

**IN THE COURT OF THE CHANCERY OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

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LUCIAN A. BEBCHUK

v.

CA, INC.

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: C.A. No. 2145-N  
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**DECLARATION OF MICHAEL J. BARRY IN SUPPORT  
OF PLAINTIFF'S PRE-HEARING BRIEF**

Michael J. Barry declares under penalty of perjury and pursuant to Court of Chancery Rule 11, as follows:

1. I am a Partner of Grant & Eisenhofer P.A., counsel for Plaintiff in the above-captioned matter.

2. I submit this declaration in support of Plaintiff's Pre-Hearing Brief.

3. Attached are true and correct copies of the following documents:

Exhibit A: Shareholder Proposal of Lucian Bebchuk submitted to CA, Inc. on March 23, 2006;

Exhibit B: *Unisuper v. News Corp.*, No. 1699, Stipulation of Settlement (Del. Ch. April 12, 2006);

- Exhibit C: *Unisuper v. News Corp.*, No. 1699, Order and Final Judgment (Del. Ch. June 1, 2006);
- Exhibit D: By-Laws of CA, Inc. as Amended March 7, 2006;
- Exhibit E: Bylaws of Bristol-Myers Squibb Company as Amended March 7, 2006;
- Exhibit F: Amended and Restated Bylaws of UAL Corporation, as Amended and Restated on February 1, 2006;
- Exhibit G: Thaddeus C. Kopinski, *Shareholders Continue Efforts to Limit Poison Pills*, ISS Corporate Governance Weekly, April 22, 2005; and
- Exhibit H: John Laide, *Research Spotlight, Poison Pill Policy*, SharkRepellant.net, Oct. 11, 2005.

The foregoing is true and correct to the best of my knowledge,  
information and belief.

Dated: June 9, 2006

/s/ Michael J. Barry  
Michael J. Barry (Del. ID. No. 4368)  
Grant & Eisenhofer P.A.  
Chase Manhattan Centre  
1201 North Market Street  
Wilmington, DE 19801  
302-622-7000

# EXHIBIT A

Lucian Bebhuk  
1545 Massachusetts Avenue  
Cambridge, MA 02138  
Telefax (617)-812-0554

March 23, 2006

**VIA OVERNIGHT MAIL**

CA, Inc.  
ATTN: Secretary  
One CA Plaza  
Islandia, New York 11749

**Re: Shareholder Proposal of Lucian Bebhuk**

Dear Mr. Handal:

I am the owner of 140 shares of common stock of CA, Inc. (the "Company"), which I have continuously held for more than 1 year as of today's date. I intend to continue to hold these securities through the date of the Company's 2006 annual meeting of shareholders.

Pursuant to Rule 14a-8, I enclose herewith a shareholder proposal and supporting statement (the "Proposal") for inclusion in the Company's proxy materials and for presentation to a vote of shareholders at the Company's 2006 annual meeting of shareholders.

Please let me know if you would like to discuss the Proposal or if you have any questions.

Sincerely,



Lucian Bebhuk

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Kenneth V Handal

It is hereby RESOLVED that pursuant to Section 109 of the Delaware General Corporation Law, 8 Del. C. § 109, and Article IX of the Company's By-Laws, the Company's By-Laws are hereby amended by adding Article XI as follows:

**Section 1.** Notwithstanding anything in these By-laws to the contrary, the adoption of any stockholder rights plan, rights agreement or any other form of "poison pill" which is designed to or has the effect of making an acquisition of large holdings of the Company's shares of stock more difficult or expensive ("Stockholder Rights Plan") or the amendment of any such Stockholder Rights Plan which has the effect of extending the term of the Stockholder Rights Plan or any rights or options provided thereunder, shall require the affirmative vote of all the members of the Board of Directors, and any Stockholder Rights Plan so adopted or amended and any rights or options provided thereunder shall expire no later than one year following the later of the date of its adoption and the date of its last such amendment

**Section 2.** Section 1 of this Article shall not apply to any Stockholder Rights Plan ratified by the stockholders.

**Section 3.** Notwithstanding anything in these By-laws to the contrary, a decision by the Board of Directors to amend or repeal this Article shall require the affirmative vote of all the members of the Board of Directors.

This By-law Amendment shall be effective immediately and automatically as of the date it is approved by the vote of stockholders in accordance with Article IX of the Company's By-laws.

#### **SUPPORTING STATEMENT**

I believe that poison pills adopted by the Board of Directors without ratification by stockholders can deny stockholders the ability to make their own decisions regarding whether or not to accept a premium acquisition offer for their stock and, under certain circumstances, could reduce stockholder value. In my view, when one or more directors do not support a decision to adopt or extend a pill, the board should not make such a decision without obtaining shareholder ratification for the pill. Additionally, I believe that it is undesirable for a poison pill not ratified by the stockholders to remain in place indefinitely without periodic determinations by the Board of Directors that maintaining the pill continues to be advisable.

The proposed By-law amendment would not preclude the Board from adopting or maintaining a poison pill not ratified by the stockholders for as long as the Board deems necessary consistent with the exercise of its fiduciary duties, but would simply ensure that the Board not do so without the unanimous vote of the directors and without considering, within one year following the last decision to adopt or extend the pill, whether continuing to maintain the pill is in the best interests of the Company and its stockholders.

I urge you to vote "yes" to support the adoption of this proposal.

# EXHIBIT B

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

UNISUPER LTD , PUBLIC SECTOR :  
SUPERANNUATION SCHEME BOARD, :  
COMMONWEALTH SUPERANNUATION :  
SCHEME BOARD, UNITED SUPER PTY LTD , :  
MOTOR TRADES ASSOCIATION OF :  
AUSTRALIA SUPERANNUATION FUND PTY :  
LTD , H.E S T. AUSTRALIA LTD , CARE :  
SUPER PTY LTD , UNIVERSITIES :  
SUPERANNUATION SCHEME LTD , BRITEL :  
FUND NOMINEES LIMITED, HERMES : Civil Action No. 1699-N  
ASSURED LIMITED, STICHTING :  
PENSIOENFONDS ABP, CONNECTICUT :  
RETIREMENT PLANS AND TRUST FUNDS, :  
and THE CLINTON TOWNSHIP POLICE AND :  
FIRE RETIREMENT SYSTEM, on behalf of :  
themselves and all others similarly situated, :

Plaintiffs, :

v :

NEWS CORPORATION, a Delaware corporation, :  
K RUPERT MURDOCH AC, PETER L :  
BARNES, CHASE CAREY, PETER CHERNIN, :  
KENNETH E. COWLEY AO, DAVID F :  
DEVOE, VIET DINH, RODERICK :  
EDDINGTON, ANDREW S B. KNIGHT, :  
LACHLAN K. MURDOCH, THOMAS J :  
PERKINS, STANLEY S. SHUMAN, ARTHUR :  
M SISKIND, and JOHN L. THORNTON, :

Defendants. :

**STIPULATION OF SETTLEMENT**

The parties to the above-captioned civil action, by and through their attorneys, have entered into the following Stipulation of Settlement (this "Stipulation"), subject to the approval of the Court

**WHEREAS:**

1. On April 6, 2004, The News Corporation Limited ("INCL"), an Australian corporation, announced that it planned to pursue a reorganization (the "Reorganization") that would result in it becoming a subsidiary of a new Delaware Corporation, News Corporation ("News Corp ");

2. Thereafter, representatives of the Australian Council of Super Investors, Inc ("ACSI") and Corporate Governance International ("CGI") had a series of communications with representatives of INCL about the Reorganization in general, and the potential corporate governance structure of the new Delaware entity in particular

3. On October 6, 2004, INCL issued a press release (the "October 6 Press Release"), which stated that in order "to further strengthen the Company's already stringent corporate governance provisions," INCL's board had approved, and News Corp 's board of directors had adopted, a package of governance provisions, including three charter provisions on certain issues, a voting agreement entered into by the Murdoch family interests (which was coupled with a corresponding charter provision), as well as a board policy concerning shareholder rights plans (the "Board Policy");

4. The October 6 Press Release described the Board Policy as follows: "[T]he Board has adopted a policy that if a shareholder rights plan is adopted by the Company following reincorporation, the plan would have a one-year sunset clause unless shareholder approval is obtained for an extension. The policy also provides that if shareholder approval is not obtained, the Company will not adopt a successor shareholder rights plan having substantially the same terms and conditions";

5. On October 7, 2004, INCL sent a letter to all of its shareholders and options holders containing largely the same information about the package of



governance provisions as the October 6 Press Release (the "October 7 Letter");

6 Thereafter, ACSI and CGI recommended the Reorganization to their members and subscribers, respectively;

7 On October 26, 2004, the shareholders of INCL voted to approve the Reorganization, and on November 3, 2004, the Federal Court of Australia granted its approval of the Reorganization;

8 On November 3, 2004, Liberty Media Corporation ("Liberty Media") disclosed that it had entered into a series of transactions that increased its voting interest in News Corp. from 9.1% to 17.1%. Subsequently, on November 8, 2004, News Corp. adopted a shareholder rights plan (the "Rights Plan"), and announced that it was adopted to counter the threat posed by Liberty Media's surprise acquisition of shares of News Corp. stock;

9 On August 10, 2005, News Corp.'s board of directors announced that it had decided to extend the Rights Plan for an additional two years because, in the board's view, the threat posed by Liberty Media had not yet been resolved;

10 On October 6, 2005, Plaintiffs, thirteen institutional investors, many of whom are based in Australia, filed this lawsuit against News Corp. and its Board of Directors alleging five different causes of action: (1) breach of contract; (2) promissory estoppel; (3) fraud; (4) negligent misrepresentation; and (5) breach of fiduciary duty (the "Action"). The crux of Plaintiffs' case was that Defendants broke a binding promise when they unilaterally extended the Rights Plan because they did not allow shareholders to vote on the extension, which Plaintiffs claimed was required by the Board Policy;

11. On October 22, 2005, Defendants filed a motion to dismiss Plaintiffs' complaint. The crux of Defendants' motion to dismiss was that News Corp never promised to shareholders that the Board Policy was irrevocable, or a permanent restriction on the News Corp board's exercise of its fiduciary duties. On December 20, 2005, the Court of Chancery granted Defendants' motion to dismiss in part, dismissing the counts for fraud, negligent misrepresentation, and breach of fiduciary duty. The Court, however, denied Defendants' motion to dismiss with respect to the counts for breach of contract and promissory estoppel;

12. Thereafter, Defendants applied to the Court of Chancery for certification of an Interlocutory Appeal to the Supreme Court of the Court of Chancery's decision on Defendants' motion to dismiss. On January 19, 2006, the Court of Chancery granted Defendants' application. However, on January 27, 2006, the Supreme Court declined to accept the Defendants' interlocutory appeal;

13. On February 9, 2006, the Court of Chancery approved Plaintiffs' discovery scheduling order, and ordered that trial would commence on April 24, 2006;

14. Thereafter, the parties engaged in extensive document discovery. On March 7, 2006, the depositions of Michael O'Sullivan (President of ACSI) and Ian Philip (Chief General Counsel of News Limited, a subsidiary of TNCL) were taken (Messrs. O'Sullivan and Philip were alleged by Plaintiffs to be the primary participants in the discussions that led to TNCL's willingness to have News Corp. adopt the package of corporate governance provisions, including the Board Policy);

15. On March 17, 2006, the parties' counsel commenced settlement discussions, which led to an agreement in principle to settle the litigation;

16. On April 12, 2006, Plaintiffs amended their Complaint in order to raise claims on behalf of a class of News Corp stockholders (as defined below);

17. Plaintiffs, through their counsel, have completed a thorough investigation of the claims and allegations asserted in the litigation, as well as the underlying events and transactions relevant to those claims and allegations. In connection with their investigation, Plaintiffs' counsel (i) carefully reviewed the thousands of pages of documents produced by the Defendants; (ii) took the deposition of Mr Philip, and defended the deposition of Mr O'Sullivan; and (iii) conducted extensive factual and legal research concerning the validity of Plaintiffs' claims.

