



**AMENDED AND RESTATED  
BY-LAWS OF  
TD AMERITRADE HOLDING CORPORATION  
Dated as of February 12, 2014**

**ARTICLE I — OFFICES**

1.1 *Registered Office and Agent.* The registered office of the Corporation in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of the registered agent of the Corporation at such address is The Corporation Trust Company. The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

**ARTICLE II — STOCKHOLDERS**

2.1 *Time and Place of Meetings.* All meetings of the stockholders for the election of directors or for any other purpose shall be held at such time and place (if any), within or without the State of Delaware, as shall be designated by the Board of Directors. In the absence of a designation of a place for any such meeting by the Board of Directors, each such meeting shall be held at the principal office of the Corporation. In lieu of holding a meeting of stockholders at a designated place, the Board of Directors, may, in its sole discretion, determine that any meeting of stockholders may be held solely by means of remote communication.

2.2 *Annual Meetings.* An annual meeting of stockholders shall be held for the purpose of electing directors and transacting such other business as may properly be brought before the meeting. The date of the annual meeting shall be determined by the Board of Directors.

2.3 *Special Meetings.* Special meetings of the stockholders of the Corporation or of the holders of any one or more classes of the capital stock of the Corporation entitled to vote as a class or classes with respect to any matter may be called only in accordance with Article 5(a) of the Amended and Restated Certificate of Incorporation of the Corporation (the "Certificate of Incorporation").

**2.4 Notice of Meetings.** Except as otherwise required or permitted by applicable law, notice of each meeting of the stockholders stating the place, date and time of the meeting shall be given, not less than ten nor more than sixty days before the date of the meeting, to each stockholder entitled to vote at such meeting. The notice of any special meeting of stockholders shall state the purpose or purposes for which the meeting is called. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice. Neither the business to be transacted at, nor the purpose of, an annual or special meeting of stockholders need be specified in any waiver of notice.

**2.5 List of Stockholders.** The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten days before each meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, showing the address of and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder of record, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting as required by applicable law. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder of record who is present.

**2.6 Quorum; Adjournments.** The holders of a majority in voting power of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business, except as otherwise required by these By-Laws, the Certificate of Incorporation, or the Delaware General Corporation Law as from time to time in effect (the "Delaware Law"). If a quorum is not represented, the holders of the stock present in person or represented by proxy at the meeting and entitled to vote thereat shall have power, by the affirmative vote of the holders of a majority in voting power of such stock, to adjourn the meeting to another time and/or place, without notice other than announcement at the meeting, except as hereinafter provided, until a quorum shall be present or represented. At such adjourned meeting, at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the original meeting. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. Withdrawal of stockholders from any meeting shall not cause the failure of a duly constituted quorum at such meeting.

**2.7 Organization.** At each meeting of stockholders, the Chairman of the Board of Directors or, in his absence, the Vice Chairman of the Board of Directors, or in his absence, the Chief Executive Officer shall act as chairman of the meeting. The Secretary or, in his absence or inability to act, the person whom the chairman of the meeting shall appoint secretary of the meeting, shall act as secretary of the meeting and keep the minutes thereof.

**2.8 Order of Business.** The order of business at all meetings of the stockholders shall be as determined by the chairman of the meeting.

**2.9 Voting.** (a) At all meetings of the stockholders, each stockholder shall be entitled to vote, in person, or by proxy appointed in an instrument in writing subscribed by the stockholder or

otherwise appointed in accordance with Section 212 of the Delaware Law, each share of voting stock owned by such stockholder of record on the record date for the meeting. Each stockholder shall be entitled to one vote for each share of voting stock held by such stockholder, unless otherwise provided in the Delaware Law or the Certificate of Incorporation.

