

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this “Agreement”), is made on [date] by and between the American Ornithologists' Union (“AOU”), a tax exempt section 501(c)(3) organization incorporated in the District of Columbia, and the Cooper Ornithological Society (“COS”), a tax exempt section 501(c)(3) charitable organization incorporated in California. The organizations are referred to singularly as “Party” and jointly as “Parties.”

On completion of the merger, COS will be dissolved leaving AOU as the surviving corporation, which will be a District of Columbia tax exempt section 501(c)(3) nonprofit organization known as The American Ornithological Society after the merger is complete.

RECITALS

WHEREAS, COS is duly organized, validly existing, and in good standing under the laws of California,

WHEREAS, AOU is duly organized, validly existing, and in good standing under the laws of the District of Columbia,

WHEREAS, the boards of directors and members of AOU and COS have concluded that the aims and purposes of their respective organizations can best be achieved if they merge as provided herein, and

WHEREAS, the Parties intend the merger to be a reorganization within the meaning of IRC §368(a)(1) (A) such that AOU, which will be re-named The American Ornithological Society following the merger, is to be the surviving corporation to the merger described in this agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

SECTION 1. Merger

1.1 Surviving Organization. Subject to the terms and conditions of this Agreement, on the Effective Date set forth in Section 1.2 below, COS shall be merged with and into AOU, under the laws of the District of Columbia (the “Merger”). As a result of the Merger, the separate corporate existence of COS shall cease, and the entity shall continue as AOU, under the new name of The American Ornithological Society.

1.2 Effect of Merger. As of the date of filing of Articles of Merger with the District of Columbia pursuant to Section 1.4 of this Agreement (the “Effective Date”), AOU will possess all the rights, privileges, and immunities of each of the Parties, all property belonging to COS, including but not limited to all intellectual property, all bank accounts, endowment and other funds, and all real and personal property (the “COS Assets”), will be transferred to and vested in AOU without further act or deed, unless otherwise required by applicable law or otherwise, and AOU will be responsible for all liabilities of each of the Parties.

1.3 Articles of Incorporation, Bylaws, and Directors. The Articles of Incorporation and Bylaws of AOU, as amended to reflect the name change to The American Ornithological Society and all categories of membership, shall be those attached hereto, which shall become effective on the Effective Date. The composition and size of the board of directors of AOU, and the terms of office of AOU directors, shall not be affected by the Merger.

1.4 Articles of Merger. After this Agreement has been adopted and approved by each Party's board of directors and members, Articles of Merger shall be drafted. COS shall provide notice to the California Attorney General of the Merger at least 20 days prior to consummation of the Merger, by filing with the Attorney General a copy of the proposed Articles of Merger (the "AG Notice"). After each Party has satisfied the conditions applicable to that Party under this Agreement pursuant to Section 3.1, and not sooner than 20 days after the AG Notice, Articles of Merger shall be signed by an authorized representative of each Party (the "Closing") and filed by AOU with the District of Columbia, as required by the laws of the District of Columbia. COS shall file an endorsed-filed copy of the Articles of Merger with the Secretary of State of California, as required by the laws of California, within five months of the Effective Date.

SECTION 2. Representations and Warranties

Except for the express representations and warranties in this Agreement, each Party expressly excludes all other warranties with respect to the transaction. Each Party represents and warrants as follows:

2.1 For a period of not more than five months following the Effective Date, the authorized representatives of COS will execute and deliver such deeds, contracts, and other instruments, and will cause to be taken such further actions as will reasonably be necessary in order to vest or perfect in AOU title to and possession of all the property, interests, assets, rights, and privileges of COS.

2.2 The Parties intend that the transactions contemplated in this Agreement be treated as a tax-free event under Section 368(a)(1)(A) of the Internal Revenue Code and/or Section 351 of the Internal Revenue Code and that the assets of COS be transferred to AOU.

2.3 The Parties have made available and delivered to each other all information, statements, and records, including without limitation the financial statements, records, and other corporate documents requested by the other Party, and the information, statements, and records are not misleading, were prepared in good faith, and fairly present the current operational and financial condition of each Party.

2.4 There is no litigation or other judicial, or administrative proceedings pending or, to the knowledge of either Party threatened that would have a material adverse effect on the ability of either Party to consummate this Agreement.

2.5 Each Party has obtained such consents and other approvals necessary to authorize AOU and COS to enter into this Agreement and close the transaction contemplated by this Agreement.

2.6 The execution, delivery, or performance of this Agreement will not: (a) violate any law, judgment, or order to which either Party is subject, or (b) breach any agreement to which either Party is bound.

2.7 Each Party has filed when due all federal, foreign, state, and local tax returns, tax information returns, reports, and estimates for all years and periods ending on or before the Closing for which any such returns, reports, or estimates were due. All such returns, reports, or estimates were prepared in the manner required by applicable law, and all taxes shown thereby have been paid when due.

2.8 COS has, and on Closing will have, free and clear title to all of the COS Assets.

SECTION 3. Conditions and Other Terms

3.1 The obligation of either Party to effect the merger is subject to the satisfaction or waiver of each of the following conditions:

- a. The representations, warranties, and covenants made by either Party in Section 2 of this Agreement are true and correct as of the Closing Date;
- b. There is no material adverse change in the business or financial condition of either Party from the date of this Agreement through the Closing Date;
- c. This Agreement is approved by the Board of Directors and members of COS entitled to vote on the matter in accordance with California law and COS's governing documents;
- d. This Agreement is approved by the Board of Directors and members of AOU entitled to vote on the matter in accordance with District of Columbia law and AOU's governing documents; and
- e. COS has given at least 20 day notice to the California Attorney General of the Merger.

