
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): June 7, 2005

PRUDENTIAL FINANCIAL, INC.

(Exact name of registrant as specified in its charter)

New Jersey
(State or other jurisdiction
of incorporation)

001-16707
(Commission File Number)

22-3703799
(I.R.S. Employer
Identification No.)

751 Broad Street
Newark, New Jersey 07102
(Address of principal executive offices and zip code)

(973) 802-6000
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

As described in Item 8.01(a) below, Prudential Financial, Inc., a New Jersey corporation (the “Company”), has amended its Amended and Restated Certificate of Incorporation and its By-Laws. Item 8.01(a) is incorporated into this Item 5.03 by reference.

Item 8.01 Other Events.

(a) Approval of Amendment of Amended and Restated Certificate of Incorporation to Declassify the Board of Directors and Related By-Law Amendments.

At the Annual Meeting of Shareholders of the Company held on June 7, 2005, the shareholders approved amendments to the Company’s Amended and Restated Certificate of Incorporation, as described in the Company’s Proxy Statement dated April 19, 2005 relating to the Annual Meeting (the “Proxy Statement”), to provide for the phased elimination over three years of the Company’s classified Board of Directors and certain ancillary changes to reflect the absence of a classified Board (the “Declassification Amendment”). The Declassification Amendment was submitted to the State of New Jersey by the Company on June 8, 2005 and became effective upon filing. A copy of the Amended and Restated Certificate of Incorporation of the Company reflecting the Declassification Amendment, as filed with the State of New Jersey, is being filed herewith as Exhibit 3.1 and is incorporated into this Item 8.01(a) by reference.

Effective upon the adoption of the Declassification Amendment, the Company’s By-Laws were amended to reflect the phased elimination over three years of the Company’s classified Board as described in the Proxy Statement. Prior to their amendment, the By-Laws permitted removal of directors only for cause and required (unless otherwise required by law) the affirmative vote of at least 80% of the votes cast at a meeting of shareholders provided that at least 50% of the outstanding shares approved. Upon adoption of the Declassification Amendment, the By-Laws were amended so that these requirements will continue to apply to the Class II and Class III directors during the remainder of their terms expiring in 2006 and 2007, respectively. The By-Laws were also amended: to provide that the directors elected at the Annual Meeting of Shareholders held on June 7, 2005, and at future annual meetings, will be removable “with or without cause” upon the affirmative vote of a majority of the votes cast at a meeting at which a quorum is present; to delete the supermajority voting requirements applicable to the classification of directors in order that, if shareholders in the future wish to reestablish a classified Board, such reestablishment would need the affirmative vote of only a majority of the votes cast at a meeting at which a quorum is present; and to make certain ancillary changes. A copy of the Amended and Restated By-Laws of the Company reflecting these changes is being filed herewith as Exhibit 3.2 and is incorporated into this Item 8.01(a) by reference.

(b) Adoption of Employee Stock Purchase Plan.

At the Annual Meeting of Shareholders of the Company held on June 7, 2005, the shareholders approved the Prudential Financial, Inc. Employee Stock Purchase Plan described in the Proxy Statement (the “ESPP”). The ESPP is a broad-based, tax-qualified plan under Section 423 of the Internal Revenue Code of 1986, as amended, pursuant to which up to 26,367,235 shares of Common Stock may be issued.

Item 9.01 Financial Statements and Exhibits.**(c) Exhibits.**

- 3.1 Amended and Restated Certificate of Incorporation of the Company.
- 3.2 Amended and Restated By-Laws of the Company.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: June 9, 2005

PRUDENTIAL FINANCIAL, INC.

By: /s/ Brian J. Morris

Name: Brian J. Morris

Title: Assistant Secretary

Exhibit Index

Exhibit No.	Description
3.1	Amended and Restated Certificate of Incorporation of Prudential Financial, Inc.
3.2	Amended and Restated By-Laws of Prudential Financial, Inc.

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION

OF

PRUDENTIAL FINANCIAL, INC.

FIRST: The name of the Corporation is Prudential Financial, Inc. (hereinafter the “Corporation”).

SECOND: The address of the current registered office of the Corporation in the State of New Jersey is 751 Broad Street, in the City of Newark, County of Essex, 07102. The name of its current registered agent at that address is Kathleen M. Gibson.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity within the purposes for which corporations may be organized under the New Jersey Business Corporation Act (the “BCA”).

FOURTH: The total number of shares of all classes which the Corporation has authority to issue is 1,520,000,000 of which 1,510,000,000 shall be designated as “common stock”, having a par value of one cent (\$.01), and 10,000,000 shall be designated as “Preferred Stock”, having a par value of one cent (\$.01). The Corporation shall have the authority to issue shares of common stock in two classes (references herein to “common stock” refer to the shares of both classes to the extent issued). One class of common stock shall be designated as “Common Stock” and shall initially consist of 1,500,000,000 authorized shares, each having a par value of one cent (\$.01). The second class of common stock shall be designated as “Class B Stock” and shall initially consist of 10,000,000 authorized shares, each having a par value of one cent (\$.01). The designations and the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications, and terms and conditions of redemption of the shares of each class of stock are as follows:

(a) Preferred Stock. The board of directors of the Corporation (the “Board of Directors”) is expressly authorized to provide for the issuance of all or any shares of the Preferred Stock in one or more classes or series, and to fix for each such class or series such voting powers, full or limited, or no voting powers, and such distinctive designations, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the

Board of Directors providing for the issuance of such class or series and as may be permitted by the BCA, including, without limitation, the authority to provide that any such class or series may be (i) subject to redemption or purchase at such time or times and at such price or prices; (ii) entitled to receive dividends (which may be cumulative or non-cumulative) at such rates, on such conditions, and at such times, and payable in preference to, or in such relation to, the dividends payable on any other class or classes or any other series; (iii) entitled to such rights upon the liquidation of, or upon any distribution of the assets of, the Corporation; (iv) entitled to the benefit of a sinking or retirement fund to be applied to the purchase or redemption of shares of the class or series and, if so entitled, the amount of such fund and the manner of its application, including the price or prices at which the shares may be redeemed or purchased through the application of such fund; (v) subject to terms dependent upon facts ascertainable outside the resolution or resolutions providing for the issuance of such class or series adopted by the Board of Directors, provided that the manner in which such facts shall operate upon the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of such class or series is clearly and expressly set forth in the resolution(s) providing for the issuance of such class or series by the Board of Directors; or (vi) convertible into, or exchangeable for, shares of any other class or classes of stock, or of any other series of the same or any other class or classes of stock, of the Corporation at such price or prices or at such rates of exchange and with such adjustments; all as may be stated in such resolution or resolutions; provided, however, unless holders of a majority of the outstanding shares of Class B Stock approve, the Board of Directors shall not have the authority to issue any shares of Preferred Stock that are convertible into or exchangeable for shares of Class B Stock or that have dividend, liquidation or other preferences with respect to the Class B Stock but not the Common Stock or disproportionately with respect to the Class B Stock as compared to the Common Stock. The Board of Directors shall have the authority to change the designation or number of shares, or the relative rights, preferences and limitations of the shares, of any theretofore established class or series no shares of which have been issued.

(b) common stock. Subject to Section (c) of this Article FOURTH, the common stock of the Corporation shall possess all such rights and privileges as are afforded to capital stock by law, including, but not limited to, the following rights and privileges:

1. Reclassification; Definitions.

When the filing of this Amended and Restated Certificate of Incorporation becomes effective, each share of "Common Stock" outstanding immediately prior thereto shall thereupon automatically be reclassified as one share of Common Stock (and outstanding certificates that had theretofore represented shares of "Common Stock" shall thereupon represent an equivalent

number of shares of Common Stock despite the absence of any indication thereon to that effect). Capitalized terms used below in this Section (b) of Article FOURTH have the meanings set forth adjacent to such terms or in Sections (b)6 and (b)8 below.

2. Dividends.

(i) Dividends. Subject to all of the rights of the Preferred Stock as expressly provided herein, by law or by the Board of Directors pursuant to this Article FOURTH, the holders of the Common Stock shall be entitled to receive dividends on their shares of Common Stock if, as and when declared by the Board of Directors with respect to such class out of legally available funds for the payment of dividends under the BCA, provided the aggregate amounts declared as dividends on Common Stock on any day may not exceed the Available Dividend Amount for the Financial Services Businesses on that day. Subject to all of the rights of the Preferred Stock as expressly provided herein, by law or by the Board of Directors pursuant to this Article FOURTH, the holders of the Class B Stock shall be entitled to receive dividends on their shares of Class B Stock if, as and when declared by the Board of Directors with respect to such class out of legally available funds for the payment of dividends under the BCA that, in aggregate amount per annum, are at least equal to the lesser of (a) the product of (x) the number of outstanding shares of Class B Stock on the applicable record date and (y) subject to any adjustment required by Section (b)8 or (b)9(i) of this Article FOURTH, \$9.625 per share per annum (the "Target Dividend Amount") or (b) the amount of the CB Distributable Cash Flow, in each case of (a) or (b), for the period as to which the dividend is declared or payable, provided, in any event, the aggregate amount declared as dividends on Class B Stock on any day may not exceed the Available Dividend Amount for the Closed Block Business on that day. For the avoidance of doubt notwithstanding the foregoing formulation, the Board of Directors is not required to declare or pay dividends on the Class B Stock in circumstances where dividends could be paid pursuant to the foregoing sentence and the right of holders of Class B Stock to dividends is non-cumulative; provided, however, that in the event dividends are not declared and paid on the Class B Stock with respect to an annual or quarterly period in the amount of at least the lower of the CB Distributable Cash Flow or the Target Dividend Amount, cash dividends shall not be declared and paid, or set apart for payment, on the Common Stock with respect to such annual or quarterly period.

(ii) Discrimination Between or Among Classes of common stock. Subject to Section (b)2(i) of this Article FOURTH and subject to all of the rights of the Preferred Stock as expressly provided herein, by

law or by the Board of Directors pursuant to this Article FOURTH, the Corporation shall have the authority to declare and pay dividends on both, one or neither class of common stock in equal or unequal amounts, notwithstanding the performance of either Business, the amount of assets available for dividends on either class of common stock, the amount of prior dividends paid on either class of common stock or any other factor, without any prior claim of the shareholders of either class to such declaration or payment.

3. Exchange of Class B Stock.

(i) Exchange of Class B Stock for Common Stock.

(a) The Corporation may, at any time (including, without limitation, in anticipation of a merger, consolidation or other business combination of the Corporation with another corporation or person or other transaction referred to in Section (b)8 of this Article FOURTH), issue, in exchange for all of the outstanding shares of Class B Stock, a number of shares of Common Stock (rounded, if necessary, to the next greatest whole number of shares) having an aggregate value equal to 120% of the aggregate Fair Market Value of the outstanding shares of Class B Stock.

(b) In the event (1) a Disposition of the Closed Block Business (other than an Exempt Disposition) has occurred, or (2) a Change of Control of the Corporation has occurred, the Corporation shall issue, in exchange for all of the outstanding shares of Class B Stock, a number of shares of Common Stock (rounded up, if necessary, to the next greatest whole number) having an aggregate value equal to 120% of the aggregate Fair Market Value of the Class B Stock.

(c) In the event a Cash/Private Transaction has occurred (whether or not it constitutes a Change of Control of the Corporation), the Corporation shall exchange all the outstanding shares of Class B Stock in accordance with Section (b)8(iii) of this Article FOURTH.

(ii) General Exchange Provisions.

