



NEW JERSEY LAW REVISION COMMISSION

Draft Final Report Addressing Meaning of Corporate “Books and Records of Account” in N.J.S. 14A:5-28

September 16, 2024

The work of the New Jersey Law Revision Commission is only a recommendation until enacted.

Please consult the New Jersey statutes in order to determine the law of the State.

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Project Summary¹

The New Jersey Business Corporation Act (“Act”), addresses a range of topics related to the formation, management, and dissolution of corporations.² Pursuant to N.J.S. 14A:5-28(1), a corporation is required to “keep *books and records of account* and minutes of the proceedings of its shareholders, board and executive committee” and a record of its shareholders.³ Pursuant to N.J.S. 14A:5-28(4), shareholders who have demonstrated a “proper purpose”⁴ to the court are permitted to inspect “the *books and records of account*, minutes, and record of shareholders of a corporation.”⁵ The phrase “books and records of account” is not defined in the Act.

In *Feuer v. Merck & Co., Inc.*, the Appellate Division considered “the scope of a shareholder’s right to inspect corporate records under N.J.S.A. 14A:5-28 and the common law,” and found that “books and records of account consist of accounting or financial documents,” but do “not necessarily encompass all financial documents of a corporation.”⁶

In February 2024, a Tentative Report was released proposing modifications to N.J.S. 14A:5-28 that defined the phrase “books and records of account” as used in the Act.⁷ The response to outreach unanimously opposed the inclusion of a definition of “books and records of account” in the statute.⁸

Therefore, the recommended modifications, set forth in the Appendix, only clarify that the “minutes” referred to in subsection (4) include the “minutes of the proceedings of its shareholders,

¹ Preliminary work on this project was conducted by Mark D. Ygarza during his tenure as a Legislative Fellow with the N.J. Law Revision Comm’n.

² N.J. STAT. ANN. §§ 14A:1-1 to 14A:18-11 (West 2024).

³ N.J. STAT. ANN. § 14A:5-28(1) (West 2024) (emphasis added).

⁴ See e.g. *Feist v. Joseph Dixon Crucible Co.*, 30 N.J. Super. 153, 158 (App. Div. 1954) (recognizing right of inspection when “application is made in good faith and is for a purpose germane to the applicant’s rights as a stockholder”) (quoting *Feick v. Hill Bread Co.*, 91 N.J.L. 486, 488 (Sup.Ct.1918), *aff’d* 92 N.J.L. 513 (E. & A. 1918)).

⁵ N.J. STAT. ANN. § 14A:5-28(4) (emphasis added).

⁶ *Feuer v. Merck & Co., Inc.*, 455 N.J. Super. 69, 78-79 (App. Div. 2018), *cert. granted* 236 N.J. 227, *aff’d* 238 N.J. 27.

⁷ N.J. Law Revision Comm’n, *Tentative Report Addressing Meaning of Corporate “Books and Records of Account” in N.J.S. 14A:5-28* (Feb. 15, 2024), www.njlrc.org (last visited Aug. 21, 2024) [hereinafter “Tentative Report”]. Following the presentation of an Update Memorandum in January 2023, see N.J. Law Revision Comm’n, *Update Memorandum Re: Meaning of Corporate “Books and Records of Account” in N.J.S. 14A:5-28* (Jan. 17, 2023), www.njlrc.org (last visited Aug. 21, 2024), Staff, at the Commission’s request, confirmed that the New Jersey Corporate and Business Law Study Commission is not actively working in this area. See E-Mail from Todd Moore, Section Chief, Commerce, Labor and Industry Section, Office of Legislative Services, to Whitney G. Schlimbach, Re: New Jersey Law Revision Commission: Corporate Books and Records of Account in N.J.S. 14A:5-28 (May 24, 2023, 2:36 PM EST) (explaining that, to his understanding, “the commission is not currently active”) (on file with NJLRC).

In addition, a letter was received from the New Jersey State Bar Association “convey[ing] the NJSBA’s] support for the [NJLRC]’s memorandum on Corporate Books and Records of Account.” See Letter from Jeralyn Lawrence, President, NJSBA, to Laura Tharney, Executive Director, NJLRC (March 13, 2023) (“agree[ing] with the NJLRC that the statutory provision referenced therein be reviewed and revised for the reasons stated by NJLRC’s staff” and offering assistance going forward) (on file with NJLRC).

⁸ See *infra* at pp. 17-20.

board, and executive committee,” as discussed by the *Feuer* Court.⁹

Statute Considered

N.J.S. 14A:5-28 provides, in relevant part:

(1) Each corporation shall keep books and records of account and minutes of the proceedings of its shareholders, board and executive committee, if any. . . .

* * *

(4) Nothing herein contained shall impair the power of any court, upon proof by a shareholder of proper purpose, irrespective of the period of time during which the shareholder shall have been a shareholder of record, and irrespective of the number of shares held by him, to compel the production for examination by such shareholder of the books and records of account, minutes, and record of shareholders of a corporation. The court may, in its discretion prescribe any limitations or conditions with reference to the inspection, or award any other or further relief as the court may deem just and proper. The court may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within this State and kept in this State upon whatever terms and conditions as the order may prescribe. In any action for inspection the court may proceed summarily.¹⁰

Legislative History of Title 14A and N.J.S. 14:5-28

In 1968, the Legislature repealed extensive portions of the General Corporation Law of New Jersey in Title 14 and enacted the Business Corporation Act in Title 14A.¹¹ The new statutory scheme was developed by the Corporation Law Revision Commission (“CLRC”).¹² The work of the CLRC culminated in the issuance of a 1968 Report, which formed the basis for the bill enacted as Title 14A.¹³

In its Report, the CLRC emphasized that the goal of the extensive revision of New Jersey’s

⁹ *Feuer*, 455 N.J. Super. at ---.

¹⁰ N.J. STAT. ANN. § 14A:5-28 (emphasis added).

¹¹ N.J. STAT. ANN. §§ 14A:1-1 to 14A:18-11.

¹² See Corp. Law Revision Comm’n, *Report of Corporation Law Revision Commission and Commissioners’ Comments to Proposed Revision of the General Corporation Law of New Jersey (Senate, No. 884)* (June 20, 1968) [hereinafter “1968 CLRC Report”]; see also S.B. 884, 1968 Leg., 193rd Sess. (1968).

The Corporation Law Revision Commission was created in 1958 and tasked with “moderniz[ing] corporation laws . . . to embody principles and procedures representing the best in modern American statutory law . . . [and] to eliminate ambiguities, outmoded procedures and conflicting, overlapping and redundant provisions, and to present statutes applicable to business corporations, in a logical, clear and concise manner.” N.J. STAT. ANN. § 1:14-3 (1958) (expired Dec. 31, 1984).

¹³ 1968 CLRC Report, *supra* note 12.

business law was to reverse the trend toward Delaware incorporation¹⁴ and restore New Jersey's popularity as a business forum.¹⁵ To that end, the CLRC explained that the changes were intended to support a strong policy of “seeking to attract corporations to establish their domiciles within [New Jersey's] borders” by enacting “flexible and permissible . . . corporation laws.”¹⁶

With respect to the content of the Report, the CLRC “adopted, in spirit if not in letter,” many provisions of the Model Business Corporation Act (“MBCA” or “Model Act”),¹⁷ and “borrowed from the statutes of such leaders of corporate law as Delaware, New York and Illinois.”¹⁸ The CLRC also gave “[g]reat weight . . . to the existing statute law in New Jersey . . . and to the large body of case law in th[e] state.”¹⁹ Among the newly enacted statutes was N.J.S. 14A:5-28, which the CLRC based on Section 46 in the 1960 version of the MBCA, New York corporation law, and three repealed statutes in Title 14.²⁰

Subsection (1) of N.J.S. 14A:5-28 was derived from all three sources: (1) repealed statute N.J.S. 14:5-1.1; (2) the first paragraph of Section 46 of the 1960 MBCA;²¹ and (3) §624 of New York's Business Corporation Law.²² The CLRC indicated that N.J.S. 14A:5-28(1) was “broadly enough expressed to make specific re-enactment of R.S. 14:5-1.1 unnecessary.”²³ That statute had required corporations to keep “transfer books [and] stock books” inside the state.²⁴

N.J.S. 14A:5-28(2) provides that a shareholder is entitled to inspect certain corporate documents – “the balance sheet, the profit-and-loss statement and the surplus statement”²⁵ – by

¹⁴ *Id.* at iv (“[s]ince World War I, however, it is clear that the trend has been steadily toward Delaware incorporation as New Jersey has fallen farther behind in modernizing its corporation act to meet current needs and practices” and predicting “that this trend will not be reversed in light of the Revision of the New Jersey corporation laws herewith submitted”).

¹⁵ *Id.* (explaining that “[d]espite the efforts of New York and other states to stem the tide to New Jersey, by 1904 the seven largest business corporations, with an aggregate capitalization of over two and a half billion dollars, all were organized under New Jersey law”).

¹⁶ *Id.* at v (“Pursuing this policy perhaps further than any other state, the Commission believes it is following sound public policy for New Jersey.”).

¹⁷ See Committee on Corporate Laws, American Bar Foundation, Ed., *Model Business Corporation Act Annotated*, Vol. 2, §46 (1960) [hereinafter “1960 MBCA”].

¹⁸ *1968 CLRC Report, supra* note 12, at iii-iv.

¹⁹ *Id.* at iv.

²⁰ *Id.* at 77 (citing to repealed statutes R.S. 14:1-3.1, R.S. 14:5-1 and R.S. 14:5-1.1).

²¹ The only difference between Section 46 and N.J.S. 14A:5-28(1) was the use of the phrase “correct and complete books and records of account,” which the New Jersey Legislature shortened to simply “books and records of account.” See *1960 MBCA, supra* note 14, at 113.