(b) When a quorum is present at any meeting, the affirmative vote of the holders of a majority in voting power of the stock having voting power present in person or represented by proxy and voting shall decide any question brought before such meeting, unless the question is one upon which, by express provision of law, of the rules or regulations of any securities exchange applicable to the Corporation or its securities, of these By-Laws or of the Certificate of Incorporation, a different vote is required, in which case such express provision shall govern and control the decision of such question. Any stockholder who is in attendance at a meeting of stockholders either in person or by proxy, but who abstains from the vote on any matter, shall not be deemed present or represented and voting at such meeting for purposes of the preceding sentence with respect to such vote, but shall be deemed present or represented at such meeting for all other purposes. Notwithstanding the foregoing, at all meetings of stockholders for the election of directors at which a quorum is present, a plurality of the votes cast shall be sufficient to elect any director.

2.10 *Inspectors*. The Board of Directors may, in advance of any meeting of stockholders, appoint one or more inspectors to act at such meeting or any adjournment thereof. If any of the inspectors so appointed shall fail to appear or act, the chairman of the meeting shall, or if inspectors shall not have been appointed, the chairman of the meeting shall (to the extent required by applicable law), appoint one or more inspectors. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability. The inspectors shall determine the number of shares of capital stock of the Corporation outstanding and the voting power of each, the number of shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the results, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the chairman of the meeting, the inspectors shall make a report in writing of any challenge, request or matter determined by them and shall execute a certificate of any fact found by them. No director or candidate for the office of director shall act as an inspector of an election of directors. Inspectors need not be stockholders.

### **ARTICLE III — DIRECTORS**

3.1 *General Powers*. Subject to the Certificate of Incorporation, the business and affairs of the Corporation shall be managed and controlled by or under the direction of its Board of Directors, which may exercise all such powers of, and do all such acts and things as may be done by, the Corporation and do all such lawful acts and things as are not by law or by the Certificate of Incorporation or by these By-Laws directed or required to be exercised or done by the stockholders.

3.2 *Qualification and Tenure*. The members of the Board of Directors shall be elected at the annual meeting of the stockholders, except as provided in the Certificate of Incorporation or Section

3 of this Article III, and each director elected shall hold office until his or her successor is elected and qualified or until his or her earlier death, termination, resignation or removal from office. Directors need not be stockholders.

**3.3 *Vacancies and Newly-Created Directorships.*** Subject to the Certificate of Incorporation, vacancies and newly created directorships resulting from any increase in the number of directors may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director, or by the stockholders, and each director so chosen shall hold office until his or her successor is elected and qualified or until his or her earlier death, termination, resignation, retirement, disqualification or removal from office. If there are no directors in office, then an election of directors may be held in the manner provided by the Delaware Law.

**3.4 *Place of Meetings.*** The Board of Directors may hold meetings, both regular and special, either within or without the State of Delaware.

**3.5 *Meetings.*** The Board of Directors shall hold a regular meeting, to be known as the annual meeting, immediately following each annual meeting of the stockholders. Other regular meetings of the Board of Directors shall be held at such time and place as shall from time to time be determined by the Board of Directors. No notice of regular meetings need be given, other than by announcement at the immediately preceding regular meeting. Special meetings of the Board of Directors may be called by the Chairman of the Board of Directors, the Vice Chairman of the Board of Directors or the Chief Executive Officer or by the Secretary on the written request of a majority of the Board of Directors. Notice of any special meeting of the Board of Directors shall be given at least one day prior thereto, either in writing or by electronic transmission, or telephonically if confirmed promptly in writing or by electronic transmission, to each director at the address shown for such director on the records of the Corporation.

**3.6 *Waiver of Notice; Business and Purpose.*** Notice of any meeting of the Board of Directors may be waived in writing signed by the person or persons entitled to such notice, or a waiver by electronic transmission by the person entitled to notice, either before or after the time of the meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened and at the beginning of the meeting records such objection with the person acting as secretary of the meeting and does not thereafter vote on any action taken at the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting, or any waiver by electronic transmission, unless specifically required by the Delaware Law.

**3.7 *Quorum and Manner of Acting.*** At all meetings of the Board of Directors a majority of the total number of directors shall constitute a quorum for the transaction of business. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. The act of a majority of the directors present at any meeting at which

there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by the Delaware Law or by the Certificate of Incorporation or these By-Laws.