(a) If the Corporation has determined to, or is required to, complete an exchange described in Section (b)3(i) of this Article FOURTH:

- (1) the Corporation shall issue a public announcement by press release of its intention or requirement to effect such exchange; with respect to exchanges pursuant to Sections (b)3(i)(b) and (b)3(i)(c) of this Article FOURTH, such announcement shall be made (regardless of any prior announcement relating to the Disposition, Change of Control or Cash/Private Transaction) no later than the date of occurrence of the Disposition, Change of Control or Cash/Private Transaction, respectively;
- (2) the Corporation shall send a notice to the holders of Class B Stock as soon as practicable after the foregoing public announcement, indicating the Corporation's determination to effect such exchange and specifying the Board of Directors' proposed appraiser to determine the Fair Market Value of the Class B Stock in accordance with Section (b)4(iii) of this Article FOURTH, and such proposed appraiser (or a second or third proposed appraiser) shall be chosen pursuant to said Section (b)4(iii) of this Article FOURTH;
- (3) with respect to:
 - (i) Section (b)3(i)(a) of this Article FOURTH, the Fair Market Value of the Class B Stock shall be determined as of the completion date of the appraisal of the Fair Market Value of the Class B Stock, and the value of the Common Stock shall be the average Market Value of the Common Stock during the 20 consecutive Trading Day period ending on the 5th Trading Day prior to the exchange date;
 - (ii) Section (b)3(i)(b)(1) of this Article FOURTH, the Fair Market Value of the Class B Stock shall be determined as of the Business Day immediately preceding the date of the consummation of such Disposition, and the value of the Common Stock shall be the average Market Value of the Common Stock during the 20 consecutive Trading Day period ending on the 5th Trading Day prior to the exchange date;

(iii) Section (b)3(i)(b)(2) of this Article FOURTH, the Fair Market Value of the Class B Stock shall be determined as of the date of occurrence of the Change of Control, and the value of the Common Stock shall be the average Market Value of the Common Stock during the 20 consecutive Trading Day period ending on the 5th Trading Day prior to the exchange date; and

(iv) Section (b)3(i)(c) of this Article FOURTH, the Fair Market Value of the Class B Stock shall be determined as of the date a majority of the outstanding shares of Common Stock are converted, exchanged or purchased in a Cash/Private Transaction, and the value of the Common Stock for purposes of determining the number of shares of Common Stock to be exchanged for cash and/or securities obtainable upon exchange of the Class B Stock shall be the average Market Value of the Common Stock during the 20 consecutive Trading Day period ending on the 5th Trading Day prior to the date a majority of the outstanding shares of Common Stock are so converted, exchanged or purchased;

- (4) the exchange date shall be no later than 10 Business Days after the completion date of the appraisal of the Fair Market Value of the Class B Stock;
- (5) upon determination of the identity of the appraiser pursuant to Section (b)4(iii) of this Article FOURTH, the Corporation shall issue a second public announcement by press release specifying the intended exchange date and intended period for determination of the average Market Value of the Common Stock;
- (6) upon completion of the appraisal of the Fair Market Value of the Class B Stock and determination of the Market Value of the Common Stock, the Corporation shall issue a second notice to the holders of the Class B Stock, which will contain: (x) the date of exchange, (y) the number of shares of Common Stock to be issued in exchange for each outstanding share of Class B

Stock (accompanied by a statement setting forth the calculation thereof), and (z) the place or places where certificates for such shares of Class B Stock, properly endorsed or assigned for transfer (unless the Corporation waives such requirement), should be surrendered for delivery of the Common Stock to be issued or delivered by the Corporation in such exchange;

- (7) the exchange shall be completed within 90 days of the public announcement referred to in clause (1) above; and
- (8) notwithstanding that a Cash/Private Transaction pursuant to Section (b)8(iii) of this Article FOURTH is also a Change of Control, it shall be treated as a Cash/Private Transaction pursuant to the foregoing.

(b) Neither the failure to mail any notice required by this Section (b)3(ii) of Article FOURTH to any particular holder of Class B Stock nor any defect therein would affect the sufficiency thereof with respect to any other holder of Class B Stock or the validity of any exchange contemplated hereby.

(c) No holder of shares of Class B Stock being exchanged shall be entitled to receive any shares of Common Stock in such exchange until such holder surrenders certificates for its shares of Class B Stock, properly endorsed or assigned for transfer, at such place as the Corporation shall specify (unless the Corporation waives such requirement). As soon as practicable after the Corporation's receipt of certificates for such shares of Class B Stock, the Corporation shall deliver to the person for whose account such shares were so surrendered, or to the nominee or nominees of such person, any shares of Common Stock issued to such holder in the exchange.

(d) From and after the date of any exchange of Class B Stock for Common Stock completed pursuant to Section (b)3(i) of this Article FOURTH, all rights of a holder of shares of Class B Stock being exchanged shall cease except for the right, upon surrender of the certificates theretofore representing such shares, to receive any shares of Common Stock (and, if such holder was a holder of record as of the close of business on the record date for a dividend not yet paid, the right to receive such dividend). A holder of shares of Class B Stock being exchanged shall not be entitled to receive any dividend or other distribution with respect to shares of Common Stock until after certificates theretofore representing the shares being exchanged are surrendered as contemplated above.

Upon such surrender, the Corporation shall pay to the holder the amount of any dividends or other distributions (without interest) which theretofore became payable with respect to a record date occurring after the exchange, but which were not paid by reason of the foregoing, with respect to the number of whole shares of Common Stock represented by the certificate or certificates issued upon such surrender. From and after the date set for any exchange, the Corporation shall, however, be entitled to treat the certificates for shares of Class B Stock being exchanged that were not yet surrendered for exchange as evidencing the ownership of the number of whole shares of Common Stock for which the shares of such Class B Stock should have been exchanged, notwithstanding the failure to surrender such certificates.

(e) The Corporation may, subject to applicable law, establish such other rules, requirements and procedures to facilitate any exchange contemplated by Section (b)3(ii) of this Article FOURTH (including longer time periods and alternative procedures for determining the Fair Market Value of the Class B Stock or the Market Value of Common Stock) as the Board of Directors may determine to be appropriate under the circumstances.

(f) The issuance of certificates for shares of Common Stock upon exchange of the Class B Stock shall be made without charge to the holders thereof for any issuance tax in respect thereof, provided that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of the Class B Stock which is being exchanged.

(g) The Corporation shall take all action required to have available sufficient authorized shares of Common Stock to permit exchange of all outstanding shares of Class B Stock.

(h) Notwithstanding the time requirement of Section (b)3(ii)(a)(7), no exchange will be completed prior to the expiration of all required waiting periods under applicable law, the receipt of all required regulatory approvals and the making of all notifications to governmental entities required for such exchange. Prior to any exchange, the Corporation and the holder(s) of shares of Class B Stock involved in the exchange shall make reasonable efforts to cause the expiration of all required waiting periods and to obtain all regulatory approvals and make all notifications required to be obtained or made by the Corporation and such

holder(s), respectively, for purposes of such exchange. The waiting periods, approvals and notifications that are subject to this clause (h) shall be limited to those required solely for such exchange.

4. Voting Rights.

(i) At every meeting of shareholders, the holders of Common Stock and the holders of Class B Stock shall vote together as a single class on all matters as to which common shareholders generally are entitled to vote, unless a separate vote is required by applicable law or as specified in Section (b)4(ii) of this Article FOURTH. On all such matters for which no separate vote is required, holders of Common Stock and holders of Class B Stock shall be entitled to, subject to any adjustment required by Section (b)8 of this Article FOURTH, one vote per share of common stock held.

(ii) Notwithstanding Section (b)4(i) of this Article FOURTH, the Class B Stock shall be entitled to vote as a class with respect to: (x) any proposal by the Board of Directors of the Corporation to issue (1) shares of Class B Stock in excess of an aggregate of 2 million outstanding shares (other than issuances pursuant to a stock split or stock dividend paid ratably to all holders of Class B Stock), (2) any shares of Preferred Stock which are exchangeable for or convertible into Class B Stock, or (3) any debt securities, rights, warrants or other securities which are convertible into, exchangeable for or provide a right to acquire shares of Class B Stock; or (y) the approval of the actuarial or other competent firm for purposes of determining "Fair Market Value" as defined in Section (b)6 of this Article FOURTH.

(iii) With respect to the approval of the actuarial or other competent firm selected by the Board of Directors for purposes of determining "Fair Market Value" as defined in Section (b)6 of this Article FOURTH, the following procedures shall apply: (1) the Board of Directors shall provide written notice of its designee to holders of Class B Stock whose shares are to be exchanged or converted pursuant to Section (b)3, (b)8(iii) or (b)9 of this Article FOURTH, requesting approval at a meeting or by written consent on a date not less than 10 nor more than 15 days following the date of such notice; (2) in the event such holders of shares of Class B Stock disapprove such first designee, the Board of Directors shall select and provide written notice of a second designee and, if necessary, a third designee in such manner; (3) in the event such holders of the Class B Stock disapprove each of the first, second and third designee, the Board of Directors may elect to proceed to complete the exchange or conversion for which such determination of

“Fair Market Value” is required using the third designee for such purpose irrespective of disapproval by such holders of the Class B Stock. Following completion of such conversion or exchange on the basis of the third designee’s determination of “Fair Market Value”, the amount of the “Fair Market Value” shall, at the request of holders of a majority of the Class B Common Stock being exchanged or converted, be subject to arbitration under the rules and auspices of the American Arbitration Association, with any upward or downward adjustment to the determined “Fair Market Value” to be settled by cash payment.

(iv) For purposes of any class vote of the Class B Stock (including any required by law), approval of holders of a majority of the outstanding shares of Class B Stock shall be required; provided, however, Section (b)7 of Article FOURTH shall not be amended without the consent of holders of 80% of the outstanding shares of Class B Stock.

5. Liquidation Rights.

In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, holders of Common Stock and holders of Class B Stock shall be entitled to receive in respect of shares of Common Stock and shares of Class B Stock their proportionate interests in the net assets of the Corporation, if any, remaining for distribution to shareholders after payment of or provision for all liabilities, including contingent liabilities, of the Corporation and payment of the liquidation preference payable to any holders of the Corporation’s Preferred Stock, if any such Preferred Stock are outstanding. Each share of each class of common stock will be entitled to a share of net liquidation proceeds in proportion to the respective liquidation units assigned to such share as provided in the following sentence. Each share of Common Stock shall have one liquidation unit and each share of Class B Stock shall have a number of liquidation units (including a fraction of one liquidation unit) equal to the quotient (rounded to the nearest five decimal places) of (i) the issuance price per share of the Class B Stock divided by (ii) the average Market Value of one share of Common Stock during the 20 consecutive Trading Day period ending on (and including) the Trading Day immediately preceding the 60th day after the Effective Date. Neither the merger nor consolidation of the Corporation with any other entity, nor a sale, transfer or lease of all or any part of the assets of the Corporation, would, alone, be deemed a liquidation, dissolution or winding-up for purposes of this Section (b)5 of Article FOURTH.

6. Additional Definitions.

As used in this Article FOURTH, the following terms shall have the following meanings (with terms defined in singular having comparable

meaning when used in the plural and vice versa), unless the context otherwise requires:

“Available Dividend Amount for the Financial Services Businesses”, on any day on which dividends are declared on shares of Common Stock, is the amount determined under generally accepted accounting principles, consistently applied, or any greater amount determined in a manner permitted under the BCA, that would, immediately prior to the payment of such dividends, be legally available for the payment of dividends on shares of Common Stock in respect of the Financial Services Businesses under the BCA if the Financial Services Businesses and the Closed Block Business were each a separate New Jersey corporation organized under the BCA.

“Available Dividend Amount for the Closed Block Business”, on any day on which dividends are declared on shares of Class B Stock, is the amount determined under generally accepted accounting principles, consistently applied, or any greater amount determined in a manner permitted under the BCA, that would, immediately prior to the payment of such dividends, be legally available for the payment of dividends on shares of Class B Stock in respect of the Closed Block Business under the BCA if the Financial Services Businesses and Closed Block Business were each a separate New Jersey corporation organized under the BCA.

