755 19th Avenue North, St. Petersburg, Florida 33704. The Surviving Corporation's Florida document number is P03000094535, and its Federal Employer Identification No. is 13-4267231.

**THIRD:** In accordance with the applicable provisions of Chapters 607 and 608, Florida Statutes, the Agreement and Plan of Merger attached to these Articles of Merger as Exhibit "A" (the "Plan of Merger") was approved by the Surviving Corporation and the Merged LLC. The Plan of Merger is incorporated herein by this reference.

**FOURTH:** With respect to the Surviving Corporation, the Plan of Merger and the Merger were adopted by the Board of Directors and approved unanimously by all of the shareholders by actions by written consent as of December 28, 2012.

**FIFTH:** With respect to the Merged LLC, the Plan of Merger and the Merger were approved by the sole Manager and approved unanimously by all of the members by actions by written consent as of December 28, 2012.

**SIXTH:** The effective time of the Merger shall be 12:01 a.m. on January 1, 2013; provided, however, if these Articles of Merger are filed after that time, the effective time of the Merger shall be when these Articles of Merger are filed by the Florida Department of State.

IN WITNESS WHEREOF, the undersigned have executed and delivered these Articles of Merger this 28th day of December 2012.

Merged LLC:

VODA LLC

By: 

David P. Fries, Manager and  
Authorized Member

Surviving Corporation:

BIOPLEX TECHNOLOGIES INC.

By: 

David P. Fries, Chief Executive  
Officer

**EXHIBIT "E"**

**CHART OF CONVERSIONS**

This Chart of Conversions shows the number of shares of common stock of Bioplex into which (i) the units of membership interest of Voda, (ii) the current shares of Bioplex, and (iii) the interest of the Holder of Residual Right are to be converted in the Plan of Merger.

<b>Current VODA Interest Holders Ownership Percentage or Residual Right</b>	<b>Current Bioplex Owners Share Ownership Number and Percentage</b>	<b>Post-Merger Bioplex Share Ownership and Percentage</b>
David Fries	David Fries No. of Shares 404.2	No. of Shares 407.96
95% of Units of Membership Interest	86%	86.8%
USF Research Foundation, Inc. Valerie McDevitt Director	USF Research Foundation, Inc.. Valerie McDevitt Director No. of Shares 37.6	No. of Shares 37.6
5% of Units of Membership Interest	8%	8%
Pragnesh Bhanushali	<i>(Intentional left blank)</i>	No. of Shares 18.8
Residual right to receive 4% of the Bioplex shares outstanding immediately after the Merger		4%
	Andrew Farmer No. of Shares 23.5	No. of Shares 4.7
	5%	1%
	5. Rob Waterbury No. of Shares 4.7	No. of Shares .94
	1%	0.2%

**EXHIBIT "A"**  
**AGREEMENT AND PLAN OF MERGER**

This AGREEMENT AND PLAN OF MERGER ("Plan of Merger") is made and entered into as of the 28th day of December 2012 by and between **VODA LLC**, a Florida limited liability company (the "Merged LLC") at 755 19th Avenue North, St. Petersburg, Florida 33704, and **BIOPLEX TECHNOLOGIES INC.**, a Florida corporation (the "Surviving Corporation") 755 19th Avenue North, St. Petersburg, Florida 33704, each of whom may be referred to separately in this Plan of Merger without distinction as a "Party," and together may be referred to in this Plan of Merger collectively as the "Parties," as follows:

**RECITALS:**

(a) The Manager and the members of the Merged LLC deem it advisable and in the best interest of the Merged LLC to merge with and into the Surviving Corporation pursuant to Florida Statutes Sections 607.1108 and 608.438 and the other requirements of Florida law (the "Merger"). The Board of Directors and the shareholders of the Surviving Corporation deem it advisable and in the best interest of the Surviving Corporation that the Surviving Corporation be the survivor in the Merger, and that its existence continue as a corporation under the laws of the State of Florida unaffected in any way by the Merger other than as set forth in this Plan of Merger.

(b) The Manager of the Merged LLC and the Board of Directors of the Surviving Corporation have adopted and approved this Plan of Merger and the Merger, and recommended the approval of this Plan of Merger and the Merger by their respective members and shareholders.

**AGREEMENT:**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party, the forgoing text is incorporated by this reference as part of this Plan of Merger and the Parties further agree, in accordance with the provisions of Florida Statutes Chapters 607 and 608, that the Merged LLC shall be and hereby is as of the Effective Time (as defined below) merged with and into the Surviving Corporation, and that the terms and conditions of the Merger, the mode of carrying it into effect, and the manner and basis of converting the ownership interests and rights in the Parties into shares of the Surviving Corporation shall be as set out in this Plan of Merger.

**SECTION 1 – APPROVAL OF MERGER.** The members of the Merged LLC and the shareholders of the Surviving Corporation have approved this Plan of Merger and the Merger by resolutions duly and unanimously adopted by actions by written consent as of December 28, 2012, which actions by written consent are incorporated herein by this reference (the "Written Consent Actions").

**SECTION 2 – EFFECTIVE TIME.** The effective time of the Merger (the "Effective Time") shall be 12:01 a.m. on January 1, 2013; provided, however, if the Articles of Merger to effect the Merger are filed by the Florida Department of State after that time, the effective time of the Merger shall be when those Articles of Merger are filed by the Florida Department of State.

