

490.1302 Right to appraisal.

1. A shareholder 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 merger to which the corporation is a party if any of the following apply:

(1) Shareholder approval is required for the merger by [section 490.1104](#) or would be required but for the provisions of [section 490.1104, subsection 10](#), except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger.

(2) The corporation is a subsidiary and the merger is governed by [section 490.1105](#).

b. Consummation of a share exchange to which the corporation is a party the shares of which will be acquired, 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 acquired in the share exchange.

c. Consummation of a disposition of assets pursuant to [section 490.1202](#) if the shareholder is entitled to vote on the disposition, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series if all of the following apply:

(1) Under the terms of the corporate action approved by the shareholders there is to be distributed to shareholders in cash the corporation's net assets, in excess of a reasonable amount reserved to meet claims of the type described in [sections 490.1406](#) and [490.1407](#), if the distribution is made subject to all of the following:

(a) Within one year after the shareholders' approval of the action.

(b) In accordance with the shareholders' respective interests determined at the time of distribution.

(2) The disposition of assets is not an interested transaction.

d. An amendment of the articles of incorporation with respect to a class or series of shares that 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 merger, share exchange, disposition of assets, or amendment to the articles of incorporation, in each case to the extent provided by the articles of incorporation, bylaws, or a resolution of the board of directors.

f. Consummation of a domestication pursuant to [section 490.920](#) if the shareholder does not receive shares in the foreign corporation resulting from the domestication that have terms as favorable to the shareholder in all material respects, and represent at least the same percentage interest of the total voting rights of the outstanding shares of the foreign corporation, as the shares held by the shareholder before the domestication.

g. Consummation of a conversion of the corporation to a nonprofit corporation pursuant to [section 490.930](#).

h. Consummation of a conversion of the corporation to an unincorporated entity pursuant to [section 490.930](#).

2. Notwithstanding [subsection 1](#), the availability of appraisal rights under [subsection 1](#), paragraphs "a", "b", "c", "d", "f", and "h", 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 any of the following:

(1) A covered security under section 18(b)(1)(A) or (B) of the federal Securities Act of 1933, as amended.

(2) Traded in an organized market and has at least two thousand shareholders and a market value of at least twenty million dollars, exclusive of the value of such shares held by the corporation's subsidiaries, senior executives and directors, and by any beneficial shareholder and any voting trust beneficial owner owning more than ten percent of such shares.

(3) Issued by an open-end management investment company registered with the United States securities and exchange commission under the federal Investment Company Act of

1940, 15 U.S.C. §80a-1 et seq., and which may be redeemed at the option of the holder at net asset value.

b. The applicability of paragraph “a” shall be determined according to the following:

(1) The record date fixed to determine the shareholders entitled to receive notice of the meeting of shareholders to act upon the corporate action requiring appraisal rights or in the case of an offer made pursuant to [section 490.1104, subsection 10](#), the date of such offer.

(2) If there is no meeting of shareholders and no offer made pursuant to [section 490.1104, subsection 10](#), the day before the consummation of the corporate action or effective date of the amendment of the articles of incorporation, as applicable.

c. Paragraph “a” shall not be applicable and appraisal rights shall be available pursuant to [subsection 1](#) under the following circumstances:

(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.

(2) For the holders of any class or series of shares, in the case of the consummation of a disposition of assets pursuant to [section 490.1202](#), unless the cash, shares, or proprietary interests received in the disposition are, under the terms of the corporate action approved by the shareholders, to be distributed to the shareholders, as part of a distribution to shareholders of the net assets of the corporation in excess of a reasonable amount to meet claims of the type described in [sections 490.1406](#) and [490.1407](#), if the distribution is made subject to all of the following:

(a) Within one year after the shareholders’ approval of the action.

(b) In accordance with the shareholders’ respective interests determined at the time of the distribution.

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 where the corporate action is an interested transaction.

3. Notwithstanding any other provision of [this section](#), the articles of incorporation as originally filed or any amendment to the articles of incorporation may limit or eliminate appraisal rights for any class or series of preferred shares, except that the following shall apply:

a. Except as provided in paragraph “b”, no such limitation or elimination shall be effective if the class or series does not have the right to vote separately as a voting group, alone or as part of a group, on the action or if the action is a conversion under [section 490.930](#), or a merger having a similar effect as a conversion in which the converted entity is an eligible entity.

b. 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 before 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 one year after the effective date of such amendment if such action would otherwise afford appraisal rights.

[89 Acts, ch 288, §132; 2002 Acts, ch 1154, §79, 125; 2008 Acts, ch 1162, §122, 155; 2013 Acts, ch 31, §51 – 55, 82; 2013 Acts, ch 140, §72; 2015 Acts, ch 30, §158; 2019 Acts, ch 20, §17; 2021 Acts, ch 165, §159, 230](#)

Referred to in [§490.1301](#), [490.1320](#), [490.1321](#), [490.1322](#), [490.1340](#), [490.1706](#), [5211.13](#)

2021 amendment effective January 1, 2022; 2021 Acts, ch 165, §230

Section stricken and rewritten