²² *1968 CLRC Report, supra* note 12, at 77 (“The last sentence of subsection 14A :5-28 (1) is taken from section 624 of the New York Act.”). See N.Y. BUS. CORP. LAW § 624 (McKinney) (“Any of the foregoing books, minutes or records may be in written form or in any other form capable of being converted into written form within a reasonable time.”).

²³ *1968 CLRC Report, supra* note 12, at 77.

²⁴ N.J. STAT. ANN. § 14:5-1.1 (repealed by L.1968, c. 350) (“The directors may keep the books of the corporation, except the stock and transfer books, outside of this state unless otherwise provided by the by-laws or certificate of incorporation.”).

²⁵ *1968 CLRC Report, supra* note 17, at 77.

submitting a written demand to the corporation.²⁶ The CLRC noted that subsection (2) was derived from the last sentence of Section 46 of the MBCA, which permitted a shareholder to access a corporation’s “most recent financial statements” after submitting a written demand.²⁷

Finally, the CLRC indicated that N.J.S. 14A:5-28(4) was based on the fourth paragraph of Section 46 of the 1960 MBCA.²⁸ As originally enacted, N.J.S. 14A:5-28(4) was practically identical to the language used in the 1960 MBCA.²⁹

Although N.J.S. 14A:5-28 was subsequently amended in 1973,³⁰ 1988,³¹ 2017,³² and 2021,³³ the amendments did not alter the language at issue in *Feuer*, nor did they provide any additional insight into the scope of the phrase “books and records of account.”

Model Business Corporation Act

Originally published in 1946 by the American Bar Association, the MBCA provides states with a modern body of statutory corporate law.³⁴ Since its publication, the MBCA has been revised several times.³⁵ As discussed *supra*, the 1960 MBCA was a significant influence on the development of Title 14A.³⁶ Until 1984, the Model Act addressed corporate records and

²⁶ N.J. STAT. ANN. § 14A:5-28(2) (“Upon the written request of any shareholder, the corporation shall mail to such shareholder its balance sheet as at the end of the preceding fiscal year, and its profit and loss and surplus statement for such fiscal year.”).

²⁷ 1960 MBCA, *supra* note 17, at 114 (“Upon the written request of any shareholder of a corporation, the corporation shall mail to such shareholder its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations.”).

²⁸ 1968 CLRC Report, *supra* note 12, at 77.

²⁹ S.B. 884, 1968 Leg., 193rd Sess. (1968). *See also* 1960 MBCA, *supra* note 17, at 113 (“Nothing herein contained shall impair the power of any court of competent jurisdiction, upon proof by a shareholder of proper purpose, irrespective of the period of time during which such shareholder shall have been a shareholder of record, and irrespective of the number of shares held by him, to compel the production for examination by such shareholder of the books and records of account, minutes, and record of shareholders of a corporation.”) (underlined portion was not included in N.J.S. 14A:5-28(4)).

³⁰ L.1973, c. 366, § 19, eff. May 1, 1974. *See also* Corporation Law Revision Commission, *Final Report of the Corporation Law Revision Commission*, at 43 (June 15, 1972) (eliminating “the burdensome requirement that small publicly-held corporations, headquartered or with transfer agents outside of New Jersey, keep duplicate shareholder records.”).

³¹ L.1988, c. 94, § 22, eff. Dec. 1, 1988 (requiring records to be kept in readable format, among other changes).

³² L.2017, c. 364, § 1, eff. Jan. 16, 2018 (clarifying that “corporations [may] impose reasonable limitations or conditions on the use or distribution” of books and records subject to shareholder inspection).

³³ L.2021, c. 238, § 1, eff. Sept. 28, 2021 (“Permits corporations to use blockchain technology for certain recordkeeping requirements.”).

³⁴ Wendell H. Holmes, *The Revised Model Business Corporation Act and Corporate Law Reform in Mississippi: Part One*, at 165, n.3 (1986), *Journal Articles*, 327, available at <https://digitalcommons.law.lsu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1327&context=faculty_scholarship> (“ . . . the first preliminary draft of the Model Act appeared in 1943; in 1946, the Corporation Law Committee of the American Bar Association promulgated the ‘Model for State Business Corporation Acts’; other revisions followed in 1950, 1953, 1959, and 1969.”).

³⁵ *See e.g.* American Bar Association website: MBCA 2016 Revision and Prior Versions, available at <https://www.americanbar.org/groups/business_law/committees/corplaws/>.

³⁶ *See supra* at p. 4.

shareholder inspection rights in a single provision, which provided the template for N.J.S. 14A:5-28.³⁷

1960 MBCA – 1984 MBCA

Pursuant to Section 46 of the 1960 MBCA, the three categories of documents that a corporation was required to maintain were “correct and complete books and records of account,” “minutes of the proceedings of its shareholders and board of directors,” and a “record of its shareholders,”³⁸ almost identical to the language of N.J.S. 14A:5-28(1).³⁹ Similarly, a shareholder with a “proper purpose” was permitted to inspect the “books and records of account, minutes, and record of shareholders of a corporation,”⁴⁰ which language is actually identical to subsection (4) of New Jersey’s statute.⁴¹

1984 MBCA – 2024 MBCA

In the 1984 version of the MBCA (“1984 MBCA”), the relevant provision was divided into two sections, addressing required corporate records (Section 16.01) and shareholder inspection rights (Section 16.02) separately.⁴² In addition, the phrase “books and records of account” no longer appeared in the Model Act beginning with the 1984 MBCA.⁴³ This formulation was maintained in subsequent versions of the MBCA, including the most recent version, updated through April 2024 (“2024 MBCA”).⁴⁴

Section 16.01(a) of the 2024 MBCA lists seven categories of records that must be maintained by a corporation, including minutes of meetings of shareholders, board of directors and committees.⁴⁵ In addition, subsections (b), (c), and (d) require a corporation to maintain “all annual

³⁷ Committee on Corporate Laws of the Section of Corporation, Banking & Business Law, American Bar Association, *Revised Model Business Corporation Act (1984) Professional Corporation Supplement Close Corporation Supplement*, 3rd Ed., Vol. 4, §16.01 (1984) (“Prior versions of the Model Act described mandatory corporate records in the most general terms.”) [hereinafter “1984 MBCA”].

³⁸ *1960 MBCA*, *supra* note 17, at 113.

³⁹ N.J. STAT. ANN. § 14A:5-28(1).

⁴⁰ *1960 MBCA*, *supra* note 17, at 114.

⁴¹ N.J. STAT. ANN. § 14A:5-28(4).

⁴² *1984 MBCA*, *supra* note 37, at 1710-11, 1718.1-20.

⁴³ In the Annotation to Section 16.01, the 1984 MBCA uses the term “accounting records” interchangeably with the phrases “books and records of account” and “books of account.” *1984 MBCA*, *supra* note 37, at 1716-17 (“Statutory Comparison”).

⁴⁴ American Bar Association, *Model Business Corporation Act (updated through April 5, 2024)* (Apr. 5, 2024), available at <https://www.americanbar.org/content/dam/aba/administrative/business_law/corplaws/mbca-202404.pdf> [hereinafter “2024 MBCA”]. A significant revision of the MBCA was issued in 2016, and there are no changes to the relevant sections between 2016 and 2024, so citations in this report are to the 2024 revision.

⁴⁵ *Id.* at *362 (“(1) its articles of incorporation as currently in effect; (2) any notices to shareholders referred to in section 1.20(k)(5) specifying facts on which a filed document is dependent if those facts are not included in the articles of incorporation or otherwise available as specified in section 1.20(k)(5); (3) its bylaws as currently in effect; (4) all written communications within the past three years to shareholders generally; (5) minutes of all meetings of, and records of all actions taken without a meeting by, its shareholders, its board of directors, and board committees established under section 8.25; (6) a list of the names and business addresses of its current directors and officers; and (7) its most recent annual report delivered to the secretary of state under section 16.21.”).

financial statements” prepared in the previous three years, “accounting records,” and a “record of its current shareholders,” respectively.⁴⁶

Although New Jersey and the current Model Act diverge with respect to the list of documents in Section 16.01(a) of the 2024 MBCA, much of the remaining language is similar.⁴⁷ The 2024 MBCA still requires a corporation to maintain “minutes of the proceedings of its shareholders, board and executive committee” and “a record or records containing the names and addresses of all shareholders,” as does N.J.S. 14A:5-28(1).⁴⁸ The third category of documents that New Jersey requires is “books and records of account,” while the 2024 MBCA additionally requires maintenance of “financial statements” and “accounting records.”⁴⁹

Section 16.02 of the 2024 MBCA, governing shareholder inspection rights, provides that any shareholder who gives timely written notice is entitled to inspect the records listed in section 16.01(a), except for minutes of board of directors and committee meetings.⁵⁰ In addition, a shareholder who makes a demand “in good faith and for a proper purpose”⁵¹ is entitled to inspect the records in subsections (b) through (d), as well as “excerpts from minutes” of board of director’s and committee meetings.⁵²

With respect to shareholder inspection, N.J.S. 14A:5-28 provides for three levels of inspection in subsections (2), (3) and (4).⁵³ Pursuant to subsection (2), shareholders may request the corporation’s “balance sheet as at the end of the preceding fiscal year, and its profit and loss and surplus statement for such fiscal year.”⁵⁴ The parallel provision in Section 46 of the 1960 MBCA permitted a shareholder to request a corporation’s “most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations.”⁵⁵ The 2024 MBCA allows a shareholder to access the corporation’s “annual financial statements for the most recent fiscal year” in Section 16.20.⁵⁶

⁴⁶ *Id.* at *362-63 (Section 16.01(b)-(d)).

⁴⁷ N.J. STAT. ANN. § 14A:5-28(1).

⁴⁸ *Id.*

⁴⁹ 2024 MBCA, *supra* note 44, at *362.