**SECTION 3 – EFFECT ON PARTIES AND PROPERTY.** Commencing with the Effective Time, the separate existence of the Merged LLC shall cease and the Surviving Corporation shall continue and be governed by the laws of the State of Florida. The consequences and effects of the Merger shall be as provided in this Plan of Merger, in Florida Statutes Sections 607.11101 and 608.4383, and in the other applicable provisions of Florida law. Without limiting the generality of the forgoing, commencing with

the Effective Time, all properties, rights, powers, franchises, privileges and immunities of the Merged LLC shall vest without reversion or impairment in the Surviving Corporation, and all debts, liabilities, obligations and duties of the Merged LLC shall become the debts, liabilities, obligations and duties of the Surviving Corporation.

**SECTION 4 – ARTICLES, BYLAWS, DIRECTORS AND OFFICERS.** The articles of incorporation of the Surviving Corporation in effect immediately prior to the Effective Time shall, upon the Merger becoming effective, be and remain the articles of incorporation of the Surviving Corporation until amended. The bylaws of the Surviving Corporation in effect immediately prior to the Effective Time shall, upon the Merger becoming effective, be and remain the bylaws of the Surviving Corporation until amended. The member or members of the Board of Directors of the Surviving Corporation, and the officers of the Surviving Corporation, in office immediately prior to the Effective Time shall, upon the Merger becoming effective, be and remain the member or members of the Board of Directors of the Surviving Corporation, and the officers of the Surviving Corporation, until their respective successors are elected and qualified.

**SECTION 5 – CONVERSION OF INTERESTS, SHARES AND RIGHTS.** The manner and basis of converting (i) the units of membership interests of the members of the Merged LLC, (ii) the shares of common stock of the Surviving Corporation, and (iii) the residual right to acquire shares of common stock of the Surviving Corporation, each of which shall be outstanding immediately prior to the Effective Time, into shares of common stock of the Surviving Corporation shall be as set out in the Written Consent Actions executed and delivered by all holders of such interests, shares and right. Promptly following the Effective Time, the holders of such interests, shares and right shall be notified thereof and they shall then promptly surrender to the Surviving Corporation evidence of their interests, shares or right and shall thereafter receive from the Surviving Corporation the shares of common stock of the Surviving Corporation into which their interests, shares or right have been converted in the Merger.

**SECTION 6 – AMENDMENT OF PLAN.** Pursuant to Florida Statutes, the Board of Directors of the Surviving Corporation and the Manager of the Merged LLC may amend this Plan of Merger at any time prior to the Effective Time in order to comply with the technical terms of the Florida Statutes and not adverse to either the members of the Merged LLC or the shareholders of the Surviving Corporation.

**SECTION 7 – FURTHER ACTIONS.** Upon request of a Party at any time, the other Party will promptly furnish such further information, execute and deliver such other documents, and do such other acts and things, as may be reasonably requested for the purpose of carrying out the intent of this Plan of Merger, the Merger, and the transactions and events contemplated hereby.

IN WITNESS WHEREOF, the Merged LLC and the Surviving Corporation have executed and delivered this Agreement and Plan of Merger as of the date first set forth above.

Merged LLC:

**VODA LLC**

By: 

David P. Fries, Manager and  
Authorized Member

Surviving Corporation:

**BIOPLEX TECHNOLOGIES INC.**

By: 

David P. Fries, Chief Executive  
Officer

**BIOPLEX TECHNOLOGIES INC.**  
**Shareholder Appraisal Rights**  
**Florida Statutes Required to be Furnished to Shareholders**  
**Sections 607.1301 through 607.1333, Florida Statutes**

**607.1301 Appraisal rights; definitions.**--The following definitions apply to ss. 607.1302-607.1333:

- (1) "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person or is a senior executive thereof. For purposes of s. 607.1302(2)(d), a person is deemed to be an affiliate of its senior executives.
- (2) "Beneficial shareholder" means a person who is the beneficial owner of shares held in a voting trust or by a nominee on the beneficial owner's behalf.
- (3) "Corporation" means the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in ss. 607.1322-607.1333, includes the surviving entity in a merger.
- (4) "Fair value" means the value of the corporation's shares determined:
  - (a) Immediately before the effectuation of the corporate action to which the shareholder objects.
  - (b) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable to the corporation and its remaining shareholders.
  - (c) For a corporation with 10 or fewer shareholders, without discounting for lack of marketability or minority status.
- (5) "Interest" means interest from the effective date of the corporate action until the date of payment, at the rate of interest on judgments in this state on the effective date of the corporate action.
- (6) "Preferred shares" means a class or series of shares the holders of which have preference over any other class or series with respect to distributions.
- (7) "Record shareholder" means the person in whose name shares are registered in the records of the corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with the corporation.
- (8) "Senior executive" means the chief executive officer, chief operating officer, chief financial officer, or anyone in charge of a principal business unit or function.
- (9) "Shareholder" means both a record shareholder and a beneficial shareholder.

