

April 26, 2000

To: J.E. Pearson

Fm: D. R. Johnson

Re: Relocation of State of Incorporation

As part of the effort to change the legal name of the Society, I recommend we move the state of incorporation from Pennsylvania to North Carolina. Such a change will bring ISA under the nonprofit corporation laws of North Carolina, a change that will make it easier to research and manage the legal corporate obligations of ISA. It will also eliminate the need to maintain a registered agent in Pennsylvania or any other legal ties to that state.

Current Situation

The Society was incorporated in the Commonwealth of Pennsylvania in January, 1945. At that time, the hub of Society activity and its principal place of business was Pittsburgh. It made perfect sense to incorporate in Pennsylvania.

When the Society relocated its headquarters to North Carolina in 1980, no effort was made to change its state of incorporation. Instead, ISA simply registered in North Carolina as a “foreign” non-profit corporation and received authority to conduct business in North Carolina. (Under corporation law, a “foreign” corporation is any corporation established outside of the state.)

As a result, the Society has what could be described as a “dual citizenship.” With its principal place of business in North Carolina, ISA is subject to the jurisdiction of North Carolina on most tax and legal issues. However, ISA must follow Pennsylvania corporation law with respect to fundamental corporate governance questions. ISA must also maintain a registered agent in Pennsylvania and is subject to the jurisdiction of Pennsylvania courts without regard to whether the dispute has any relationship to Pennsylvania.

Benefits/Detriments to Change

Changing the state of incorporation has several benefits, including:

- Simplifying the sources of law applicable to corporate and business operations.
- Eliminating the need to maintain a registered agent in Pennsylvania. As long as ISA maintains a corporate presence in Pennsylvania, it must maintain a registered agent that resides in that state. The agent may be a person or a corporation. We currently use a corporation that specializes in handling corporate matters as our registered agent. The cost to do so is about \$200/year.
- Eliminating the need to research Pennsylvania law, including consultations with a Pennsylvania law firm, when dealing with corporate governance issues such as Bylaw changes.

- Ending the potential jurisdiction of the Pennsylvania courts over matters that don't arise in Pennsylvania.
- Eliminating the risk that Pennsylvania will assert some tax or other obligation on ISA even though there is no business activity in Pennsylvania. For example, Pennsylvania could, at some point, require ISA to file tax returns or corporate information returns even though there is no presence in the state. Pennsylvania could require us to collect sales taxes on sales to members and customers from Pennsylvania. Under current law, without a presence in the state, the state could not impose those obligations on ISA.

The disadvantages to making the change are:

- There would be some cost associated with filing the necessary documentation with the respective states, although the additional costs above those related to the name change are small, in the range of \$500. This would be a one-time expense.
- There is a risk that the IRS would re-examine the tax-exempt status of ISA based on the fact that a "new" entity will be created in North Carolina and could change the status. Since the substance of the transaction would be to simply transfer the state of incorporation, it is not likely the IRS would take this stance, but it is a possibility.

Under the change, current corporate governance would be unaffected. North Carolina law permits a delegate structure for member representation just as Pennsylvania does. The North Carolina non-profit corporation law is based on a national model act that gives the organization a great deal of flexibility in organizational issues. Although the Pennsylvania statutes are not based on the model act, the rules are essentially the same.

Additional Benefits in Coinciding with Name Change

Although the change in the legal name and the change in the state of incorporation may be done separately, the change in legal name provides an ideal opportunity to accomplish both steps at once. To effect the change in name, amended articles of incorporation must be filed in Pennsylvania. After that, an additional filing must be made in North Carolina. The change in state of incorporation also requires filings in both states, but the two procedures can be combined so that the number of filings (and the associated cost) is reduced. Since there is a charge for filing documents, the fewer needed, the lower the cost. Combining the two procedures also reduces the administrative time required to handle this action. It is simply more efficient to make the change in state in conjunction with the change in name.

Procedure to Make the Change

The technique to move the state of incorporation is to create a new corporation in North Carolina, merge the existing corporation into the new corporation, then end the existence of the

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old corporation by filing the merger registration in both states. The steps required to make the change are:

- Establish a new North Carolina non-profit corporation. Establish the new corporation as a shell with only minimal requirements. Appoint only a minimum number of initial directors, either staff or volunteers or both. The role of these directors is to adopt the merger plan and the ISA Bylaws as the Bylaws of the new corporation.
- Have the CSD approve a plan of merger with the new North Carolina corporation.
- Have the new North Carolina corporation approve the merger plan.
- File the merger documents with both states.
- File a name change for the new corporation with North Carolina. (This can be done simultaneously with the merger.)

In order to accomplish this, the ISA Executive Board must recommend to the CSD the approval of the merger plan. The proposed merger plan is attached.

/drj

**Plan of Merger
of
Instrument Society of America
and
ISA Holding, Inc.
into
ISA – The Instrumentation, Systems, and Automation Society**

Corporations Participating in the Merger

The Instrument Society of America, a Pennsylvania nonprofit corporation authorized to conduct business in North Carolina, (the “Merging Corporation”) will merge into ISA Holding, Inc., a North Carolina nonprofit corporation, which will be the surviving corporation (the “Surviving Corporation”).

Name of Surviving Corporation

After the merger, the Surviving Corporation will have the name “ISA – The Instrumentation, Systems, and Automation Society.”

Merger

The merger of the Merging Corporation into the Surviving Corporation will be effected pursuant to the terms and conditions of this Plan. As soon as the merger is effective, the corporate existence of the Merging Corporation will cease while the corporate existence of the Surviving Corporation will continue. The time when the merger becomes effective is upon the filing Articles of Merger with the Secretary of State of the State of North Carolina, hereafter referred to as the “Effective Time.”

Terms and Conditions

At the Effective Time, all assets of the Merging Corporation will be assigned and transferred to the Surviving Corporation and the Surviving Corporation will assume all liabilities of the Merging Corporation.

Conversion of Memberships

At the Effective Time, the memberships of each corporation will be converted and exchanged as follows:

Surviving Corporation. No memberships in the Surviving Corporation will be converted, altered, modified, or exchanged in any manner as a result of the merger and will remain as memberships of the Surviving Corporation.

Merging Corporation. Each membership in the Merging Corporation will be converted and exchanged for a membership of the same class and type in the Surviving Corporation. Thereafter, each member of the Merging Corporation shall have the same rights and obligations of members of the Surviving Corporation.

Adoption of Bylaws by the Surviving Corporation

At the Effective Time, the Bylaws of the Merging Corporation will be adopted as the Bylaws of the Surviving Corporation except for Article I, Section 1, which will be amended at the Effective Time to reflect the post-merger name of the Surviving Corporation.

Abandonment

The Executive Board of the Merging Corporation may, at its discretion, abandon the merger at any time before its Effective Date.