“Business” means the Financial Services Businesses or the Closed Block Business.

“Business Day” means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in The City of New York generally are authorized or obligated by law or executive order to close.

“CB Distributable Cash Flow” means for any quarterly or annual period, the sum (measured as of the last day of the applicable period) of (i) to the extent that Prudential Insurance is able to distribute as a dividend such amount to Prudential Holdings under New Jersey law (for the avoidance of doubt, including the BCA and the New Jersey Life and Health Insurance Code) but without giving effect, directly or indirectly, to the “earned surplus” requirement of Section 17:27A-4c.(3) (or any successor provision thereto), the excess of (a) the Surplus and Related Assets of Prudential Insurance applicable to the Closed Block Business over (b) the “Required Surplus” of Prudential Insurance applicable to

the Closed Block Business and (ii) if a positive amount, the excess of (c) the amount held in the Debt Service Coverage Account – Subaccount for Closed Block Business established pursuant to the terms of the IHC Debt Securities over (d) the aggregate amount of remaining payments of principal and interest required to repay the IHC Debt Securities pursuant to their terms (without any prepayment prior to maturity). For purposes of the foregoing, “Required Surplus” means the amount of surplus applicable to the Closed Block Business within Prudential Insurance that would be required to maintain the quotient (expressed as percentage) of (e) the “Total Adjusted Capital” applicable to the Closed Block Business within Prudential Insurance (including any applicable dividend reserves) divided by (f) the “Company Action Level RBC” applicable to the Closed Block Business within Prudential Insurance, equal to 100%, where “Total Adjusted Capital” and “Company Action Level RBC” are as defined in the regulations promulgated under the New Jersey Dynamic Capital and Surplus Act of 1993 as such are in effect on the Effective Date and without taking in to account any subsequent amendments to such act and regulations.

“Change of Control” means the occurrence of any of the following events (except as expressly provided in clause (ii), whether or not approved by the Board of Directors):

(i) (a) any Person (for purpose of this definition of “Change of Control”, as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, including any group acting for the purpose of acquiring, holding or disposing of securities within the meaning of Rule 13d-5(b)(1) under the Securities Exchange Act of 1934, but excluding the Corporation, any subsidiary of the Corporation, any employee benefit plan or employee stock plan of the Corporation or any subsidiary or any person organized, appointed, established or holding capital stock of the Corporation or a subsidiary pursuant to such a plan, or any person organized by or on behalf of the Corporation to effect a reorganization or recapitalization of the Corporation that does not contemplate a change in the ultimate beneficial ownership of 50% or more of the voting power of the then outstanding equity interests of the Corporation) is or becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934), directly or indirectly, of more than 50% of the total voting power of the then outstanding equity interests of the Corporation; or

(b) the Corporation merges with, or consolidates with, another Person or the Corporation sells, assigns, conveys, transfers, leases or otherwise disposes of all or substantially all of the assets of the Corporation to any Person;

other than, in the case of either clause (i)(a) or (i)(b), any such transaction where immediately after such transaction the Person or Persons that “beneficially owned” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934) immediately prior to such transaction, directly or indirectly, the then outstanding voting equity interests of the Corporation “beneficially own” (as so determined), directly or indirectly, more than 50% of the total voting power of the then outstanding equity interests of the surviving or transferee Person; or

(ii) During any year or any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors (together with any new directors whose election by such Board of Directors or whose nomination for election by the shareholders of the Corporation was approved by a vote of a majority of the directors of the Corporation then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason, other than pursuant to a proposal or request that the Board of Directors be changed as to which the holder of the Class B Stock seeking the conversion has participated or assisted or is participating or assisting, to constitute a majority of the Board of Directors then in office; provided, however, for purposes of the foregoing determination, an individual who retires from the Board of Directors and whose resignation is approved by the individuals who at the beginning of such period constituted the Board of Directors (together with any directors referred to in the preceding parenthetical phrase) shall not be considered an individual who was a member of the Board of Directors at the beginning of such period or who ceased to be a director during such period if the number of directors is reduced following such resignation.

“Closed Block Business” means (a) the Regulatory Closed Block established pursuant to Article IX of the Plan of Reorganization, together with such Surplus and Related Assets and indebtedness and other liabilities of the Corporation and its subsidiaries, and together with corresponding adjustments in accordance with

generally accepted accounting principles, that the Board of Directors has, as of the Effective Date, allocated to the Closed Block Business, (b) any assets or liabilities acquired or incurred by the Corporation or any of its subsidiaries after the Effective Date in the ordinary course of business and attributable to the Closed Block Business, (c) any assets or liabilities allocated to the Closed Block Business in accordance with policies established from time to time by the Board of Directors, and (d) the rights and obligations of the Closed Block Business under any inter-Business debt or other transaction deemed to be owed to or by the Closed Block Business (as such rights and obligations are defined in accordance with policies established from time to time by the Board of Directors); provided, however, that the Corporation or any of its subsidiaries may re-allocate assets from one Business to the other Business in return for other assets or services rendered by that other Business in accordance with policies established by the Board of Directors from time to time. The Closed Block Business excludes any expenses and liabilities from litigation affecting Closed Block policies, which expenses and liabilities shall be part of, and borne by, the Financial Services Businesses. In the event that interest expense on the IHC Debt Securities is not deductible for federal income tax purposes, the additional tax expense will be borne by the Financial Services Businesses and shall be excluded from the Closed Block Business.

“Disposition” means a sale, transfer, assignment, reinsurance transaction or other disposition (whether by merger, consolidation, sale or otherwise) of all or substantially all of the Closed Block Business to one or more persons or entities, in one transaction or a series of related transactions, other than an Exempt Disposition. A “Disposition” of the Closed Block Business shall not include a sale, transfer, assignment, reinsurance transaction or other disposition (whether by merger, consolidation, sale or otherwise) which results in the reduction of no more than 50% of the Surplus and Related Assets held outside the Regulatory Closed Block immediately prior to such transaction, provided the proceeds of such transaction are for the benefit of the Closed Block Business.

“Effective Date” means the date as of which this Amended and Restated Certificate of Incorporation becomes effective under New Jersey law, which shall be the same date as the “Effective Date” as defined under the Plan of Reorganization.

“Exempt Disposition” means any of the following:

- (a) a Disposition in connection with the liquidation, dissolution or winding up of the Corporation and the distribution of assets to shareholders; or
- (b) a cash dividend, out of the Closed Block Business’ assets, to holders of Class B Stock.

“Fair Market Value” means the fair market value of all of the outstanding shares of Class B Stock as determined by appraisal by a nationally recognized actuarial or other competent firm independent of and selected by the Board of Directors and approved by holders of the outstanding shares of Class B Stock in the manner specified in Section (b)4(iii) of this Article FOURTH. Fair Market Value shall be the present value of expected future cash flows to holders of the Class B Stock, reduced by any payables to the Financial Services Businesses. Future cash flows shall be projected consistent with the policy, as described in the Plan of Reorganization, for Prudential Insurance’s Board of Directors to declare policyholder dividends based on actual experience in the Regulatory Closed Block. Following the repayment in full of the IHC Debt Securities, these cash flows shall be the excess of statutory surplus applicable to the Closed Block Business over Required Surplus (as defined in the definition of “CB Distributable Cash Flow”) for each period that would be distributable as a dividend under New Jersey law if the Closed Block Business were a separate insurer. These cash flows will be discounted at an equity rate of return, to be estimated as a risk-free rate plus an equity risk premium. The risk-free rate shall be an appropriate ten-year U.S. Treasury rate reported by the Federal Reserve Bank of New York. The equity risk premium will be eight and one quarter percent initially, declining evenly to four percent over the following 21 years and remaining constant thereafter.

“Financial Services Businesses” means (a) all of the businesses, assets and liabilities of the Corporation and its subsidiaries, other than the businesses, assets and liabilities that are part of the Closed Block Business, and (b) the rights and obligations of the Financial Services Businesses under any inter-Business debt or other transaction deemed to be owed to or by the Financial Services Businesses (as such rights and obligations are defined in accordance with policies established from time to time by the Board of Directors); provided, however, that the Corporation or

any of its subsidiaries may re-allocate assets from one Business to the other Business in return for other assets or services rendered by that other Business in accordance with policies established by the Board of Directors from time to time.

“IHC Debt Securities” means debt securities issued by Prudential Holdings as described in the Plan of Reorganization.

“Market Value” of a share of Common Stock (or any other security) on any Trading Day means the average of the high and low reported sales prices regular way of a share of such security on such Trading Day or, in case no such reported sale takes place on such Trading Day, the average of the reported closing bid and asked prices regular way of the security on such Trading Day, in either case as reported on the New York Stock Exchange (“NYSE”) Composite Tape or, if the security is not listed or admitted to trading on the NYSE on such Trading Day, on the principal national securities exchange on which the security is listed or admitted to trading or, if not listed or admitted to trading on any national securities exchange on such Trading Day, on The Nasdaq National Market System of the Nasdaq Stock Market (“Nasdaq NMS”) or, if the security is not listed or admitted to trading on any national securities exchange or quoted on the Nasdaq NMS on such Trading Day, the average of the closing bid and asked prices of a share of such security in the over-the-counter market on such Trading Day as furnished by any NYSE member firm selected from time to time by the Corporation or, if such closing bid and asked prices are not made available by any such NYSE member firm on such Trading Day, the fair market value of a share of such security as the Board of Directors shall determine in good faith (which determination shall be conclusive and binding on all shareholders); provided, that, for purposes of determining the average Market Value of a share of Common Stock (or any other security) for any period, (a) the “Market Value” on any day prior to any “ex-dividend” date or any similar date occurring during such period for any dividend or distribution (other than any dividend or distribution contemplated by clause (b)(ii) of this sentence) paid or to be paid with respect to the Common Stock (or any other security) shall be reduced by the fair value of the per security amount of such dividend or distribution as determined by the Board of Directors and (b) the “Market Value” of a share of Common Stock (or any other security) on any day prior to (i) the effective date of any subdivision (by stock split or otherwise) or combination (by reverse stock split or otherwise) of outstanding shares of Common Stock (or any other security) occurring during

such period or (ii) any “ex-dividend” date or any similar date occurring during such period for any dividend or distribution with respect to the Common Stock (or any other security) to be made in shares of Common Stock (or such other security) shall be appropriately adjusted, as determined by the Board of Directors, to reflect such subdivision, combination, dividend or distribution.

“Plan of Reorganization” refers to the Plan of Reorganization of Prudential Insurance under Chapter 17C of Title 17 of the New Jersey Revised Statutes, dated as of December 15, 2000, as amended and restated and as it may be further amended through the date of this Amended and Restated Certificate of Incorporation and hereafter.

“Prudential Holdings” means Prudential Holdings, LLC, a limited liability company formed under the New Jersey Limited Liability Company Act and a wholly owned direct subsidiary of the Corporation and the direct parent of Prudential Insurance, or a successor entity.

“Prudential Insurance” means The Prudential Insurance Company of America, a New Jersey mutual life insurance company that will become, upon consummation of the Plan of Reorganization, a New Jersey stock life insurance company, or a successor company.

“Regulatory Closed Block” means the “closed block” established pursuant to Article IX of the Plan of Reorganization.

“SEC” means the United States Securities and Exchange Commission, or any successor agency.

“Surplus and Related Assets” means those assets segregated outside the Regulatory Closed Block held to meet capital requirements related to the Closed Block Business within Prudential Insurance as well as those assets that represent the difference between assets of the Regulatory Closed Block and the sum of the liabilities of the Regulatory Closed Block and the applicable statutory interest maintenance reserve, as designated by the Corporation.