3.8 **Organization.** The Chairman of the Board of Directors shall act as chairman at all meetings of the Board of Directors. If the Chairman of the Board of Directors is not present, the Vice Chairman of the Board of Directors, shall act as chairman of such meeting of the Board of Directors, and if the Chairman of the Board of Directors and the Vice Chairman of the Board of Directors, are not present, a director chosen by a majority of the directors present shall act as chairman at such meeting of the Board of Directors.

3.9 **Removal of Directors.** Unless otherwise prescribed by the Certificate of Incorporation, any director may be removed, either with or without cause, at any time, by stockholders owning a majority in voting power of the stock of the Corporation issued and outstanding and entitled to vote.

3.10 **Committees.** (a) The Board of Directors, by resolution adopted by the Board of Directors, may create one or more committees and appoint two or more directors to serve on such committee or committees. Each director appointed to serve on any such committee shall serve, unless the resolution designating the respective committee is sooner amended or rescinded by the Board of Directors, until the next annual meeting of the Board of Directors or until their respective successors are designated. The Board of Directors, by resolution adopted by a majority of the whole Board, may also designate additional directors as alternate members of any committee to serve as members of such committee in the place and stead of any regular member or members thereof who may be unable to attend a meeting or otherwise unavailable to act as a member of such committee. In the absence or disqualification of a member and all alternate members designated to serve in the place and stead of such member, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another director to act at the meeting in the place and stead of such absent or disqualified member.

(b) There shall be appointed an Outside Independent Directors Committee consisting of such number of members as may be required by the Stockholders Agreement dated as of June 22, 2005 by and among the Corporation, The Toronto-Dominion Bank and the other stockholders of the Corporation party thereto (the "Stockholders Agreement"), as such agreement may be amended or supplemented from time to time, having such power and authority as may be set forth or contemplated in the Certificate of Incorporation. Notwithstanding anything to the contrary contained in these By-laws, the Board may amend this Section 10(b) of this Article III (including in connection with a merger or consolidation or otherwise by operation of law) only with the approval of the Outside Independent Directors Committee.

(c) There shall be appointed a Non-TD Directors Committee consisting of such number of members as may be required by the Stockholders Agreement, as such agreement may be amended or supplemented from time to time, having such power and authority as may be set forth or contemplated in the Certificate of Incorporation. Notwithstanding anything to the contrary contained in these By-laws, the Board may amend this Section 10(c) of this Article III (including in connection

with a merger or consolidation or otherwise by operation of law) only with the approval of the Non-TD Directors Committee.

(d) No committee may take any action that is expressly required by the Delaware Law or the Certificate of Incorporation or these By-Laws to be taken by the Board of Directors and not by a committee thereof. Each committee shall keep a record of its acts and proceedings, which shall form a part of the records of the Corporation in the custody of the Secretary, and all actions of each committee, shall be reported to the Board of Directors at the next meeting of the Board of Directors.

(e) Meetings of committees may be called at any time by the chairman of the respective committee or by the Secretary on the written request of a majority of the Board of Directors. A majority of the members of the committee shall constitute a quorum for the transaction of business and, except as expressly limited by this section, the act of a majority of the members present at any meeting at which there is a quorum shall be the act of such committee. Except as expressly provided in this section or in the resolution designating the committee, a majority of the members of any such committee may select its chairman, fix its rules of procedure, fix the time and place of its meetings and specify what notice of meetings, if any, shall be given.

3.11 **Action without Meeting.** Unless otherwise specifically prohibited by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or such committee, as the case may be, execute a consent thereto in writing or by electronic transmission setting forth the action so taken, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or such committee.

3.12 **Attendance by Telephone.** Members of the Board of Directors, or any committee thereof, may participate in and act at any meeting of the Board of Directors, or such committee, as the case may be, through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such meeting shall constitute attendance and presence in person at the meeting of the person or persons so participating.