**History.**--s. 118, ch. 89-154; s. 21, ch. 2003-283; s. 2, ch. 2005-267.

**607.1302 Right of shareholders to appraisal.**--

- (1) A shareholder of a domestic corporation is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

(a) Consummation of a conversion of such corporation pursuant to s. 607.1112 if shareholder approval is required for the conversion and the shareholder is entitled to vote on the conversion under ss. 607.1103 and 607.1112(6), or the consummation of a merger to which such corporation is a party if shareholder approval is required for the merger under s. 607.1103 and the shareholder is entitled to vote on the merger or if such corporation is a subsidiary and the merger is governed by s. 607.1104;

(b) Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired if the shareholder is entitled to vote on the exchange, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

(c) Consummation of a disposition of assets pursuant to s. 607.1202 if the shareholder is entitled to vote on the disposition, including a sale in dissolution but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within 1 year after the date of sale;

(d) An amendment of the articles of incorporation with respect to the class or series of shares which reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created;

(e) Any other amendment to the articles of incorporation, merger, share exchange, or disposition of assets to the extent provided by the articles of incorporation, bylaws, or a resolution of the board of directors, except that no bylaw or board resolution providing for appraisal rights may be amended or otherwise altered except by shareholder approval; or

(f) With regard to a class of shares prescribed in the articles of incorporation prior to October 1, 2003, including any shares within that class subsequently authorized by amendment, any amendment of the articles of incorporation if the shareholder is entitled to vote on the amendment and if such amendment would adversely affect such shareholder by:

1. Altering or abolishing any preemptive rights attached to any of his or her shares;
2. Altering or abolishing the voting rights pertaining to any of his or her shares, except as such rights may be affected by the voting rights of new shares then being authorized of any existing or new class or series of shares;
3. Effecting an exchange, cancellation, or reclassification of any of his or her shares, when such exchange, cancellation, or reclassification would alter or abolish the shareholder's voting rights or alter his or her percentage of equity in the corporation, or effecting a reduction or cancellation of accrued dividends or other arrearages in respect to such shares;
4. Reducing the stated redemption price of any of the shareholder's redeemable shares, altering or abolishing any provision relating to any sinking fund for the redemption or purchase of any of his or her shares, or making any of his or her shares subject to redemption when they are not otherwise redeemable;
5. Making noncumulative, in whole or in part, dividends of any of the shareholder's preferred shares which had theretofore been cumulative;
6. Reducing the stated dividend preference of any of the shareholder's preferred shares; or
7. Reducing any stated preferential amount payable on any of the shareholder's preferred shares upon voluntary or involuntary liquidation.

(2) Notwithstanding subsection (1), the availability of appraisal rights under paragraphs (1)(a), (b), (c), and (d) shall be limited in accordance with the following provisions:

(a) Appraisal rights shall not be available for the holders of shares of any class or series of shares which is:

1. Listed on the New York Stock Exchange or the American Stock Exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.; or

2. Not so listed or designated, but has at least 2,000 shareholders and the outstanding shares of such class or series have a market value of at least \$10 million, exclusive of the value of such shares held by its subsidiaries, senior executives, directors, and beneficial shareholders owning more than 10 percent of such shares.

(b) The applicability of paragraph (a) shall be determined as of:

1. The record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

2. If there will be no meeting of shareholders, the close of business on the day on which the board of directors adopts the resolution recommending such corporate action.

(c) Paragraph (a) shall not be applicable and appraisal rights shall be available pursuant to subsection (1) for the holders of any class or series of shares who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in paragraph (a) at the time the corporate action becomes effective.

(d) Paragraph (a) shall not be applicable and appraisal rights shall be available pursuant to subsection (1) for the holders of any class or series of shares if:

1. Any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange, or otherwise, pursuant to the corporate action by a person, or by an affiliate of a person, who:

a. Is, or at any time in the 1-year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, the beneficial owner of 20 percent or more of the voting power of the corporation, excluding any shares acquired pursuant to an offer for all shares having voting power if such offer was made within 1 year prior to the corporate action requiring appraisal rights for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action; or

b. Directly or indirectly has, or at any time in the 1-year period immediately preceding approval by the board of directors of the corporation of the corporate action requiring appraisal rights had, the power, contractually or otherwise, to cause the appointment or election of 25 percent or more of the directors to the board of directors of the corporation; or

2. Any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange, or otherwise, pursuant to such corporate action by a person, or by an affiliate of a person, who is, or at any time in the 1-year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, a senior executive or director of the corporation or a

senior executive of any affiliate thereof, and that senior executive or director will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than:

- a. Employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the corporate action;
- b. Employment, consulting, retirement, or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in s. 607.0832; or
- c. In the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of such entity or such affiliate.

(e) For the purposes of paragraph (d) only, the term "beneficial owner" means any person who, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares, provided that a member of a national securities exchange shall not be deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because such member is the recordholder of such securities if the member is precluded by the rules of such exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby shall be deemed to have acquired beneficial ownership, as of the date of such agreement, of all voting shares of the corporation beneficially owned by any member of the group.

(3) Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, but any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange, or other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within 1 year of that date if such action would otherwise afford appraisal rights.

(4) A shareholder entitled to appraisal rights under this chapter may not challenge a completed corporate action for which appraisal rights are available unless such corporate action:

- (a) Was not effectuated in accordance with the applicable provisions of this section or the corporation's articles of incorporation, bylaws, or board of directors' resolution authorizing the corporate action; or
- (b) Was procured as a result of fraud or material misrepresentation.

**History.**--s. 119, ch. 89-154; s. 5, ch. 94-327; s. 31, ch. 97-102; s. 22, ch. 2003-283; s. 1, ch. 2004-378; s. 3, ch. 2005-267.

#### **607.1303 Assertion of rights by nominees and beneficial owners.--**

(1) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder only if the record shareholder objects



with respect to all shares of the class or series owned by the beneficial shareholder and notifies the corporation in writing of the name and address of each beneficial shareholder on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(2) A beneficial shareholder may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if such shareholder:

(a) Submits to the corporation the record shareholder's written consent to the assertion of such rights no later than the date referred to in s. 607.1322(2)(b)2.

(b) Does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder.