⁵⁰ *Id.* at *365 (“excluding minutes of meetings of, and records of actions taken without a meeting by, the corporation’s board of directors and board committees established under section 8.25”).

⁵¹ *Id.* (requiring also that “[1] the shareholder’s demand describes with reasonable particularity the shareholder’s purpose and the records the shareholder desires to inspect; and [2] the records are directly connected with the shareholder’s purpose”).

⁵² *Id.* (“(1) the financial statements of the corporation maintained in accordance with section 16.01(b); (2) accounting records of the corporation; (3) excerpts from minutes of any meeting of, or records of any actions taken without a meeting by, the corporation’s board of directors and board committees maintained in accordance with section 16.01(a); and (4) the record of shareholders maintained in accordance with section 16.01(d).”).

⁵³ N.J. STAT. ANN. § 14A:5-28. *See supra* at pp. 4-5.

⁵⁴ N.J. STAT. ANN. § 14A:5-28(2).

⁵⁵ 1960 MBCA, *supra* note 17, at 114.

⁵⁶ 2024 MBCA, *supra* note 44, at *370.

Pursuant to N.J.S. 14A:5-28(3), certain qualifying shareholders may inspect the minutes of shareholder meetings and the record of shareholders “for any proper purpose.”⁵⁷ In the 2024 MBCA, the minutes of shareholder meetings are included among the documents and records in Section 16.01(a) that a shareholder may inspect upon written demand, pursuant to Section 16.02(a).⁵⁸ Section 16.02(a) does not contain any restrictions with regard to which shareholders may request inspection under that section.⁵⁹

Finally, subsection (4) of New Jersey’s statute permits shareholders who have demonstrated a proper purpose to inspect “books and records of account, minutes, and [the] record of shareholders.”⁶⁰ The 2024 MBCA allows inspection of three years of “financial statements,” “accounting records,” “excerpts” of minutes of board of directors and committee meetings, and the “the record of shareholders” by a shareholder with a “proper purpose” and acting in “good faith.”⁶¹

The 1984 and the 2024 MBCA specified that a corporation must only provide excerpts of minutes that are “relevant” or “directly connected with the shareholder’s purpose.”⁶² As discussed *infra*, the *Cain* Court, after concluding that the “minutes” referred to in N.J.S. 14A:5-28(4) include those of board of directors and committee meetings, reiterated that the “scope of records a shareholder may examine under subsection (4) is limited to those . . . which are pertinent to the shareholder's proper purpose.”⁶³

The 2024 MBCA does not define “financial statements” or “accounting records,” just as New Jersey does not define “books and records of account.”⁶⁴ The Official Comment to Section 16.01 indicates that “financial statements . . . are those that the corporation prepares in the

⁵⁷ N.J. STAT. ANN. § 14A:5-28(3) (“[a]ny person who shall have been a shareholder of record of a corporation for at least six months immediately preceding his demand, or any person holding, or so authorized in writing by the holders of, at least 5% of the outstanding shares of any class or series, upon at least five days’ written demand shall have the right for any proper purpose to examine . . .”).

⁵⁸ 2024 MBCA, *supra* note 44, at *362 (Section 16.01(a)(5)).

⁵⁹ *Id.* at *365 (“A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation’s principal office, any of the records of the corporation described in section 16.01(a), excluding minutes of [board of directors and committee meetings] if the shareholder gives the corporation a signed written notice of the shareholder’s demand at least five business days before the date on which the shareholder wishes to inspect and copy”).

⁶⁰ N.J. STAT. ANN. § 14A:5-28(4) (“Nothing herein contained shall impair the power of any court, upon proof by a shareholder of proper purpose” to order inspection).

⁶¹ 2024 MBCA, *supra* note 44, at *365 (Sections 16.02(b) – (c)) (allowing inspection of records in subsection (b) by shareholders if “shareholder’s demand is [1] made in good faith and for a proper purpose; (2) [it] describes with reasonable particularity the shareholder’s purpose and the records the shareholder desires to inspect; and (3) the records are directly connected with the shareholder’s purpose”).

⁶² 1984 MBCA, *supra* note 37, at 1721 (“The corporation is required to make available only relevant excerpts of minutes and need not make available minutes of entire meetings merely because a portion of the minutes is directly connected with the shareholder’s purpose.”); 2024 MBCA, *supra* note 44, at *366 (“a shareholder is entitled to inspect only excerpts of meetings of, and records of written actions taken by, the board of directors and board committees related to the purpose of the inspection”).

⁶³ *Cain v. Merck & Co.*, 415 N.J. Super. 319, 334 (App. Div. 2010).

⁶⁴ The 1984 MBCA required only that corporation maintain “appropriate accounting records,” which, as noted *infra* at note 43, was a term used interchangeably with the phrase “books and records of account.” 1984 MBCA, *supra* note 37, at 1712.

operation of its business, including in response to third party requirements.”⁶⁵ The Model Act simply provides that the “accounting records” requirement “depend[s] upon the form of the corporation’s financial statements.”⁶⁶ The 1984 MBCA required only “appropriate accounting records,” which were described as “records that permit financial statements to be prepared which fairly present the financial position and transactions of the corporation.”⁶⁷

Although New Jersey has not adopted the post-1984 version of the MBCA, the New Jersey statute and the 2024 MBCA align with respect to the broad categories of documents to be maintained by the corporation, and that are available for shareholder inspection. As discussed *infra*, judicial interpretation of the phrase “books and records of account,” in New Jersey and in other states, includes “financial statements,” “accounting records” and other documents and records similar to these terms, as described by the MBCA.

New Jersey Case Law

There are very few decisions addressing the specific books and records that a shareholder is entitled to inspect pursuant to either N.J.S. 14A:5-28 or the common law right of inspection.⁶⁸ Most books and records decisions only decide whether a shareholder has demonstrated a “proper purpose.”⁶⁹ However, courts have provided general descriptions of the types of documents and records that a shareholder has been permitted to inspect,⁷⁰ or emphasized that the right of

⁶⁵ 2024 MBCA, *supra* note 44, at *364.

⁶⁶ *Id.*

⁶⁷ 1984 MBCA, *supra* note 37, at 1712.

⁶⁸ *Lanza v. New Glob. Commc'ns, Inc.*, 2005 WL 2759215, at *3 (N.J. Super. Ct. Ch. Div. Oct. 21, 2005) (noting a prior order “to turn over all books and records in defendants' possession, or under their custody or contract, . . . and . . . to provide plaintiffs with copies of all corporate documents . . . , including but not limited to by-laws, minutes of meetings, notices of meetings, corporate resolutions, share transfer records, correspondence, consents, the Certificate of Incorporation, any amendments to the Certificate or Incorporation and any other corporate documents maintained by the corporation”); *Kemp v. Sloss-Sheffield Steel & Iron Co.*, 128 N.J.L. 322, 322 (Sup. Ct. 1942) (allowing inspection of “the books of account, records, contracts, federal reports, and other data of the respondent corporation as to the assets, liabilities, contracts, operations and practices and the administration of the affairs of the corporation”); *Garcin v. Trenton Rubber Mfg. Co.*, 60 A. 1098, 1098-99 (N.J. Sup. Ct. 1905) (granting inspection of “the ledger, the cashbook, the checkbook, the bills-payable book, the invoice book, and the salesbook; but not the books in which secret compounds of manufacture are kept”).

⁶⁹ *Bruning v. Hoboken Printing & Publ'g Co.*, 67 N.J.L. 119, 120 (Sup. Ct. 1902) (“The right [of inspection] is not to be given to gratify curiosity, or for speculative purposes, but only when its exercise is sought in good faith, and for a specific purpose.”). See e.g. *City of Birmingham Relief & Ret. Sys. v. ExxonMobil Corp.*, 2019 WL 1986543, at *4 (N.J. Super. Ct. App. Div. May 6, 2019) (affirming “that plaintiff failed to establish proof of a proper purpose to support its inspection request” under N.J.S. 14A:5-28); *Siena v. Grand Lodge of State of N.J., Ord. Sons of Italy in Am.*, 11 N.J. Super. 507, 518 (App. Div. 1951) (denying inspection request because “plaintiff did not make his application in good faith”); *Fulle v. White Metal Mfg. Co.*, 180 A. 231, 232 (N.J. Sup. Ct. 1935) (finding “[t]he motive behind this action appears to be animus engendered by separation from a large salary” and denying the application for inspection).

⁷⁰ *City of Roseville Employees' Ret. Sys. on Behalf of Kid Brands Inc. v. Kid Brands*, 2012 WL 12906489, at *4 & *7 (D.N.J. Nov. 8, 2012) (finding the shareholder entitled to only those records “directly related to its allegations made in the underlying Complaint” and concluding the phrase “of account” does not “limit[] the stockholder's right to accounting reports”); *Rosenbaum v. Holthausen*, 9 N.J. Super. 484, 484–85 (Ch. Div. 1950) (differentiating between “books of account and of the stock books and stock transfer books” of a corporation); *Wyckoff v. Hardware Supply Co.*, 134 N.J.L. 172, 173–74 (Sup. Ct. 1946) (concluding that “a common stockholder has the right of inspection of the books and records of a corporation . . . to ascertain the value of his shareholdings for the purpose of sale”); *Drake*

inspection allows shareholders to protect their interests by “determining whether there has been proper management,” and ascertaining the financial condition of the corporation.⁷¹

The decision in *Feuer v. Merck & Co., Inc.*, which brought this issue to the attention of the Commission, appears to be the only New Jersey decision expressly interpreting the meaning of the statutory phrase “books and records of account.”⁷² Another New Jersey decision, *Cain v. Merck & Co.*, provided clarification of the term “minutes,” as used in N.J.S. 14A:5-28(4).⁷³

Feuer v. Merck & Co., Inc.