“Trading Day” means, with respect to the Common Stock or any other security, each weekday on which the Common Stock or such other security is traded on the principal national securities exchange on which it is listed or admitted to trading or on the Nasdaq NMS or, if such security is not listed or admitted to trading on a national securities exchange or quoted on the Nasdaq NMS, traded in the principal over-the-counter market in which it trades.

7. Amendment of Class B Stock.

The Board of Directors is expressly authorized to amend (including any amendment effectuated by merger) the voting powers, designations, preferences and relative, participating, optional or other special rights and qualifications of the Class B Stock specified herein without (except as otherwise required by law) the vote of (i) the holders of Common Stock, irrespective of the effect that any such amendment may have on the relative rights and preferences of the Common Stock, or (ii) except to the extent the rights of the holders of Class B Stock would be adversely affected thereby, the holders of Class B Stock.

8. Stock Splits, Reclassification, Business Combinations, etc.

(i) In the event of any stock split or reverse stock split of the outstanding shares of Common Stock or any dividend paid with respect to the Common Stock in additional shares of Common Stock, any outstanding shares of Class B Stock shall be proportionately subdivided or combined, or a dividend in additional shares of Class B Stock shall be paid, and the Target Dividend Amount shall be proportionately adjusted; provided, however, that unless the Corporation has available sufficient authorized shares of Class B Stock to comply with this Section (b)8 of this Article FOURTH, the Corporation shall not authorize or effect any stock split of Common Stock or a dividend of Common Stock. In the event the number of votes per share of Common Stock is modified (other than in a manner that is dependent on the identity of the holder of shares of Common Stock), the number of votes per share of Class B Stock shall be proportionately modified.

(ii) In the event of any reclassification, recapitalization or exchange of, or any tender offer or exchange offer for, the outstanding shares of Common Stock, including by merger, consolidation or other business combination, as a result of which shares of Common Stock are exchanged for or converted into another security which is both (i) registered under Section 12 of the Securities Exchange Act of 1934 and (ii) either (1) listed for trading on the New York Stock Exchange or any national securities exchange registered under Section 6 of the Securities Exchange Act of 1934 that is the successor to such exchange or (2) quoted in the National Association of Securities Dealers Automation Quotation System, or any successor system (such security that satisfies both (i) and (ii) being referred to as a "Public Security"), then the Class B Stock shall remain outstanding (unless otherwise exchanged or converted pursuant to

Section (b)3 or (b)9 of this Article FOURTH) and, in the event 50% or more of the outstanding shares of Common Stock are so converted or exchanged, holders of outstanding Class B Stock shall be entitled to receive, in the event of any subsequent exchange or conversion pursuant to Section (b)3 or (b)9 of this Article FOURTH, the securities into which the Common Stock has been exchanged or converted by virtue of such reclassification, recapitalization, merger, consolidation, tender offer, exchange offer, or other business combination (the "Successor Public Securities"). Following any such conversion or exchange of 50% or more of the outstanding shares of Common Stock, references to Common Stock shall be deemed to refer to Successor Public Securities in the following Sections of paragraph (b) of this Article FOURTH: 3(i)(a); 3(i)(b); 3(ii)(a)(3)(i), (ii) and (iii); 3(ii)(a)(5) and (6); 3(ii)(c), (d), (e) and (f); 8(i); 9(ii)(c), (e) and (f); and 9(iv), (v), (vi), (vii) and (viii).

(iii) If, in the event of any reclassification, recapitalization or exchange of, or any tender or exchange offer for, the outstanding shares of Common Stock, including by merger, consolidation or other business combination, and whether in one transaction or a series of transactions, as a result of which a majority of the outstanding shares of Common Stock are so converted into or exchanged or purchased for either (i) cash or (ii) securities which are not Public Securities, or a combination thereof (a "Cash/Private Transaction"), the Class B Stock shall be entitled to receive cash and/or securities of the type and in the proportion (the "Successor Cash/non-Public Securities") that such holders of Class B Stock would have received if an exchange of Class B Stock for Common Stock had occurred pursuant to Section (b)3 of this Article FOURTH providing a number of shares of Common Stock (rounded up, if necessary, to the next greatest whole number) having an aggregate value equal to 120% of the aggregate Fair Market Value of the Class B Stock immediately prior to the conversion, exchange or purchase of a majority of the outstanding shares of Common Stock and the holders of Class B Stock had participated as holders of Common Stock in such conversion, exchange or purchase. Following any such conversion, exchange or purchase of a majority of the outstanding shares of Common Stock, references to Common Stock shall be deemed to refer to Successor Cash/non-Public Securities in the following Sections of paragraph (b) of this Article FOURTH: 3(i)(b); 3(ii)(c); and 3(ii)(d), (e) and (f).

9. Conversion of Class B Stock at Holder's Election.

(i) Any holder of shares of Class B Stock may, by prior written notice to the Corporation, request to convert all of such holder's shares of Class B Stock into such number of shares of Common Stock (rounded, if necessary, to the next greatest whole number of shares) having an aggregate value equal to 100% of the Fair Market Value of the outstanding shares of Class B Stock

(1) commencing on January 1 of the fifteenth calendar year following the year in which the Effective Date occurs or at any time thereafter,

(2) at any time in the event the Class B Stock will no longer be treated as equity of the Corporation for federal income tax purposes, or

(3) at any time if the New Jersey Department of Banking and Insurance amends, alters, changes or modifies the regulation of the Regulatory Closed Block, the Closed Block Business, the Class B Stock or the IHC Debt Securities in a manner that materially adversely affects the CB Distributable Cash Flow;

provided, however, that in no event may a holder of Class B Stock convert any shares of Class B Stock pursuant to this Section (b)9 of Article FOURTH if such holder immediately upon such conversion, together with its affiliates, would be the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934) of in excess of 9.9% of the total outstanding voting power of the Corporation’s voting securities; provided, further, however, with respect to clauses (2) and (3) preceding, if the Corporation delivers a notice to the holders of the Class B Stock that the holders are entitled to convert pursuant to such clause (2) or (3), the holder must exercise the right of conversion within six months of such date of notification; provided, further, that the six-month period described in the preceding proviso shall be tolled and extended with respect to any holder for so long as such holder is restricted from converting any shares of Class B Stock due to the first proviso of this sentence. In no event will the preceding sentence limit the right of a holder of Class B Stock, in the absence of six month’s prior notice from the Corporation, to notify the Corporation that the conditions specified in clauses (2) or (3) of this Section (b)9(i) of this Article FOURTH have occurred and thereby exercise its conversion right. In the event a holder of shares of Class B Stock requests to convert shares pursuant to clause (2) in this Section (b)9(i) of this Article FOURTH, the Corporation may irrevocably elect, instead of effecting such conversion, to compensate such holder by increasing the Target Dividend Amount to \$12.6875 per share per annum retroactively from the time of issuance of the Class B Stock, such compensation being payable upon the Corporation’s election by one or more special dividends declared and paid with respect to the Class B Stock in amount(s) sufficient to give effect to such retroactive increase.

(ii) Upon the Corporation's receiving notice from a holder of Class B Stock requesting to convert its shares as described in Section (b)9(i) of this Article FOURTH:

(a) the Corporation shall issue a public announcement by press release as soon as practicable after its receipt of such notice that it has received such request;

(b) the Corporation shall send a notice to the holders of Class B Stock as soon as practicable after the foregoing public announcement, indicating the Corporation's determination to effect such conversion and specifying the Board of Directors' proposed appraiser to determine the Fair Market Value of the Class B Stock in accordance with Section (b)4(iii) of this Article FOURTH, and such proposed appraiser (or a second or third proposed appraiser) shall be chosen pursuant to said Section (b)4(iii) of this Article FOURTH;

(c) the Fair Market Value of the Class B Stock shall be determined as of the completion date of the appraisal of the Fair Market Value of the Class B Stock, and the value of the Common Stock shall be the average Market Value of the Common Stock during the 20 consecutive Trading Day period ending on the 5th Trading Day prior to the conversion date;

(d) the conversion date shall be no later than 10 Business Days after the completion date of the appraisal of the Fair Market Value of the Class B Stock;

(e) upon determination of the identity of the appraiser pursuant to Section (b)4(iii) of this Article FOURTH, the Corporation shall issue a second public announcement by press release specifying the intended conversion date and the intended period for determination of the average Market Value of the Common Stock;

(f) upon completion of the appraisal of the Fair Market Value of the Class B Stock and determination of the Market Value of the Common Stock, the Corporation shall issue a second notice to the holders of Class B Stock who had given notice of their decision to convert their shares pursuant to Section (b)9(i) of this Article FOURTH, which shall contain: (x) the date of conversion, (y) the number of shares of Common Stock into which each outstanding share of Class B Stock will be converted (accompanied by a statement setting forth the calculation thereof),

and (z) the place or places where certificates for such shares of Class B Stock, properly endorsed or assigned for transfer (unless the Corporation waives such requirement), should be surrendered for delivery of the Common Stock to be issued or delivered by the Corporation upon such conversion;

(g) the conversion shall be completed within 90 days of the public announcement referred to in clause (a) above.

(iii) Neither the failure to mail any notice required by Section (b)9(ii) of Article FOURTH to any particular holder of Class B Stock nor any defect therein would affect the sufficiency thereof with respect to any other holder of Class B Stock or the validity of any such conversion.

(iv) No holder of shares of Class B Stock converting its shares shall be entitled to receive any shares of Common Stock in such conversion until such holder surrenders certificates for its shares of Class B Stock, properly endorsed or assigned for transfer, at such place as the Corporation shall specify (unless the Corporation waives such requirement). As soon as practicable after the Corporation's receipt of certificates for such shares of Class B Stock, the Corporation shall deliver to the person for whose account such shares were so surrendered, or to the nominee or nominees of such person, any shares of Common Stock issued to such holder in the conversion.

(v) From and after the date set for any conversion completed pursuant to this Section (b)9 of this Article FOURTH, all rights of a holder of shares of Class B Stock converting its shares shall cease except for the right, upon surrender of the certificates theretofore representing such shares, to receive any shares of Common Stock (and, if such holder was a holder of record as of the close of business on the record date for a dividend not yet paid, the right to receive such dividend). A holder of shares of Class B Stock converting its shares shall not be entitled to receive any dividend or other distribution with respect to shares of Common Stock until after certificates theretofore representing the shares being converted are surrendered as contemplated above. Upon such surrender, the Corporation shall pay to the holder the amount of any dividends or other distributions (without interest) which theretofore became payable with respect to a record date occurring after the conversion, but which were not paid by reason of the foregoing, with respect to the number of whole shares of Common Stock represented by the certificate or certificates issued upon such surrender. From and after the date set for any conversion, the Corporation shall, however, be entitled to treat the certificates for shares of Class B Stock being converted that

were not yet surrendered for conversion as evidencing the ownership of the number of whole shares of Common Stock for which the shares of such Class B Stock should have been converted, notwithstanding the failure to surrender such certificates.

(vi) The Corporation may, subject to applicable law, establish such other rules, requirements and procedures to facilitate any conversion contemplated by this Section (b)9 of this Article FOURTH (including longer time periods and alternative procedures for determining the Fair Market Value of the Class B Stock or the Market Value of the Common Stock) as the Board of Directors may determine to be appropriate under the circumstances.

(vii) The issuance of certificates for shares of Common Stock upon conversion of the Class B Stock shall be made without charge to the holders thereof for any issuance tax in respect thereof, provided that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of the Class B Stock which is being converted.

(viii) The Corporation shall take all action required to have available sufficient authorized shares of Common Stock to permit conversion of all outstanding shares of Class B Stock.