**History.**--s. 23, ch. 2003-283.

**607.1320 Notice of appraisal rights.--**

(1) If proposed corporate action described in s. 607.1302(1) is to be submitted to a vote at a shareholders' meeting, the meeting notice must state that the corporation has concluded that shareholders are, are not, or may be entitled to assert appraisal rights under this chapter. If the corporation concludes that appraisal rights are or may be available, a copy of ss. 607.1301-607.1333 must accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

(2) In a merger pursuant to s. 607.1104, the parent corporation must notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. Such notice must be sent within 10 days after the corporate action became effective and include the materials described in s. 607.1322.

(3) If the proposed corporate action described in s. 607.1302(1) is to be approved other than by a shareholders' meeting, the notice referred to in subsection (1) must be sent to all shareholders at the time that consents are first solicited pursuant to s. 607.0704, whether or not consents are solicited from all shareholders, and include the materials described in s. 607.1322.

**History.**--s. 120, ch. 89-154; s. 35, ch. 93-281; s. 32, ch. 97-102; s. 24, ch. 2003-283.

**607.1321 Notice of intent to demand payment.--**

(1) If proposed corporate action requiring appraisal rights under s. 607.1302 is submitted to a vote at a shareholders' meeting, or is submitted to a shareholder pursuant to a consent vote under s. 607.0704, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(a) Must deliver to the corporation before the vote is taken, or within 20 days after receiving the notice pursuant to s. 607.1320(3) if action is to be taken without a shareholder meeting, written notice of the shareholder's intent to demand payment if the proposed action is effectuated.

(b) Must not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed action.

(2) A shareholder who does not satisfy the requirements of subsection (1) is not entitled to payment under this chapter.

**History.**--s. 25, ch. 2003-283; s. 7, ch. 2004-378.

**607.1322 Appraisal notice and form.--**

(1) If proposed corporate action requiring appraisal rights under s. 607.1302(1) becomes effective, the corporation must deliver a written appraisal notice and form required by paragraph (2)(a) to all shareholders who satisfied the requirements of s. 607.1321. In the case of a merger under s. 607.1104, the parent must deliver a written appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(2) The appraisal notice must be sent no earlier than the date the corporate action became effective and no later than 10 days after such date and must:

(a) Supply a form that specifies the date that the corporate action became effective and that provides for the shareholder to state:

1. The shareholder's name and address.
2. The number, classes, and series of shares as to which the shareholder asserts appraisal rights.
3. That the shareholder did not vote for the transaction.
4. Whether the shareholder accepts the corporation's offer as stated in subparagraph (b)4.
5. If the offer is not accepted, the shareholder's estimated fair value of the shares and a demand for payment of the shareholder's estimated value plus interest.

(b) State:

1. Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subparagraph 2.
2. A date by which the corporation must receive the form, which date may not be fewer than 40 nor more than 60 days after the date the subsection (1) appraisal notice and form are sent, and state that the shareholder shall have waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by such specified date.
3. The corporation's estimate of the fair value of the shares.
4. An offer to each shareholder who is entitled to appraisal rights to pay the corporation's estimate of fair value set forth in subparagraph 3.
5. That, if requested in writing, the corporation will provide to the shareholder so requesting, within 10 days after the date specified in subparagraph 2., the number of shareholders who return the forms by the specified date and the total number of shares owned by them.
6. The date by which the notice to withdraw under s. 607.1323 must be received, which date must be within 20 days after the date specified in subparagraph 2.

(c) Be accompanied by:

1. Financial statements of the corporation that issued the shares to be appraised, consisting of a balance sheet as of the end of the fiscal year ending not more than 15 months prior to the date of the corporation's

appraisal notice, an income statement for that year, a cash flow statement for that year, and the latest available interim financial statements, if any.

2. A copy of ss. 607.1301-607.1333.

**History.**--s. 26, ch. 2003-283.

**607.1323 Perfection of rights; right to withdraw.--**

(1) A shareholder who wishes to exercise appraisal rights must execute and return the form received pursuant to s. 607.1322(1) and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to s. 607.1322(2)(b)2. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the executed forms, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to subsection (2).

(2) A shareholder who has complied with subsection (1) may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice pursuant to s. 607.1322(2)(b)6. A shareholder who fails to so withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

(3) A shareholder who does not execute and return the form and, in the case of certificated shares, deposit that shareholder's share certificates if required, each by the date set forth in the notice described in subsection (2), shall not be entitled to payment under this chapter.

**History.**--s. 27, ch. 2003-283.

**607.1324 Shareholder's acceptance of corporation's offer.--**

(1) If the shareholder states on the form provided in s. 607.1322(1) that the shareholder accepts the offer of the corporation to pay the corporation's estimated fair value for the shares, the corporation shall make such payment to the shareholder within 90 days after the corporation's receipt of the form from the shareholder.

(2) Upon payment of the agreed value, the shareholder shall cease to have any interest in the shares.

**History.**--s. 28, ch. 2003-283.

**607.1326 Procedure if shareholder is dissatisfied with offer.--**

(1) A shareholder who is dissatisfied with the corporation's offer as set forth pursuant to s. 607.1322(2)(b)4. must notify the corporation on the form provided pursuant to s. 607.1322(1) of that shareholder's estimate of the fair value of the shares and demand payment of that estimate plus interest.

(2) A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection (1) within the timeframe set forth in s. 607.1322(2)(b)2. waives the right to demand payment under this section and shall be entitled only to the payment offered by the corporation pursuant to s. 607.1322(2)(b)4.

**History.**--s. 29, ch. 2003-283.

**607.1330 Court action.--**

(1) If a shareholder makes demand for payment under s. 607.1326 which remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, any shareholder who has made a demand pursuant to s. 607.1326 may commence the proceeding in the name of the corporation.