18. In evaluating the settlement provided for herein (the "Settlement"), Plaintiffs and their counsel have considered: (1) the substantial benefits to the members of the Class (defined below) from the Settlement; (2) the facts developed during discovery; (3) the attendant risks of continued litigation and the uncertainty of the outcome of the Action; (4) the probability of success on the merits and the allegations contained in the Action, including the uncertainty relating to the proof of those allegations; (5) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation; and (6) the conclusion of Plaintiffs' counsel that the terms and conditions of the Settlement are fair, reasonable, adequate, and in the best interests of the Class;

19. The Defendants, and each of them, have at all times denied, and continue to deny, that any of them have committed, or have threatened to commit, any wrongful acts or violations of law of any nature whatsoever in connection with any of the matters alleged, or which could have been alleged, in this lawsuit. In entering into this

Settlement, the Defendants and their counsel have considered: (1) the facts developed during discovery; (2) the burden, risk and expense of further litigation, and the uncertainty of the outcome of the Action; (3) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation; and (4) the Defendants' conclusion that the terms and conditions of the Settlement are in the best interests of News Corp ;

**NOW, THEREFORE, IT IS STIPULATED AND AGREED**, by and among the parties hereto, through their respective attorneys, subject to approval of the Court of Chancery, and pursuant to Court of Chancery Rule 23, as follows:

20 Plaintiffs shall move the Court, and the Defendants shall support the motion, to certify the Action to proceed as a class action pursuant to Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2), without opt-out rights, by the Plaintiffs on behalf of all persons or entities who owned shares of any class of News Corp. common stock at any time, as well as all persons or entities who owned shares of stock in INCL (including ordinary shares and/or preferred limited voting shares) at any time from September 30, 2004 to November 12, 2004, either of record or beneficially, including any and all of their respective successors-in-interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them (the "Class") The named Plaintiffs shall request that the Court certify them as representatives of the Class and that the Court designate Grant & Eisenhofer P.A. as lead counsel for the Class, and the Defendants shall not oppose such requests.

21. The terms of the Settlement are as follows:

(a) The trial scheduled to begin on April 24, 2006, and any remaining pre-trial discovery, has been postponed;

(b) A stockholder vote on a rights plan (as described below) will be held at News Corp.'s regularly scheduled October 2006 annual meeting (the "October 2006 Annual Meeting");

(c) The rights plan to be voted on at the October 2006 Annual Meeting, which may be an extension of the Rights Plan, will be a two-year plan (expiring upon the second anniversary of the stockholder vote described in paragraph (b) above, in October 2008), with News Corp.'s board of directors having the right to extend the rights plan for no more than one additional year after the expiration of the two-year period if the threat posed by Liberty Media has not, in the board's judgment, been resolved (the "October 2006 Rights Plan");

(d) If stockholders vote in favor of the October 2006 Rights Plan, the Action will be dismissed with prejudice. Shareholder approval for the October 2006 Rights Plan must be obtained by a majority of the shares actually voting (excluding from the denominator, as well as the numerator, abstentions and broker non-votes);

(e) If stockholders vote against the October 2006 Rights Plan, News Corp. and its board of directors retain the right to treat the vote as advisory, in which case the parties will proceed with the litigation and trial in the Action. If Defendants exercise the right to treat the vote as advisory, Defendants must provide written notice thereof to Plaintiffs' counsel within ten (10) business days after the October 2006 Annual Meeting, whereupon the Settlement will terminate and the parties shall be restored in all respects to their respective positions existing prior to the execution of this Stipulation, and the parties

shall jointly request that the Court set the case for trial as soon as practicable, consistent with the Court's schedule. If the Defendants do not exercise their right to treat the vote as advisory, the Rights Plan will expire effective on the eleventh business day after the October 2006 Annual Meeting.;

(f) If stockholders vote in favor of the October 2006 Rights Plan, or if the stockholders vote against the October 2006 Rights Plan but the Defendants do not exercise their right to treat the vote as advisory pursuant to paragraph 21(e) above, the following shall apply:

(i) Upon the expiration of the October 2006 Rights Plan, or any other rights plan adopted consistent with the remainder of this paragraph (f), no further rights plan shall be adopted for a period of 9 months (the "Interim Period"). Thereafter, News Corp shall have the right to adopt new rights plans, without stockholder approval, with a duration of up to one year. The expiration of any such rights plans shall be followed by another Interim Period of 9 months, during which the rights plan shall not be rolled over or extended, and no new shareholder rights plan shall be adopted, without shareholder approval. Notwithstanding the foregoing, News Corp shall have the right to adopt a new rights plan (or extend an existing rights plan), with a duration of one year, during any Interim Period, if prior to or during that Interim Period (1) any person acquires beneficial ownership of voting stock, and after such acquisition such person beneficially owns at least 5% of the voting stock of News Corp. (provided that this clause (1) shall not apply if such person beneficially owned 5% or more of News Corp's voting stock prior to the commencement of such Interim Period unless (x) such person acquires at least another 5% of the outstanding voting stock prior to or during

such Interim Period, (y) such person acquires beneficial ownership of voting stock during such Interim Period and after such acquisition such person beneficially owns at least 15% of the outstanding voting stock, or (z) such person beneficially owned at least 15% or more of News Corp.'s voting stock prior to the commencement of such Interim Period and such person acquires at least 3% of the outstanding voting stock during such Interim Period) or (2) any person offers or proposes to acquire voting stock or assets of News Corp., and after such acquisition, if it were successfully consummated, such person would beneficially own 30% of the voting stock or would own 30% of the assets of News Corp.;

(ii) Notwithstanding sub-paragraph (i) above, the company may adopt, at any time, a rights plan of any type and duration with advance shareholder approval; and

(iii) Shareholder approval, as referenced in sub-paragraphs (i) and (ii) above, must be obtained by a majority of the shares actually voting (excluding from the denominator, as well as the numerator, abstentions and broker non-votes);

(g) Plaintiffs may vote their shares of stock as they determine. However, Plaintiffs and their counsel shall not solicit proxies or take any other action in opposition to the October 2006 Rights Plan. No party to the Settlement, their counsel, or ACSI, shall make any negative statements with respect to the Settlement, the stockholder vote, or the October 2006 Rights Plan. Breach of this provision shall be subject to injunctive relief, but shall not result in liability for damages;

(h) It has been Plaintiffs' position throughout this Action, as stated in the Complaint and in other public statements, that the Action was not about the merits of





undisclosed, hidden or concealed, matured or unmatured, accrued or unaccrued, apparent or unapparent, that have been, could have been, or in the future can or might be, asserted in this Court or in any other tribunal (including, but not limited to, any claims arising under federal, state, foreign or common law relating to any alleged fraud or misrepresentation; breach of any duty, including any duty of disclosure (whether under state or federal law); breach of contract; promissory estoppel; or otherwise) by the Plaintiffs or by or on behalf of any other member of the Class, whether directly, representatively, derivatively, individually, legally, equitably or any other type or in any other capacity, against any of the Defendants, any of their respective family members, parent entities, controlling persons, associates, affiliates or subsidiaries, and each and all of their past, present or future officers, directors, agents, employees, attorneys, consultants, accountants, shareholders, insurers, co-insurers and re-insurers, advisors (including financial or investment), investment bankers, commercial bankers, general or limited partners and partnerships, limited liability companies, members, joint ventures, heirs, executors, personal or legal representatives, estates, administrators, trustees, predecessors, successors and assigns, whether or not served with process and whether or not such person appeared in the Action (collectively, the "Released Persons"), which have arisen, could have arisen, arise now or hereafter arise out of, or relate in any manner to any of the acts, events, facts, matters, transactions, occurrences, statements, representations, misrepresentations or omissions or any other matter, thing or cause whatsoever set forth, alleged, embraced, involved or otherwise asserted in the Action, or in any other court or forum, by any member of the Class, including, without limitation, any claims directly or indirectly related to the Action or to the allegations asserted in the

Action, including any disclosure claims premised on state or federal law (but excluding any claims to enforce the terms of the Settlement) (collectively, the “Settled Claims”), shall be completely, individually and collectively, fully, finally and forever compromised, settled, released, discharged, extinguished and dismissed with prejudice, subject to the terms and conditions set forth herein; and (c) without limiting or being limited by the foregoing, any and all claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, duties, suits, costs, expenses, matters and issues, known or unknown, contingent or absolute, liquidated or unliquidated, disclosed or undisclosed, hidden or concealed, matured or unmatured, accrued or unaccrued, apparent or unapparent, that have been, could have been, or in the future can or might be, asserted in this Court or in any other tribunal (including, but not limited to, any claims arising under federal, state, foreign or common law relating to any alleged fraud or misrepresentation; breach of any duty, including any duty of disclosure (whether under state or federal law); breach of contract; promissory estoppel; or otherwise) by the Defendants, whether directly, representatively, derivatively, individually, legally, equitably or any other type or in any other capacity, against any of the Plaintiffs, any of their respective parent entities, controlling persons, associates, affiliates or subsidiaries, and each and all of their past, present or future officers, directors, agents, employees, attorneys, consultants, accountants, shareholders, insurers, co-insurers and re-insurers, advisors (including financial or investment), investment bankers, commercial bankers, general or limited partners and partnerships, limited liability companies, members, joint ventures, heirs, executors, personal or legal representatives, estates, administrators, trustees, predecessors, successors and assigns, whether or not served with process and

whether or not such person appeared in the Action, which have arisen, could have arisen, arise now or hereafter arise out of, or relate in any manner to Plaintiffs' filing or pursuit of this Action (but excluding any claims to enforce the terms of the Settlement), shall be completely, individually and collectively, fully, finally and forever compromised, settled, released, discharged, extinguished and dismissed with prejudice, subject to the terms and conditions set forth herein

23. Upon final Court approval of the Settlement, Plaintiffs and each of the members of the Class shall be deemed to have, and by operation of the Order and Final Judgment (as defined below) shall have, fully, finally, and forever released, relinquished and discharged all Settled Claims and any Settled Claims which any of the Plaintiffs and/or members of the Class do not know or suspect to exist in his, her or its favor at the time of the release of the Released Persons which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Persons, or might have affected his, her or its decision not to object to this Settlement. With respect to any and all Settled Claims, the parties stipulate and agree that, upon final Court approval of the Settlement, Plaintiffs shall expressly, and each of the members of the Class shall be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived, to the extent permissible by law, the provisions, rights and benefits of California Civil Code § 1542, which provides:

*A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor*

Upon final Court approval of the Settlement, Plaintiffs and each of the members of the Class shall be deemed to have waived, to the extent permissible by law, and by operation

of the Order and Final Judgment shall have waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law or international or foreign law, which is similar, comparable or equivalent to California Civil Code § 1542. Plaintiffs and members of the Class may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Settled Claims, but Plaintiffs shall expressly and each member of the Class, upon final Court approval of the Settlement, shall be deemed to have, and by operation of the Order and Final Judgment shall have, fully, finally, and forever settled and released any and all Settled Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The parties acknowledge, and the members of the Class shall be deemed by operation of the Order and Final Judgment to have acknowledged, that the foregoing waiver was bargained for and a material element of the Settlement of which this release is a part.

24 Plaintiffs' counsel will present the Settlement to the Court for approval as soon as practicable and all of the parties will take all appropriate steps and use their best efforts to obtain final Court approval of the Settlement and to procure dismissal of the Action on the terms set forth herein.

25 As soon as practicable after this Stipulation has been executed, Plaintiffs' counsel will request that the Court enter an Order, in substantially the form

attached hereto as Exhibit A, providing, among other things: (i) that the Action shall proceed as a class action on behalf of the Class; (ii) that the form and manner of providing notice (as described in paragraph 26 below) to the Class is approved; and (iii) for the scheduling of a settlement hearing

26. News Corp shall provide notice of the Settlement to the members of the Class by means of (1) a press release to be agreed upon by the parties substantially in the form attached hereto as Exhibit B, which together with this Stipulation of Settlement shall be made available on News Corp 's website until the Settlement has been approved by the Court, and (2) a Form 8-K filing with the Securities & Exchange Commission. News Corp will pay the entire cost and expense related to the provision of such notice to the Class.