(ix) Notwithstanding the time requirement of Section (b)9(ii)(g), no conversion will be completed prior to the expiration of all required waiting periods under applicable law, the receipt of all required regulatory approvals and the making of all notifications to governmental entities required for such conversion. Prior to any conversion, the Corporation and the holder(s) of shares of Class B Stock involved in the conversion shall make reasonable efforts to cause the expiration of all required waiting periods and to obtain all regulatory approvals and make all notifications required to be obtained or made by the Corporation and such holder(s), respectively, for purposes of such conversion. The waiting periods, approvals and notifications that are subject to this clause (ix) shall be limited to those required solely for such conversion.

(c) Following Issuance and Retirement of all Outstanding Shares of Class B Stock.

(i) The terms of Section (b) of this Article FOURTH shall apply only when there are shares of both classes of common stock outstanding.

(ii) Following issuance and retirement of all outstanding shares of Class B Stock, subject to all of the rights of the Preferred Stock as expressly provided herein, by law or by the Board of Directors pursuant to this Article FOURTH, the Common Stock of the Corporation shall then possess all such rights and privileges as are afforded to capital stock by law, including, but not limited to, the following rights and privileges:

(a) Holders of Common Stock shall be entitled to dividends declared by the Corporation's Board of Directors out of funds legally available to pay dividends, subject to any preferential dividend rights granted to the holders of any Preferred Stock.

(b) Each share of Common Stock shall give the owner of record one vote on all matters submitted to a shareholder vote.

(c) In the event of a liquidation, dissolution or winding-up of the Corporation, holders of Common Stock shall be entitled to an equal share of any assets of the Corporation that remain after paying all of the Corporation's liabilities and the liquidation preference, if any, of any outstanding Preferred Stock.

FIFTH: The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and shareholders:

(a) The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, except as otherwise provided in the BCA or this Amended and Restated Certificate of Incorporation.

(b) The number of directors constituting the current Board of Directors of the Corporation, which directors shall serve until their successors are elected and qualified, is 11 and the names and addresses of persons serving as such directors are as set forth below:

<u>Name</u>	<u>Address</u>
Arthur F. Ryan	c/o Prudential Financial, Inc. 751 Broad Street Newark, New Jersey 07102
Frederic K. Becker	"
Gordon M. Bethune	"
Gaston Caperton	"
Gilbert F. Casellas	"
James G. Cullen	"
William H. Gray, III	"
Jon F. Hanson	"
Constance J. Horner	"
Karl J. Krapek	"
James A. Unruh	"

The number of directors of the Corporation shall be as from time to time fixed by, or in the manner provided in, the By-Laws of the Corporation.

(c) The election of directors need not be by written ballot unless the By-Laws so provide. Commencing at the annual meeting of shareholders that is held in calendar year 2005 (the "2005 Annual Meeting"), directors shall be elected annually for terms of one year, except that any director in office at the 2005 Annual Meeting whose term expires at the annual meeting of shareholders held in calendar year 2006 or calendar year 2007 (a "Continuing Classified Director") shall continue to hold office until the end of the term for which such director was elected and until such director's successor shall have been elected and qualified. Accordingly, at the 2005 Annual Meeting, the successors of the directors whose terms expire at that meeting shall be elected for a term expiring at the annual meeting of shareholders that is held in calendar year 2006 and until such directors' successors shall have been elected and qualified. At the annual meeting of shareholders that is held in calendar year 2006, the successors of the directors whose terms expire at that meeting shall be elected for a term expiring at the annual meeting of shareholders that is held in calendar year 2007 and until such directors' successors shall have been elected and qualified. At each annual meeting of shareholders thereafter, all directors shall be elected for terms expiring at the next annual meeting of shareholders and until such directors' successors shall have been elected and qualified. Except as otherwise required by law, until the term of a Continuing Classified Director expires as aforesaid (or the earlier resignation of such director), such Continuing Classified Director may be removed from office at any time, but only for cause, by the vote of 80% of the votes cast at a meeting of shareholders by the holders of shares entitled to vote for the election of directors so long as the number of affirmative votes cast at such meeting of shareholders is at least 50% of the total number of issued and outstanding shares entitled to vote thereon.

(d) Newly created directorships resulting from any increase in the number of directors and any vacancies on the Board of Directors, however resulting, shall be filled solely by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board of Directors, or by a sole remaining director, unless otherwise required by law. Any director elected in accordance with the preceding sentence shall hold office until the next succeeding annual meeting of shareholders and until his or her successor shall have been elected and qualified, including in the circumstances where such

director's predecessor was elected to a longer term. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

(e) In the event that the holders of any class or series of Preferred Stock of the Corporation shall be entitled, voting separately as a class or series, to elect any directors of the Corporation, then the number of directors that may be elected by such holders shall be in addition to the number fixed pursuant to the By-Laws and, except as otherwise expressly provided in the terms of such class or series, the terms of the directors elected by such holders shall expire at the annual meeting of shareholders next succeeding their election.

(f) No director shall be personally liable to the Corporation or any of its shareholders for damages for breach of duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its shareholders, (ii) for acts or omissions not in good faith or which involve a knowing violation of law, or (iii) for any transaction from which the director derived or received an improper personal benefit. Any repeal or modification of this Article FIFTH by the shareholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

(g) In addition to the powers and authority herein prescribed or by statute expressly conferred upon them, the Board of Directors is hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, except as otherwise provided in the BCA or this Amended and Restated Certificate of Incorporation.

SIXTH: (a) Meetings of shareholders may be held within or without the State of New Jersey, as the By-Laws may provide or as may be fixed by the Board of Directors pursuant to the authority granted in the By-Laws. The books of the Corporation may be kept (subject to any provision contained in the BCA) within or outside the State of New Jersey.

(b) Any action required or permitted to be taken by the shareholders of the Corporation must be effected at a duly called annual or special meeting of shareholders entitled to vote thereon and may not be effected by any consent in writing by the shareholders, other than (i) a consent in writing adopted by all shareholders entitled to vote thereon pursuant to Section 14A:5-6(1) of the BCA, (ii) a consent in writing adopted by a majority of the holders of the Class B Stock being exchanged or converted with respect to an approval sought by the Board of Directors which is the subject of Section (b)(4)(iii) of Article FOURTH pursuant to Section 14A:5-6(2) of the BCA or (iii) if authorized by the Board of Directors when fixing the voting powers of a class or series of Preferred Stock

pursuant to Section (a) of Article FOURTH, a consent in writing adopted by a majority (or such higher provision as may be authorized by the Board of Directors) of the holders of such class or series with respect to a matter (if any) for which such class or series has a separate class vote pursuant to Sections 14A:5-6(1) or (2) of the BCA.

SEVENTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon shareholders herein are granted subject to this reservation. Notwithstanding anything in the preceding sentence to the contrary, Sections (b) and (f) of Article FIFTH, Section (b) of Article SIXTH, this Article SEVENTH, Article EIGHTH and Article NINTH of this Amended and Restated Certificate of Incorporation shall not be altered, amended, changed or repealed and no provision inconsistent therewith shall be adopted without the affirmative vote of at least 80% of the votes cast at a meeting of shareholders by the holders of shares entitled to vote thereon; provided, however, that the number of votes cast at such meeting of shareholders is at least 50% of the total number of issued and outstanding shares entitled to vote thereon.

EIGHTH: (a) With respect to shares of common stock and any shares of Preferred Stock voting together with the common stock as a class, the holders of 25% of the shares entitled to cast votes at a meeting of shareholders shall constitute a quorum (the “Quorum”) at all meetings of the shareholders for the transaction of business; provided, however that in the event that the holders of at least the percentage of shares of Common Stock entitled to cast votes at a meeting of shareholders set forth in Column A below are present or represented at a meeting of shareholders, the Quorum shall be increased to the percentage listed in Column B below, effective for the next succeeding annual or special meeting of shareholders:

Column A	Column B
Shares Present	Quorum at subsequent meetings of shareholders
25%	25%
35%	30%
45%	40%
55%	50%

In no event will the Quorum diminish as a result of the percentage of shareholders present or represented at a meeting of shareholders.

(b) With respect to shares of any class or series of Preferred Stock not voting together as a class with the common stock, the holders of the number of shares specified by the resolution or resolutions adopted by the Board of

Directors providing for the issuance of such class or series of Preferred Stock shall constitute a quorum. With respect to shares of Class B Stock voting separately (i.e., without the Common Stock) as a class, the holders of a majority of the outstanding shares of Class B Stock shall constitute a quorum.

NINTH: The Board of Directors of the Corporation shall have the power to make, alter, amend and repeal the By-Laws (except so far as the By-Laws adopted by the shareholders shall otherwise provide). To the extent not inconsistent with this Amended and Restated Certificate of Incorporation, any By-Laws made by the Board of Directors under the powers conferred hereby may be altered, amended or repealed by the Board of Directors or by the shareholders. Notwithstanding the foregoing and anything contained in this Amended and Restated Certificate of Incorporation to the contrary, Sections 3, 4 and 7 of Article II, Sections 1(a), 2 and 3 of Article III, Article VIII and Article IX of the By-Laws shall not be altered, amended or repealed by the shareholders and no provision inconsistent therewith shall be adopted without either (a) the approval of the Board of Directors, or (b) the affirmative vote of at least 80% of the votes cast at a meeting of shareholders by the holders of shares entitled to vote thereon; provided, however, that the number of votes cast at such meeting of shareholders is at least 50% of the total number of issued and outstanding shares entitled to vote thereon.

The effective date of this Amended and Restated Certificate of Incorporation shall be June 9, 2005.

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Certificate of Incorporation this 8th day of June, 2005.

PRUDENTIAL FINANCIAL, INC.

By: /s/ Kathleen M. Gibson

Name: Kathleen M. Gibson

Title: Vice President, Secretary and
Corporate Governance Officer

AMENDED AND RESTATED

BY-LAWS

of

PRUDENTIAL FINANCIAL, INC.

A New Jersey Corporation

Effective June 7, 2005

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AMENDED AND RESTATED
BY-LAWS
OF
PRUDENTIAL FINANCIAL, INC.
(hereinafter called the "Corporation")

ARTICLE I

OFFICES

Section 1. Registered Office. The registered office of the Corporation shall be in the City of Newark, County of Essex, State of New Jersey.

Section 2. Other Offices. The Corporation may also have offices at other places, both within and without the State of New Jersey.

ARTICLE II

MEETINGS OF SHAREHOLDERS

Section 1. Place of Meetings. Meetings of the shareholders for the election of directors or for any other purpose shall be held at such time and place, either within or without the State of New Jersey, as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 2. Annual Meetings. The annual meetings of shareholders shall be held on such date and at such time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting, at which meetings the shareholders shall elect directors and transact such other business as may properly be brought before the meeting. Written notice of the annual meeting stating the place, date and hour of the meeting and the purpose or purposes for which such meeting is called, shall be given to each shareholder of record entitled to vote at such meeting not less than ten nor more than sixty days before the date of the meeting.

Section 3. Special Meetings. Unless otherwise prescribed by law or by the certificate of incorporation of the Corporation, as amended or restated from time to time (the "Certificate of Incorporation"), special meetings of shareholders, for any purpose or purposes, may be called by either (i) the Chairman of the Board of

Directors, (ii) the Chief Executive Officer, (iii) the President, (iv) the Board of Directors, or (v) holders of not less than 25% of the shares entitled to vote at a meeting. Written notice of a special meeting shall state the place, date and hour of the meeting and the purpose or purposes for which the meeting is called and shall be given not less than ten nor more than sixty days before the date of the meeting to each shareholder of record entitled to vote at such meeting. At a special meeting of the shareholders, only such business shall be conducted as shall be specified in the notice of meeting (or any supplement thereto).