(2) The proceeding shall be commenced in the appropriate court of the county in which the corporation's principal office, or, if none, its registered office, in this state is located. If the corporation is a foreign corporation without a registered office in this state, the proceeding shall be commenced in the county in this state in which the principal office or registered office of the domestic corporation merged with the foreign corporation was located at the time of the transaction.

(3) All shareholders, whether or not residents of this state, whose demands remain unsettled shall be made parties to the proceeding as in an action against their shares. The corporation shall serve a copy of the initial pleading in such proceeding upon each shareholder party who is a resident of this state in the manner provided by law for the service of a summons and complaint and upon each nonresident shareholder party by registered or certified mail or by publication as provided by law.

(4) The jurisdiction of the court in which the proceeding is commenced under subsection (2) is plenary and exclusive. If it so elects, the court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them or in any amendment to the order. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

(5) Each shareholder made a party to the proceeding is entitled to judgment for the amount of the fair value of such shareholder's shares, plus interest, as found by the court.

(6) The corporation shall pay each such shareholder the amount found to be due within 10 days after final determination of the proceedings. Upon payment of the judgment, the shareholder shall cease to have any interest in the shares.

**History.**---s. 2, ch. 2004-378.

**607.1331 Court costs and counsel fees.--**

(1) The court in an appraisal proceeding shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds such shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

(2) The court in an appraisal proceeding may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with ss. 607.1320 and 607.1322; or

(b) Against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

(3) If the court in an appraisal proceeding finds that the services of counsel for any shareholder were of substantial benefit to other shareholders similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to such counsel reasonable fees to be paid out of the amounts awarded the shareholders who were benefited.

(4) To the extent the corporation fails to make a required payment pursuant to s. 607.1324, the shareholder may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the corporation all costs and expenses of the suit, including counsel fees.

**History.**---s. 30, ch. 2003-283; s. 98, ch. 2004-5.

**607.1332 Disposition of acquired shares.**--Shares acquired by a corporation pursuant to payment of the agreed value thereof or pursuant to payment of the judgment entered therefor, as provided in this chapter, may be held and disposed of by such corporation as authorized but unissued shares of the corporation, except that, in the case of a merger or share exchange, they may be held and disposed of as the plan of merger or share exchange otherwise provides. The shares of the surviving corporation into which the shares of such shareholders demanding appraisal rights would have been converted had they assented to the merger shall have the status of authorized but unissued shares of the surviving corporation.

**History.**---s. 31, ch. 2003-283.

**607.1333 Limitation on corporate payment.**--

(1) No payment shall be made to a shareholder seeking appraisal rights if, at the time of payment, the corporation is unable to meet the distribution standards of s. 607.06401. In such event, the shareholder shall, at the shareholder's option:

(a) Withdraw his or her notice of intent to assert appraisal rights, which shall in such event be deemed withdrawn with the consent of the corporation; or

(b) Retain his or her status as a claimant against the corporation and, if it is liquidated, be subordinated to the rights of creditors of the corporation, but have rights superior to the shareholders not asserting appraisal rights, and if it is not liquidated, retain his or her right to be paid for the shares, which right the corporation shall be obliged to satisfy when the restrictions of this section do not apply.

(2) The shareholder shall exercise the option under paragraph (1)(a) or paragraph (b) by written notice filed with the corporation within 30 days after the corporation has given written notice that the payment for shares cannot be made because of the restrictions of this section. If the shareholder fails to exercise the option, the shareholder shall be deemed to have withdrawn his or her notice of intent to assert appraisal rights.

**History.**---s. 32, ch. 2003-283.

**VODA LLC**  
**Member Appraisal Rights, When Applicable**  
**Florida Statutes to be Furnished to Members When Applicable**  
**Sections 608.4351 through 608.43595, Florida Statutes**

608.4351 Appraisal rights; definitions.—The following definitions apply to this section and ss. 608.4352-608.43595:

- (1) “Affiliate” means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person. For purposes of s. 608.4352(2)(d), a person is deemed to be an affiliate of its senior executives.
- (2) “Appraisal event” means an event described in s. 608.4352(1).
- (3) “Beneficial member” means a person who is the beneficial owner of a membership interest held in a voting trust or by a nominee on the beneficial owner’s behalf.
- (4) “Converted entity” means the other business entity into which a domestic limited liability company converts pursuant to ss. 608.4401-608.4404.
- (5) “Fair value” means the value of the member’s membership interests determined:
  - (a) Immediately before the effectuation of the appraisal event to which the member objects.
  - (b) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal, excluding any appreciation or depreciation in anticipation of the transaction to which the member objects unless exclusion would be inequitable to the limited liability company and its remaining members.
  - (c) For a limited liability company with 10 or fewer members, without discounting for lack of marketability or minority status.
- (6) “Interest” means interest from the effective date of the appraisal event to which the member objects until the date of payment, at the rate of interest determined for judgments in accordance with s. 55.03, determined as of the effective date of the appraisal event.
- (7) “Limited liability company” means the domestic limited liability company that issued the membership interest held by a member demanding appraisal and, for matters covered in ss. 608.4352-608.43595, includes the converted entity in a conversion or the surviving entity in a merger.
- (8) “Record member” means each person who is identified as a member in the current list of members maintained in accordance with s. 608.4101 by the limited liability company, or to the extent the limited liability company has failed to maintain a current list, each person that is the rightful owner of a membership interest in the limited liability company. An assignee of a membership interest is not a record member.
- (9) “Senior executive” means a manager or managing member or the chief executive officer, chief operating officer, chief financial officer, or anyone in charge of a principal business unit or function of a limited liability company or of a manager or managing member of the limited liability company.
- (10) “Member” means a record member or a beneficial member.

