

# P96000101118

**Florida Department of State**

Division of Corporations

Public Access System

Katherine Harris, Secretary of State

**Electronic Filing Cover Sheet**

**Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.**

(((H99000018921 9)))

**Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.**

**To:**

Division of Corporations  
Fax Number : (850) 922-4000

**From:**

Account Name : WHITE & CASE  
Account Number : 075410002143  
Phone : (305) 371-2700  
Fax Number : (305) 358-5744

**FILED**  
99 AUG -4 PM 1:35  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**MERGER OR SHARE EXCHANGE****Orbus Medical Technologies, Inc.**

Certificate of Status	0
Certified Copy	1
Page Count	08
Estimated Charge	\$78.75

File Ref: 1533279-0001

Return to m. wagon

*Merger*

8/4/99

*DC*

ARTICLES OF MERGER  
Merger Sheet

-----  
MERGING:

ORBUS MEDICAL TECHNOLOGIES, INC., a Florida corporation,  
P96000101118

INTO

ORBUS MEDICAL TECHNOLOGIES, INC., a Delaware corporation not  
qualified in Florida

File date: August 4, 1999

Corporate Specialist: Darlene Connell



**FLORIDA DEPARTMENT OF STATE**

**Katherine Harris**  
Secretary of State

August 2, 1999

ORBUS MEDICAL TECHNOLOGIES, INC.  
200 SOUTH BISCAYNE BOULEVARD  
20TH FLOOR  
MIAMI, FL 33131

SUBJECT: ORBUS MEDICAL TECHNOLOGIES, INC.  
REF: P96000101118

We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refax the complete document, including the electronic filing cover sheet.

If shareholder approval was not required, a statement to that effect must be contained in the merger for each applicable corporation.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 487-6906.

Darlene Connell  
Corporate Specialist

FAX Aud. #: H99000018921  
Letter Number: 499A00039038

Division of Corporations - P.O. BOX 6327 -Tallahassee, Florida 32314

**ARTICLES OF MERGER**  
**OF**  
**ORBUS MEDICAL TECHNOLOGIES, INC.**  
**(a Florida Corporation)**  
**INTO**  
**ORBUS MEDICAL TECHNOLOGIES, INC.**  
**(a Delaware Corporation)**

**FILED**  
**99 AUG -4 PM 1:35**  
**SECRETARY OF STATE**  
**TALLAHASSEE, FLORIDA**

Pursuant to the provisions of Section 607.1105 of the Florida Statutes and Section 252 of the Delaware General Corporation Law, the undersigned hereby certify that:

1. The names and States of incorporation of each of the constituent corporations of the merger (the "Merger") are as follows: Orbus Medical Technologies, Inc., a Florida corporation ("OMT Florida" or the "Merging Corporation"), and Orbus Medical Technologies, Inc., a Delaware corporation ("OMT Delaware" or the "Surviving Corporation").
2. An Agreement and Plan of Merger between the parties to the merger has been approved, adopted, certified, executed and acknowledged by OMT Florida and OMT Delaware.
3. The Merger shall become effective on the day that these Articles of Merger have been filed by the Secretary of State of Florida (the "Effective Date").
4. The Certificate of Incorporation of OMT Delaware shall be the Certificate of Incorporation of the Surviving Corporation without amendments or changes.
5. The executed Agreement and Plan of Merger (the "Agreement and Plan of Merger" dated as of July 27, 1999, pursuant to which the Merger shall be accomplished and a copy of which is attached hereto, was adopted in accordance with the Florida Statutes and the Delaware General Corporation Law, and by the Board of Directors and the Shareholders of OMT Florida as of July 6, 1999, and by the Board of Directors of OMT Delaware as of July 27, 1999 and shareholder approval was not required.
6. The executed Agreement and Plan of Merger is on file at the office of the Surviving Corporation, located at 5363 N.W. 35<sup>th</sup> Avenue, Fort Lauderdale, Florida 33309, and a copy will be furnished by the Surviving Corporation, on request and without cost to any stockholder of either the Merging Corporation or the Surviving Corporation.
7. The authorized capital stock of the Merging Corporation is 100,000,000 shares of common stock, par value \$.01.