Section 4. Quorum. The Certificate of Incorporation shall establish the percentage of shares entitled to vote, that shall constitute a quorum at meetings of the shareholders for the transaction of business. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum. If, however, such quorum shall not be present or represented at any meeting of the shareholders, the shareholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. When a meeting is adjourned to another time and place, notice of such time and place shall not be required if such time and place are announced at the meeting at which the adjournment is taken and at the adjourned meeting at which a quorum is present or represented such business is transacted which might have been transacted at the meeting as originally noticed. 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 shareholder of record entitled to vote at the meeting not less than ten nor more than sixty days before the date of the meeting.

For purposes of the foregoing, where a separate vote by class or classes is required for any matter, the holders of the number of shares specified by the Certificate of Incorporation as constituting a quorum shall constitute a quorum to take action with respect to that vote on that matter. Two or more classes or series of stock shall be considered a single class if the holders thereof are entitled to vote together as a single class at the meeting.

Section 5. Proxies. Any shareholder entitled to vote may do so in person or by his or her proxy appointed by an instrument in writing subscribed by such shareholder or by his or her attorney thereunto authorized, delivered to the Secretary of the meeting; provided, however, that no proxy shall be voted or acted upon after eleven months from its date, unless said proxy expressly provides for a longer period. Without limiting the manner in which a shareholder may authorize another person or persons to act for him or her as proxy, either of the following shall constitute a valid means by which a shareholder may grant such authority:

(i) A shareholder may execute a writing authorizing another person or persons to act for him or her as proxy. Execution may be accomplished by the shareholder or his or her authorized officer, director, employee or agent

signing such writing or causing his or her signature to be affixed to such writing by any reasonable means, including, but not limited to, by facsimile signature.

(ii) A shareholder may authorize another person or persons to act for him or her as proxy by transmitting or authorizing the transmission of a telegram, cable, telephonic transmission or, to the extent permitted by law, other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission.

Section 6. Voting. At all meetings of the shareholders at which a quorum is present, except as otherwise required by law, the Certificate of Incorporation or these By-Laws, any question brought before the meeting shall be decided by the affirmative vote of a majority of the votes cast at the meeting by the holders of shares entitled to vote thereon. The Board of Directors, in its discretion, or the Chairman of the meeting, in his or her discretion, may require that any votes cast at such meeting shall be cast by written ballot.

Section 7. Nature of Business at Annual Meeting of Shareholders. No business may be transacted at an annual meeting of shareholders, other than business that is either (a) specified in the notice of meeting (or any supplement thereto) given

by or at the direction of the Board of Directors (or any duly authorized committee thereof), (b) otherwise properly brought before the annual meeting by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (c) otherwise properly brought before the annual meeting by any shareholder of the Corporation (i) who is a shareholder of record on the date of the giving of the notice provided for in this Section 7 and on the record date for the determination of shareholders entitled to vote at such annual meeting and (ii) who complies with the notice procedures set forth in this Section 7.

In addition to any other applicable requirements, for business to be properly brought before an annual meeting by a shareholder, such shareholder must have given timely notice thereof in proper written form to the Secretary of the Corporation.

To be timely, a shareholder's notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the Corporation not less than one hundred twenty (120) days nor more than one hundred and fifty (150) days prior to the anniversary date of the immediately preceding annual meeting of shareholders; provided, however, that in the event that the annual meeting is called for a date that is not within thirty (30) days before or after such anniversary date, notice by the shareholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure of the date of the annual meeting was made, whichever first occurs.

To be in proper written form, a shareholder's notice to the Secretary must set forth as to each matter such shareholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and record address of such shareholder, (iii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such shareholder, (iv) a description of all arrangements or understandings between such shareholder and any other person or persons (including their names) in connection with the proposal of such business by such shareholder and any material interest of such shareholder in such business and (v) a representation that such shareholder intends to appear in person or by proxy at the annual meeting to bring such business before the meeting.

No business shall be conducted at the annual meeting of shareholders except business brought before the annual meeting in accordance with the procedures set forth in this Section 7, provided, however, that, once business has been properly brought before the annual meeting in accordance with such procedures, nothing in this Section 7 shall be deemed to preclude discussion by any shareholder of any such business. If the Chairman of an annual meeting determines that business was not properly brought before the annual meeting in accordance with the foregoing procedures, the Chairman shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted.

The order of business at each annual or special meeting of shareholders shall be as determined by the Chairman of the meeting. The Chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts and things as are necessary or desirable for the proper conduct of the meeting, including, without limitation, the establishment of procedures for the maintenance of order and safety, limitations on the time allotted to questions or comments on the affairs of the Corporation, restrictions on entry to such meeting after the time prescribed for the commencement thereof and the opening and closing of the voting polls.

Section 8. List of Shareholders Entitled to Vote. The officer or agent of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make a complete list of the shareholders entitled to vote at the shareholders' meeting or any adjournment thereof, arranged in alphabetical order by class, series or group of shareholders maintained by the Corporation, and showing the address of each shareholder entitled to vote at the shareholders' meeting and the number of shares registered in the name of each such shareholder. The list shall be produced (or available by means of visual display) and kept at the time and place of the meeting for inspection of any shareholder of the Corporation present at the meeting for a reasonable period during the meeting.

Section 9. Stock Ledger. The stock ledger of the Corporation shall be the only evidence as to who are the shareholders entitled to examine the stock ledger, the list required by Section 8 of this Article II or the books of the Corporation, or to vote in person or by proxy at any meeting of shareholders.

Section 10. Record Date. In order that the Corporation may determine the shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date: (1) in the case of determination of shareholders entitled to vote at any meeting of shareholders or adjournment thereof, shall not be more than sixty nor less than ten days before the date of such meeting; and (2) in the case of any other action, shall not be more than sixty days prior to such other action. If no record date is fixed: (1) the record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; and (2) the record date for determining shareholders for any other purpose shall be at the close of business on the day on which the Board of

Directors adopts the resolution relating thereto. A determination of shareholders of record entitled to notice of or to vote at a meeting of shareholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 11. Inspectors of Election. In advance of any meeting of shareholders, the Board by resolution or the Chairman of the Board of Directors or Chief Executive Officer shall appoint one or more inspectors of election to act at the meeting and make a written report thereof. One or more other persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is present, ready and willing to act at a meeting of shareholders, the Chairman of the meeting shall appoint one or more inspectors to act at the meeting. Unless otherwise required by law, inspectors may be officers, employees or agents of the Corporation, although no person standing for election as a director at a meeting may serve as an inspector for such meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector shall have the duties prescribed by law and shall take charge of the polls and, when the vote is completed, shall make a certificate of the result of the vote taken and of such other facts as may be required by law.

ARTICLE III

DIRECTORS

Section 1. Number and Election of Directors.

(a) The Board of Directors shall consist of not less than ten nor more than twenty-four members, the exact number of which shall be determined from time to time by resolution adopted by the Board of Directors. Except as provided in Section 3 of this Article III, directors shall be elected by a plurality of votes cast by the shareholders entitled to vote at the annual meetings of shareholders, and each director so elected shall hold office for the term set forth in subsection (b) hereof and until such director's successor is duly elected and qualified, or until such director's death, or until such director's earlier resignation or removal. The directors may appoint a Chairman of the Board, who may, in the Board's discretion, also be the Chief Executive Officer of the Corporation.

(b) Commencing at the annual meeting of shareholders that is held in calendar year 2005 (the "2005 Annual Meeting"), directors shall be elected annually for terms of one year, except that any director in office at the 2005 Annual Meeting whose term expires at the annual meeting of shareholders held in calendar year 2006 or calendar year 2007 (a "Continuing Classified Director") shall continue to hold office until the end of the term for which such director was elected and until such director's successor shall have been elected and qualified. Accordingly, at the 2005

Annual Meeting, the successors of the directors whose terms expire at that meeting shall be elected for a term expiring at the annual meeting of shareholders that is held in calendar year 2006 and until such directors' successors shall have been elected and qualified. At the annual meeting of shareholders that is held in calendar year 2006, the successors of the directors whose terms expire at that meeting shall be elected for a term expiring at the annual meeting of shareholders that is held in calendar year 2007 and until such directors' successors shall have been elected and qualified. At each annual meeting of shareholders thereafter, all directors shall be elected for terms expiring at the next annual meeting of shareholders and until such directors' successors shall have been elected and qualified.

Section 2. Nomination of Directors. Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation, except as may be otherwise provided in the Certificate of Incorporation with respect to the right of holders of preferred stock of the Corporation to nominate and elect a specified number of directors in certain circumstances. Nominations of persons for election to the Board of Directors may be made at any annual meeting of shareholders, or at any special meeting of shareholders called for the purpose of electing directors. Nominations may be made either (a) by or at the direction of the Board of Directors (or any duly authorized committee thereof) or (b) by any shareholder of the Corporation (i) who is a shareholder of record on the date of the giving of the notice provided for in this

Section 2 and on the record date for the determination of shareholders entitled to vote at such meeting and (ii) who complies with the notice procedures set forth in this Section 2.

In addition to any other applicable requirements, for a nomination to be made by a shareholder, such shareholder must have given timely notice thereof in proper written form to the Secretary of the Corporation.

To be timely, a shareholder's notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the Corporation (a) in the case of an annual meeting, not less than one hundred and twenty (120) days nor more than one hundred and fifty (150) days prior to the anniversary date of the immediately preceding annual meeting of shareholders; provided, however, that in the event that the annual meeting is called for a date that is not within thirty (30) days before or after such anniversary date, notice by the shareholder in order to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure of the date of the annual meeting was made, whichever first occurs; and (b) in the case of a special meeting of shareholders called for the purpose of electing directors, not later than the close of business on the tenth (10th) day following the day on which notice of the date of the special meeting was mailed or public disclosure of the date of the special meeting was made, whichever first occurs.

To be in proper written form, a shareholder's notice to the Secretary must set forth (a) as to each person whom the shareholder proposes to nominate for election as a director (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by the person and (iv) any other information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (together with any successor laws, rules and regulations, the "Exchange Act"); and (b) as to the shareholder giving the notice (i) the name and record address of such shareholder, (ii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such shareholder, (iii) a description of all arrangements or understandings between such shareholder and each proposed nominee and any other person or persons (including their names) pursuant to which the nomination(s) are to be made by such shareholder, (iv) a representation that such shareholder intends to appear in person or by proxy at the meeting to nominate the persons named in its notice and (v) any other information relating to such shareholder that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act. Such notice must be accompanied by a written consent of each proposed nominee agreeing to be named as a nominee and to serve as a director, if elected.

No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 2. If the Chairman of the meeting determines that a nomination was not made in accordance with the foregoing procedures, the Chairman shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded.

Section 3. Vacancies. Subject to the terms of any one or more classes or series of Preferred Stock, any vacancy on the Board of Directors that results from an increase in the number of directors or any other vacancy occurring on the Board of Directors, however resulting, may be filled solely by the affirmative vote of a majority of the remaining Board of Directors, even though less than a quorum of the Board of Directors, or by a sole remaining director, unless otherwise required by law. Any director elected in accordance with the preceding sentence shall hold office until the next succeeding annual meeting of shareholders and until his or her successor shall have been elected and qualified, including in the circumstances where such director's predecessor was elected to a longer term. Notwithstanding the foregoing, whenever the holders of any one or more class or classes or series of Preferred Stock of the Corporation shall have the right, voting separately as a class, to elect directors at an annual or special meeting of shareholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the Certificate of Incorporation.

Section 4. Duties and Powers. The business of the Corporation shall be managed by or under the direction of the Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things, except as otherwise provided in the BCA or by the Certificate of Incorporation.