(11) "Membership interest" has the same meaning set forth in s. 608.402, except, if the appraisal rights of a member under s. 608.4352 pertain to only a certain class or series of a membership interest, the term "membership interest" means only the membership interest pertaining to such class or series.

(12) "Surviving entity" means the other business entity into which a domestic limited liability company is merged pursuant to ss. 608.438-608.4383.

History.—s. 6, ch. 2005-267.

**608.4352 Right of members to appraisal.—**

(1) A member of a domestic limited liability company is entitled to appraisal rights, and to obtain payment of the fair value of that member's membership interest, in the following events:

(a) Consummation of a merger of such limited liability company pursuant to this act and the member possessed the right to vote upon the merger; or

(b) Consummation of a conversion of such limited liability company pursuant to this act and the member possessed the right to vote upon the conversion.

(2) Notwithstanding subsection (1), the availability of appraisal rights shall be limited in accordance with the following provisions:

(a) Appraisal rights shall not be available for membership interests which are:

1. Listed on the New York Stock Exchange or the American Stock Exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.; or

2. Not listed or designated as provided in subparagraph 1. but are issued by a limited liability company that has at least 500 members and all membership interests of the limited liability company, including membership interests that are limited to a right to receive distributions, have a market value of at least \$10 million, exclusive of the value of any such interests held by its managing members, managers, and other senior executives owning more than 10 percent of the rights to receive distributions from the limited liability company.

(b) The applicability of paragraph (a) shall be determined as of the date fixed to determine the members entitled to receive notice of, and to vote upon, the appraisal event.

(c) Paragraph (a) shall not apply, and appraisal rights shall be available pursuant to subsection (1), for any members who are required by the appraisal event to accept for their membership interests anything other than cash or a proprietary interest of an entity that satisfies the standards set forth in paragraph (a) at the time the appraisal event becomes effective.

(d) Paragraph (a) shall not apply, and appraisal rights shall be available pursuant to subsection (1), for the holders of a membership interest if:

1. Any of the members' interests in the limited liability company or the limited liability company's assets are being acquired or converted, whether by merger, conversion, or otherwise, pursuant to the appraisal event by a person, or by an affiliate of a person, who:

a. Is, or at any time in the 1-year period immediately preceding approval of the appraisal event was, the beneficial owner of 20 percent or more of those interests in the limited liability company entitled to vote on the appraisal event, excluding any such interests acquired pursuant to an offer for all interests having such voting rights if such offer was made within 1 year prior to the appraisal event for consideration of the same kind and of a value equal to or less than that paid in connection with the appraisal event; or

b. Directly or indirectly has, or at any time in the 1-year period immediately preceding approval of the appraisal event had, the power, contractually or otherwise, to cause the appointment or election of any senior executives; or

2. Any of the members' interests in the limited liability company or the limited liability company's assets are being acquired or converted, whether by merger, conversion, or otherwise, pursuant to the appraisal event by a person, or by an affiliate of a person, who is, or at any time in the 1-year period immediately preceding approval of the appraisal event was, a senior executive of the limited liability company or a senior executive of any affiliate of the limited liability company, and that senior executive will receive, as a result of the limited liability company action, a financial benefit not generally available to members, other than:

a. Employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the appraisal event;

b. Employment, consulting, retirement, or similar benefits established in contemplation of, or as part of, the appraisal event that are not more favorable than those existing before the appraisal event or, if more favorable, that have been approved by the limited liability company; or

c. In the case of a managing member or manager of the limited liability company who will, during or as the result of the appraisal event, become a managing member, manager, general partner, or director of the surviving or converted entity or one of its affiliates, those rights and benefits as a managing member, manager, general partner, or director that are provided on the same basis as those afforded by the surviving or converted entity generally to other managing members, managers, general partners, or directors of the surviving or converted entity or its affiliate.

(e) For the purposes of sub-subparagraph (d)1.a. only, the term "beneficial owner" means any person who, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the right to vote, or to direct the voting of, an interest in a limited liability company with respect to approval of the appraisal event, provided a member of a national securities exchange shall not be deemed to be a beneficial owner of an interest in a limited liability company held directly or indirectly by it on behalf of another person solely because such member is the recordholder of interests in the limited liability company if the member is precluded by the rules of such exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the interests in the limited liability company to be voted. When two or more persons agree to act together for the purpose of voting such interests, each member of the group formed thereby shall be deemed to have acquired beneficial ownership, as of the date of such agreement, of all voting interests in the limited liability company beneficially owned by any member of the group.

(3) A member entitled to appraisal rights under this section and ss. 608.4353-608.43595 may not challenge a completed appraisal event unless the appraisal event:

(a) Was not effectuated in accordance with the applicable provisions of this section and ss. 608.4353-608.43595, or the limited liability company's articles of organization or operating agreement; or

(b) Was procured as a result of fraud or material misrepresentation.



(4) A limited liability company may modify, restrict, or eliminate the appraisal rights provided in this section and ss. 608.4353-608.43595 in its operating agreement.

History.—s. 6, ch. 2005-267.