3.2 AOU's governing documents as of the Effective Date may subsequently be further revised and amended under the guidance and recommendations of the Bylaws Committee of AOU to further effectuate the Merger.

3.3 The membership rights and benefits of all classes of members, paid and elective, in good standing of COS will transfer to AOU on the Effective Date as follows:

- a. Regular Members of COS who are also members in good standing of AOU will be recognized according to their class of membership in AOU;
- b. Full Time Student Members of COS who are also members in good standing of AOU will be recognized according to their class of membership in AOU;
- c. Special Countries Members of COS who are also members in good standing of AOU will be recognized according to their class of membership in AOU;
- d. Emeritus Members of COS who are also members in good standing of AOU will be recognized according to their class of membership in AOU;

- e. Regular Members of COS who are not also members of AOU will be recognized as Regular Members in AOU;
- f. Full Time Student Members of COS who are not also members of AOU will be recognized as Student Members in AOU;
- g. Special Countries Members of COS who are not also members of AOU will be recognized as Special Countries Members in AOU;
- h. Emeritus Members of COS who are not also members of AOU will be recognized as Emeritus/ Retired Members in AOU;
- i. Life Members of COS will be recognized as Life Members in AOU;
- j. Honorary Members of COS who are also members in good standing of AOU will be recognized as Life Members in AOU; and
- k. Honorary Members of COS who are not also members in good standing of AOU will be recognized as Life Members in AOU.

Subsequent to the merger, all members may choose to select any other class of membership for which they qualify during the annual renewal process. The future structure and fee schedule of membership classes are subject to review and adjustment from time to time in accordance with AOU's governing documents, policies, procedures and applicable law.

3.4 AOU expects to continue publication of the scholarly journals of both Parties and engage in their other publication enterprises for the foreseeable future.

3.5 AOU shall notify the IRS of the Merger and that COS's operations have ceased and merged into AOU as of the Effective Date. COS will file federal, foreign, state, and local tax returns, tax information returns, and reports for any period for which any such returns, reports, or estimates come due prior to the Effective Date. All such returns, reports, or estimates will be prepared in the manner required by applicable law, and all taxes shown thereby will be paid when due. AOU shall prepare and file a final IRS Form 990 and California Franchise Tax Board Form 199 for COS.

SECTION 4. Joint Statement

The Parties will draft a joint statement regarding the transaction contemplated in this Agreement for distribution to members, professional audiences, and the public, which will be approved for distribution on the Closing or any other time agreed to by the Parties. Any media release(s) pertaining to the transaction contemplated in this Agreement will be reviewed and approved by both Parties prior to its release.

SECTION 5. Termination

5.1 Failure to Obtain Approval. This Agreement will automatically terminate in the event that it is brought to a vote and not adopted by either: (a) the Board of Directors or members of AOU entitled to vote on the matter, or (b) the Board of Directors or members of COS entitled to vote on the matter.

5.2 Other Termination. This Agreement may be terminated and the merger abandoned at any time before the Closing Date (a) by mutual written agreement of the Parties; (b) by either Party if any condition provided in this Agreement has not been satisfied or waived on or before the Closing Date; or (c) by either Party if there has been a material breach of this Agreement by the other Party.

5.3 Effect of Termination. Upon termination, this Agreement will become wholly void and of no effect, without liability or obligations on the part of either Party.

SECTION 6. Miscellaneous Provisions

6.1 Waivers. No waiver will be binding unless it is in writing and signed by the Party making the waiver. A Party's waiver will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision.

6.2 Amendment. This Agreement may be amended at any time before the Closing Date with the approval of the Parties and subject to any further vote required by applicable law.

6.3 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the District of Columbia, without regard to conflict of laws principles.

6.4 Mediation. Any controversy or claim arising out of this Agreement will be settled by mediation in the District of Columbia in accordance with applicable rules and laws. If mediation is not successful in resolving the controversy or claim, the Parties may resort to settlement in a court located in the District of Columbia.

6.5 Binding Effect. Except as provided otherwise herein, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective legal representatives, successors and assigns.

6.6 Severability. If a provision of this Agreement is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Agreement will not be impaired.

6.7 Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning of this Agreement.

6.8 Expenses. All fees and expenses incurred by each Party in connection with this Agreement and the transaction contemplated in this Agreement shall be borne by that Party.

6.9 Survival. All provisions of this Agreement that would reasonably be expected to survive the termination of this Agreement will do so.

6.10 Attorney Fees. If any arbitration or litigation is instituted to interpret, enforce, or rescind this Agreement, the prevailing party on a claim will be entitled to recover with respect to the claim, in

addition to any other relief awarded, the prevailing Party's reasonable attorney's fees and other fees, costs, and expenses of every kind.

6.11 Entire Agreement. This Agreement constitutes the entire agreement among the Parties and supersedes any prior agreement or understanding among the Parties concerning its subject matter.

6.12 Assignment. This Agreement may not be transferred, assigned, pledged or hypothecated by either Party without the prior written consent of the other.

6.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one agreement. Furthermore, this Agreement may be executed by a Party's signature transmitted by facsimile or by electronic mail, and copies of this Agreement executed and delivered by means of faxed or electronic mail shall have the same force and effect as copies hereof executed and delivered with original signatures. All Parties hereto may rely upon faxed or electronic mail as if such signatures were originals.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the day and year first written above.

American Ornithologists' Union

Name: Scott M. Lanyon
Title: President, American Ornithologists' Union

Name: Andrew W. Jones
Title: Secretary, American Ornithologists' Union

Cooper Ornithological Society

Name: Martin Raphael
Title: President, Cooper Ornithological Society

Name: Abby Powell
Title: Secretary, Cooper Ornithological Society