In *Feuer*, a Merck shareholder (“Plaintiff”) brought an action to compel the production of documents related to the activities of a “Working Group” that was appointed by Merck’s board of directors to evaluate Plaintiff’s demand that the board of directors commence suit against itself and the corporation.⁷⁴ Plaintiff asserted his right to inspection pursuant to N.J.S. 14A:5-28(4), “to search for evidence that Merck acted wrongfully when it rejected” his demand.⁷⁵ Plaintiff’s inspection demand was “refused.”⁷⁶

The Appellate Division noted that the phrase “books and records of account” appears in N.J.S. 14A:5-28(1), which “describes the corporation’s record-keeping obligation” and N.J.S. 14A:5-28(4), addressing shareholder inspection.⁷⁷ The *Feuer* Court “presume[d] the phrase means the same in both subsections absent a clear indication to the contrary.”⁷⁸ It concluded, therefore, that “expansively defin[ing] the universe of documents subject to inspection under [N.J.S. 14A:5-28(4)]” would require a corporation to maintain the same broad “universe of documents.”⁷⁹ The Court found that N.J.S. 14A:5-28 “does not impose such a vaguely defined record-keeping obligation on corporations, nor does it grant courts the power to grant an equally vague scope of inspection to shareholders.”⁸⁰

v. *Newton Amusement Corp.*, 123 N.J.L. 560, 561 (Sup. Ct. 1939) (permitting inspection based on the plaintiff’s assertion that shareholders have a “right to verify the contents of [reports and financial] statements [submitted to relators]”).

⁷¹ *Wyckoff*, 134 N.J.L. at 174; see also *Szeman v. Capitol Theater*, 127 A. 325, 326 (N.J. Sup. Ct. 1925) (permitting inspection “so that [the corporation’s] financial situation may be ascertained”); *Feick v. Hill Bread Co.*, 91 N.J.L. 486, 490 (Sup. Ct. 1918), *aff’d*, 92 N.J.L. 513 (1919) (“upon an examination of the books, that the annual reports made by the company were inaccurate and did not truly represent the business affairs and condition of the company, and hence the present value of the stock would be more or less affected”); *Huyler v. Cragin Cattle Co.*, 40 N.J. Eq. 392, 398 (Ch. 1885) (finding shareholders were “entitled to such inspection, though their only object is to ascertain whether their affairs have been properly conducted by the directors or managers [because] such a right is necessary to their protection”), *rev’d sub nom. Huyler v. Cragin Cattle Co.*, 42 N.J. Eq. 139 (Ch. 1887).

⁷² *Feuer*, 455 N.J. Super. at 73.

⁷³ *Cain*, 415 N.J. Super. at 334.

⁷⁴ *Feuer*, 455 N.J. Super. at 73.

⁷⁵ *Id.* at 73.

⁷⁶ *Id.* at 75. Plaintiff appealed the trial court’s holding that “the documents [Plaintiff] sought fell outside ‘books and records of account,’ and the common law did not expand the statutory inspection right.” *Id.*

⁷⁷ *Id.* at 79.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

With respect to the definition of “books and records of account,” the Court cited approvingly the “common meaning” of the phrase set forth in Black’s Law Dictionary, which “equat[es] ‘books of account’ with ‘shop books’ which are ‘[r]ecords of original entry maintained in the usual course of a business’”⁸¹

In addition, the *Feuer* Court referred to an Alaska Supreme Court decision, *Pederson v. Arctic Slope Regional Corp.*,⁸² which interpreted the phrase “books and records of account” as used in Alaska’s corporate shareholder inspection statute.⁸³ The Court agreed that “‘books and records of account’ consist of accounting or financial documents,” and noted that the Alaska Supreme Court “include[d] detailed accounting and executive compensation records” in its definition of the term.⁸⁴

However, the *Feuer* Court also found that the phrase “does not encompass any and all records, books, and documents of a corporation,” nor even “all financial documents of a corporation.”⁸⁵ The Court cited cases from Pennsylvania, Missouri, and Wisconsin, in which the courts found that certain documents and records did not fall within the scope of the phrase.⁸⁶

Finding that the documents sought by Plaintiff were largely “documents the corporation generated as it considered and rejected his [initial] demand” of a lawsuit, the Court found his request was “one significant step removed from a shareholders’ demand for documents prepared in the usual course pertaining to the corporation’s management or suspected mismanagement.”⁸⁷

Therefore, the *Feuer* Court held that Plaintiff’s demand “exceed[ed] the scope of inspection that the statute authorizes.”⁸⁸

Cain v. Merck & Co.

In *Cain*, the Appellate Division analyzed the scope of the word “minutes” in N.J.S. 14A:5-28(4).⁸⁹ Two shareholders asserted their right to inspect corporate records, including minutes of

⁸¹ *Id.* (quoting *Black’s Law Dictionary* 207, 1504 (9th ed. 2009)).

⁸² *Pederson v. Arctic Slope Reg’l Corp.*, 331 P.3d 384 (Alaska 2014).

⁸³ Alaska’s shareholder inspection statute is very similar in structure and language to N.J.S. 14A:5-28. *See* ALASKA STAT. ANN. § 10.06.430 (West 2024).

⁸⁴ *Feuer*, 455 N.J. Super. at 78 (citing *Pederson*, 331 P.3d at 397 (“The statutory phrase ‘books and records of account’ encompasses monthly financial statements, records of receipts, disbursements and payments, accounting ledgers, and other financial accounting documents, including records of individual executive compensation and transfers of corporate assets or interests to executives.”)).

⁸⁵ *Id.* at 78-79.

⁸⁶ *See Susquehanna Corp. v. Gen’l Refractories Co.*, 250 F. Supp. 797, 800-01 (E.D. Pa.) (excluding “records of another corporation whose acquisition is contemplated” and “the proposed contract”), *aff’d in part, rev’d in part*, 356 F.2d 985 (3d Cir. 1966); *State ex rel. Jones v. Ralston Purina Co.*, 358 S.W.2d 772, 778 (Mo. 1962) (excluding “analyses or tentative studies . . . in the nature of confidential inter-office communications”); and *Bitters v. Milcut, Inc.*, 117 Wis. 2d 48, 53 (Ct. App. 1983) (excluding “interim profit and loss statements”).

⁸⁷ *Feuer*, 455 N.J. Super. at 89.

⁸⁸ *Id.* at 83.

⁸⁹ *Cain*, 415 N.J. Super. at 323. *See also* N.J. STAT. ANN. § 14A:5-28(4) (allowing shareholder with a proper purpose to inspect “the books and records of account, minutes, and record of shareholders of a corporation”) (emphasis added).

specified “Board of Directors and Executive Committee” meetings, related to “corporate mismanagement and wrongdoing.”⁹⁰

To determine whether the word “minutes” in subsection (4) includes minutes of board of directors and committee proceedings, the *Cain* court analyzed its use in the rest of N.J.S. 14A:5-28.⁹¹ Subsection (1) requires a corporation to maintain “minutes of the proceedings of its shareholders, board and executive committee.”⁹² Subsection (3) permits inspection of the minutes of shareholder proceedings.⁹³ In subsection (4), however, the word “minutes” is “unqualified.”⁹⁴

The *Cain* Court employed “the general rule of statutory construction that ‘where the Legislature has carefully employed a term in one place and excluded it in another, it should not be implied where excluded.’”⁹⁵ Therefore, because the type of minutes available for inspection is specified in subsection (3), the Court “construe[d] the reference to ‘minutes’ in subsection (4) to refer to the shareholder, board, and executive committee minutes referred to in subsection (1).”⁹⁶

Other State Statutes and Common Law

Like New Jersey, most state statutes are aligned with some version of the MBCA’s provision(s) addressing corporate records and shareholder inspection rights.⁹⁷ A majority of states and the District of Columbia have adopted a post-1984 MBCA list of records that a corporation must maintain and a shareholder may inspect in different circumstances.⁹⁸ There are nine states that, like New Jersey, have codified a pre-1984 version of the MBCA to permit the inspection of

⁹⁰ *Cain*, 415 N.J. Super. at 334.

⁹¹ *Id.* at 331.

⁹² N.J. STAT. ANN. § 14A:5-28(1).

⁹³ N.J. STAT. ANN. § 14A:5-28(3) (“[a]ny person who shall have been a shareholder of record of a corporation for at least six months immediately preceding his demand, or any person holding, or so authorized in writing by the holders of, at least 5% of the outstanding shares of any class or series, upon at least five days' written demand shall have the right for any proper purpose to examine . . . its minutes of the proceedings of its shareholders and record of shareholders”).

⁹⁴ *Cain*, 415 N.J. Super. at 330.

⁹⁵ *Id.* at 331.

⁹⁶ *Id.* (reiterating also that “[t]he scope of records a shareholder may examine under subsection (4) is limited to those identified in the statute which are pertinent to the shareholder's proper purpose for the investigation”).

⁹⁷ See e.g. American Bar Association website: MBCA Enactment Map (as of Jan. 1, 2023), available at <https://www.americanbar.org/groups/business_law/committees/corplaws/>.