**608.4353 Assertion of rights by nominees and beneficial owners.—**

(1) A record member may assert appraisal rights as to fewer than all the membership interests registered in the record member's name which are owned by a beneficial member only if the record member objects with respect to all membership interests of the class or series owned by that beneficial member and notifies the limited liability company in writing of the name and address of each beneficial member on whose behalf appraisal rights are being asserted. The rights of a record member who asserts appraisal rights for only part of the membership interests of the class or series held of record in the record member's name under this subsection shall be determined as if the membership interests to which the record member objects and the record member's other membership interests were registered in the names of different record members.

(2) A beneficial member may assert appraisal rights as to a membership interest held on behalf of the member only if such beneficial member:

(a) Submits to the limited liability company the record member's written consent to the assertion of such rights no later than the date referred to in s. 608.4356(2)(b)2.

(b) Does so with respect to all membership interests of the class or series that are beneficially owned by the beneficial member.

History.—s. 6, ch. 2005-267.

**608.4354 Notice of appraisal rights.—**

(1) If a proposed appraisal event is to be submitted to a vote at a members' meeting, the meeting notice must state that the limited liability company has concluded that members are, are not, or may be entitled to assert appraisal rights under this act.

(2) If the limited liability company concludes that appraisal rights are or may be available, a copy of ss. 608.4351-608.43595 must accompany the meeting notice sent to those record members entitled to exercise appraisal rights.

(3) If the appraisal event is to be approved other than by a members' meeting, the notice referred to in subsection (1) must be sent to all members at the time that consents are first solicited, whether or not consents are solicited from all members, and include the materials described in s. 608.4356.

History.—s. 6, ch. 2005-267.

**608.4355 Notice of intent to demand payment.—**

(1) If a proposed appraisal event is submitted to a vote at a members' meeting, or is submitted to a member pursuant to a consent vote, a member who is entitled to and who wishes to assert appraisal rights with respect to any class or series of membership interests:

(a) Must deliver to a manager or managing member of the limited liability company before the vote is taken, or within 20 days after receiving the notice pursuant to s. 608.4354(3) if action is to be taken without a member meeting, written notice of such person's intent to demand payment if the proposed appraisal event is effectuated.

(b) Must not vote, or cause or permit to be voted, any membership interests of such class or series in favor of the appraisal event.

(2) A person who may otherwise be entitled to appraisal rights, but who does not satisfy the requirements of subsection (1), is not entitled to payment under ss. 608.4351-608.43595.

History.—s. 6, ch. 2005-267; s. 69, ch. 2006-1.

608.4356 Appraisal notice and form.—

(1) If the proposed appraisal event becomes effective, the limited liability company must deliver a written appraisal notice and form required by paragraph (2)(a) to all members who satisfied the requirements of s. 608.4355.

(2) The appraisal notice must be sent no earlier than the date the appraisal event became effective and no later than 10 days after such date and must:

(a) Supply a form that specifies the date that the appraisal event became effective and that provides for the member to state:

1. The member's name and address.
2. The number, classes, and series of membership interests as to which the member asserts appraisal rights.
3. That the member did not vote for the transaction.
4. Whether the member accepts the limited liability company's offer as stated in subparagraph (b)4.
5. If the offer is not accepted, the member's estimated fair value of the membership interests and a demand for payment of the member's estimated value plus interest.

(b) State:

1. Where the form described in paragraph (a) must be sent.
2. A date by which the limited liability company must receive the form, which date may not be fewer than 40 nor more than 60 days after the date the appraisal notice and form described in this subsection are sent, and that the member shall have waived the right to demand appraisal with respect to the membership interests unless the form is received by the limited liability company by such specified date.
3. In the case of membership interests represented by a certificate, the location at which certificates for such certificated membership interests must be deposited, if that action is required by the limited liability company, and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subparagraph 2.

4. The limited liability company's estimate of the fair value of the membership interests.
5. An offer to each member who is entitled to appraisal rights to pay the limited liability company's estimate of fair value set forth in subparagraph 4.
6. That, if requested in writing, the limited liability company will provide to the member so requesting, within 10 days after the date specified in subparagraph 2., the number of members who return the forms by the specified date and the total number of membership interests owned by them.
7. The date by which the notice to withdraw under s. 608.4357 must be received, which date must be within 20 days after the date specified in subparagraph 2.

(c) Be accompanied by:

1. Financial statements of the limited liability company that issued the membership interests to be appraised, consisting of a balance sheet as of the end of the fiscal year ending not more than 15 months prior to the date of the limited liability company's appraisal notice, an income statement for that year, a cash flow statement for that year, and the latest available interim financial statements, if any.
2. A copy of ss. 608.4351-608.43595.

History.—s. 6, ch. 2005-267.

608.4357 Perfection of rights; right to withdraw.—

- (1) A member who wishes to exercise appraisal rights must execute and return the form received pursuant to s. 608.4356(1) and, in the case of certificated membership interests and if the limited liability company so requires, deposit the member's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to s. 608.4356(2)(b)2. Once a member deposits that member's certificates or, in the case of uncertificated membership interests, returns the executed form described in s. 608.4356(2), the member loses all rights as a member, unless the member withdraws pursuant to subsection (3). Upon receiving a demand for payment from a member who holds an uncertificated membership interest, the limited liability company shall make an appropriate notation of the demand for payment in its records.
- (2) The limited liability company may restrict the transfer of such membership interests from the date the member delivers the items required by subsection (1).
- (3) A member who has complied with subsection (1) may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the limited liability company in writing by the date set forth in the appraisal notice pursuant to s. 608.4356(2)(b)7. A member who fails to so withdraw from the appraisal process may not thereafter withdraw without the limited liability company's written consent.
- (4) A member who does not execute and return the form and, in the case of certificated membership interests, deposit that member's certificates, if so required by the limited liability company, each by the date set forth in the notice described in subsection (2), shall not be entitled to payment under this chapter.
- (5) If the member's right to receive fair value is terminated other than by the purchase of the membership interest by the limited liability company, all rights of the member, with respect to such membership interest, shall be reinstated effective as of the date the member delivered the items required by subsection (1), including the right to receive any intervening payment or other distribution with respect

to such membership interest, or, if any such rights have expired or any such distribution other than a cash payment has been completed, in lieu thereof at the election of the limited liability company, the fair value thereof in cash as determined by the limited liability company as of the time of such expiration or completion, but without prejudice otherwise to any action or proceeding of the limited liability company that may have been taken by the limited liability company on or after the date the member delivered the items required by subsection (1).