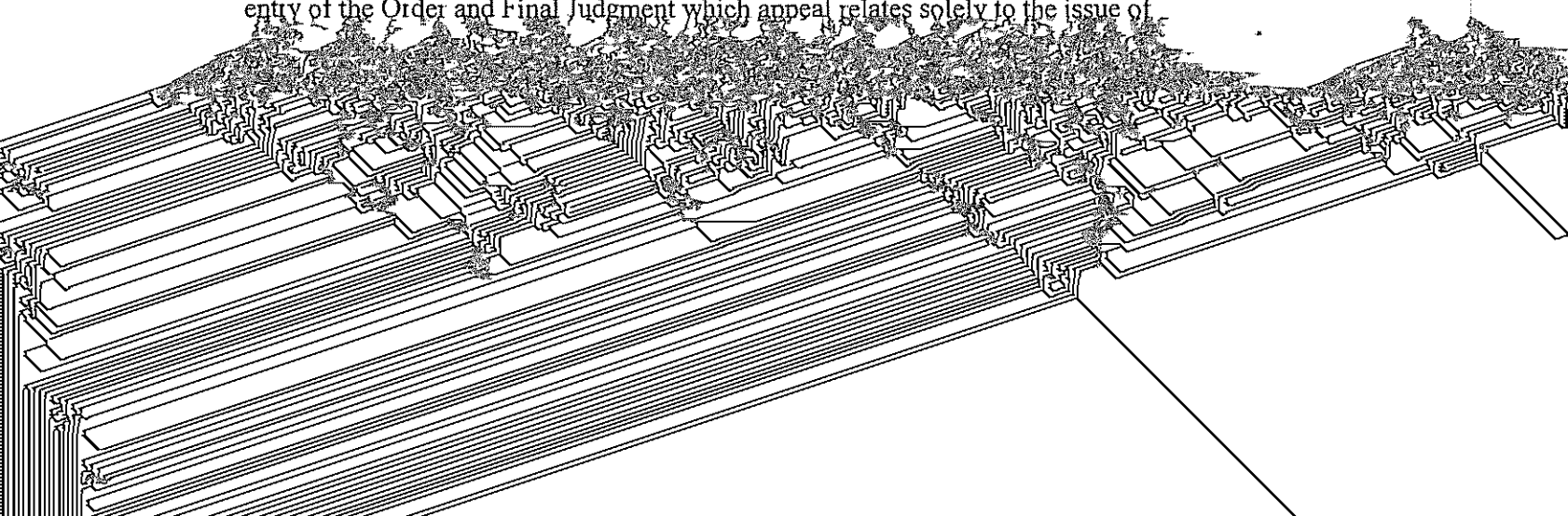
27. If the terms of the Settlement as provided herein, including any modifications thereto made with the consent of the parties, shall be approved by the Court, Plaintiffs' counsel will make an application to the Court of Chancery, which the Defendants will support, for an award of attorneys' fees and expenses not to exceed \$1,650,000 00 in the aggregate, to be paid solely by News Corp. or one of its wholly-owned subsidiaries. News Corp. or one of its wholly owned subsidiaries shall pay Plaintiffs' counsel, Grant & Eisenhofer P A , the amount of \$1,650,000 00 within ten (10) calendar days (or the first business day following the 10<sup>th</sup> calendar day if not a business day) of the signing of this Stipulation of Settlement. If the Court rejects this Settlement and/or rejects or limits the fee awarded to Plaintiffs' counsel, Grant & Eisenhofer will refund the payment of \$1,650,000 00 plus interest (or the amount of the fee award so reduced and any proportionate amount of interest paid thereon) within ten (10) calendar

days following the Court's decision. To the extent the fee award is reduced on appeal, Grant & Eisenhofer P A shall refund the amount so reduced and any proportionate amount of interest paid thereon.

28. Except as provided for in paragraphs 26 and 27 above, the Defendants and the other Released Persons shall bear no other expenses, costs, damages or fees incurred by Plaintiffs, or any member of the Class, or by any attorney, expert, advisor, agent or representative of the foregoing persons in the Action. The Defendants reserve the right to oppose any application made to the Court or any other court to recover any such additional amounts.

29. If the Court approves the Settlement provided for herein, the Plaintiffs will ask the Court to enter an order and final judgment, substantially in the form attached hereto as Exhibit C (the "Order and Final Judgment").

30. The obligations of the parties under this Stipulation, other than as described in paragraphs 26 and 27 above, are conditioned upon final Court approval of the Settlement and all transactions preparatory or incident thereto. Notwithstanding anything in this Stipulation to the contrary, the effectiveness of the release of the Settled Claims and the other obligations of the Plaintiffs and the Defendants under the Settlement (except with respect to the payment of attorneys' fees and expenses) shall not be conditioned upon or subject to the resolution of any appeal from the Court of Chancery's entry of the Order and Final Judgment which appeal relates solely to the issue of



this Stipulation, including the releases contained herein, which Order is finally affirmed on appeal or no longer is subject to appeal or review.

31 In the event that: (i) the Court declines, in any respect (except for a modification of the proposed Class definition or of the releases provided for herein which is not material), to enter the Order and Final Judgment provided for above and any one of the parties hereto fails to consent to the entry of another form of order in lieu thereof; (ii) the Court disapproves the Settlement proposed herein, including any amendments thereto agreed upon by all of the parties; or (iii) the Court approves the Settlement proposed herein or any amendment thereto approved by all of the parties, but such approval is reversed or substantially modified on appeal without all parties consenting to such modification and such reversal or modification becomes final by a lapse of time or otherwise; then, in any of such events, the parties, Plaintiffs' counsel, or any of them, shall have the right to terminate the Settlement by written notice to all other parties within ten (10) calendar days following the event giving rise to the right of termination. If one or more parties exercises the right to terminate the Settlement in accordance with this paragraph, this Stipulation, the Settlement proposed herein (including any amendments hereof), any actions taken or to be taken with respect to the Settlement proposed herein, and the Order and Final Judgment to be entered shall be of no further force or effect and shall be null and void, and without prejudice to any of the parties hereto, who shall be restored in all respects to their respective positions existing prior to the execution of this Stipulation. For purposes of this provision, a disallowance or modification by the Court of the fees and expenses sought by plaintiffs' counsel shall not

Final Judgment Notwithstanding the foregoing, any findings the Court makes with regard to certification of the Class or the qualifications of Plaintiffs as appropriate Class representatives shall be binding in any further litigation

32. Neither this Stipulation, nor any documents prepared, nor proceedings taken in accordance with the terms set forth herein shall be construed as or deemed to be evidence, or any admission or concession, either: (i) on the part of the Plaintiffs, or any of them, of the lack of merit of the Action, or (ii) on the part of the Defendants, or any of them, of any liability or wrongdoing whatsoever, which is hereby expressly denied and disclaimed by the Defendants. Neither this Stipulation, nor the fact of its execution, nor any of its provisions, shall be offered or received in evidence in any action or proceeding of any nature, or otherwise referred to or used in any manner in any court or other tribunal, including, but not limited to, by any party hereto or their counsel, except in a proceeding to enforce the terms thereof, including any application for attorneys' fees and expenses.

33. If any claims that are or would be subject to the release and dismissal contemplated by the Settlement are asserted against any of the Released Persons in any court prior to final Court approval of the Settlement, the Plaintiffs shall join, where possible, in any motion to dismiss or stay such proceedings and otherwise shall use their best efforts to support the Released Person(s)' efforts to effect a withdrawal or dismissal of such claims.

34. The administration of the Settlement and final decision as to all disputed questions of law and fact shall be under the authority of the Court.

35. Without further order of the Court, the parties may agree to



reasonable extensions of time to carry out any of the provisions of this Stipulation, except that the October 2006 Annual Meeting will be scheduled to occur sometime in October 2006 and will be held when scheduled unless Defendants obtain prior Court approval to postpone that meeting, for good cause shown;

36 This Settlement shall be binding upon and shall inure to the benefit of the parties (and, in the case of the benefits, all Released Persons) and the respective legal representatives, heirs, executors, administrators, transferees, successors and assigns of all of such foregoing persons and upon any corporation, partnership, or other entity into or with which any party or person may merge or consolidate

37 By signing this Stipulation, Plaintiffs' counsel represent and warrant that they have authority to act on behalf of all named Plaintiffs, and Defendants' counsel represent and warrant that they have authority to act on behalf of all Defendants

38 All of the exhibits hereto are incorporated herein by reference as if set forth herein verbatim, and the terms of all such exhibits are expressly made part of this Stipulation

39 The waiver by any party of any breach of this Stipulation shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Stipulation

40 This Stipulation constitutes the entire agreement among the parties and supersedes any prior agreements among the parties with respect to the subject matter hereof This Stipulation may be amended or any of its provisions waived only by a writing executed by all of the parties hereto

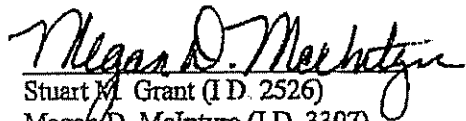
41 This Stipulation may be executed in two or more counterparts

42 Plaintiffs and Plaintiffs' counsel represent and warrant that: (i) Plaintiffs are members of the Class, and (ii) none of the Plaintiffs' claims or causes of action in the Action have been assigned, encumbered or in any manner transferred in whole or in part.

43 This Stipulation shall be governed by the laws of the State of Delaware without giving force to any of the provisions therein concerning conflicts of laws

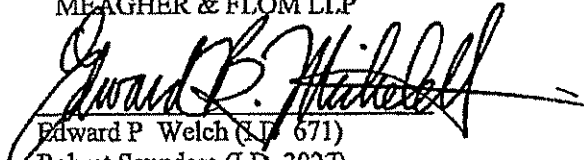
DATED: April 12, 2006

GRANI & EISENHOFER, P A



Stuart M. Grant (I D. 2526)  
Megar D. McIntyre (I D. 3307)  
Cynthia A. Calder (I D. 2978)  
Chase Manhattan Centre  
1201 North Market Street  
Wilmington, DE 19801  
Lead Counsel for Plaintiffs

SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM LLP



Edward P. Welch (S.D. 671)  
Robert Saunders (I D. 3027)  
Edward B. Micheletti (I D. 3794)  
One Rodney Square  
P O Box 636  
Wilmington, DE 19899-0636  
Counsel for Defendants

**EXHIBIT A**

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

UNISUPER LTD , PUBLIC SECTOR :  
SUPERANNUATION SCHEME BOARD, :  
COMMONWEALTH SUPERANNUATION :  
SCHEME BOARD, UNITED SUPER PTY LTD., :  
MOTOR TRADES ASSOCIATION OF :  
AUSTRALIA SUPERANNUATION FUND PTY :  
LTD , H E S I AUSTRALIA LTD , CARE :  
SUPER PTY LTD , UNIVERSITIES :  
SUPERANNUATION SCHEME LTD , BRITEL :  
FUND NOMINEES LIMITED, HERMES : Civil Action No. 1699-N  
ASSURED LIMITED, STICHTING :  
PENSIOENFONDS ABP, CONNECTICUT :  
RETIREMENT PLANS AND TRUST FUNDS, :  
and THE CLINTON TOWNSHIP POLICE AND :  
FIRE RETIREMENT SYSTEM, on behalf of :  
themselves and all others similarly situated, :  
:  
Plaintiffs, :  
:  
v. :  
:  
NEWS CORPORATION, a Delaware corporation, :  
K RUPERT MURDOCH AC, PETER L :  
BARNES, CHASE CAREY, PETER CHERNIN, :  
KENNETH E COWLEY AO, DAVID F :  
DEVOE, VIET DINH, RODERICK :  
EDDINGTON, ANDREW S.B. KNIGHT, :  
LACHLAN K MURDOCH, THOMAS J :  
PERKINS, STANLEY S SHUMAN, ARTHUR :  
M SISKIND, and JOHN L THORNTON, :  
:  
Defendants. :

**SCHEDULING ORDER**<sup>1</sup>

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1 Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Stipulation of Settlement dated April 12, 2006, as filed with the Delaware Court of Chancery