3.13 **Compensation.** Directors may be paid such compensation for their services and such reimbursement for expenses of attendance at meetings as the Board of Directors may from time to time determine. These payments shall not preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

## ARTICLE IV — OFFICERS

4.1 **Enumeration.** The officers of the Corporation shall be chosen by the Board of Directors and shall include a Chairman of the Board of Directors, a Chief Executive Officer, a Chief Financial Officer, a Secretary and a Treasurer. The Board of Directors may also elect a President, a Chief Operating Officer, one or more Divisional Presidents, one or more Executive Vice Presidents, one or more Senior Vice Presidents, one or more Vice Presidents, one or more Assistant Secretaries and

Assistant Treasurers and such other officers and agents as it may deem appropriate. Any number of offices may be held by the same person. No officer need be a stockholder. The Corporation shall also have a Vice Chairman of the Board of Directors, who shall be considered an officer of the Corporation only if he holds another position at the Corporation that is an officer position.

**4.2 *Term of Office.*** Subject to the Certificate of Incorporation, the officers of the Corporation shall be elected at the annual meeting of the Board of Directors and shall hold office until their successors are elected and qualified, or until their earlier death, termination, resignation or removal from office, and any officer or agent of the Corporation may be removed at any time by the Board of Directors, with or without cause. Any vacancy in any office because of death, resignation, termination, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

**4.3 *Chairman and Vice Chairman of the Board of Directors.*** The Chairman of the Board of Directors shall be a member of the Board of Directors of the Corporation. The Chairman of the Board of Directors shall oversee the overall strategic business management of the Corporation and shall have such other functions, authority and duties as customarily appertain to the office of the chairman of a business corporation or as may be prescribed by the Board of Directors. The Vice Chairman of the Board of Directors, in the absence of the Chairman of the Board of Directors or in the event of the Chairman's inability or refusal to act, shall have the authority to perform the duties of the Chairman of the Board of Directors and such other duties as may from time to time be prescribed by the Board of Directors.

**4.4 *Chief Executive Officer.*** (a) The Chief Executive Officer shall be the chief executive officer of the Corporation and, as such, shall have general supervision, direction and control of the business and affairs of the Corporation, subject to the control of the Board of Directors, and shall have such other functions, authority and duties as customarily appertain to the office of the chief executive of a business corporation or as may be prescribed by the Board of Directors.

(b) Prior to the occurrence of a Termination Event (and, following a Specified Termination Event, during any Post-Termination Period) (as such terms are defined in the Certificate of Incorporation), any Chief Executive Officer (other than the Chief Executive Officer in office as of the date of the effectiveness of this Section 4(b) of this Article IV) may be appointed only with the approval of at least two-thirds of all of the directors then serving on the Board of Directors. Notwithstanding anything to the contrary contained in these By-laws, this Section 4(b) of this Article IV may only be amended (including by merger, consolidation or otherwise) by (i) unanimous vote of the Board of Directors or (ii) the affirmative vote of the holders of at least 80% in voting power of the shares of capital stock of the Corporation issued and outstanding and entitled to vote thereon.

**4.5 *President.*** When and if elected, the President shall perform such duties and shall have such powers as are prescribed by these By-laws and as the Board of Directors or the Chief Executive Officer may from time to time prescribe. The Chief Executive Officer of the Corporation shall have the functions, authority and duties of President under these By-Laws, unless the Board of Directors appoints another individual to serve as President.

**4.6 Chief Operating Officer.** When and if elected, the Chief Operating Officer shall be the chief operating officer of the Corporation and shall have such functions, authority and duties as may from time to time be prescribed by the Board of Directors or the Chief Executive Officer.

**4.7 Chief Financial Officer**

The Chief Financial Officer shall be the principal accounting and financial officer of the Corporation. The Chief Financial Officer shall perform the duties incident to the office of chief financial officer and shall have such other functions, authority and duties as may from time to time be prescribed by the Board of Directors or the Chief Executive Officer. In the absence of the Treasurer or in the event of the Treasurer's inability or refusal to act, the Chief Financial Officer shall have the authority to perform the duties of the Treasurer

**4.8 Divisional President.** When and if elected, each Divisional President shall be the chief operating officer of the designated division of the Corporation and shall have such functions, authority and duties as may from time to time be prescribed by the Board of Directors or the Chief Executive Officer or the Chief Operating Officer.