History.—s. 6, ch. 2005-267.

**608.43575 Member's acceptance of limited liability company's offer.—**

(1) If the member states on the form provided in s. 608.4356(1) that the member accepts the offer of the limited liability company to pay the limited liability company's estimated fair value for the membership interest, the limited liability company shall make such payment to the member within 90 days after the limited liability company's receipt of the items required by s. 608.4357(1).

(2) Upon payment of the agreed value, the member shall cease to have any interest in the membership interest.

History.—s. 6, ch. 2005-267.

**608.4358 Procedure if member is dissatisfied with offer.—**

(1) A member who is dissatisfied with the limited liability company's offer as set forth pursuant to s. 608.4356(2)(b)5. must notify the limited liability company on the form provided pursuant to s. 608.4356(1) of the member's estimate of the fair value of the membership interest and demand payment of that estimate plus interest.

(2) A member who fails to notify the limited liability company in writing of the member's demand to be paid the member's estimate of the fair value plus interest under subsection (1) within the timeframe set forth in s. 608.4356(2)(b)2. waives the right to demand payment under this section and shall be entitled only to the payment offered by the limited liability company pursuant to s. 608.4356(2)(b)5.

History.—s. 6, ch. 2005-267.

**608.43585 Court action.—**

(1) If a member makes demand for payment under s. 608.4358 which remains unsettled, the limited liability company shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the membership interest and accrued interest. If the limited liability company does not commence the proceeding within the 60-day period, any member who has made a demand pursuant to s. 608.4358 may commence the proceeding in the name of the limited liability company.

(2) The proceeding shall be commenced in the appropriate court of the county in which the limited liability company's principal office in this state is located or, if none, the county in which its registered agent is located. If the limited liability company is a foreign limited liability company without a registered agent in this state, the proceeding shall be commenced in the county in this state in which the principal office or registered agent of the domestic limited liability company was located at the time of the appraisal event.

(3) All members, whether or not residents of this state, whose demands remain unsettled shall be made parties to the proceeding as in an action against their membership interests. The limited liability company shall serve a copy of the initial pleading in such proceeding upon each member party who is a resident of this state in the manner provided by law for the service of a summons and complaint and upon each nonresident member party by registered or certified mail or by publication as provided by law.

(4) The jurisdiction of the court in which the proceeding is commenced under subsection (2) is plenary and exclusive. If it so elects, the court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them or in any amendment to the order. The members demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

(5) Each member made a party to the proceeding is entitled to judgment for the amount of the fair value of such member's membership interests, plus interest, as found by the court.

(6) The limited liability company shall pay each such member the amount found to be due within 10 days after final determination of the proceedings. Upon payment of the judgment, the member shall cease to have any interest in the membership interests.

History.—s. 6, ch. 2005-267.

**608.4359 Court costs and counsel fees.—**

(1) The court in an appraisal proceeding shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the limited liability company, except that the court may assess costs against all or some of the members demanding appraisal, in amounts the court finds equitable, to the extent the court finds such members acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

(2) The court in an appraisal proceeding may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the limited liability company and in favor of any or all members demanding appraisal if the court finds the limited liability company did not substantially comply with ss. 608.4353 and 608.4356; or

(b) Against either the limited liability company or a member demanding appraisal, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

(3) If the court in an appraisal proceeding finds that the services of counsel for any member were of substantial benefit to other members similarly situated, and that the fees for those services should not be assessed against the limited liability company, the court may award to such counsel reasonable fees to be paid out of the amounts awarded the members who were benefited.

(4) To the extent the limited liability company fails to make a required payment pursuant to s. 608.43575, the member may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the limited liability company all costs and expenses of the suit, including attorney's fees.

History.—s. 6, ch. 2005-267.

608.43595 Limitation on limited liability company payment.—

(1) No payment shall be made to a member seeking appraisal rights if, at the time of payment, the limited liability company is unable to meet the distribution standards of s. 608.428. In such event, the member shall, at the member's option:

(a) Withdraw the notice of intent to assert appraisal rights, which shall in such event be deemed withdrawn with the consent of the limited liability company; or

(b) Retain the status as a claimant against the limited liability company and, if the limited liability company is liquidated, be subordinated to the rights of creditors of the limited liability company but have rights superior to the members not asserting appraisal rights and, if it is not liquidated, retain the right to be paid for the membership interest, which right the limited liability company shall be obliged to satisfy when the restrictions of this section do not apply.

(2) The member shall exercise the option under paragraph (1)(a) or paragraph (1)(b) by written notice filed with the limited liability company within 30 days after the limited liability company has given written notice that the payment for the membership interests cannot be made because of the restrictions of this section. If the member fails to exercise the option, the member shall be deemed to have withdrawn the notice of intent to assert appraisal rights.

History.—s. 6, ch. 2005-267.