The parties having made application, pursuant to Court of Chancery Rule 23, for an Order approving the settlement (the "Settlement") of the above action (the "Action") in accordance with a Stipulation of Settlement dated as of April 12, 2006 (the "Stipulation"), which is incorporated herein by reference and which, together with the accompanying documents, sets forth the terms and conditions for the proposed Settlement of the Action and for a judgment dismissing Plaintiffs' claims in the Action with prejudice upon the terms and conditions set forth therein; and the Court having read and considered the Stipulation and the accompanying documents; and all parties having consented to the entry of this Order;

**IT IS HEREBY ORDERED** this \_\_\_ day of \_\_\_\_\_, 2006 that:

1 Preliminarily for purposes of this Order, the Action shall be maintained and proceed as a class action pursuant to Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2), without opt-out rights, by the Plaintiffs in the Action (the "Plaintiffs") on behalf of all persons or entities who owned shares of any class of News Corp common stock at any time, as well as all persons or entities who owned shares of stock in INCL (including ordinary shares and/or preferred limited voting shares) at any time from September 30, 2004 to November 12, 2004, either of record or beneficially, including any and all of their respective successors-in-interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them (the "Class")

2 A hearing (the "Hearing") shall be held before the Court on \_\_\_\_\_, at \_\_\_\_\_ in the Court of Chancery of the State of Delaware, in and for Sussex County, in the Court of Chancery Courthouse, 34 The Circle, Georgetown, DE 19947, for the purposes of: (a) determining whether the proposed Settlement of the Action

on the terms and conditions provided for in the Stipulation is fair, reasonable, adequate and in the best interests of the Class and should be approved by the Court, and whether the Order and Final Judgment provided for in the Stipulation should be entered thereon; (b) determining whether the Action should be certified as a class action; (c) considering the application of Plaintiffs' counsel for an award of attorneys' fees and expenses to be paid by News Corp. or one of its wholly owned subsidiaries; and (d) ruling on such other matters as the Court may deem appropriate. The Court may adjourn the Hearing (including consideration of the application of Plaintiffs' counsel for an award of attorneys' fees and expenses) or any adjournment thereof without further notice to the Class other than by announcement at the Hearing or any adjournment thereof.

3 The Court finds that the manner and form of notice set forth in subparagraphs 3(a) and 3(b) of this Order, meets the requirements of Court of Chancery Rule 23 and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

(a) News Corp. shall provide notice of the Settlement to the members of the Class by means of (1) a press release to be agreed upon by the parties substantially in the form attached as Exhibit B to the Stipulation, which together with the Stipulation shall be made available on News Corp.'s website until the Settlement has been approved by the Court, and (2) a Form 8-K filing with the Securities & Exchange Commission. News Corp. will pay the entire cost and expense related to the provision of such notice to the Class.

(b) At or before the Hearing provided for in paragraph 2 of this Order, News Corp shall file proof, by affidavit, that such notice provided for in paragraph 3(a) occurred.

4 At the Hearing, any member of the Class who desires to do so may appear personally or by counsel, provided that an appearance is filed and served, as hereinafter provided, and show cause, if any, why the Settlement of Plaintiffs' claims in the Action should not be approved as fair, reasonable, adequate, and in the best interests of the Class; why the *Order and Final Judgment should not be entered dismissing with prejudice Plaintiffs' claims asserted against all of the Defendants on the merits and with prejudice against the Plaintiffs and the Class, as determined by the Court; or why the Court should not grant an allowance of fees and expenses to Plaintiffs' counsel for their services herein and expenses incurred; provided, however, that no member of the Class or any other person opposing the Settlement or any provision thereof shall be heard or entitled to contest the approval of the terms and conditions of the Settlement and, if approved, the Order and Final Judgment to be entered thereon and the allowance of fees and expenses to Plaintiffs' counsel, and no papers or briefs submitted by any member of the Class or any other person shall be received and considered, except by Order of the Court for good cause shown, unless, no later than ten (10) calendar days prior to the Hearing, copies of: (a) a notice of intention to appear; (b) a detailed statement of such person's specific objections to any matter before the Court; (c) proof that the person opposing the Settlement was a member of the Class; (d) the grounds for such objections and any reasons for the Class member's desiring to appear and to be heard; and (e) all documents and writings such person desires this Court to consider, shall be served upon the following counsel:*

Stuart M. Grant, Esquire  
GRANT & EISENHOFER, P.A.  
Chase Manhattan Centre  
1201 North Market Street  
Wilmington, DE 19801

Edward P. Welch, Esquire  
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
One Rodney Square  
Post Office Box 636  
Wilmington, DE 19899-0636

and then filed with the Register in Chancery at the New Castle County Courthouse. Unless the Court otherwise directs, no member of the Class shall be entitled to object to the Settlement, or to the Order and Final Judgment to be entered herein, or to the award of attorneys' fees and expenses to Plaintiffs' counsel, or otherwise to be heard, except by serving and filing written objections as described above. Any person who fails to object in the manner provided above shall be deemed to have waived such objection and shall forever be barred from making any such objection in this Action or in any other action or proceeding.

5 Following the Hearing, if the Court approves the Settlement provided for in the Stipulation, judgment shall be entered substantially in the form attached as Exhibit C (the "Order and Final Judgment") to the Stipulation.

6 In the event that: (i) the Court declines, in any respect (except for a modification of the proposed Class definition or of the releases provided for in the Stipulation which is not material), to enter the Order and Final Judgment provided for above and any one of the parties hereto fails to consent to the entry of another form of order in lieu thereof; (ii) the Court disapproves the Settlement, including any amendments thereto agreed upon by all of the parties; or (iii) the Court approves the Settlement or any amendment thereto approved by all of the parties, but such approval is reversed or substantially modified

on appeal without all parties consenting to such modification and such reversal or modification becomes final by a lapse of time or otherwise; then, in any of such events, the Stipulation, the Settlement (including any amendments hereof), any actions taken or to be taken with respect to the Settlement, and the Order and Final Judgment to be entered shall be of no further force or effect and shall be null and void, and without prejudice to any of the parties hereto, who shall be restored in all respects to their respective positions existing prior to the execution of the Stipulation. For purposes of this provision, a disallowance or modification by the Court of the fees and expenses sought by plaintiffs' counsel shall not be deemed an amendment, modification or disapproval of the Settlement or the Order and Final Judgment

7. The Court reserves the right to approve the Stipulation and the Settlement with modifications and without further notice to members of the Class, and retains jurisdiction over this Action to consider all further applications arising out of or connected with the proposed Settlement

8 Pending final determination of whether the Settlement should be approved, Plaintiffs and all members of the Class, and any of them, are hereby barred and enjoined from asserting, commencing, prosecuting, assisting, instigating or in any way participating in the commencement or prosecution of any action asserting any Settled Claims, either directly, representatively, derivatively or in any other capacity.

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Chancellor



**EXHIBIT**

**B**



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## NEWS RELEASE

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For Immediate Release

Contact: Media -- Andrew Butcher 212-852-7070  
Investors -- Reed Nolte 212-852-7092

### **News Corporation Settles Litigation Regarding Stockholder Rights Plan**

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**NEW YORK, NY, April 12, 2006** -- News Corporation today announced that it had settled a lawsuit regarding its stockholder rights plan

The settlement has been approved unanimously by the News Corporation Board of Directors and the plaintiffs and is subject to approval by the Delaware Court of Chancery

Under the terms of the agreement, the trial and all remaining proceedings in the litigation will be postponed pending a stockholder vote on a rights plan to be held at News Corporation's annual stockholders meeting in October 2006

If stockholders vote in favor of the rights plan, the litigation will be dismissed. If stockholders vote against the plan, the company has the right to treat the vote as advisory and proceed with the litigation

At the October stockholders meeting, an extension of the existing rights plan to October 2008 will be proposed, with the company having the right to extend for one year if the situation with Liberty Media, which led to the adoption of the rights plan, remains unresolved. If the stockholders vote in favor of the rights plan, then at the expiration of the existing stockholder rights plan or any other rights plan, the company may adopt subsequent rights plans of one-year duration without shareholder approval, subject to interim periods of nine months between plans. If during or prior to any interim period, any stockholder acquires 5 percent or more of News Corporation's voting stock, offers to purchase voting stock or assets that would result in their owning 30 percent or more of News Corporation's voting stock or assets, or in certain other circumstances, the company may immediately adopt a new rights plan of one-year duration. The company may, of course, also adopt new rights plans or extend existing rights plans of unlimited duration with shareholder approval.

The settlement agreement will be attached to a Form 8-K to be filed by the company with the Securities and Exchange Commission. The company has agreed to pay the plaintiffs' attorneys fees and expenses in the litigation.

News Corporation (NYSE: NWS, NWS.A; ASX: NWS, NWSLV) had total assets as of December 31, 2005 of approximately US\$55 billion and total annual revenues of approximately US\$24 billion. News Corporation is a diversified international media and entertainment company with operations in eight industry segments: filmed entertainment; television; cable network programming; direct broadcast satellite television; magazines and inserts; newspapers; book publishing; and other. The activities of News Corporation are conducted principally in the United States, Continental Europe, the United Kingdom, Australia, Asia and the Pacific Basin.

For more information about News Corporation, please visit [www.newscorp.com](http://www.newscorp.com)

**EXHIBIT C**

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

UNISUPER LTD., PUBLIC SECTOR	:	
SUPERANNUATION SCHEME BOARD,	:	
COMMONWEALTH SUPERANNUATION	:	
SCHEME BOARD, UNITED SUPER PTY LTD ,	:	
MOTOR TRADES ASSOCIATION OF	:	
AUSTRALIA SUPERANNUATION FUND PTY	:	
LTD , H.E.S.T AUSTRALIA LTD , CARE	:	
SUPER PTY LTD , UNIVERSITIES	:	
SUPERANNUATION SCHEME LTD , BRITEL	:	
FUND NOMINEES LIMITED, HERMES	:	Civil Action No 1699-N
ASSURED LIMITED, STICHTING	:	
PENSIOENFONDS ABP, CONNECTICUT	:	
RETIREMENT PLANS AND TRUST FUNDS,	:	
and THE CLINTON TOWNSHIP POLICE AND	:	
FIRE RETIREMENT SYSTEM, on behalf of	:	
themselves and all others similarly situated,	:	
	:	
Plaintiffs,	:	
	:	
v	:	
	:	
NEWS CORPORATION, a Delaware corporation,	:	
K. RUPERT MURDOCH AC, PETER L	:	
BARNES, CHASE CAREY, PETER CHERNIN,	:	
KENNETH E. COWLEY AO, DAVID F.	:	
DEVOE, VIEI DINH, RODERICK	:	
EDDINGTON, ANDREW S.B. KNIGHT,	:	
LACHLAN K. MURDOCH, THOMAS J.	:	
PERKINS, STANLEY S. SHUMAN, ARTHUR	:	
M. SISKIND, and JOHN L. THORNTON,	:	
	:	
Defendants.	:	

**ORDER AND FINAL JUDGMENT**<sup>1</sup>

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1 Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Stipulation of Settlement dated April 12, 2006, as filed with the Delaware Court of Chancery.