**4.9 Vice President.** Each Vice President, whether designated as Executive or Senior or without such additional title, shall perform such duties and have such other powers as may from time to time be prescribed by the Board of Directors or the Chief Executive Officer.

**4.10 Secretary.** The Secretary shall: (a) keep a record of all proceedings of the stockholders, the Board of Directors and any committees thereof in one of more books provided for that purpose; (b) give, or cause to be given, all notices that are required by law or these By-Laws to be given by the Secretary; (c) be custodian of the corporate records and, if the Corporation has a corporate seal, of the seal of the Corporation; (d) have authority to affix the seal of the Corporation to all instruments the execution of which requires such seal and to attest such affixing of the seal; (e) keep a register of the post office address of each stockholder which shall be furnished to the Secretary by such stockholder; (f) sign, with the Chairman of the Board of Directors, the President or any Vice President, or any other officer thereunto authorized by the Board of Directors (to the extent permitted by the Delaware Law), any certificates for shares of the Corporation, or any deeds, mortgages, bonds, contracts or other instruments which the Board of Directors has authorized to be executed by the signature of more than one officer; (g) have general charge of the stock transfer books of the Corporation; (h) have authority to certify as true and correct, copies of the By-Laws, or resolutions of the stockholders, the Board of Directors and committees thereof, and of other documents of the Corporation; and (i) in general, perform the duties incident to the office of secretary and such other duties as from time to time may be prescribed by the Board of Directors or the Chairman of the Board of Directors. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest such affixing of the seal.

**4.11 Assistant Secretary.** The Assistant Secretary, if any, or if there shall be more than one, each Assistant Secretary, in the absence of the Secretary or in the event of the Secretary's inability or refusal to act, shall have the authority to perform the duties of the Secretary, subject to such

limitations thereon as may be imposed by the Board of Directors, and such other duties as may from time to time be prescribed by the Board of Directors, the Chief Executive Officer or the Secretary.

4.12 **Treasurer.** The Treasurer shall perform the duties incident to the office of treasurer and shall have such other functions, authority and duties as may from time to time be prescribed by the Board of Directors, the Chief Executive Officer or the Chief Financial Officer. The Treasurer may sign, with the Chairman of the Board of Directors, the President or any Vice President, or any other officer thereunto authorized by the Board of Directors (to the extent permitted by the Delaware Law), certificates for shares of the Corporation. If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board of Directors may determine.

4.13 **Assistant Treasurer.** The Assistant Treasurer, if any, or if there shall be more than one, each Assistant Treasurer, in the absence of the Treasurer and the Chief Financial Officer acting as Treasurer or in the event of the inability or refusal to act of the Treasurer or the Chief Financial Officer acting as Treasurer, shall have the authority to perform the duties of the Treasurer, subject to such limitations thereon as may be imposed by the Board of Directors, and such other duties as may from time to time be prescribed by the Board of Directors, the Chief Executive Officer or the Treasurer.

4.14 **Other Officers and Agents.** Any officer or agent who is elected or appointed from time to time by the Board of Directors and whose duties are not specified in these By-Laws shall perform such duties and have such powers as may from time to time be prescribed by the Board of Directors or the Chief Executive Officer.

## **ARTICLE V — CERTIFICATES OF STOCK AND THEIR TRANSFER**

5.1 **Form.** The shares of the Corporation shall be represented by certificates in such form as the Board of Directors may approve; provided, the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the Corporation's stock shall be uncertificated shares. Each certificate for shares shall be consecutively numbered or otherwise identified. Certificates of stock in the Corporation, shall be signed by or in the name of the Corporation by the Chairman of the Board, the President or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Corporation. Where a certificate is countersigned by a transfer agent, other than the Corporation or an employee of the Corporation, or by a registrar, the signatures of one or more officers of the Corporation may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, the certificate may be issued by the Corporation with the same effect as if such officer, transfer agent or registrar were such officer, transfer agent or registrar at the date of its issue.

5.2 **Transfer.** Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Corporation, subject to any applicable restrictions on

transfer, to issue a new certificate of stock or uncertificated shares in place of any certificate theretofore issued by the Corporation to the person entitled thereto, cancel the old certificate and record the transaction in its stock transfer books.