July 27, 1999

PREPARED BY:  
MARIA BOYSEN MCREDDIE  
FL. BAR NO. 141460  
WHITE & CASE LLP  
200 S. BISCAYNE BLVD., #4900  
MIAMI, FL 33131  
9228276 P 3

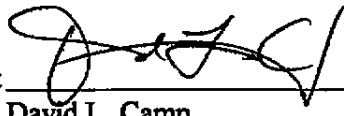
[SIGNATURES ON NEXT PAGE]

FAX AUDIT NO.  
H990000189219

ORBUS MEDICAL TECHNOLOGIES, INC., a  
Delaware corporation

By:   
David L. Camp  
President

ORBUS MEDICAL TECHNOLOGIES, INC., a  
Florida corporation

By:   
David L. Camp  
President

**AGREEMENT AND PLAN OF MERGER**

This AGREEMENT AND PLAN OF MERGER (the "Agreement") dated as of July 25, 1999, by and between ORBUS MEDICAL TECHNOLOGIES, INC., a Florida corporation ("OMT Florida"), and ORBUS MEDICAL TECHNOLOGIES, INC., a Delaware corporation ("OMT Delaware").

**RECITALS**

A. OMT Florida is a Florida corporation, having its principal place of business in Broward County, Florida.

B. OMT Delaware is a Delaware corporation, having its principal place of business in New Castle County, Delaware.

C. The Board of Directors of OMT Florida has determined that it is in the best interests of OMT Florida and its shareholders to adopt this Agreement and to consummate the merger of OMT Florida with and into OMT Delaware, with OMT Delaware surviving and continuing to exist as a Delaware corporation, and accordingly, has adopted resolutions adopting this Agreement and the Merger as defined and provided for herein upon the terms and subject to the conditions set forth herein.

D. The Board of Directors of OMT Delaware has determined that it is advisable for OMT Delaware to approve this Agreement and to consummate the merger of OMT Florida with and into OMT Delaware, with OMT Delaware surviving and continuing to exist as a Delaware corporation, and accordingly, has adopted resolutions approving the execution and delivery of this Agreement and the Merger as defined and provided for herein upon the terms and subject to the conditions set forth herein.

E. The authorized capital stock of OMT Florida consists of 100,000,000 shares of common stock, par value \$.01 per share (the "OMT Florida Common Stock"), of which 9,204,281 shares are issued and outstanding.

F. The authorized capital stock of OMT Delaware consists of 100,000,000 shares of common stock, par value \$.01 per share (the "OMT Delaware Common Stock"), of which 100 shares are issued and outstanding.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, representations, warranties and agreements contained in this Agreement, the parties hereby adopt the plan of merger encompassed by this Agreement and agree as follows:

1. Merger. Subject to the terms and conditions of this Agreement, at the Effective Time (as defined in Section 3). OMT Florida shall be merged with and into OMT Delaware (the "Merger"), the separate corporate existence of OMT Florida shall cease and OMT Delaware shall survive and continue to exist as a Delaware corporation (OMT Delaware, as a surviving corporation in the Merger, sometimes being referred to herein as the "Surviving



b. All shares of OMT Florida Common Stock shall no longer be outstanding and shall be canceled and retired and shall cease to exist. At the Effective Time, each certificate representing shares of OMT Florida Common Stock will be deemed for all purposes to evidence the same number of shares of OMT Delaware Common Stock until such certificate is exchanged for a certificate representing shares of OMT Delaware Common Stock.

c. Any shares of OMT Florida Common Stock held in OMT Florida's treasury (*i.e.*, issued but not outstanding shares of OMT Florida Common Stock) at the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, cease to be outstanding, shall be canceled and retired without payment of any consideration therefor and shall cease to exist.

d. Each share of OMT Delaware Common Stock issued and outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of OMT Delaware or the holder of such shares, be canceled and retired without payment of any consideration therefor.

e. OMT Florida's obligations with respect to any dividends or other distributions to the shareholders of OMT Florida that have been declared by OMT Florida but not paid prior to the Effective Time will be assumed by OMT Delaware in accordance with the terms thereof.