⁹⁸ D.C. CODE § 29-313.02(b) (West 2024); ALA. CODE § 10A-2A-16.02(b) (West 2024); ARIZ. REV. STAT. ANN. § 10-1602(B) (West 2024); ARK. CODE ANN. § 4-27-1602(b) (West 2024); COLO. REV. STAT. § 7-116-102(2) (West 2024); CONN. GEN. STAT. ANN. § 33-946(c) (West 2024); FLA. STAT. ANN. § 607.1602; GA. CODE ANN. § 14-2-1602(c) (West 2024); IDAHO CODE ANN. § 30-29-1602(b) (West 2024); IND. CODE § 23-1-52-2(b) (West 2024); IOWA CODE ANN. § 490.1602(2) (West 2024); KY. REV. STAT. ANN. § 271B.16-020(2) (West 2024); ME. REV. STAT. ANN. TIT. 13-C, § 1602(3) (West 2024); MASS. GEN. LAWS ANN. CH. 156, § 16.02(b) (West 2024); MISS. CODE ANN. § 79-4-16.02(b) (West 2024); MONT. CODE ANN. § 35-14-1602(2) (West 2024); NEB. REV. STAT. § 21-2-2,222(c) (West 2024); N.H. REV. STAT. ANN. § 293-A:16.02(c) (West 2024); N.C. GEN. STAT. ANN. § 55-16-02(b) (West 2024); OR. REV. STAT. ANN. § 60.774(2) (West 2024); S.C. CODE ANN. § 33-16-102(b) (West 2024); S.D. CODIFIED LAWS § 47-1A-1602.1 (West 2024); TENN. CODE ANN. § 48-26-102(b) (West 2024); UTAH CODE ANN. § 16-10a-1602(2) (West 2024); VT. STAT. ANN. TIT. 11A, § 16.02(b) (West 2024); VA. CODE ANN. § 13.1-771(C) (West 2024); WASH. REV. CODE § 23B.16.020(2) (West 2024); W. VA. CODE ANN. § 31D-16-1602(b) (West 2024); WIS. STAT. ANN. § 180.1602(2)(a) (West 2024); WYO. STAT. ANN. § 17-16-1602(b) (West 2024).

“books and records of account.”⁹⁹ Other states have developed their own lists of records available for inspection by shareholders.¹⁰⁰

There are only two states with statutes providing a definition of “books and records of account.” In Hawaii, the statute states that “[t]he books and records of account shall include accounts of the corporation’s assets, liabilities, receipts, disbursements, gains, and losses.”¹⁰¹ The Missouri statute provides that “[e]ach corporation shall keep correct and complete books and records of account, including the amount of its assets and liabilities.”¹⁰²

Of the statutes with similar language to N.J.S.14A:5-28, the *Feuer* Court cited, with approval, decisions in Alaska, Missouri, and Pennsylvania¹⁰³ that analyzed the scope of the phrase “books and records of account.”¹⁰⁴ In addition, the New Jersey Legislature has expressly relied on

⁹⁹ ALASKA STAT. ANN. § 10.06.430 (West 2024); ARK. CODE ANN. § 4-26-715 (West 2024); 805 Ill. Comp. Stat. Ann. 5/7.75 (West 2024); MO. REV. STAT. § 351.215 (West 2024); N.M. STAT. ANN. § 53-11-50 (West 2024); N.Y. BUS. CORP. LAW § 624 (McKinney 2024); OHIO REV. CODE ANN. § 1701.37 (West 2024); 15 PA. CONS. STAT. § 1508 (West 2024); R.I. GEN. LAWS § 7-1.2-1502 (West 2024).

¹⁰⁰ CAL. CORP. CODE § 1601(a)(1) (West 2024); DEL. CODE ANN. TIT. 8, § 220(b) (West 2024); HAW. REV. STAT. ANN. § 414-470(a) (West 2024); KAN. STAT. ANN. § 17-6510(b) (West 2024); LA. REV. STAT. ANN. § 12:1-1602(C) (West 2024); MD. CODE ANN., CORPS. & ASS'NS § 2-512(a) (West 2024); MICH. COMP. LAWS ANN. § 450.1487(2) (West 2024); MINN. STAT. ANN. § 302A.461(2)-(4) (West 2024); NEV. REV. STAT. § 78.257(1)-(2) (West 2024); N.D. CENT. CODE ANN. § 10-19.1-84(2)-(4) (West 2024); OKLA. STAT. ANN. TIT. 18, § 1065(B) (West 2024); TEX. BUS. ORGS. CODE ANN. § 21.218(b) (West 2024).

¹⁰¹ HAW. REV. STAT. ANN. § 414-470(a).

¹⁰² MO. REV. STAT. § 351.215(1).

¹⁰³ See *Feuer*, 455 N.J. Super. at 78-79. See *supra* at p. 11.

¹⁰⁴ *Pederson*, 331 P.3d at 387 (including “monthly financial statements, records of receipts, disbursements and payments, accounting ledgers, and other financial accounting documents, including records of individual executive compensation and transfers of corporate assets or interests to executives” within the scope of the phrase “books and records of account” as used in Alaska Stat. Ann. § 10.06.430); *Ralston Purina Co.*, 358 S.W.2d at 778 (“analyses or tentative studies prepared purely for the information of the management . . . being in the nature of confidential inter-office communications, were not comprehended within the meaning of ‘books’ as that term is used in the statute.”); *Susquehanna Corp.*, 250 F. Supp. at 800–01 (excluding “the records of another corporation whose acquisition is contemplated” and “the proposed contract” from the scope of 15 Pa. Stat. and Cons. Stat. Ann. § 1508(b)). See also *State ex rel. Brown v. III Invs., Inc.*, 80 S.W.3d 855, 860 (Mo. Ct. App. 2002) (“‘books’ of the company . . . does not extend to documents . . . like confidential inter-office communications containing internal analysis or tentative studies prepared for the information of management”); *Ginsburg v. Redmond Finishing Co.*, 8 Pa. D. & C.3d 756, 757 (Pa. Com. Pl. 1978) (allowing inspection of “contracts of defendant relating to sale or purchase of assets, raw materials and sale production of goods and materials [and] books and records relating to attempts to resolve or compromise corporate tax liens, and . . . showing dividends declared or paid”) and *Reilly v. Coppertech, Inc.*, 19 Pa. D. & C.3d 349, 351 (Pa. Com. Pl. 1981) (holding a shareholder “has the right to see the original records,” including “cash receipts and disbursements, accounts receivable and payable ledgers, financial reports, checkbooks, books of original entry, bank reconciliations and Federal and state tax returns”).

the statutory law of Illinois¹⁰⁵ and New York¹⁰⁶ in developing its own statutory language.¹⁰⁷ Finally, in an additional two jurisdictions with statutes similar to New Jersey – Arkansas and Ohio – courts have issued decisions specifying that certain types of corporate records fall within the scope of “books and records of account.”¹⁰⁸

Among the materials held to fall within the scope of the phrase “books and records” in these states and New Jersey, the documents and records most commonly identified are related to the financial situation of the corporation, including information related to a corporation’s assets, liabilities, expenses, disbursements, and income.¹⁰⁹ Most states include some form of financial statements or accounting reports or ledgers within the scope of a shareholder’s right to inspect corporate books and records.¹¹⁰

The aforementioned states have also provided that payroll information, including executive compensation information,¹¹¹ may be made available to shareholders.¹¹² Another category of record frequently made available for inspection are contracts, although Arkansas and Pennsylvania disagree on whether proposed contracts or offers to contract are open to inspection.¹¹³

Other Sources

In addition to the MBCA and cases interpreting the phrase “books and records of account,” there are two unrelated sources that provide guidance regarding the records and documents that

¹⁰⁵ *Weigel v. O'Connor*, 57 Ill. App. 3d 1017, 1021-22 (1978) (allowing inspection of “television logs, contracts with advertisers, and reports that the corporation . . . filed with the Federal Communications Commission”); *Corwin v. Abbott Lab'ys*, 353 Ill. App. 3d 848, 850-52 (2004) (permitting inspection of “internal investigatory reports and any and all ‘document[s] received by any’ board member . . . relating to the federal investigation” of the corporation’s subsidiary”).

¹⁰⁶ *Beryl v. U.S. Smelting Ref. & Min. Co.*, 228 N.Y.S.2d 394, 396-97 (Sup. Ct. 1962) (allowing inspection of “(1) minute and stock record books; (2) general ledger; (3) books of original entry, including journals and cash books; (4) payroll ledgers; and (5) books of account”).

¹⁰⁷ See 1968 CLRC Report, *supra* note 12, at iii-iv (“borrow[ing] from the statutes of such leaders of corporate law as Delaware, New York and Illinois” when developing Title 14A).

¹⁰⁸ *Ashley Bancstock Co. v. Meredith*, 2017 Ark. App. 598, 11 (2017) (holding that “books and records of account” encompasses “liability-insurance policies” because “[i]nsurance policies are contracts [and] contracts are business records pertinent to the operations of a corporation”); *No-Burn, Inc. v. Murati*, 2011-Ohio-5635, ¶ 35 (Nov. 2, 2011) (concluding records that “provide a picture of the general financial condition of the corporation” include “[g]eneral and payroll ledgers, bank statements, financial statements and supporting memoranda from accountants, corporate investments, general expense reports, personnel expense records, owner/officer/related entity expense records, travel expense records, and owner/officer/employee reimbursement reports [and c]ontracts (employment, consulting, transactional, leases, guarantees, loans) and offers to contract (loan applications) provide a picture of management’s utilization of corporate resources and willingness to assume risks”).

¹⁰⁹ See *supra* notes 104, 105, 106 & 108.

¹¹⁰ See *id.*

¹¹¹ See *supra* note 104. See also *Pederson*, 331 P.3d at 398 n.34 (noting that that five other states have “interpreted their inspection rights to run to individual executive compensation information”: Delaware, Illinois, North Carolina, Oregon, and Pennsylvania).

¹¹² See *supra* notes 104 & 106.

¹¹³ See *supra* notes 108.

should be maintained by a corporation. These sources provide more context for the potential scope of the phrase “books and records of account” in terms of shareholder inspection rights.

N.J.S. 45:2B-44 in the Accountancy Act

N.J.S. 45:2B-44, which defines “financial statements” and other terms, is found in the New Jersey Accountancy Act of 1997.¹¹⁴ Although the definitions contained in N.J.S. 45:2B-44 are explicitly applicable only to the Accountancy Act,¹¹⁵ the definition provides general context for the meaning of the phrase “financial statements,” which some states,¹¹⁶ and the current MBCA,¹¹⁷ include as records available for shareholder inspection.