**5.3 Replacement.** In case of the loss, destruction, mutilation or theft of a certificate for any stock of the Corporation, a new certificate of stock or uncertificated shares in place of any certificate theretofore issued by the Corporation may be issued upon the surrender of the mutilated certificate or, in the case of loss, destruction or theft of a certificate, upon satisfactory proof of such loss, destruction or theft and upon such terms as the Board of Directors may prescribe. The Board of Directors may in its discretion require the owner of the lost, destroyed or stolen certificate, or his legal representative, to give the Corporation a bond, in such sum and in such form and with such surety or sureties as it may direct, to indemnify the Corporation against any claim that may be made against it with respect to the certificate alleged to have been lost, destroyed or stolen.

**5.4 Registered Stockholders.** The Corporation shall be entitled to recognize the exclusive right of a person registered on its records as the owner of shares of stock to receive dividends and to vote as such owner, shall be entitled to hold liable for calls and assessments a person registered on its records as the owner of shares of stock, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares of stock on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the Delaware Law.

## **ARTICLE VI — INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS**

**6.1 Third Party Actions.** The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative, including all appeals (other than an action, suit or proceeding by or in the right of the Corporation) by reason of the fact that he is or was a director, officer, employee, or member of any committee of the Board of Directors of the Corporation, or is or was serving at the request of the Corporation as a director, manager, officer or employee of another corporation, limited liability company or other enterprise (and the Corporation, in the discretion of the Board of Directors, may so indemnify a person by reason of the fact that he is or was an agent of the Corporation or is or was serving at the request of the Corporation in any other capacity for or on behalf of the Corporation), to the fullest extent permitted by law, including indemnifying such person against expenses (including attorneys' fees), judgments, decrees, fines, penalties, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful; provided, the Corporation shall be required to indemnify such officer, director, employee or member of any committee of the Board of Directors, or such person serving at the request of the Corporation as a director, manager, officer or employee of another corporation, limited liability company or other enterprise, in connection with an action, suit or proceeding initiated by such person only if such action, suit or proceeding was authorized by the Board of Directors. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or

its equivalent, shall not, of itself, create a presumption that the person did not act in good faith or in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

**6.2 Actions By or in the Right of the Corporation.** The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit, including all appeals, by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or member of any committee of the Board of Directors of the Corporation, or is or was serving at the request of the Corporation as a director, manager, officer or employee of another corporation, limited liability company or other enterprise (and the Corporation, in the discretion of the Board of Directors, may so indemnify a person by reason of the fact that he is or was an agent of the Corporation or is or was serving at the request of the Corporation in any other capacity for or on behalf of the Corporation), to the fullest extent permitted by law, including indemnifying such person against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been finally adjudged to be liable to the Corporation unless and only to the extent that the court in which such action or suit was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as such court shall deem proper. Notwithstanding the foregoing, the Corporation shall be required to indemnify such officer, director, employee or member of any committee of the Board of Directors, or such person who is or was serving at the request of the Corporation as a director, manager, officer or employee of another corporation, limited liability company or other enterprise in connection with an action, suit or proceeding initiated by such person only if such action, suit or proceeding was authorized by the Board of Directors.

**6.3 Indemnity if Successful.** To the extent that a present or former director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding pursuant to which he is entitled to indemnification in Section 1 or 2 of this Article VI, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

**6.4 Standard of Conduct.** Except in a situation governed by Section 3 of this Article VI, any indemnification under Section 1 or 2 of this Article VI (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent of the Corporation is proper in the circumstances because he has met the applicable standard of conduct set forth in Section 1 or 2, as applicable, of this Article VI. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination: (a) by a majority vote of directors who are not parties to such action, suit or proceeding, even though less than a quorum; (b) by a committee of

such directors designated by majority vote of such directors, even though less than a quorum; (c) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion; or (d) by the stockholders. The determination to be made that indemnification is proper with respect to a person who is a former director or officer, or an employee or agent of the Corporation, shall be made by a majority of the Board of Directors.