8. Benefit Matters

a. Assumption of Options to Purchase Shares of OMT Florida Common Stock. At the Effective Time, by virtue of the Merger, and without any further action on the part of any holder of options hereafter referred to, each option granted by OMT Florida to purchase shares of OMT Florida Common Stock which is outstanding and unexercised immediately prior thereto, whether or not vested, shall be converted automatically into an option to purchase the same number of shares of OMT Delaware Common Stock at an exercise price equal to the exercise price per share of OMT Florida Common Stock under the option immediately before the Effective Time (and otherwise subject to the terms of the [name of option plan] (the "Plan")). The duration, vesting schedule, exercisability and other terms of the option immediately after the Effective Time shall be the same as the corresponding terms in effect immediately before the Effective Time, except that all references to OMT Florida in the Plan (and the corresponding references in the option agreement documenting such option) shall be deemed to be references to OMT Delaware. Vesting of stock options under the Plan shall not be accelerated as a result of the Merger. Continuous employment with OMT Florida or its subsidiaries shall be credited to the optionee for purposes of determining the vesting of all assumed OMT Florida options after the Effective Time. It is intended that OMT Florida options assumed by OMT Delaware shall qualify following the Effective Time as incentive stock options as defined in Section 422 of the Code, to the extent such options qualified as such prior to the Effective Time and the provisions of this Section 8 shall be applied consistently with such intent. As soon as reasonably practicable after the Effective Time, OMT Delaware will issue to each holder of an assumed option notice of the foregoing assumption by OMT Delaware of such OMT Florida option.



b. Other Benefit Plans. OMT Delaware shall assume any other benefit plans of OMT Florida.

9. Conditions to the Merger. The respective obligations of OMT Florida and OMT Delaware to consummate the Merger are subject to satisfaction or waiver of the following conditions:

a. This Agreement shall have duly approved by a majority of all shares of OMT Florida Common Stock entitled to vote on the Agreement.

b. OMT Florida and OMT Delaware shall have received all governmental and third party consents, approvals and authorizations necessary or advisable from OMT Florida to effect the Merger in accordance with the terms and conditions of this Agreement.

10. Termination. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, before or after approval of this Agreement (i) by the Board of Directors of OMT Florida in its sole discretion or (ii) by the Board of Directors of OMT Delaware in its sole discretion. In the event of termination of this Agreement or abandonment of the Merger pursuant to this Section 10, no party hereto (or any of its directors or officers) shall have any liability or further obligation to any other party to this Agreement.

11. Additional Representations, Warranties and Covenants of OMT Florida; Further Assurance. OMT Florida hereby represents and warrants to OMT Delaware and to the securityholders and creditors of OMT Florida that the execution, delivery and performance of this Agreement and the consummation of the Merger contemplated hereby by OMT Florida in accordance with the terms of this Agreement will not (i) violate, conflict with, or result in a breach of or the acceleration of any obligation under, or constitute a default (or an event which with notice or the lapse of time or both would become a default) under, or give to others any right of, or result in any, termination, amendment, acceleration or cancellation of, or loss of any benefit or creation of a right of first refusal, or require any payment under, or result in the creation of a lien or other encumbrance on, any of the properties or assets of OMT Florida pursuant to or under any provision of any indenture, mortgage, note, bond, lien, lease, license, agreement, franchise, contract, order, judgment, ordinance, permit or other instrument or obligation to which OMT Florida is a party or by which OMT Florida or any of its properties is bound or subject to, or (ii) violate or conflict with the Articles of Incorporation or bylaws of OMT Florida. [OMT Florida hereby covenants that it will obtain all government and third party consents, approvals or authorizations that are necessary or advisable for OMT Florida to effect the Merger in accordance with the terms of this Agreement.

12. Entire Agreement. This Agreement and any documents delivered by the parties in connection herewith constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings among the parties with respect hereto. No addition to or modification of any provision of this Agreement shall be binding upon any party hereto unless made in writing and signed by all parties hereto.

FAX AUDIT NO.  
H990000189219

13. Amendment. This Agreement may be amended by the parties hereto, by action taken by their respective boards of directors at any time [before or after approval of the Agreement by the shareholders of OMT Florida, but after such shareholder approval, no amendment shall be made which by law requires the further approval of such shareholders without obtaining such further approval.

[SIGNATURES ON NEXT PAGE]

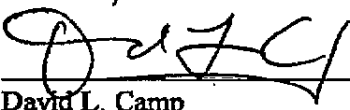
FAX AUDIT NO.  
H990000189219

IN WITNESS WHEREOF, the parties have caused this Agreement and Plan of Merger to be executed and delivered in counterparts by their duly authorized officers, all as of the date first-above written.

ORBUS MEDICAL TECHNOLOGIES, INC., a  
Florida corporation

By:   
David L. Camp  
President

ORBUS MEDICAL TECHNOLOGIES, INC., a  
Delaware corporation

By:   
David L. Camp  
President