A Hearing having been held before this Court on \_\_\_\_\_, 2006, pursuant to this Court's Order dated \_\_\_\_\_, 2006 (the "Scheduling Order"), upon a Stipulation of Settlement (the "Stipulation") filed in the above action (the "Action"), which is incorporated herein by reference; it appearing that due notice of said hearing has been given in accordance with the aforesaid Scheduling Order; the respective parties having appeared by their attorneys of record; the Court having heard and considered evidence in support of the proposed settlement (the "Settlement") set forth in the Stipulation; the attorneys for the respective parties having been heard; an opportunity to be heard having been given to all other persons requesting to be heard in accordance with the Scheduling Order; the Court having determined that notice to the Class was adequate and sufficient; and the entire matter of the proposed Settlement having been heard and considered by the Court:

**IT IS ORDERED, ADJUDGED AND DECREED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2006, AS FOLLOWS:**

1 In full compliance with Court of Chancery Rule 23 and the requirements of due process, New Corp provided notice of the Settlement to the members of the Class by means of (1) a press release, which together with the Stipulation of Settlement was made available on News Corp 's website, and (2) a Form 8-K filing with the Securities & Exchange Commission. (collectively, the "Notice")

2 Each of the provisions of Court of Chancery Rule 23(a) has been satisfied and the Action has been properly maintained according to the provisions of Court of Chancery Rule 23(b) with respect to the claims asserted on behalf of the Class. Specifically, based on the record of the Action, this Court expressly and conclusively finds and orders that: (a) the Class, as defined in the Scheduling Order, was so numerous that joinder of all members was

impracticable; (b) there were questions of law or fact common to the Class; (c) the claims or defenses of the representative plaintiffs in the Action were typical of the claims or defenses of the Class; (d) the representative plaintiffs in the Action and their counsel have fairly and adequately protected and represented the interests of the Class; and (e) the requirements of Court of Chancery Rule 23(b)(1) and (2) have been satisfied. The Action is certified as a class action, pursuant to Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2), without opt-out rights on behalf of the Class, which is a class consisting of all persons or entities who owned shares of any class of News Corp common stock at any time, as well as all persons or entities who owned shares of stock in *TNCL* (including ordinary shares and/or preferred limited voting shares) at any time from September 30, 2004 to November 12, 2004, either of record or beneficially, including any and all of their respective successors-in-interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them.

3. Due and adequate notice of the proceedings having been provided to the members of the Class, and a full opportunity having been offered to them to participate in this Hearing, it is hereby determined that they are bound by this Order and Final Judgment

4. The Stipulation and the terms of the Settlement as described in the Stipulation and the Notice are hereby approved and confirmed as being fair, reasonable, adequate, and in the best interests of the Class; the parties to the Stipulation are directed hereby to consummate the Settlement in accordance with the terms and conditions set forth in the Stipulation; and the Register in Chancery is directed to enter and docket this Order and Final Judgment in the Action

5 Plaintiffs' claims asserted in the Action on behalf of the Class against all Defendants shall be dismissed on the merits with prejudice against Plaintiffs and all members of the Class, without costs, except as provided herein. Without limiting or being limited by the foregoing, any and all claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, duties, suits, costs, expenses, matters and issues, known or unknown, contingent or absolute, liquidated or unliquidated, disclosed or undisclosed, hidden or concealed, matured or unmatured, accrued or unaccrued, apparent or unapparent, that have been, could have been, or in the future can or might be, asserted in this Court or in any other tribunal (including, but not limited to, any claims arising under federal, state, foreign or common law relating to any alleged fraud or misrepresentation; breach of any duty, including any duty of disclosure (whether under state or federal law); breach of contract; promissory estoppel; or otherwise) by the Plaintiffs or by or on behalf of any other member of the Class, whether directly, representatively, derivatively, individually, legally, equitably or any other type or in any other capacity, against any of the Defendants, any of their respective family members, parent entities, controlling persons, associates, affiliates or subsidiaries, and each and all of their past, present or future officers, directors, agents, employees, attorneys, consultants, accountants, shareholders, insurers, co-insurers and re-insurers, advisors (including financial or investment), investment bankers, commercial bankers, general or limited partners and partnerships, limited liability companies, members, joint ventures, heirs, executors, personal or legal representatives, estates, administrators, trustees, predecessors, successors and assigns, whether or not served with process and whether or not such person appeared in the Action (collectively, the "Released Persons"), which have arisen, could have arisen, arise now or hereafter arise out of, or relate in any manner to any of the

acts, events, facts, matters, transactions, occurrences, statements, representations, misrepresentations or omissions or any other matter, thing or cause whatsoever set forth, alleged, embraced, involved or otherwise asserted in the Action, or in any other court or forum, by any member of the Class, including, without limitation, any claims directly or indirectly related to the Action or to the allegations asserted in the Action, including any disclosure claims premised on state or federal law (but excluding any claims to enforce the terms of the Settlement) (collectively, the "Settled Claims"), shall be completely, individually and collectively, fully, finally and forever compromised, settled, released, discharged, extinguished and dismissed with prejudice, subject to the terms and conditions set forth herein. Without limiting or being limited by the foregoing, any and all claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, duties, suits, costs, expenses, matters and issues, known or unknown, contingent or absolute, liquidated or unliquidated, disclosed or undisclosed, hidden or concealed, matured or unmatured, accrued or unaccrued, apparent or unapparent, that have been, could have been, or in the future can or might be, asserted in this Court or in any other tribunal (including, but not limited to, any claims arising under federal, state, foreign or common law relating to any alleged fraud or misrepresentation; breach of any duty, including any duty of disclosure (whether under state or federal law); breach of contract; promissory estoppel; or otherwise) by the Defendants, whether directly, representatively, derivatively, individually, legally, equitably or any other type or in any other capacity, against any of the Plaintiffs, any of their respective parent entities, controlling persons, associates, affiliates or subsidiaries, and each and all of their past, present or future officers, directors, agents, employees, attorneys, consultants, accountants, shareholders, insurers, co-insurers and re-insurers, advisors

(including financial or investment), investment bankers, commercial bankers, general or limited partners and partnerships, limited liability companies, members, joint ventures, heirs, executors, personal or legal representatives, estates, administrators, trustees, predecessors, successors and assigns, whether or not served with process and whether or not such person appeared in the Action, which have arisen, could have arisen, arise now or hereafter arise out of, or relate in any manner to Plaintiffs' filing or pursuit of this Action (but excluding any claims to enforce the terms of the Settlement), shall be completely, individually and collectively, fully, finally and forever compromised, settled, released, discharged, extinguished and dismissed with prejudice, subject to the terms and conditions set forth herein.

6 Plaintiffs and each of the members of the Class shall be deemed to have, and by operation of this Order and Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Settled Claims and any Settled Claims which any of the Plaintiffs and/or member of the Class do not know or suspect to exist in his, her, or its favor at the time of the release of the Released Persons which, if known by him, her, or it, might have affected his, her, or its settlement with and release of the Released Persons, or might have affected his, her, or its decision not to object to this Settlement. With respect to any and all Settled Claims, the parties stipulate and agree that Plaintiffs shall expressly, and each of the members of the Class shall be deemed to have, and by operation of this Order and Final Judgment shall have, expressly waived, to the extent permissible by law, the provisions, rights and benefits of California Civil Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.



Plaintiffs and each of the members of the Class shall be deemed to have waived, and by operation of this Order and Final Judgment shall have waived, to the extent permissible by law, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law or international or foreign law, which is similar, comparable or equivalent to California Civil Code § 1542. Plaintiffs and members of the Class may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Settled Claims, but Plaintiffs shall expressly and each member of the Class shall be deemed to have, and by operation of this Order and Final Judgment shall have, fully, finally, and forever settled and released any and all Settled Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The parties acknowledge, and the members of the Class shall be deemed by operation of this Order and Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a material element of the Settlement of which this release is a part.

7       The Plaintiffs and the members of the Class are hereby, individually and severally, permanently barred and enjoined from instituting, commencing, prosecuting, participating in or continuing any action or other proceeding in any court or tribunal of this or any other jurisdiction, either directly, representatively, derivatively or in any other capacity, against any of the Released Persons, based upon, arising out of, or in any way related to or

for the purpose of enforcing any Settled Claim, all of which Settled Claims are hereby declared to be compromised, settled, released, dismissed with prejudice and extinguished by virtue of the proceedings in the Action and this Order and Final Judgment.

8 The attorneys for the Plaintiffs are awarded attorneys' fees and expenses in the amount of \$ \_\_\_\_\_, which sum the Court finds to be fair and reasonable, to be paid solely by News Corp. or one of its wholly-owned subsidiaries in accordance with the terms of the Stipulation.

9 This Order and Final Judgment shall not constitute any evidence or admission by any of the Defendants hereto or any other person that any acts of negligence or wrongdoing of any nature have been committed and shall not be deemed to create any inference that there is any liability therefore.

10 The effectiveness of the provisions of this Order and Final Judgment and the obligations of the Plaintiffs and the Defendants under the Settlement shall not be conditioned upon or subject to the resolution of any appeal from this Order and Final Judgment that relates solely to the issue of Plaintiffs' counsel's application for an award of attorneys' fees and expenses.

11 Without affecting the finality of this Order and Final Judgment, jurisdiction is hereby retained by this Court for the purpose of protecting and implementing the Stipulation and the terms of this Order and Final Judgment, including the resolution of any disputes that may arise with respect to the effectuation of any of the provisions of the Stipulation, and for the entry of such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement and this Order and Final Judgment.

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Chancellor

# EXHIBIT C

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

UNISUPER LTD., PUBLIC SECTOR	:	
SUPERANNUATION SCHEME BOARD,	:	
COMMONWEALTH SUPERANNUATION	:	
SCHEME BOARD, UNITED SUPER PTY LTD.,	:	
MOTOR TRADES ASSOCIATION OF	:	
AUSTRALIA SUPERANNUATION FUND PTY	:	
LTD., H.E.S.T. AUSTRALIA LTD., CARE	:	
SUPER PTY LTD., UNIVERSITIES	:	
SUPERANNUATION SCHEME LTD., BRITEL	:	
FUND NOMINEES LIMITED, HERMES	:	Civil Action No. 1699-N
ASSURED LIMITED, STICHTING	:	
PENSIOENFONDS ABP, CONNECTICUT	:	
RETIREMENT PLANS AND TRUST FUNDS,	:	
and THE CLINTON TOWNSHIP POLICE AND	:	
FIRE RETIREMENT SYSTEM, on behalf of	:	
themselves and all others similarly situated,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
NEWS CORPORATION, a Delaware corporation,	:	
K. RUPERT MURDOCH AC, PETER L.	:	
BARNES, CHASE CAREY, PETER CHERNIN,	:	
KENNETH E. COWLEY AO, DAVID F.	:	
DEVOE, VIET DINH, RODERICK	:	
EDDINGTON, ANDREW S.B. KNIGHT,	:	
LACHLAN K. MURDOCH, THOMAS J.	:	
PERKINS, STANLEY S. SHUMAN, ARTHUR	:	
M. SISKIND, and JOHN L. THORNTON,	:	
	:	
Defendants.	:	

**ORDER AND FINAL JUDGMENT**<sup>1</sup>

A Hearing having been held before this Court on May 23, 2006, pursuant to this Court's Order dated April 18, 2006 (the "Scheduling Order"), upon a Stipulation of Set-

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<sup>1</sup> Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Stipulation of Settlement dated April 12, 2006, as filed with the Delaware Court of Chancery.

tlement (the "Stipulation") filed in the above action (the "Action"), which is incorporated herein by reference; it appearing that due notice of said hearing has been given in accordance with the aforesaid Scheduling Order; the respective parties having appeared by their attorneys of record; the Court having heard and considered evidence in support of the proposed settlement (the "Settlement") set forth in the Stipulation; the attorneys for the respective parties having been heard; an opportunity to be heard having been given to all other persons requesting to be heard in accordance with the Scheduling Order; the Court having determined that notice to the Class was adequate and sufficient; and the entire matter of the proposed Settlement having been heard and considered by the Court:

**IT IS ORDERED, ADJUDGED AND DECREED THIS 1st DAY OF  
June, 2006, AS FOLLOWS:**

1. In full compliance with Court of Chancery Rule 23 and the requirements of due process, New Corp. provided notice of the Settlement to the members of the Class by means of (1) a press release, which together with the Stipulation of Settlement was made available on News Corp.'s website, and (2) a Form 8-K filing with the Securities & Exchange Commission. (collectively, the "Notice").

2. Each of the provisions of Court of Chancery Rule 23(a) has been satisfied and the Action has been properly maintained according to the provisions of Court of Chancery Rule 23(b) with respect to the claims asserted on behalf of the Class. Specifically, based on the record of the Action, this Court expressly and conclusively finds and orders that: (a) the Class, as defined in the Scheduling Order, was so numerous that joinder of all members was impracticable; (b) there were questions of law or fact common to the Class; (c) the claims or defenses of the representative plaintiffs in the Action were typical of the claims or defenses

of the Class; (d) the representative plaintiffs in the Action and their counsel have fairly and adequately protected and represented the interests of the Class; and (e) the requirements of Court of Chancery Rule 23(b)(1) and (2) have been satisfied. The Action is certified as a class action, pursuant to Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2), without opt-out rights on behalf of the Class, which is a class consisting of all persons or entities who owned shares of any class of News Corp. common stock at any time, as well as all persons or entities who owned shares of stock in TNCL (including ordinary shares and/or preferred limited voting shares) at any time from September 30, 2004 to November 12, 2004, either of record or beneficially, including any and all of their respective successors-in-interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them.