Section 5. Organization. At each meeting of the Board of Directors, the Chairman of the Board of Directors, or, in his or her absence, a director chosen by a majority of the directors present, shall act as Chairman. The Secretary of the Corporation shall act as Secretary at each meeting of the Board of Directors. In case the Secretary shall be absent from any meeting of the Board of Directors, an Assistant Secretary shall perform the duties of Secretary at such meeting; and in the absence from any such meeting of the Secretary and all the Assistant Secretaries, the Chairman of the meeting may appoint any person to act as Secretary of the meeting.

Section 6. Resignations and Removals of Directors. Any director of the Corporation may resign at any time, by giving written notice to the Chairman of the Board of Directors, the Chief Executive Officer or the Secretary of the Corporation. Such resignation shall take effect at the time therein specified or, if no time is specified, immediately; and, unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective. Except as

otherwise required by law and subject to the rights, if any, of the holders of shares of Preferred Stock then outstanding, any director or the entire Board of Directors may be removed from office at any time, with or without cause, by the affirmative vote of the majority of the votes cast at a meeting of shareholders by the holders of shares entitled to vote for the election of directors; provided, however, that until the term of a Continuing Classified Director expires (or the earlier resignation of such Continuing Classified Director), such Continuing Classified Director may be removed from office at any time, but only for cause, by the vote of 80% of the votes cast at a meeting of shareholders by the holders of shares entitled to vote for the election of directors so long as the number of affirmative votes cast at such meeting of shareholders is at least 50% of the total number of issued and outstanding shares entitled to vote thereon.

Section 7. Meetings. The Board of Directors of the Corporation may hold meetings, both regular and special, either within or without the State of New Jersey. Regular meetings of the Board of Directors may be held at such time and at such place as may from time to time be determined by the Board of Directors and, unless required by resolution of the Board of Directors, without notice. Special meetings of the Board of Directors may be called by the Chairman of the Board of Directors, the Chief Executive Officer, the Vice Chairman, if there be one, or a majority of the directors then in office. Notice thereof stating the place, date and hour of the meeting shall be given to each director either by mail not less than forty-eight (48)

hours before the date of the meeting, by telephone, facsimile or telegram on twenty-four (24) hours' notice, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

Section 8. Quorum. Except as may be otherwise required by law, the Certificate of Incorporation or these By-Laws, at all meetings of the Board of Directors, the lesser of eleven directors or a majority of the entire Board of Directors shall constitute a quorum for the transaction of business and 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. 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 of the time and place of the adjourned meeting (provided the period of adjournment does not exceed ten days in any one adjournment), until a quorum shall be present.

Section 9. Actions of Board. Unless otherwise provided 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, prior to or subsequent to the action, all the members of the Board of Directors or committee, as the case may be, consent thereto in writing, and the written consents are filed with the minutes of proceedings of the Board of Directors or committee.

Section 10. Meetings by Means of Conference Telephone. Unless otherwise provided by the Certificate of Incorporation or these By-Laws, members of the Board of Directors of the Corporation, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 10 shall constitute presence in person at such meeting.

Section 11. Committees. The Board of Directors may, by resolution adopted by a majority of the entire Board of Directors, designate one or more committees, each committee to consist of one or more of the directors of the Corporation; provided, however that in any event the Board shall designate Audit, Compensation and Corporate Governance Committees that shall be composed entirely of directors who are not officers or employees of the Corporation or any of its affiliates, and such Committees shall be constituted to comply in all respects with the organizational requirements of applicable laws, rules, regulations and stock exchange listing requirements. The Board of Directors, by resolution adopted by a majority of the entire Board of Directors, may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of any such committee with all powers of such absent or disqualified member. Any committee, to the extent permitted by law and provided in the

resolution establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation. Each committee shall keep regular minutes and report to the Board of Directors when required.

Section 12. Compensation. The Board of Directors, by affirmative vote of the majority of directors in office, shall have the authority to cause the payment of the directors' expenses, if any, of attendance at each meeting of the Board of Directors and its committees and to cause the payment of such other reasonable fees and amounts as shall be determined by the Board of Directors in the manner set forth in this Section 12. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor; provided, however, that no director of the Corporation who receives a salary as an officer or employee of the Corporation shall receive any per diem compensation for attending meetings of the Board of Directors or any of its committees.

Section 13. Interested Directors. No contract or other transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or otherwise have a financial interest, shall be void or voidable solely for such reasons, or solely because the director or officer is present at or participates in the

meeting of the Board of Directors or committee thereof which authorizes the contract or other transaction, or solely because such person's vote is counted for such purpose if any of the following is true: (i) the contract or other transaction is fair and reasonable as to the Corporation at the time it is authorized, approved or ratified; (ii) the fact of the common directorship or interest is disclosed or known to the Board of Directors or committee and the Board of Directors or committee authorizes, approves or ratifies the contract or other transaction by unanimous written consent, provided at least one director so consenting is disinterested, or by affirmative vote of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (iii) the fact of the common directorship or interest is disclosed or known to the shareholders, and they authorize, approve or ratify the contract or transaction. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or other transaction.

Section 14. Insurance Holding Company Systems. The Board of Directors shall comprise itself and its committees to comply in all respects with the organizational requirements of N.J.S.A. 17:27A-4(d), unless some or all elements of compliance are in fact properly undertaken by an insurance affiliate of the corporation and the Board of Directors determines to rely on such compliance.

ARTICLE IV

OFFICERS

Section 1. General. The officers of the Corporation shall be a Chief Executive Officer, President, one or more Vice Presidents, a Secretary, a Treasurer, and a Controller. Officers at the level of Senior Vice President and above shall be elected by the Board of Directors, and may in the discretion of the Board of Directors be given the designation of “Executive” or “Senior” Vice President, Vice Chairman, General Counsel, Chief Investment Officer, Chief Financial Officer, Chief Information Officer or such other title as the Board of Directors deems appropriate. All officers at the level below Senior Vice President, including those who are named for signatory purposes only, shall be appointed by a proper officer of the Corporation and, in the case of an appointed Vice President, may be designated by such officer as “Corporate,” “Departmental,” “Second” or such other designation as may be deemed appropriate. Any number of offices may be held by the same person, unless otherwise prohibited by law, the Certificate of Incorporation or these By-Laws.

Section 2. Election. Subject to the provisions of Section 1 of this Article IV, the Board of Directors at its first meeting held after each annual meeting of shareholders shall elect the officers of the Corporation at the Senior Vice President level and above, who shall hold their offices for such terms and shall exercise such

powers and perform such duties as shall be determined from time to time by the Board of Directors, and all officers of the Corporation shall hold office until their successors are chosen and qualified, or until their earlier resignation or removal. Any officer elected by the Board of Directors may be removed with or without cause at any time by the affirmative vote of a majority of the Board of Directors.

Section 3. Voting Securities Owned by the Corporation. Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the Chief Executive Officer or his or her designee and any such officer may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present.

Section 4. Chairman of the Board of Directors. The Chairman of the Board of Directors, if there be one, shall preside at all meetings of the shareholders and of the Board of Directors. In case of the absence or disability of the Chairman of the Board, the Board of Directors shall select a director to preside. In case of a vacancy in the office of the Chairman of the Board, the Board of Directors may designate a replacement presiding officer.

Section 5. Chief Executive Officer. The Chief Executive Officer shall be selected by the Board of Directors and shall have the power to supervise and direct the business of the Corporation, subject only to the power and authority of the Board of Directors. The Chief Executive Officer shall have power, subject to the power of the Board of Directors, to appoint or remove all persons employed or to be employed by the Corporation in any capacity whatsoever, except the officers elected by the Board of Directors, and shall have power to fix the compensation of all persons employed or to be employed by the Corporation, other than the compensation of officers whose compensation shall be fixed by the Board of Directors pursuant to applicable law, these By-Laws, or a resolution of the Board of Directors. The Chief Executive Officer shall, with the approval of the Board of Directors, designate an officer at or above the level of Senior Vice President who, in the absence or disability of the Chief Executive Officer, shall be vested with the powers and required to perform the duties of the Chief Executive Officer.

Section 6. President and Vice President. The President and Vice Presidents shall each exercise such powers and perform such duties as may be prescribed by the Chief Executive Officer, the officer to whom such officer reports or the Board of Directors.

Section 7. Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of shareholders and record all the proceedings thereat in a book or books to be kept for that purpose; the Secretary shall also perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of the shareholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors, the Chairman of the Board, or the Chief Executive Officer. If the Secretary shall be unable or shall refuse to cause to be given notice of all meetings of the shareholders and special meetings of the Board of Directors, and if there be no Assistant Secretary, then the Board of Directors, the Chairman of the Board or the Chief Executive Officer may choose another officer to cause such notice to be given. The Secretary shall have custody of the seal of the Corporation and the Secretary or any Assistant Secretary, if there be one, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the signature of the Secretary or by the signature of any such Assistant Secretary.

Section 8. Treasurer. The Treasurer shall have custody of such funds of the Corporation as shall be placed in his or her keeping, shall open and maintain accounts in banking institutions in the name of the corporation for the deposit of such funds and may open and maintain accounts in the names or titles of representatives of the Corporation under such conditions as he or she may deem appropriate, subject to supervision by the Board of Directors or a committee thereof.

All funds shall be disbursed only by instruments signed by two or more officials to be designated by the Board of Directors or a committee thereof or pursuant to procedures approved by the Treasurer and the Controller. The Treasurer shall have custody of such of the securities of the Corporation as shall be placed in his or her keeping and shall open and maintain accounts in banking institutions in the name of the Corporation for the custody of such securities, including accounts maintained for the purpose of participating in one or more securities systems designed to permit the transfer of a security without physical delivery of the certificate or other evidence of such security, subject to supervision by the Board of Directors or a committee thereof.

The Treasurer shall have the power to sell, assign or transfer securities of the Corporation on the authorization or direction of the Board of Directors or a committee thereof or to take such other action in connection therewith as may be authorized or directed by the Board of Directors or a committee thereof, and shall have power to execute, on behalf of the Corporation, all instruments necessary or appropriate in the premises. The Treasurer shall have the power to borrow funds on behalf of the Corporation on the authorization of the Board of Directors or a committee thereof and perform such other duties as may be assigned to him or her by the Board of Directors or the Chief Executive Officer or the officer to whom the Treasurer reports. Each Assistant Treasurer shall have power to perform, on behalf of the Corporation, such duties as are or may be required to be performed by the Treasurer, and shall perform such other duties as may be assigned to him or her from time to time by the Chief Executive Officer or the Treasurer.

If required by the Board of Directors, the Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of the office of Treasurer and for the restoration to the Corporation, in case of the Treasurer's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in the Treasurer's possession or under control of the Treasurer belonging to the Corporation.

Section 9. Controller. The Controller shall supervise the accounts of the Corporation, shall have supervision over and responsibility for the books, records, accounting and systems of accounting and auditing in each business unit of the Corporation, and shall perform such other duties as may be prescribed by the Board of Directors or the Chief Executive Officer, or the officer to whom the Controller reports.

ARTICLE V

STOCK

Section 1. Certificates: Uncertificated Shares. Each share of the Corporation's stock shall be represented either by book entries on the Corporation's

books, or by certificates signed by, or in the name of the Corporation by, the Chairman of the Board of Directors, the President or a Vice President and, at the Corporation's option, countersigned by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary.