The Accountancy Act defines the term to include “statements and related footnotes that purport to present an actual or prospective financial position at a particular time, or results of operations, cash flow, or changes in financial position for a period time, in conformity with generally accepted accounting principles^[118] or another comprehensive basis of accounting.”¹¹⁹

IRS Guidelines

The Internal Revenue Service (“IRS”) publishes and updates a document entitled “Starting a Business and Keeping Records,” which contains a section on “Recordkeeping.”¹²⁰ The IRS notes

¹¹⁴ N.J. STAT. ANN. §§ 45:2B-42 to 75 (West 2024).

¹¹⁵ *Id.* (setting forth definitions for terms “[a]s used in this act”); *see also State v. Lee*, 2012 WL 722985, at *7 (Ariz. Ct. App. Mar. 6, 2012) (“Defendant relies on the New Jersey definition of ‘financial statement’ that is contained in the New Jersey Accountancy Act of 1997. N.J.S.A. 45:2B–44. According to the plain language of that same statute, however, the provisions and definition therein apply solely to the Accountancy Act.”).

¹¹⁶ *See supra* at notes 104 & 106.

¹¹⁷ 2024 MBCA, *supra* note 44, at *362.

¹¹⁸ The phrase “generally accepted accounting principles” (GAAP) references the “financial accounting and reporting” guidelines issued by the Financial Accounting Standards Board (FASB). *See* Financial Accounting Standards Board website, available at <<https://www.fasb.org>> (“Established in 1973, the Financial Accounting Standards Board (FASB) is the independent, private- sector, not-for-profit organization based in Norwalk, Connecticut, that establishes financial accounting and reporting standards for public and private companies and not-for-profit organizations that follow Generally Accepted Accounting Principles (GAAP).”). The FASB issues “Concept Statements,” and in its most recent Concepts Statement addressing “Elements of Financial Statements,” the FASB lists the following “elements”: “a. Assets b. Liabilities c. Equity (net assets) d. Investments by owners e. Distributions to owners f. Comprehensive income g. Revenues h. Expenses i. Gains j. Losses.” Financial Accounting Standards Board, *Conceptual Framework for Financial Reporting: Chapter 4, Elements of Financial Statements*, “Statement of Financial Accounting Concepts No. 8”, at 1 (Dec. 2021) (explaining that “[d]efinitions of elements of financial statements are a significant determinant of the content of financial statements”), available at <<http://tinyurl.com/ysabmv52>>.

¹¹⁹ N.J. STAT. ANN. § 45:2B-44 (West 2024).

¹²⁰ Department of the Treasury, Internal Revenue Service, “Starting a Business and Keeping Records,” Publication 583 (Rev. January 2021) [hereinafter “IRS Publication 583”], available at <<https://www.irs.gov/pub/irs-pdf/p583.pdf>>. *See also* Michael J. Faul, Jr. and Robert Dipasquale, “A Minority Shareholder’s Inspection Rights Under N.J.S.A. 14a:5-28,” *New Jersey Lawyer, The Magazine*, 204-AUG N.J. Law. 8, at 11–12 (Aug. 2000) (“The Internal Revenue Code (IRC) offers general guidance regarding categories of books and records to be maintained by taxpayers. For example, I.R.C. Section 6001 requires taxpayers other than wage earners and farmers to keep “permanent books of accounts or records including inventories sufficient to establish gross income, deductions, credits and other amounts required to be shown on any tax return or information return.”).

that, “[e]xcept in a few cases, the law does not require any specific kind of records.”¹²¹

The publication advises that a taxpayer “can choose any recordkeeping system suited to [the] business that clearly shows [the business’s] income and expenses.”¹²² The publication does state, however, that the “recordkeeping system should include a summary of [the] business transactions[, which] is ordinarily made in [the] books (for example, accounting journals and ledgers).”¹²³ Additionally, the IRS advises taxpayers to maintain “supporting documents” of the following: “[g]ross receipts”; “[i]nventory”; “[e]xpenses”; and “[a]ssets.”¹²⁴

Outreach

Outreach was conducted to knowledgeable and interested individuals and organizations including the New Jersey Civil Justice Institute (“NJCJI”), the New Jersey Business Industry Association (“NJBIA”), the New Jersey State Bar Association (“NJSBA”), the New Jersey Chamber of Commerce, the Commerce and Industry Association of New Jersey, the Council of Institutional Investors, the New Jersey Society of Certified Public Accountants, the New Jersey Association of Corporate Counsel, and several private law firms specializing in the area of shareholder litigation.

Response was received from the NJSBA¹²⁵ and in a joint letter from the NJCJI, NJBIA, the Commerce and Industry Association of New Jersey, the Chamber of Commerce of Southern New Jersey, and the New Jersey Chamber of Commerce.¹²⁶

Business Law Section, NJSBA

The Business Law Section of the NJSBA (“Business Law Section” or “NJSBA”) provided its position on the proposed modifications by letter.¹²⁷ With respect to the modification in subsection (4) of the statute clarifying that “minutes” refers to “minutes of the proceedings of its shareholders, board, and executive committee,” the NJSBA “agrees that [this modification] . . . is

¹²¹ *IRS Publication 583, supra* note 120, at 13 (“Business transactions are ordinarily summarized in books called journals and ledgers.”).

¹²² *Id.*

¹²³ *Id.* (noting also that “[a] corporation should keep minutes of board of directors’ meetings”).

¹²⁴ *Id.* at 12-13 (emphasis added). *See also* A Minority Shareholder’s Inspection Rights Under N.J.S.A. 14a:5-28, 204-AUG N.J. Law. at 12 (listing the following as typical books and records normally maintained by companies in the ordinary course of business”: “[g]eneral ledger . . . [c]ash receipts journals . . . [s]ales journal . . . [c]ash disbursements journals . . . [p]urchase journal . . . [i]nventory journal . . . [p]ayroll journal . . . [and a]ccounts receivable journal”).

¹²⁵ Letter from Timothy F. McGoughran, Esq., President, NJSBA to Whitney G. Schlimbach, Counsel, NJLRC (Apr. 22, 2024) (on file with NJLRC) [hereinafter “NJSBA Comment”].

¹²⁶ Letter from Anthony M. Anastasio, President, NJCJI; Michael Egenton, Executive Vice President, New Jersey Chamber of Commerce; Christina Renna, President, Chamber of Commerce of Southern New Jersey; Anthony Russo, President, Commerce and Industry Association of New Jersey; and Michele Siekerka, President, NJBIA, to Whitney G. Schlimbach, Counsel, NJLRC (Apr. 12, 2024) (on file with NJLRC) [hereinafter “Joint NJCJI Comment”].

¹²⁷ *See* NJSBA Comment, *supra* note 125.

consistent with the general understanding of that subsection[, and] . . . reflects the ruling of . . . in [*Cain*].”¹²⁸

However, the Business Law Section opposes the modification defining “books and records of account” in its entirety.¹²⁹ Expressing concern that “the proposed changes will lead to questions about record keeping requirements, increased litigation, confusion about the scope of discretion of the court . . . and issues with confidentiality of information and materials,”¹³⁰ the Business Law Section “thinks that the existing provisions of Section 5-28 already reflect a fair balance between the interests of shareholders in obtaining books and records . . . and corporations . . . in operating their businesses, avoiding unnecessary distraction and expense and ensuring . . . confidentiality.”¹³¹

The Business Law Section added that it is “not aware of the courts struggling to interpret the scope of the books and records in respect of demands for inspection . . . nor corporations finding difficulties in understanding the requirements of subsection (1)” of the statute, nor “of shareholders being deprived of adequate access to books and records in order to protect their interests.”¹³²

The Business Law Section explained that it objects to the proposed definition because it may simultaneously be interpreted by the courts as establishing a universe of books and records that must be maintained by New Jersey corporations and concurrently as restricting the discretion that the courts have long maintained in determining what book sand records would satisfy the needs of a shareholder who made a proper demand based upon the facts of a particular circumstance.¹³³

The NJSBA believes that “the documents reflected in the more expansive definition of ‘books and records’ . . . go well beyond the materials that shareholders might typically seek.”¹³⁴ This expanded definition “would embolden shareholders to seek to delve into the inner workings of a corporation” and “[c]ourts . . . may . . . feel compelled to accommodate [such] demands.”¹³⁵ The NJSBA explained that “any hypothetical benefit to shareholders would [not] outweigh the burden that would be imposed on corporations.”¹³⁶

Finally, the Business Law Section pointed out that, in addition to the substantial breadth of information stored by corporations, much of the stored information “is also sensitive even if not proprietary” and the proposed definition “increases the risk of disclosure of confidential and

¹²⁸ *Id.* at 1.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.* at 1-2.

¹³² *Id.* at 3.

¹³³ *Id.* at 3.

¹³⁴ *Id.* at 3 (noting that shareholders usually make inspection demands “in one of two situations: (i) concerns about mismanagement or wrongdoing or (ii) a desire or need to value stock in the corporation”).

¹³⁵ *Id.* at 3-4.

¹³⁶ *Id.* at 4.

proprietary information including information in which a third-party may have an interest and/or entitlement to confidentiality.”¹³⁷

NJCJI Joint Comment

A joint comment was received from the NJCJI, NJBIA, CIANJ, NJCC and the Chamber of Commerce of Southern New Jersey (“the organizations”).¹³⁸ The organizations also oppose the proposed modifications, writing that

the undersigned are concerned that the proposed amendments to N.J.S. 14A:5-28 will create uncertainty regarding corporations’ obligations concerning “books and records of account” and may unintentionally spawn new litigation impacting businesses in our State.¹³⁹

Consequently, the organizations “respectfully request that the Commission decline to recommend the proposed amendments to the NJBCA to address the definition of books and records of account.”¹⁴⁰

The organizations provided some additional background information regarding N.J.S. 14A:5-28, noting that the “Appellate Division has expressed considerable reluctance to interpret the phrase ‘books and records of account’ broadly, as such an interpretation may inadvertently impose new, nebulous compliance requirements on New Jersey corporations.”¹⁴¹ The organizations then outlined four concerns related to adding a definition of “books and records of account” to the statute.¹⁴²

First, the proposed modifications¹⁴³ potentially “inject uncertainty into an area where New Jersey courts have established a clear and deliberative approach.”¹⁴⁴ The organizations explained that “the vast majority of books and records actions . . . are heard by Chancery judges in courts of equity . . . tasked with ‘formulating fair and practical remedies appropriate to the specific dispute.’”¹⁴⁵ The Commission’s attempt to “distill these principles down into a single sentence . .

