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**Testimony of Mark G. Sklarz
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**In SUPPPORT of HB6497
An Act Creating Jobs by Enhancing Connecticut's Corporate and Securities Laws**

Banking Committee
March 8, 2011

Senator Duff, Representative Tong and members of the Banking Committee.

Thank you for the opportunity to appear before the Committee to comment on Raised Bill No. 6497, An Act Creating Jobs by Enhancing Connecticut's Corporate and Securities Laws with respect to Sections 2 through 53 inclusive relating to the proposed Model Entity Transactions Act and amendments to current Connecticut statutes related thereto.

My name is Mark G. Sklarz. I am a partner with Day Pitney, LLC in New Haven and practice in the areas of business, corporate and tax law. I am a member of the Business Law and Tax Sections of the Connecticut Bar Association and have served as Chair of a Joint Subcommittee of such Sections for the purpose of developing and considering the proposed legislation to be discussed this morning.

BACKGROUND

Throughout the last three decades, state law has introduced several new forms of business entities, including limited liability companies, limited liability partnerships and limited liability limited partnerships as attractive methods of conducting business for the entrepreneur and small business person. In particular, the financial and tax efficiencies of the organization and operation of a limited liability company have encouraged most small businesses to adopt this form as its initial method of organization. A difficulty encountered by the new forms of entities has often occurred when restructuring becomes desirable, whether resulting from internal transition or an acquisitive transaction. In those situations, statutory authority to permit conversion to a different form of entity or allow transactions between dissimilar entities has frequently been inadequate. As a result, it often becomes necessary to engage in multiple and expensive steps for businesses to achieve desired results. While Connecticut has provided some measures to address the issues, the current statutory framework is not comprehensive and in many instances fails to provide the desired authority. This has caused businesses to resort to other state law, particularly that of

Delaware, to facilitate transactions between or among different forms of entities, increasing cost and frequently resulting in those business organizations converting to and continuing as Delaware organizations.

REVIEW PROCESS

Due to the concerns of inefficiency, cost and frustration of business purpose in Connecticut related to mergers and other similar transactions among entities of different forms, a decision was made by both the Business Law and Tax Sections of the Connecticut Bar Association that it was imperative to adopt comprehensive legislation to permit cross entity transactions of all forms, both for Connecticut and foreign entities. To implement this project, a joint committee (the "Joint Committee") of the Business Law and Tax Sections was appointed to review, evaluate and develop a recommended approach to improve the pertinent Connecticut statutory authority.

The Joint Committee studied multiple state law provisions addressing the method of permitting transactions between and among dissimilar entities and ultimately concluded the most favorable approach was clearly to recommend adoption of the Model Entity Transactions Act ("META"). META represents a thoroughly and diligently conceived and vetted model act developed through almost ten years of collaboration of the National Conference of Commissioners on Uniform State Laws ("NCCUSL") and the American Bar Association (the "ABA"). META was created specifically to facilitate transactions between and among dissimilar entities and creates an efficient and workable comprehensive framework to address all varieties of cross-entity transactions. Importantly as well, META is a "junction box statute" which provides a stand alone provision to implement cross-entity transactions without the need to revise current Connecticut statutory authority dealing with transactions of the same form of entity. Additionally, META will continue the goal of expanding model act legislation within the business organization statutes to provide uniformity with other jurisdictions and make Connecticut increasingly attractive to cross-border transactions.

META

As expressed above, META is referred to as a junction box statute and is based upon an act adopted by a joint collaboration of NCCUSL and the ABA. The Joint Committee of the Business Law and Tax Sections carefully reviewed META, found it be extremely thorough and concluded META should be adopted as a new chapter of the Connecticut General Statutes designated as the Connecticut Model Entity Transactions Act. It will complement the existing Connecticut statutes and permit a number of very important cross-entity transactions, many of which cannot be accomplished under existing Connecticut statutes. Specifically, META would permit the following:

1. Mergers, consolidations and interest exchange transactions among entities of different forms (i.e. corporation, general partnerships, limited liability companies, limited liability partnerships, associations and other forms of unincorporated for-profit entities). Currently, many of these transactions cannot be accomplished in Connecticut and thus require a multistep process, including cumbersome, expensive and time consuming procedures involving use of other jurisdictions, such as Delaware, to achieve the desired result. Frequently, after such transactions, the companies remain domiciled in the other jurisdictions rather than returning to Connecticut.

2. Converting from one form of entity to another. For example, META would permit the conversion of a corporation to a limited liability company by simply filing a certificate with the Secretary of the State and paying a filing fee. Again, in many cases, current Connecticut statutes do not permit this type of transaction and thus require Connecticut companies to resort to a multi-step, multi-jurisdictional process.
3. Domestication of entities to or from Connecticut. Illustratively, a corporation organized in another state could become a Connecticut corporation under META by filing a certificate with the Connecticut Secretary of the State and appropriate filing office in the other state. There currently is no Connecticut statutory authority to permit domestication.

As proposed, META would apply only to for-profit entities and would implement the above objectives as follows:

- a. Merger, consolidation and interest exchange transactions between entities of the same form will continue to be governed by the current statutes and not by META.
- b. All statutory authority regarding mergers, consolidations, interest exchanges and conversions between or among dissimilar entities will be governed solely by META.
- c. META will govern all domestications.

The Business Law and Tax Sections have concluded there should be no significant negative fiscal impact of the proposed legislation. In fact, the view is META will create a positive impact through some increased filing fees and in particular avoiding the necessity for Connecticut businesses to accomplish the desired transactions in other states and not continue as Connecticut entities. As a result, the Sections strongly believe that adoption of META will enhance the usefulness of the laws of Connecticut for pertinent cross-entity transactions and provide substantial benefits to many Connecticut businesses, particularly those of small and medium size. Further, the Sections believe the availability of META may well encourage existing businesses, which otherwise would be required to apply the laws of Delaware or other states to accomplish a desired transaction, to remain in Connecticut rather than relocating to such other jurisdictions.

It is important to mention that META relates only to the form of entity in which a business will operate and does not impact the tax consequences of a transaction.

To assist the office of the Connecticut Secretary of the State in the transition process, it has been agreed to defer the effective date of the legislation to January 1, 2013.

CONCLUSION

Connecticut business will benefit from the clarity, efficiency and comprehensive structure of META. The current "patchwork authority" of the Connecticut statutes, while a worthy attempt to close gaps, is confusing, disorganized and not complete. META has been specifically designed to remedy these issues and will provide Connecticut with a best practices statute to assist small and medium size businesses to compete in the most favorable environment for entities of different forms.