In the case of uncertificated shares, within a reasonable time after the issuance or transfer thereof, the Chief Executive Officer or his or her designee shall send to the registered owner of such shares a written notice containing (i) (A) a full statement of the designations, relative rights, preferences and limitations of the shares of the class and series issued or transferred, so far as the same have been determined, and the authority of the Board of Directors to divide the shares into classes or series and to determine and change the relative rights, preferences and limitations of any class or series; or (B) a declaration that the Corporation will furnish to the shareholder, upon request and without charge, a statement containing the information described in the preceding clause (A); (ii) a statement that the corporation is organized under the laws of the State of New Jersey; (iii) the name of the person to whom the uncertificated shares have been issued or transferred; (iv) the number and class of shares, and the designation of the series, if any, to which such notice applies; and (v) any restrictions on transfer of the shares in accordance with Section 14A:7-12(2) of the BCA. The notice referred to in the preceding sentence shall also contain the following statement: "This notice is merely a record of the rights of the addressee as of the time of its issuance. Delivery of this statement, of itself, confers no rights on the recipient. This notice is neither a negotiable instrument nor a security."

Section 2. Signatures. Any or all of the signatures on a certificate may be a facsimile. 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, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Section 3. Lost, Stolen, Mutilated or Destroyed Certificates. The Corporation, acting through the Chief Executive Officer or his designee, may issue or direct the issuance of a new certificate of stock or uncertificated share or shares in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen, mutilated or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, mutilated or destroyed. When authorizing such issue of a new certificate or uncertificated shares, the responsible officer may, in his discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen, mutilated or destroyed certificate, or such person's legal representative, to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen, mutilated or

destroyed. The Board of Directors may adopt such other provisions and restrictions with reference to lost, stolen, mutilated or destroyed certificates, not inconsistent with applicable law, as it shall in its discretion deem appropriate.

Section 4. Transfers of Certificates. Stock of the Corporation for which certificates have been issued shall be transferable in the manner prescribed by law and in these By-Laws. Transfers of certificated stock shall be made on the books of the Corporation only by the person named in the certificate or by such person's representative as determined in accordance with generally accepted securities industry practices, and upon the surrender of the certificate therefor, properly endorsed for transfer, and payment of all necessary transfer taxes; provided, however, that such surrender and endorsement or payment of taxes shall not be required in any case in which the officers of the Corporation shall determine to waive such requirement. Every certificate exchanged, returned or surrendered to the Corporation shall be marked "Cancelled," with the date of cancellation, by the Secretary or Assistant Secretary of the Corporation or the transfer agent thereof. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred.

Section 5. Transfers of Uncertificated Shares. Except as otherwise required by law or the requirements of the New York Stock Exchange or Depository Trust

Company, uncertificated shares of the Corporation's stock shall be transferable in the manner prescribed by law and in these By-Laws. Transfers of uncertificated shares shall be made on the books of the Corporation only by the person then registered in the stock records of the Corporation as the owner of such shares or by such person's representative as determined in accordance with generally accepted securities industry practices, and only upon payment of all necessary transfer taxes and receipt of a written notice to the Corporation containing the following information: (i) the class of shares, and the designation of the series, if any, to which such notice applies; (ii) the number of shares transferred; and (iii) the name and address of the party to whom the shares have been transferred, and who, as a result of such transfer, is to become the new registered owner of the shares transferred. Notwithstanding the foregoing, such notice or payment of taxes shall not be required in any case in which the officers of the Corporation shall determine to waive such requirement. No transfer of uncertificated shares shall be valid as against the Corporation for any purpose until it shall have been entered in the stock ledger of the Corporation by an entry showing from and to whom transferred.

Section 6. Transfer and Registry Agents. The Corporation may from time to time maintain one or more transfer offices or agencies and registry offices or agencies as may be determined from time to time by the Board of Directors.

Section 7. Beneficial Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by law or the New York Stock Exchange.

ARTICLE VI

NOTICES

Section 1. Notices. Whenever written notice is required by law, the Certificate of Incorporation or these By-Laws, to be given to any director, member of a committee or shareholder, such notice may be given by mail, addressed to such director, member of a committee or shareholder, at such person's last address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Written notice may also be given personally or by telegram, courier service, express mail service or facsimile.

Section 2. Waivers of Notice.

(a) Whenever any notice is required by law, the Certificate of Incorporation or these By-Laws, to be given to any director, member of a committee or shareholder, a waiver thereof in writing, signed, by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting, present by person or represented by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by him or her.

(b) Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the shareholders, directors or members of a committee of directors need be specified in any written waiver of notice unless so required by law, the Certificate of Incorporation or these By-Laws.

ARTICLE VII

GENERAL PROVISIONS

Section 1. Dividends. Subject to the requirements of the BCA and the provisions of the Certificate of Incorporation, dividends upon the capital stock of the Corporation may be declared by resolution of the Board of Directors, and may be paid in cash, in property (including the shares or bonds of other corporations), in the Corporation's bonds or in shares of the Corporation's capital stock. Before payment of any dividend, there may be set aside out of any funds of the Corporation available

for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for purchasing any of the shares of capital stock, warrants, rights, options, bonds, debentures, notes, scrip or other securities or evidences of indebtedness of the Corporation, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any other proper purpose, and the Board of Directors may modify or abolish any such reserve.

Section 2. Disbursements. All checks, drafts or demands for money and notes of the Corporation shall be signed on behalf of the Corporation by the Treasurer and Controller or two or more officials to be designated by procedures approved by the Treasurer and Controller or by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 3. Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 4. Corporate Seal. The corporate seal shall have inscribed thereon the name of the Corporation, and the words "Corporate Seal, New Jersey". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE VIII

INDEMNIFICATION

Section 1. Power to Indemnify in Actions, Suits or Proceedings Other than Those by or in the Right of the Corporation. Subject to Section 3 of this Article VIII, 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, arbitrative or investigative (including any appeal thereon) (other than an action by or in the right of the Corporation) by reason of the fact that such person is or was a director or officer of the Corporation or Another Enterprise (hereinafter defined), against expenses (including reasonable costs, disbursements and attorneys' fees), judgments, fines, penalties and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, such person had no reasonable cause to believe his or her conduct was unlawful; provided, however, that no indemnification shall be made in respect of any claim, issue or matter if a judgment or final adjudication adverse to such person establishes that his or her acts or omissions i) were in breach of his or her duty of loyalty to the Corporation or its shareholders as defined in Subsection (3) of Section 14A: 2-7 of the BCA, ii) were not in good faith or involved a knowing violation of

law or iii) resulted in receipt by such person of an improper personal benefit. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolocontendere or its equivalent, shall not, of itself, create a presumption that such person did not act in good faith and in a manner which such person 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 or her conduct was unlawful.

Section 2. Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation. Subject to Section 3 of this Article VIII, 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 (whether civil, criminal, administrative, arbitrative or investigative) by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Corporation or Another Enterprise, against expenses (including reasonable costs, disbursements and attorneys' fees) judgments, fines, penalties and amounts paid in settlement actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; provided, however, that no indemnification shall be made in respect of any claim, issue or matter if a judgment or final adjudication adverse to such person establishes that his or her acts or

omissions i) were in breach of his or her duty of loyalty to the Corporation or its shareholders, as defined in Subsection (3) of Section 14A: 2-7 of the BCA, ii) were not in good faith or involved a knowing violation of law or iii) resulted in receipt by such person of an improper personal benefit. Notwithstanding the preceding sentence, no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Superior Court of the State of New Jersey or the court in which such action or suit was brought 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 which the Superior Court or such other court shall deem proper.

Section 3. Authorization of Indemnification. Any indemnification under Section 1 of this Article VIII and, unless ordered by a court, under Section 2 of this Article VIII, shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director or officer is proper in the circumstances, because such person has met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VIII, as the case may be. With respect to directors or officers of the level of Senior Vice President or above, such determination shall be made (i) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) if there are no such directors, or if such directors so direct, by independent legal

counsel in a written opinion, or (iii) by the shareholders. With respect to officers below the level of Senior Vice President, such determination may be made by the General Counsel of the Corporation, or his or her designees. To the extent, however, that a director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described in Sections 1 and 2 of this Article VIII, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including reasonable costs, disbursements and attorneys' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

Section 4. Good Faith Defined. For purposes of any determination under Section 3 of this Article VIII, a person shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe his or her conduct was unlawful, if and to the extent such person's action is based upon

- financial statements, books of account or reports of the Corporation or Another Enterprise represented to such person to be correct by the President, the officer of the Corporation or Another Enterprise having charge of its books of account, or, in the case of a director, the person presiding at a meeting of the Board of Directors, or

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- on information supplied to such person by the officers of the Corporation or Another Enterprise in the course of their duties, or
 - on the advice of legal counsel for the Corporation or Another Enterprise, or
 - on information or records given or reports made to the Corporation or Another Enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or Another Enterprise,

provided such person had a reasonable good faith belief in the accuracy of the above described statements, books, records, information, advice, or reports. The provisions of this Section 4 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Section 1 or 2 of this Article VIII, as the case may be.

Section 5. Expenses Payable in Advance. The reasonable expenses incurred by a director or officer in defending or investigating a threatened or pending action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking (reasonably satisfactory to the Corporation) by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article VIII; provided, however, that with respect to officers of the Corporation, the Board of Directors or General Counsel may in any instance require as a condition to such

advancements that the proposed indemnitee cooperate with an investigation to be conducted at the Corporation's expense, by an independent nationally recognized law firm selected by the Corporation, and that such law firm render an opinion that, based on its investigation, the firm has concluded that it is more likely than not that the proposed indemnitee will meet the standard for indemnification in connection with the matter for which advancements are sought as set forth in Section 1 or 2 of this Article VIII, as the case may be.

Section 6. Nonexclusivity of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by or granted pursuant to this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate of Incorporation or any By-Law, agreement, contract, vote of shareholders or disinterested directors or pursuant to the direction (howsoever embodied) of any court of competent jurisdiction or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office. The provisions of this Article VIII shall not be deemed to preclude the indemnification of any person who is not specified in Section 1 or 2 of this Article VIII but whom the Corporation has the obligation to indemnify under the provisions of the BCA or otherwise.

Section 7. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of Another Enterprise against any expenses incurred in any proceeding and liabilities asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article VIII.

Section 8. Certain Definitions. For purposes of this Article VIII, 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 power and authority to indemnify its directors or officers so that any person who is or was a director or officer of such constituent corporation, or is or was a director or officer of such constituent corporation serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or Another Enterprise, shall stand in the same position under the provisions of this Article VIII with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. For purposes of this Article VIII, the term "Another Enterprise" shall mean any other corporation or any

partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. For purposes of this Article VIII, 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 any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest 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 VIII.

Section 9. Survival of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, or employee and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 10. Limitation on Indemnification. Notwithstanding any thing contained in this Article VIII to the contrary, the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or

personal or legal representatives) or advance expenses in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors of the Corporation.

Section 11. Indemnification of Agents and Employees. The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article VIII to directors or officers of the Corporation.

ARTICLE IX

AMENDMENTS

Section 1. Amendments. The Board of Directors of the Corporation shall have the power to make, alter, amend and repeal these By-Laws (except in so far as the By-Laws adopted by the shareholders shall otherwise provide). Any By-Laws made by the directors under the powers conferred hereby may be altered, amended or repealed by the directors or the shareholders. Notwithstanding the foregoing and anything in the Certificate of Incorporation to the contrary, Sections 3, 4 and 7 of Article II, Sections 1(a), 2 and 3 of Article III, Article VIII and Article IX of these By-Laws shall not be altered, amended or repealed by the shareholders and no

provision inconsistent therewith shall be adopted without either i) the approval of the Board of Directors, or ii) the affirmative vote of at least 80% of the votes cast at a meeting of shareholders by the holders of shares entitled to vote thereon; provided, however, that the number of votes cast at such meeting of shareholders is at least 50% of the total number of issued and outstanding shares entitled to vote thereon.

Section 2. Entire Board of Directors. As used in this Article IX and in these By-Laws generally, the term “entire Board of Directors” means the total number of directors which the Corporation would have if there were no vacancies.