¹³⁷ *Id.* (“Access to the proposed broader collection of materials may also require the creation of new protocols and undue time, effort and expense by corporations to create copies of electronic files and the creation of separate systems or databases to provide secure access.”).

¹³⁸ See Joint NJCJI Comment, *supra* note 126.

¹³⁹ *Id.* at 1.

¹⁴⁰ *Id.* at 4.

¹⁴¹ *Id.* at 2; see also NJSBA Comment, *supra* note 125, at 2 (referencing the New Jersey Supreme Court’s decision in *In re De Vengoechea*, cautioning that “the power to order an inspection of books is so great, its exercise may affect unfavorably so many innocent stockholders, and may cause such inconvenience or perhaps such ruinous results”) (quoting *In re De Vengoechea*, 86 N.J.L. 35, 37 (Sup. Ct. 1914)).

¹⁴² *Id.* at 2-4.

¹⁴³ *Id.* at 2 (referring to the proposed language defining “books and records of account” as “documents and records prepared, kept, and currently maintained in the usual course of operating the business that present the financial position and transactions of the corporations”).

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

. may encroach on the current, flexible approach” and “threatens to upset the current legal landscape with minimal benefit to judges, businesses, or litigants.”¹⁴⁶

Similarly, with respect to “the inclusion of a non-exhaustive list of specific examples of books and records,” the proposed modifications “will both generate legal uncertainty and inspire new shareholder litigation by permitting more expansive books and records requests.”¹⁴⁷ The organizations first pointed out the risk that the proposed definition “could easily be construed as imposing on all New Jersey corporations the requirement to maintain the enumerated categories of records listed in the amendment without regard to the unique circumstances of individual businesses or the utility or necessity of these records as part of the operations of the business.”¹⁴⁸ In addition, the organizations are concerned that “litigants will . . . attempt to parse new, expansive meaning from every term,”¹⁴⁹ and as “New Jersey courts have [not] struggled to identify which materials corporations must produce,” the proposed language thus “risks disturbing the current state of law without providing any clear benefit to practitioners, businesses, or shareholders.”¹⁵⁰

The third concern articulated by the organizations relates to the risk that the proposed language may result in “extensive fishing expeditions by plaintiffs who seek to use books and records actions to support potential shareholder litigation.”¹⁵¹ Given that the proposed language “may encourage new books and records actions by shareholders who will no doubt argue in favor of broad-ranging inspections,” the result would be “increase[d] litigation[,] . . . place further strain on [New Jersey’s] civil justice system and, for New Jersey businesses, would result in increased legal expenses.”¹⁵²

Finally, the organizations raised the possibility that “the proposed amendments may have far-reaching implications beyond books and records litigation and shareholder suits.”¹⁵³ The organizations explained that, “[f]or instance, litigants seeking general discovery from New Jersey corporations may cite the amendments as a basis to support broad discovery requests in non-shareholder litigation.”¹⁵⁴

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 3 (“it is hard to conceive what type of information would not be covered by this proposed new language” and “failure to comply, or a perceived failure to comply, may result in litigation and otherwise inject our courts into the daily operations of businesses”).

¹⁴⁹ *Id.* (“By relying on out-of-state precedent and other, non-binding authorities to generate this list, the proposed amendments may create unnecessary confusion in the law if aggrieved shareholders come to rely on non-New Jersey authorities to expand the scope of books and records actions in this State.”).

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.* at 4 (noting that additional legal expenses are a “cost ultimately borne by shareholders and customers”).

¹⁵³ *Id.*

¹⁵⁴ *Id.* (“New Jersey courts address discovery disputes with a ‘presumption in favor of discoverability,’ and ‘start from the premise that the discovery rules are to be construed liberally in favor of broad pretrial discovery’” and therefore, when requesting discovery from a corporation, a party “may point to the corporation’s new obligations under the proposed amendments as evidence that the request is not particularly onerous”) (citing *Trenton Renewable Power, LLC v. Denali Water Solutions, LLC*, 470 N.J. Super. 218, 226 (App. Div. 2022) (internal citations omitted)).

Pending Bills

There are no pending bills that address N.J.S. 14A:5-28.

Conclusion

In light of the unanimous opposition of commenters and the potential policy implications raised by the previously proposed modifications, the recommended modifications are limited to clarifying that the “minutes” referred to in N.J.S. 14A:5-28(4) include “minutes of the proceedings of its shareholders, board, and executive committee,” as held by the *Cain* Court.

APPENDIX

The recommended modifications are shown on the following pages with underlining – the language shown in **bold** and with ~~striketrough~~ represent changes made since the release of the Tentative Report.

N.J.S. 14A:5-28. Books and records; right of inspection; limitations or conditions on use or distribution of requested materials

Books and records; right of inspection.

(1) Each corporation shall keep books and records of account and minutes of the proceedings of its shareholders, board and executive committee, if any. Unless otherwise provided in the bylaws, such books, records and minutes may be kept outside this State. The corporation shall keep at its principal office, its registered office, at the office of its transfer agent, or on an electronic network, a record or records containing the names and addresses of all shareholders, the number, class and series of shares held by each and the dates when they respectively became the owners of record thereof. Any of the foregoing books, minutes or records may be in written form or in any other form capable of being converted into readable form within a reasonable time, including on an electronic network. A corporation shall convert into readable form without charge any such records not in such form, upon the written request of any person entitled to inspect them.

(2) Upon the written request of any shareholder, the corporation shall mail to such shareholder its balance sheet as at the end of the preceding fiscal year, and its profit and loss and surplus statement for such fiscal year.

(3) Any person who shall have been a shareholder of record of a corporation for at least six months immediately preceding his demand, or any person holding, or so authorized in writing by the holders of, at least 5% of the outstanding shares of any class or series, upon at least five days' written demand shall have the right for any proper purpose to examine in person or by agent or attorney, during usual business hours, its minutes of the proceedings of its shareholders and record of shareholders and to make extracts therefrom, at the places where the same are kept pursuant to subsection 14A:5-28(1). If the records are kept on an electronic network, the corporation shall convert any records so kept into a clearly legible form upon the request of any person entitled to the records in the timeframe required pursuant to this subsection.

(4) Nothing herein contained shall impair the power of any court, upon proof by a shareholder of proper purpose, irrespective of the period of time during which the shareholder shall have been a shareholder of record, and irrespective of the number of shares held by him, to compel the production for examination by such shareholder of the books and records of account, minutes of the proceedings of its shareholders, board, and executive committee,¹⁵⁵ and record of shareholders of a corporation. The court may, in its discretion prescribe any limitations or

¹⁵⁵ *Cain*, 415 N.J. Super. at 331 (holding that the use of the term “minutes” in subsection (4) “refer[s] to the shareholder, board, and executive committee minutes referred to in subsection (1)”).

conditions with reference to the inspection, or award any other or further relief as the court may deem just and proper. The court may order books, documents and records, pertinent extracts therefrom, or duly authenticated copies thereof, to be brought within this State and kept in this State upon whatever terms and conditions as the order may prescribe. In any action for inspection the court may proceed summarily.

(5) Holders of voting trust certificates representing shares of the corporation shall be regarded as shareholders for the purpose of this section.

(6) A corporation may impose reasonable limitations or conditions on the use or distribution of requested materials provided to a demanding shareholder: (a) pursuant to either subsection 14A:5-28(2) or 14A:5-28(3); or (b) prior to the order of a court pursuant to subsection 14A:5-28(4).

As used in this section, “electronic network” means one or more electronic networks or databases, including one or more distributed electronic networks or databases that utilize blockchain technology, administered by or on the behalf of the corporation.

As used in this section, “books and records of account” means documents and records prepared, kept and currently maintained in the usual course of operating the business that present the financial position and transactions of the corporation. [These may include: financial statements¹⁵⁶ and related reports or audits,¹⁵⁷ accounting records,¹⁵⁸ journals or ledgers¹⁵⁹ showing inventory,¹⁶⁰ assets, liabilities, receipts, disbursements, gains, and losses;¹⁶¹

¹⁵⁶ 2024 MBCA, *supra* note 44, at *362 (Section 16.01(b)); *see No-Burn, Inc.*, 2011-Ohio-5635, ¶ 35 (“financial statements and supporting memoranda from accountants”); *Pederson*, 331 P.3d at 387 (“monthly financial statements”); *Coppertech, Inc.*, 19 Pa. D. & C.3d at 351 (“financial reports”).

¹⁵⁷ 2024 MBCA, *supra* note 44, at *360 (“all annual financial statements . . . and any audit or other reports with respect to such financial statements”) (emphasis added); *see also No-Burn, Inc.*, 2011-Ohio-5635, ¶ 35 (“financial statements and supporting memoranda from accountants”) (emphasis added).

¹⁵⁸ 2024 MBCA, *supra* note 44, at *362 (“[a] corporation shall maintain accounting records in a form that permits preparation of its financial statements”); *City of Roseville Employees' Ret. Sys.*, 2012 WL 12906489, at *4 (addressing whether the phrase “of account” does not “limit[] the stockholder's right to accounting reports”).