3. Due and adequate notice of the proceedings having been provided to the members of the Class, and a full opportunity having been offered to them to participate in this Hearing, it is hereby determined that they are bound by this Order and Final Judgment.

4. The Stipulation and the terms of the Settlement as described in the Stipulation and the Notice are hereby approved and confirmed as being fair, reasonable, adequate, and in the best interests of the Class; the parties to the Stipulation are directed hereby to consummate the Settlement in accordance with the terms and conditions set forth in the Stipulation; and the Register in Chancery is directed to enter and docket this Order and Final Judgment in the Action.

5. The following shall become effective as of (a) the date of the October 2006 Annual Meeting, if holders of a majority of the shares actually voting (excluding from the

denominator, as well as the numerator, abstentions and broker non-votes) approve the October 2006 Rights Plan, or (b) the eleventh business day after the October 2006 Annual Meeting, if the shareholders do not approve the October 2006 Rights Plan and if the Defendants do not exercise their right to treat the vote as advisory in accordance with paragraph 21(e) of the Stipulation:

(a) All claims asserted in the Action against the Defendants are dismissed on the merits with prejudice against Plaintiffs and all members of the Class, without costs, except as provided herein;

(b) In addition to the foregoing, any and all claims, causes of action, or disputes -- whether known or unknown, apparent or unapparent, contingent or absolute, liquidated or unliquidated, accrued or unaccrued -- that have been, could have been or in the future might be asserted in this Court or in any other tribunal under the laws of any jurisdiction (including, but not limited to, the federal securities laws), by Plaintiffs or any other member of the Class (whether directly, representatively or in any other capacity), against Defendants or any other Released Persons,<sup>2</sup> which arise out of or relate in any manner to any facts, events, actions, transactions, representations, omissions or any other issues that were asserted, alleged, or in any way referenced in the Action (including, but not limited to, the adoption of the Rights Plan in November 2004 and the extension of the Rights Plan in August 2005; but excluding

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2 "Released Persons" means any of the Defendants or any of their respective family members; parent entities; controlling persons; associates; affiliates or subsidiaries, and each and all of their past, present or future officers, directors, agents, employees, attorneys, consultants, accountants, shareholders, insurers, co-insurers, advisors (including financial or investment), investment bankers, commercial bankers, general or limited partners and partnerships, limited liability companies, members, joint ventures, heirs, executors, personal or legal representatives, estates, administrators, trustees, predecessors, successors and assigns, whether or not served with process and whether or not such person appeared in the Action.



any claims to enforce the terms of the Settlement) (collectively, the "Settled Claims"), are fully, finally and forever compromised, settled, released, extinguished and dismissed with prejudice, subject to the terms and conditions set forth herein;

(c) For clarification purposes, claims challenging the merits of future conduct by Defendants or any other Released Persons, including fiduciary duty claims challenging any future decision relating to the adoption or redemption of any rights plan, are not included within the definition of "Settled Claims" in subparagraph (b) above;

(d) The Settled Claims are deemed to be released without regard to the subsequent discovery of facts in addition to or different from those which Plaintiffs and the members of the Class now know or believe to be true with respect to the subject matter of the Settled Claims, even if such facts might have affected the decision by Plaintiffs and members of the Class not to object to the Settlement. With respect to any and all Settled Claims, Plaintiffs and the members of the Class are deemed to have, and by operation of this Order and Final Judgment shall have, expressly waived, to the extent permissible by law, the provisions, rights and benefits of California Civil Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

With respect to any and all Settled Claims, Plaintiffs and the members of the Class are likewise deemed to have waived, and by operation of this Order and Final Judgment shall have waived, to the extent permissible by law, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law or international or foreign law, which is similar, comparable or equivalent to California Code § 1542. The parties acknowledge, and the members of the Class shall be deemed by

operation of this Order and Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a material element of the Settlement.

(e) Any and all claims, causes of action, or disputes -- whether known or unknown, apparent or unapparent, contingent or absolute, liquidated or unliquidated, accrued or unaccrued -- that have been, could have been or in the future might be asserted in this Court or in any other tribunal under the laws of any jurisdiction, by Defendants (whether directly, representatively, or in any other capacity), against any of the Plaintiffs,<sup>3</sup> which arise out of or relate in any manner to Plaintiffs' filing or pursuit of this Action (but excluding any claims to enforce the terms of the Settlement), are fully, finally and forever compromised, settled, released, extinguished and dismissed with prejudice, subject to the terms and conditions set forth herein.

6. Upon the effective date of the dismissal as set forth in paragraph 5, the Plaintiffs and the members of the Class are hereby, individually and severally, permanently barred and enjoined from instituting, commencing, prosecuting, participating in or continuing any action or other proceeding in any court or tribunal of this or any other jurisdiction, either directly, representatively, derivatively or in any other capacity, against any of the Released Persons, based upon, arising out of, or in any way related to or for the purpose of enforcing any Settled Claim, all of which Settled Claims are hereby declared to be compromised,

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3 For purposes of this subparagraph (e), the term "Plaintiffs" means any of the Plaintiffs or any of their respective parent entities; controlling persons; associates; affiliates or subsidiaries, and each and all of their past, present or future officers, directors, agents, employees, attorneys, consultants, accountants, shareholders, insurers, co-insurers, advisors (including financial or investment), investment bankers, commercial bankers, general or limited partners and partnerships, limited liability companies, members, joint ventures, heirs, executors, personal or legal representatives, estates, administrators, trustees, predecessors, successors and assigns, whether or not served with process and whether or not such person appeared in the Action.


settled, released, dismissed with prejudice and extinguished upon the effective date of the dismissal, by virtue of the proceedings in the Action and this Order and Final Judgment.

7. The attorneys for the Plaintiffs are awarded attorneys' fees and expenses in the amount of \$ 1,650,000.00, which sum the Court finds to be fair and reasonable, to be paid solely by News Corp. or one of its wholly-owned subsidiaries in accordance with the terms of the Stipulation.

8. This Order and Final Judgment shall not constitute any evidence or admission by any of the Defendants hereto or any other person that any acts of negligence or wrongdoing of any nature have been committed and shall not be deemed to create any inference that there is any liability therefore.

9. The effectiveness of the provisions of this Order and Final Judgment and the obligations of the Plaintiffs and the Defendants under the Settlement shall not be conditioned upon or subject to the resolution of any appeal from this Order and Final Judgment that relates solely to the issue of Plaintiffs' counsel's application for an award of attorneys' fees and expenses.

10. Without affecting the finality of this Order and Final Judgment, jurisdiction is hereby retained by this Court for the purpose of protecting and implementing the Stipulation and the terms of this Order and Final Judgment, including the resolution of any disputes that may arise with respect to the effectuation of any of the provisions of the Stipulation, and for the entry of such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement and this Order and Final Judgment.

  
Chancellor

# EXHIBIT D

# CA, INC. (CA)

ONE CA PLAZA  
ISLANDIA, NY 11749  
631.342.3550

## EX-3.1

EX-3.1: BY-LAWS  
8-K Filed on 03/09/2006 - Period: 03/06/2006  
File Number 001-09247



BY-LAWS  
OF  
CA, INC  
(As Amended, Effective as of March 7, 2006)

ARTICLE I  
OFFICES

The registered office of the Corporation in the State of Delaware shall be located at 2711 Centerville Road, Suite 400, Wilmington, Delaware, New Castle County, 19808, and the resident agent of the Corporation thereat shall be Corporation Service Company. The Corporation may have such other offices, either within or without the State of Delaware, as the Board of Directors may designate or as the business of the Corporation may require from time to time.

ARTICLE II.  
STOCKHOLDERS

Section 1. Annual Meeting. An annual meeting of stockholders shall be held for the election of directors at such date, time and place, either within or without the State of Delaware, as may be designated by resolution of the Board of Directors from time to time. Any other proper business may be transacted at the annual meeting.

Section 2. Special Meeting. Special meetings of the stockholders, for any proper purpose or purposes, may be called only by the Board of Directors.

Section 3. Place of Meeting. The place of meeting for any annual meeting or special meeting of stockholders shall be designated by or under the authority of the Board of Directors. If no such designation is made, the place of meeting shall be the registered office of the Corporation in the State of Delaware.

Section 4. Notice of Meeting. Written or printed notice stating the place, date and time of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered, unless otherwise provided by law, by the Certificate of Incorporation of the Corporation, or by these By-laws, not less than 10 nor more than 60 days before the date of the meeting, either personally or by mail, to each stockholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the stockholder at his or her address as it appears on the stock transfer books of the Corporation, with postage thereon prepaid. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken, unless the adjournment

is for more than 30 days or unless, after adjournment, a new record date is fixed for the adjourned meeting, in either of which cases notice of the adjourned meeting will be given to each stockholder of record entitled to vote at the meeting. Any previously scheduled meeting of the stockholders may be postponed, and (except as otherwise provided by law or by the Certificate of Incorporation of the Corporation) any special meeting of stockholders may be

the action taken or proposed to be taken is delivered to the Corporation, as provided in the Delaware General Corporation Law

Section 6. Voting Lists. The officer or agent having charge of the stock ledger of the Corporation shall make or cause to be made, at least 10 days before each meeting of the stockholders, a complete list of the stockholders entitled to vote at such meeting, or any adjournment thereof, arranged in alphabetical order with the address of and the number of shares held by each, which list, shall be open to the examination of any stockholder, for any purpose germane to such meeting, for a period of at least 10 days prior to such meeting, during ordinary business hours, at the principal place of business of the Corporation. In addition, such list shall be produced and kept at the time and place of such meeting during the whole time of such meeting, and may be inspected by any stockholder who is present. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger or to vote at any meeting of stockholders.

Section 7. Quorum; Adjournment; Required Votes. A majority of the outstanding shares of the Corporation entitled to vote, present or represented by proxy, shall constitute a quorum at a meeting of stockholders. If less than a majority of the outstanding shares are represented at a meeting, the Chair of the meeting may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally called. The stockholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. In the election of directors, a plurality of the votes cast shall be sufficient to elect. Unless otherwise provided by law, by the Certificate of Incorporation or by these By-laws, in all matters other than the election of directors, the affirmative vote of the majority of shares present or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders.

Section 8. Proxies. At all meetings of stockholders, a stockholder may vote by proxy (a) executed in writing by the stockholder or by his or her duly authorized attorney in fact; or (b) by transmitting or authorizing the transmission of a telegram, cablegram or other means of electronic transmission to the person who will be the holder of the proxy or an agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder; or (c) as otherwise permitted pursuant to the Delaware General Corporation Law. Such proxy shall be filed with the Secretary of the Corporation before or at the time of the meeting. No proxy shall be valid after three years from the date of its execution, unless otherwise provided in the proxy.

Section 9. Voting of Shares. Unless otherwise provided in the Certificate of Incorporation of the Corporation, each outstanding share entitled to vote shall be entitled to one vote upon each matter submitted to a vote at a meeting of stockholders



Shares standing in the name of another corporation may be voted by such officer, agent or proxy as the by-laws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine. Shares of its own capital stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of any corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

Section 10 Consent of Stockholders in Lieu of Meeting; Inspectors of Election; Procedures for Counting Consents.

(a) Subject to Section 5 of this Article II, any action required to be taken at a meeting of the stockholders, or any other action which may be taken at a meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing setting forth the action so taken shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. The Corporation shall give prompt notice of the taking of corporate action without a meeting by less than unanimous written consent to stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of stockholders to take the action were delivered to the Corporation in the manner provided in the Delaware General Corporation Law.