**6.5 Expenses.** Expenses (including attorneys' fees) of each present or former officer, director, employee, or member of any committee of the Board of Directors of the Corporation, or a person who is or was serving at the request of the Corporation as a director, manager, officer or employee of another corporation, limited liability company or other enterprise hereunder indemnified, actually and reasonably incurred in defending any civil, criminal, administrative or investigative action, suit or proceeding or threat thereof shall be paid by the Corporation (and such expenses of any present or former agent of the Corporation or a person who is or was serving at the request of the Corporation in any other capacity for or on behalf of the Corporation may, at the discretion of the Board of Directors, be so paid) in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized in this Article VI and, in the case of any present or former agent of the Corporation or a person who is or was serving at the request of the Corporation in a capacity (other than as a director, manager, officer or employee) for another corporation, limited liability company or other enterprise, shall be so paid by the Corporation upon the receipt of the aforesaid undertaking and such terms and conditions, if any, as the Board of Directors deems appropriate.

**6.6 Nonexclusivity.** The indemnification and advancement of expenses provided by, or granted pursuant to, other Sections of this Article VI shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may now or hereafter be entitled under any law, by-law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

**6.7 Insurance.** The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of the Delaware Law.

**6.8 Definitions.** For purposes of this Article, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had the power and authority to indemnify any or all of its directors, officers, employees and agents, so that any person who was a director, officer, employee or agent of such constituent corporation, or was serving at the request of such constituent corporation in any other capacity, shall stand in the same position under the provisions of this Article with respect to the resulting or

surviving corporation as such person would have had with respect to such constituent corporation if its separate existence had continued as such corporation was constituted immediately prior to such merger.

For purposes of this Article, references to “other capacities” shall include serving as a trustee or agent for any employee benefit plan; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the Corporation” shall include (1) any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries, or (2) any service as a director, manager, officer, or employee of another corporation, limited liability company, or other enterprise of which a majority of the equity interests entitled to vote in the election of directors or managers is held directly or indirectly by the Corporation. A person who acted in good faith and in a manner he or she reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this Article.

For purposes of this Article, references to “committees” include committees, some or all members of which are not directors, that the Corporation may establish from time to time.

6.9 *Severability*. If any provision hereof is invalid or unenforceable in any jurisdiction, the other provisions hereof shall remain in full force and effect in such jurisdiction, and the remaining provisions hereof shall be liberally construed to effectuate the provisions hereof, and the invalidity of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

6.10 *Amendment*. The right to indemnification conferred by this Article VI shall be deemed to be a contract between the Corporation and each person entitled to the benefits referred to therein until amended or repealed (including by merger, consolidation or otherwise by operation of law), but no amendment to or repeal of these provisions shall apply to or have any effect on the right to indemnification of any person with respect to any liability or alleged liability of such person for or with respect to any act or omission of such person occurring prior to such amendment or repeal.

## **ARTICLE VII — NOMINATION OF DIRECTORS AND PRESENTATION OF BUSINESS AT STOCKHOLDER MEETINGS**

### **7.1 *General*.**

(a) Except as provided below, only such persons who are nominated in accordance with the procedures set forth in this Article VII shall be eligible to serve as directors and only such business as shall have been brought before the meeting in accordance with the procedures set forth in this Article VII shall be conducted at a meeting of stockholders.

(b) Notwithstanding anything herein to the contrary, prior to the occurrence of a Termination Event (and, following a Specified Termination Event, during any Post-Termination Period), any stockholder then entitled to designate or nominate one or more directors of the

Corporation under the terms of the Stockholders Agreement (as defined in the Certificate of Incorporation) may nominate persons for election as directors at any meeting of the stockholders without complying with the advance notice provisions of this Article VII. Each person so nominated will not be ineligible to be nominated or elected to the Board of Directors by virtue of a failure to comply with any such advance notice provisions.