¹⁵⁹ *Garcin*, 60 A. at 1098 (“the ledger, the cashbook, the checkbook, the bills-payable book, the invoice book, and the salesbook”); *Pederson*, 331 P.3d at 387 (“accounting ledgers”); *Coppertech, Inc.*, 19 Pa. D. & C.3d at 351 (“accounts receivable and payable ledgers”); *Beryl*, 228 N.Y.S.2d at 396 (“general ledger”). *See also IRS Publication 583, supra* note 120, at 13 (“Business transactions are ordinarily summarized in books called journals and ledgers.”).

¹⁶⁰ *IRS Publication 583, supra* note 120, at 12.

¹⁶¹ *Kemp*, 128 N.J.L. at 322 (“other data of the respondent corporation as to the assets, liabilities, contracts, operations and practices and the administration of the affairs of the corporation”); *1960 MBCA, supra* note 17, at 114 (permitted a shareholder to request a corporation’s “most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations”). *See also* HAW. REV. STAT. ANN. § 414-470(a) (“The books and records of account shall include accounts of the corporation's assets, liabilities, receipts, disbursements, gains, and losses.”) *and* MO. REV. STAT. § 351.215(1) (“[e]ach corporation shall keep correct and complete books and records of account, including the amount of its assets and liabilities”).

~~payroll and executive compensation information;¹⁶² transfer books;¹⁶³ contracts;¹⁶⁴ and other data relevant to the operations, practices and administration of the affairs of the corporation¹⁶⁵].~~

COMMENT

The recommended modifications add language to subsection (4) clarifying that the “minutes” mentioned in that subsection refer to the “minutes of the proceedings of its shareholders, board and executive committee” identified in subsection (1). This modification reflects the holding in *Cain*.¹⁶⁶

¹⁶² *Pederson*, 331 P.3d at 387 (“records of individual executive compensation and transfers of corporate assets or interests to executives”); *Beryl*, 228 N.Y.S.2d at 397 (“payroll ledgers”); *No-Burn, Inc.*, 2011-Ohio-5635, ¶ 35 (“[g]eneral and payroll ledgers”).

¹⁶³ *Feist*, 30 N.J. Super. at 156 (quoting N.J.S. 14:5-1, the shareholder inspection statute that preceded N.J.S. 14A:5-28, which provides “[e]very corporation of this state shall keep at its principal office the transfer books, in which the transfer of stock shall be registered, and the stock books, which shall contain the names and addresses of the stockholders and the number of shares held by them respectively, open at all times during the usual hours for business to the examination of every stockholder, and for the transfer of stock.”). The term “stock book” is synonymous with the “record of shareholders of a corporation” in the current statute. N.J. STAT. ANN. § 14A:5-28(1) (requiring corporations to maintain “a record or records containing the names and addresses of all shareholders, the number, class and series of shares held by each and the dates when they respectively became the owners of record thereof”).

¹⁶⁴ *Kemp*, 128 N.J.L. at 322 (Sup. Ct. 1942) (“contracts”); *Ginsburg*, 8 Pa. D. & C.3d at 757 (“contracts of defendant relating to sale or purchase of assets, raw materials and sale production of goods and materials”); *Weigel*, 57 Ill. App. 3d at 1021 (“contracts with advertisers”); *Ashley Bancstock Co.*, 2017 Ark. App. at 11 (“[i]nsurance policies are contracts [and] contracts are business records pertinent to the operations of a corporation”); *No-Burn, Inc.*, 2011-Ohio-5635, ¶ 35 (“[c]ontracts (employment, consulting, transactional, leases, guarantees, loans) and offers to contract (loan applications)”). *But see Susquehanna Corp.* 250 F. Supp. at 800–01 (excluding “records of another corporation whose acquisition is contemplated” and “the proposed contract”).

¹⁶⁵ *Kemp*, 128 N.J.L. at 322 (allowing inspection of “other data of the respondent corporation as to the assets, liabilities, contracts, operations and practices and the administration of the affairs of the corporation”). The proposed language providing categories of documents that may fall within the scope of “books and records of account” is not intended to imply that corporations are required to maintain those documents and records listed in the statute.

¹⁶⁶ *Cain*, 415 N.J. Super. at 331.

Additional proposed language was added as a stand-alone paragraph at the end of N.J.S. 14A:5-28 and was intended to clarify the scope of the term “books and records of account.”¹⁶⁷ In light of the strong opposition from commenters, this language is not recommended.¹⁶⁸

First, as pointed out by both the NJSBA and in the joint NJCJI comment, the previously proposed language may be understood to change the record-keeping requirements of corporations.¹⁶⁹ Given that the phrase “books and records of account” has been held to have the same meaning in subsections (1) and (4), it is not possible to eliminate the risk that the new language will be interpreted to require corporations to maintain a broader range of documents and records than is currently required.¹⁷⁰ As noted *infra*, the New Jersey Business Corporation Act was enacted with the intention of encouraging business to incorporate in the state¹⁷¹ and therefore, any change in the law that potentially increases the burden on corporations may be more appropriately made by the Legislature.

In addition, the commenters agreed that it does not appear that courts, corporations or shareholders struggle to appropriately interpret the current statutory language.¹⁷² Also, as discussed, there is no consistent definition or definitive list of documents and records that are subject to shareholder inspection. The commenters expressed concern that the expansiveness of the proposed language raised the possibility of increased litigation, confusion in the law, and encroachment upon the traditionally broad discretion of the courts in this area, with little to no added benefit.¹⁷³

¹⁶⁷ The language “prepared in the usual course of operating the business” is derived from the description of the phrase “books and records of account” in the *Feuer* opinion, *see Feuer*, 455 N.J. Super. at 89, in which the Court cited with approval the definition of “books of account” in Black’s Law Dictionary. *See id.* (noting that “accounting or financial documents” are “consistent with the . . . common meaning” of “books and records of account” and referencing the definition contained in Black’s Law Dictionary “equating ‘books of account’ with ‘shop books,’ which are ‘[r]ecords of original entry maintained in the usual course of a business by a shopkeeper, trader or other business person’”) (quoting *Black’s Law Dictionary* 207, 1504 (9th ed. 2009)); *see also 2024 MBCA*, *supra* note 44, at *364 (providing that the “financial statements” described in “section 16.01(b) are those that the corporation prepares in the operation of its business, including in response to third party requirements”).

The language directing that “books and records of account” should “present the financial condition and transactions of the corporation” is based on the principle reiterated in several New Jersey decisions that shareholder inspection rights are intended to allow a shareholder to ascertain the corporation’s “financial condition,” *see Szeman*, 127 A. at 326, and determine “whether there has been proper management of the corporate affairs and business.” *Kemp*, 128 N.J.L. at 323 (“inspection is justified if only for the purpose of ascertaining whether there has been proper management of the corporate affairs and business”); *see also 1984 MBCA*, *supra* note 37, at 1712 (describing “appropriate accounting records” as “records that permit financial statements to be prepared which fairly present the financial position and transactions of the corporation”).

¹⁶⁸ *See supra* pp. 17-20.

¹⁶⁹ *See NJSBA Comment*, *supra* note 125, at 2 (“the proposed changes will lead to questions about record keeping requirements”); *see Joint NJCJI Comment*, *supra* note 126, at 3 (“[t]he amendment could easily be construed as imposing on all New Jersey corporations the requirement to maintain the enumerated categories of records listed in the amendment without regard to the unique circumstances of individual businesses or the utility or necessity of these records as part of the operations of the business”).

¹⁷⁰ *Feuer*, 455 N.J. Super. at 79 (“We must presume the phrase means the same in both subsections [(1) and (4)] absent a clear indication to the contrary.”).

¹⁷¹ *See 1968 CLRC Report*, *supra* note 12, at iv-v.

¹⁷² *See NJSBA Comment*, *supra* note 125, at 3 (“[t]he Business Law Section is not aware of the courts struggling to interpret the scope . . . nor corporations finding difficulties in understanding the requirements of subsection (1) [of the statute] . . . [nor] of shareholders being deprived of adequate access to books and records to protect their interests”); *see also Joint NJCJI Comment*, *supra* note 126, at 2 (“it does not appear that New Jersey courts have struggled to identify which materials corporations must produce for inspections under N.J.S. 14A:5-28(4)”).

¹⁷³ *See NJSBA Comment*, *supra* note 125, at 3-4 (“the proposed definition may . . . be interpreted by the courts . . . as restricting the discretion that the courts have long maintained in determining what books and records would satisfy the needs of a shareholder who made a proper demand based upon the facts of a particular circumstance” and “the Business Law Section does not believe that any hypothetical benefit to shareholders would outweigh the burden that

The latter half of the proposed modifications was bracketed to indicate that guidance was requested regarding whether to include this detailed list of documents and records falling within the scope of the phrase “books and records of account.”¹⁷⁴ In light of the unanimous response from commenters, this language is not recommended.¹⁷⁵

would be imposed on corporations”); *see* Joint NJCJI Comment, *supra* note 126, at 2 (“the proposed amendments may encroach on the current, flexible approach taken by Chancery judges in New Jersey books and records actions[, and u]ltimately, the inclusion of this new definition of ‘books and records of account’ threatens to upset the current legal landscape with minimal benefit to judges, businesses, or litigants”).

¹⁷⁴ The eliminated proposed language provided that the list “may include” the identified documents and records because there is no definitive list of the specific documents and records that must be maintained by a corporation or that are subject to shareholder inspection within or outside of New Jersey. The documents and records that were included in the proposed non-exhaustive list included those that are (1) commonly identified by New Jersey and other jurisdictions as falling within the scope of the statutory shareholder inspection right; (2) identified in prior New Jersey shareholder inspection statutes; (3) contained in the 2024 and 1960 MBCA; and (4) identified by the IRS guidelines as records to be maintained by a corporation for tax purposes. In addition, the final category was taken from language employed by the New Jersey Supreme Court in *Kemp* to provide an additional “catch-all” provision ensuring that the proposed list is not read as exclusive. *Kemp*, 128 N.J.L. at 322.

¹⁷⁵ *See supra* pp. 17-20.