(b) Within three (3) business days after receipt of the earliest dated consent delivered to the Corporation in the manner provided in the Delaware General Corporation Law or the determination by the Board of Directors of the Corporation that the Corporation should seek corporate action by written consent, as the case may be, the Secretary shall engage nationally recognized independent inspectors of elections for the purpose of performing a ministerial review of the validity of the consents and revocations. The cost of retaining inspectors of election shall be borne by the Corporation. No action by written consent without a meeting shall be effective until such date as the inspectors certify to the Corporation that the consents delivered to the Corporation in accordance with this Section 10 represent at least the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Consents and revocations shall be delivered to the inspectors upon receipt by the Corporation, the soliciting stockholders or their proxy solicitors or other designated agents. As soon as consents and revocations are received, the inspectors shall review the consents and revocations and shall maintain a count of the number of valid and unrevoked consents. The inspectors shall keep such count confidential and shall not reveal the count to the Corporation, the soliciting stockholder or their representatives or any other entity. As soon as practicable after the earlier of (i) 60 days after the date of the earliest dated consent delivered to the Corporation in the manner provided in the Delaware General Corporation Law or (ii) a

written request therefor by the Corporation or the soliciting stockholders (whichever is soliciting consents), notice of which request shall be given to the party opposing the solicitation of consents, if any, which request shall state that the Corporation or soliciting stockholders, as the case may be, have a good faith belief that the requisite number of valid and unrevoked consents to authorize or take the action specified in the consents has been received in accordance with these By-laws, the inspectors shall issue a preliminary report to the Corporation and the soliciting stockholders stating: (i) the number of valid consents; (ii) the number of valid revocations; (iii) the number of valid and unrevoked consents; (iv) the number of invalid consents; (v) the number of invalid revocations; (vi) whether, based on their preliminary count, the requisite number of valid and unrevoked consents has been obtained to authorize or take the action specified in the consents.

Unless the Corporation and the soliciting stockholders shall agree to a shorter or longer period, the Corporation and the soliciting stockholders shall have 48 hours to review the consents and revocations and to advise the inspectors and the opposing party in writing as to whether they intend to challenge the preliminary report of the inspectors. If no written notice of an intention to challenge the preliminary report is received within 48 hours after the inspectors' issuance of the preliminary report, the inspectors shall issue to the Corporation and the soliciting stockholders their final report containing the inspectors' determination with respect to whether the requisite number of valid and unrevoked consents was obtained to authorize and take the action specified in the consents. If the Corporation or the soliciting stockholders issue written notice of an intention to challenge the inspectors' preliminary report within 48 hours after the issuance of that report, a challenge session shall be scheduled by the inspectors as promptly as practicable. Following completion of the challenge session, the inspectors shall as promptly as practicable issue their final report to the soliciting stockholders and the Corporation, which report shall contain the information included in the preliminary report, plus all changes in the vote totals as a result of the challenge and a certification of whether the requisite number of valid and unrevoked consents was obtained to authorize or take the action specified in the consents. A copy of the final report of the inspectors shall be filed with the proceedings of meetings of stockholders.

Section 11. Nominations of Directors

(a) Only persons who are nominated in accordance with the procedures set forth in these By-laws shall be eligible to serve as directors. Nominations of persons for election to the Board of Directors of the Corporation may be made at a meeting of stockholders (i) by or at the direction of the Board of Directors or (ii) by any stockholder of the Corporation who is a stockholder of record at the time of giving of notice provided for in this Section 11, who shall be entitled to vote for the election of directors at the meeting and who complies with the notice procedures set forth in this Section 11.

(b) Nominations by stockholders shall be made pursuant to timely notice in writing to the Secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to or mailed and received at the principal executive offices of the Corporation (i) in the case of an annual meeting, not less than 90 days nor more than 120 days prior to the first anniversary of the preceding year's annual meeting; provided,

however, that in the event that the date of the annual meeting is changed by more than 30 days from such anniversary date, notice by the stockholder to be timely must be so received not later than the close of business on the 10th day following the earlier of the day on which notice of the date of the meeting was mailed or public disclosure was made, and (ii) in the case of a special meeting at which directors are to be elected, not later than the close of business on the 10th day following the earlier of the day on which notice of the date of the meeting was mailed or public disclosure was made. Such stockholder's notice shall set forth (1) as to each person whom the stockholder proposes to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (2) as to the stockholder giving the notice (A) the name and address, as they appear on the Corporation's books, of such stockholder and (B) the class and number of shares of the Corporation that are beneficially owned by such stockholder and also that are owned of record by such stockholder; and (3) as to the beneficial owner, if any, on whose behalf the nomination is made, (A) the name and address of such person and (B) the class and number of shares of the Corporation that are beneficially owned by such person. At the request of the Board of Directors, any person nominated by the Board of Directors for election as a director shall furnish the Secretary of the Corporation that information required to be set forth in the stockholder's notice of nomination which pertains to the nominee.

(c) No person shall be eligible to serve as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 11. *The Chair of the meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the procedures prescribed by these By-laws, and if he or she should so determine, he or she shall so declare to the meeting and the defective nomination shall be disregarded.*

Section 12 Notice of Stockholder Business.

(a) At an annual meeting of the stockholders, only such business shall be conducted as shall have been brought before the meeting (i) pursuant to the Corporation's notice of meeting, (ii) by or at the direction of the Board of Directors or (iii) by a stockholder of the Corporation who is a stockholder of record at the time of giving of the notice provided for in this Section 12, who shall be entitled to vote at such meeting and who complies with the notice procedures set forth in this Section 12.

(b) For business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of paragraph (a) of this Section 12, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice with respect to an annual meeting must be delivered to or mailed and received at the principal executive offices of the Corporation not less than 90 days nor more than 120 days prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the meeting is changed by more than 30 days from such anniversary date, notice by the stockholder to

be timely must be received no later than the close of business on the 10th day following the earlier of the day on which notice of the date of the meeting was mailed or public disclosure was made. A stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the meeting (i) a brief description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting, (ii) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business, and the name and address of the beneficial owner, if any, on whose behalf the proposal is made, (iii) the class and number of shares of the Corporation which are owned beneficially and of record by such stockholder of record and by the beneficial owner, if any, on whose behalf the proposal is made and (iv) any material interest of such stockholder of record and the beneficial owner, if any, on whose behalf the proposal is made in such business.

(c) No business shall be conducted at an annual meeting except in accordance with the procedures set forth in this Section 12; provided, however, that nothing in this Section 12 shall be deemed to affect the right of any stockholder to request the inclusion of a proposal in a proxy statement of the Corporation pursuant to and in accordance with Rule 14a-8 under the Securities Exchange Act of 1934 or any successor thereto. Only such matters provided for in the Corporation's notice of meeting shall be properly brought before a special meeting of stockholders. The Chair of the meeting shall, if the fact warrant, determine and declare to the meeting that business was not properly brought before the meeting and in accordance with the procedures prescribed by these By-laws, and if he or she should so determine, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

Section 13 Conduct of Meetings. The Board of Directors of the Corporation may adopt such rules, regulations and procedures for the conduct of meetings of stockholders as it shall deem appropriate. Except to the extent inconsistent with any such rules and regulations, the Chair of any meeting of stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to take all such actions as, in the judgment of such Chair, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the Chair of the meeting, may include, without limitation, the following: (a) the establishment of an agenda and order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the Chair shall permit; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. Unless, and to the extent, determined by the Board of Directors or the Chair of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

ARTICLE III.  
BOARD OF DIRECTORS

Section 1 General Powers The business and affairs of the Corporation shall be managed by its Board of Directors.

Section 2 Number and Tenure The Board of Directors shall consist of three or more members, the number thereof to be determined from time to time by resolution of the Board of Directors. Directors need not be stockholders. Each director shall hold office until the next annual meeting of stockholders and until his or her successor shall have been elected and shall have qualified.

Section 3 Annual and Regular Meetings An annual meeting of the Board of Directors shall be held, without other notice, immediately after, and at the same place as, the annual meeting of stockholders. The Board of Directors may also provide, by resolution, the time and place, either within or without the State of Delaware, for the holding of other regular meetings without notice other than such resolution.

Section 4 Special Meetings Special meetings of the Board of Directors may be called by or at the request of the Chairman, the President, or the Secretary upon the written request of any two directors. The persons authorized to call special meetings of the Board of Directors may fix any place, either within or without the State of Delaware, as the place for holding any special meeting of the Board of Directors called by them.

Section 5 Notice Notice of any special meeting or notice of a change in the time or place of any regular meeting of the Board of Directors shall be given to each director at his or her business or residence (a) in writing, by hand delivery, first-class or overnight mail or courier service, telegram, facsimile transmission, or electronic mail; or (b) orally, by telephone to the director or his or her representative. If mailed by first-class mail, such notice shall be deemed adequately given when deposited in the U.S. mail so addressed, with postage thereon prepaid, at least five days before such meeting. If by telegram, overnight mail or courier service, such notice shall be deemed adequately given when the telegram is delivered to the telegraph company or the notice is delivered to the overnight mail or courier service company at least 24 hours before such meeting. If by electronic mail or facsimile transmission, such notice shall be deemed adequately given when transmitted at least 12 hours before such meeting. If by telephone or hand delivery, such notice shall be deemed adequately given when delivered or given at least 12 hours before such meeting. A director may waive notice of any meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or any waiver of notice of such meeting. A meeting may be held at any time without notice if all the directors are present or if those not present waive notice of the meeting.

Section 6. Quorum. A majority of the directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but if less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

Section 7. Manner of Acting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors; provided, however, that any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all the members of the Board of Directors or such committee, as the case may be, consent thereto in writing or writings filed with the minutes of proceedings of the Board of Directors or such committee.

Section 8. Vacancies. Any vacancy occurring in the Board of Directors, including a vacancy resulting from enlargement of the Board of Directors, may be filled by the directors by vote of a majority of the directors then in office though less than a quorum of the Board of Directors, or by the plurality of the votes cast at a meeting of stockholders. A director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office, or in the case of an enlargement of the Board of Directors, until the next annual meeting of stockholders and until his or her successor shall have been elected and shall have qualified.

Section 9. Compensation. Directors who are not employees of the Corporation may be paid such fees or other compensation for service on the Board of Directors or any Committee of the Board of Directors as may be approved by the Board of Directors. Such directors may also be reimbursed for the expenses they incur in attending or participating in meetings of the Board of Directors or any Committee of the Board.

Section 10. Telephonic Meetings. Members of the Board of Directors, or any Committee thereof, may participate in a meeting of the Board or Committee by means of 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 the meeting.

Section 11. Committees

(a) Powers and Authority. The Corporation shall be governed by the provisions of the Delaware General Corporation Law, as that statute may be amended from time to time, in respect to the powers and authority of any committee of the Board of Directors.

(b) Formation. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The 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 the committee. In the absence or disqualification of a member of the committee, the member

or members thereof present at any meeting and not disqualified from voting, whether or not he or she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and to the extent provided in the resolution of the Board of Directors, 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, and may authorize the seal of the Corporation to be affixed to all papers which may require it.

(c) Committee Rules. Unless the Board of Directors otherwise provides, each committee designated by the Board of Directors may make, alter and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article III of these By-laws.

#### ARTICLE IV OFFICERS

Section 1. Number. The officers of the Corporation shall be a Chairman of the Board, President, one or more Vice Presidents (the number thereof to be determined by the Board of Directors), a Secretary, and a Treasurer, each of whom shall be elected by the Board of Directors. One or more Assistant Secretaries and Assistant Treasurers and such other officers and assistant officers as may be deemed necessary may also be elected from time to time by the Board of Directors. Any two or more offices may be held by the same person, except the offices of President and Secretary.

Section 2. Election and Term of Office. The officers of the Corporation to be elected by the Board of Directors shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of the stockholders. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as practicable. Each officer shall hold office until his or her successor shall have been duly elected and shall have qualified or until his or her death or until he or she shall resign or shall have been removed in the manner hereinafter provided.