**7.2 Nominations of Directors and Proposals at Stockholder Meetings.** Nominations of persons for election to the Board of Directors and the proposal of business to be considered by the stockholders may be made at a meeting of stockholders (a) by or at the direction of the Board of Directors or (b) by any stockholder who is a stockholder of record at the time of the giving of notice provided for in this Article VII, who is entitled to vote at the meeting of stockholders and who complies with the notice procedures set forth in Section 3. In addition, a stockholder may nominate a person to be a director only if such stockholder would be entitled to vote for such person in the election for such director.

**7.3 Notice Procedures.**

(a) For nominations or other business to be properly brought by a stockholder before an annual meeting of stockholders pursuant to subsection (b) of Section 2 of this Article VII, the stockholder must have given timely notice thereof in writing to the Secretary. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not less than 90 days nor more than 120 days prior to the anniversary of the Corporation's annual meeting of the preceding year; provided, that in the event that the date of the annual meeting is advanced or delayed by more than 30 days from the date of the preceding year's annual meeting, notice by the stockholder must be so delivered not less than 90 days nor more than 120 days prior to the date of the current year's annual meeting.

(b) For nominations or other business to be properly brought by a stockholder before a special meeting of stockholders pursuant to subsection (b) of Section 2 of this Article VII, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not earlier than the 90th day prior to such special meeting and not later than the close of business on the 60th day prior to such special meeting.

(c) Each stockholder's notice shall set forth (i) as to each person whom the stockholder proposes to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (ii) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (iii) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (A) the name and address of such stockholder as they

appear on the Corporation's books, and of such beneficial owner, and (B) the class and number of shares of stock of the Corporation that are owned beneficially and of record by such stockholder and such beneficial owner.

**7.4 *Determination of Compliance.*** The chairman of the meeting of stockholders shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the procedures set forth in this Article VII and, if any proposed nomination or business is not in compliance with this Article VII, to declare that such defective nomination or proposal shall be disregarded.

## **ARTICLE VIII — GENERAL PROVISIONS**

**8.1 *Fiscal Year.*** The fiscal year of the Corporation shall be fixed from time to time by resolution of the Board of Directors.

**8.2 *Corporation Seal.*** The corporate seal, if any, of the Corporation shall be in such form as may be approved from time to time by the Board of Directors. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

**8.3 *Notices and Mailing.*** Except as otherwise provided in the Act, the Certificate of Incorporation or these By-Laws, all notices required to be given by any provision of these By-Laws shall be deemed to have been given (a) when received, if given in person, (b) when transmitted, if sent by telex, facsimile or other electronic transmission, (c) one day after delivery, properly addressed, to a reputable courier for same day or overnight delivery or (d) three days after being deposited, properly addressed, in the U.S. Mail, certified or registered mail, postage prepaid.

**8.4 *Waiver of Notice.*** Whenever any notice is required to be given under the Delaware Law or the provisions of the Certificate of Incorporation or these By-Laws, a waiver thereof in writing, signed by the person or persons entitled to said notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice.

**8.5 *Construction & Interpretation.*** In these By-laws, unless a clear contrary intention appears, the singular number includes the plural number and vice versa, and reference to either gender includes the other gender.

**8.6 *Forum for Adjudication of Disputes.*** Unless the Corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, or (iv) any action asserting a claim governed by the internal affairs doctrine shall be a state or federal court located within the state of Delaware, in all cases subject to the court's having personal jurisdiction over the indispensable parties named as defendants. Any person or entity purchasing or otherwise acquiring any interest in shares of capital

stock of the Corporation shall be deemed to have notice of and consented to the provisions of this By-Law.

8.7 *Invalid Provisions.* If any provision of these By-Laws is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of the stockholders would not be materially and adversely affected thereby, such provision shall be fully separable, and these By-Laws shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, the remaining provisions of these By-Laws shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom, and in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of these By-Laws, a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

#### **ARTICLE IX — AMENDMENTS**

These By-Laws may be altered, amended or repealed, or new By-Laws may be adopted, by the Board of Directors (subject, in the case of any amendment to Sections 10(b) and 10(c) of Article III and Section 4(b) of Article IV, to the respective express requirements set forth therein). The fact that the power to amend, alter, repeal or adopt the By-Laws has been conferred upon the Board of Directors shall not divest the stockholders of the same powers.