Section 3. Removal. Any officer or agent elected by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the Corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 4. Vacancies. A vacancy in any office, whether caused by death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

Section 5. Chairman of the Board and Vice Chairman of the Board. The Board of Directors may appoint a Chairman of the Board. If the Board of Directors

appoints a Chairman of the Board, he or she shall perform such duties and possess such powers as are assigned to him or her by the Board of Directors and these By-laws. The Chairman of the Board shall preside at all meetings of the Board of Directors and the stockholders at which he or she is present. If the Board of Directors appoints a Vice Chairman of the Board, he or she shall, in the absence or disability of the Chairman of the Board, perform the duties and exercise the powers of the Chairman of the Board and shall perform such other duties and possess such other powers as may from time to time be vested in him or her by the Board of Directors.

Section 6 President. Except as otherwise provided by the Board of Directors, the President shall be the Chief Executive Officer of the Corporation; shall, subject to the direction of the Board, have general charge and supervision of the business of the Corporation; and shall perform all duties incidental to his or her office which may be required by law and all such other duties as are properly required of him or her by the Board. The President shall, when present and in the absence of the Chairman of the Board and the Vice Chairman of the Board, if one shall be appointed, or the Chief Executive Officer, if other than the President, preside at all meetings of the stockholders and of the Board of Directors. He or she may sign, with the Secretary or any other proper officer of the Corporation thereunto authorized by the Board of Directors, certificates for shares of the Corporation, any deeds, mortgages, bonds, contracts, or other instruments which the Board has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board or by these By-laws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board from time to time.

Section 7 The Vice President. In the absence of the President or in the event of his or her death, inability or refusal to act, the Vice President (or in the event there be more than one Vice President, the Vice Presidents in the order designated at the time of their election, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have all powers of and be subject to all the restrictions upon the President. Any Vice President may sign, with the Secretary or an Assistant Secretary, certificates for shares of the Corporation; and shall perform such other duties as from time to time may be assigned to him or her by or under the authority of the Board of Directors.

Section 8 The Secretary. The Secretary shall: (a) keep the minutes of the meetings of the stockholders and the Board of Directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these By-laws or as required by law; (c) be custodian of the corporate records and of the seal of the Corporation and see that the seal of the Corporation is affixed to all documents the execution of which on behalf of the Corporation under its seal is duly authorized; (d) sign, with the President or a Vice President, certificates for shares of the Corporation, the issuance of which shall have been authorized by resolution of the Board of Directors; and (e) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by or under the authority of the Board of Directors.



Section 9. The Treasurer. The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the Corporation; receive and give receipts for moneys due and payable to the Corporation from any source whatsoever, and deposit or cause to be deposited all such moneys in the name of the Corporation in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article V of these By-laws; (b) have general charge of the stock transfer books of the Corporation, unless a transfer agent shall have been appointed; (c) sign, with the President or a Vice President, certificates for shares of the Corporation, the issuance of which shall have been authorized by resolution of the Board of Directors; and (d) in general perform all the duties incident to the office of Treasurer and such other duties as may from time to time be assigned to him or her by or under the authority of the Board of Directors.

Section 10. Assistant Secretaries and Assistant Treasurers. The Assistant Secretaries, when elected by the Board of Directors, may sign, with the President or a Vice President, certificates for shares of the Corporation the issuance of which shall have been authorized by a resolution of the Board of Directors. The Assistant Secretaries and Assistant Treasurers, in general, shall perform such duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by or under the authority of the Board of Directors.

Section 11. Salaries. The salaries of the officers shall be fixed from time to time by or under the authority of the Board of Directors, and no officer shall be prevented from receiving such salary by reason of the fact that he or she is also a director of the Corporation.

#### ARTICLE V.

#### CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 1. Contract. The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the Corporation and no evidences of indebtedness shall be issued in its name unless authorized by or under the authority of the Board of Directors. Such authority may be general or confined to specific instances.

Section 3. Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by or under the authority of the Board of Directors.

Section 4. Deposits All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as may be selected by or under the authority of the Board of Directors

ARTICLE VI.

CERTIFICATES FOR SHARES AND THEIR TRANSFER

Section 1. Certificates Shares of the Corporation shall be evidenced by certificates in such form as the *appropriate officers of the Corporation* may from time to time prescribe; provided, that the Board of Directors may provide by resolution that some or all of any or all classes or series of stock of the Corporation shall be uncertificated shares. Notwithstanding the foregoing, each holder of uncertificated shares shall be entitled, upon request, to a certificate representing such shares. Shares represented by certificates shall be numbered and registered in a share register as they are issued. Share certificates shall exhibit the name of the registered holder and the number and class of shares and the series, if any, represented thereby and the par value of each share or a statement that such shares are without par value, as the case may be. Except as otherwise provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificated shares of the same class and series shall be identical

Section 2. Signatures on Certificates Every share certificate shall be signed by the Chairman of the Board, the Chief Executive Officer, the Chief Operating Officer, the President or a Vice President, and by the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer, and shall be sealed with the Corporation's seal, which may be facsimile, engraved or printed

Section 3. Transfer Agents and Registrars; Facsimile Signatures The Board of Directors may appoint one or more transfer agents and one or more registrars and may require all certificates for shares to bear the signature or signatures of any of them. Where a certificate is signed (a) by a transfer agent or an assistant or co-transfer agent, or (b) by a registrar or co-registrar, the signature of any officer thereon may be facsimile. Where a certificate is signed by a registrar or co-registrar, the certificate of any transfer agent or co-transfer agent thereon may be by facsimile signature of the authorized signatory of such transfer agent or co-transfer agent. In case any officer or officers of the Corporation who have signed, or whose facsimile signature or signatures have been used on, any such certificate or certificates shall cease to be such officer or officers, whether because of death, resignation or otherwise, before such certificate or certificates have been delivered by the Corporation, such certificate or certificates may, nevertheless, be issued and delivered as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures have been used thereon had not ceased to be such officer or officers of the Corporation.

Section 4. Lost Certificates In case of the loss or destruction of any certificate of stock or other security of the Corporation, another may be issued in its place

upon satisfactory proof of such loss or destruction and upon the giving of a satisfactory bond of indemnity to the Corporation and to the transfer agents and registrars, if any, of such stock or other security, in such sum as the Board of Directors may prescribe. The Board of Directors may delegate to any officer or officers of the Corporation the authorization of the issuance of such new certificate or certificates and the approval of the form and amount of such indemnity bond and the surety thereon.

Section 5. Transfer of Shares. Upon surrender to the Corporation, or a transfer agent of the Corporation, of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, the Corporation may issue a new certificate, or, upon request, evidence of the equivalent uncertificated shares, to the person entitled thereto, cancel the old certificate and record the transaction upon its books. Upon receipt of proper transfer instructions from the holder of uncertificated shares, the Corporation shall cancel such uncertificated shares and issue new equivalent uncertificated shares, or, upon such holder's request, certificated shares, to the person entitled thereto, and record the transaction upon its books.

Section 6. Registered Shareholders. The Corporation and its transfer agents shall be entitled to treat the holder of record of any share or shares as the holder in fact thereof and shall not be bound to recognize any equitable or other claims to, or interest in, such shares on the part of any other person and shall not be liable for any registration or transfer of shares which are registered, or to be registered, in the name of a fiduciary or the nominee of a fiduciary unless made with actual knowledge that a fiduciary, or nominee of a fiduciary, is committing a breach of trust in requesting such registration or transfer, or with knowledge of such facts that its participation therein amounts to bad faith.

ARTICLE VII.

FISCAL YEAR

*The fiscal year of the Corporation shall begin on the first day of April and end on the last day of March in each year*

ARTICLE VIII

SEAL

The Board of Directors shall approve a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Corporation and the state of incorporation and the words, "Corporate Seal"

ARTICLE IX.  
AMENDMENTS

Unless otherwise provided by the Certificate of Incorporation or these By-laws, these By-laws may be amended or repealed, or new By-laws may be adopted, (1) at any annual or special meeting of the stockholders, by the affirmative vote of the holders of not less than a majority of the outstanding shares of stock of the Corporation, present or represented by proxy and entitled to vote on such action; provided, however, that the notice of such meeting shall have been given as provided in these By-laws, which notice shall mention that the amendment or repeal of these By-laws, or the adoption of new By-laws, is one of the purposes of such meeting; (2) by written consent of the stockholders pursuant to Section 10 of Article II of these By-laws; or (3) by action of the Board of Directors.

ARTICLE X.  
INDEMNIFICATION

To the fullest extent permitted by the Delaware General Corporation Law, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether brought by a third party or by or in the right of the Corporation, by reason of the fact that he or she is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of, or in a similar capacity with respect to, any subsidiary or joint venture of the Corporation or other entity or enterprise, or as a fiduciary, trustee or administrator or in any similar capacity with respect to any employee benefit plan or other plan or program sponsored by the Corporation or any subsidiary of the Corporation, against expenses (including attorneys' fees), liability, loss, judgment, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding. Excise taxes assessed on any such person with respect to an employee benefit plan shall be deemed to be indemnifiable expenses, and action by any such person with respect to an employee benefit plan which he or she reasonably believes to be in the interests of the participants and beneficiaries of such plan shall be deemed to be action not opposed to the best interests of the Corporation.

Expenses (including attorneys' fees) actually and reasonably incurred by any such person in defending any such threatened, pending or completed action, suit or proceeding shall be paid on behalf of such person by the Corporation in advance of the final disposition of such action, suit, or proceeding and within 30 days of receipt by the Secretary of the Corporation of (1) an application from such person setting forth the basis for such indemnification, and (2) an undertaking by or on behalf of such person 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. A plea of guilty to a felony charge arising out of misconduct committed by such person in his or her capacity (a) as a director or officer of the Corporation, (b) as a director or officer of, or in a similar

capacity with respect to, any subsidiary or joint venture of the Corporation or other entity or enterprise referred to in the preceding paragraph of this Article, or (c) as a fiduciary, trustee or administrator or in a similar capacity with respect to any employee benefit plan or other plan or program sponsored by the Corporation or any subsidiary of the Corporation shall, for purposes of the mandatory advancement of expenses provided in the preceding sentence, constitute a final disposition of such action or proceeding. The financial ability of any person to make a repayment contemplated by this provision shall not be a prerequisite to the making of an advance.

Such indemnity and right to advancement of expenses shall inure to the benefit of the heirs, executors and administrators of any person so indemnified pursuant to this Article. The right to indemnification and to advancement of expenses under this Article shall be a contract right. Such indemnification and advancement of expenses shall be in addition to any other rights to which those persons seeking indemnification and advancement of expenses may be entitled under any law, agreement, vote of stockholders, or otherwise.

Any repeal or amendment of this Article by the Board of Directors or stockholders of the Corporation or by changes in applicable law shall, to the extent permitted by applicable law, be prospective only, and shall not adversely affect any right to indemnification or advancement of expenses of any person existing at the time of such repeal or amendment. In addition to the foregoing, the right to indemnification and advancement of expenses shall be to the fullest extent permitted by the Delaware General Corporation Law or any other applicable law and all amendments to such laws as hereafter enacted from time to time.

# EXHIBIT E

# BRISTOL MYERS SQUIBB CO (BMY)

345 PARK AVE  
NEW YORK, NY 10154  
212. 546 4000

## EX-3.(B)

BYLAWS OF BRISTOL-MYERS SQUIBB COMPANY  
10-K Filed on 03/14/2006 - Period: 12/31/2005  
File Number 001-01136



BRISTOL-MYERS SQUIBB COMPANY

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BYLAWS

As Adopted on November 1, 1965  
And as Amended to March 7, 2006

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**BYLAWS**  
of  
**BRISTOL-MYERS SQUIBB COMPANY**  
**OFFICES**

1. The registered office of the Company shall be in the City of Wilmington, County of New Castle, State of Delaware
2. The Company may also have offices at such place or places as the Board of Directors may from time to time appoint or the business of the Company may require

**SEAL**

3. The corporate seal shall have inscribed thereon the name of the Company, the year of its organization and the words "Corporate Seal, Delaware " Said seal may be used in causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise

**MEETINGS OF STOCKHOLDERS**

4. The annual meeting of the stockholders for the election of directors and for the transaction of any other proper business shall be held at such time as the Board of Directors may determine. For nominations or other business to be properly brought before any annual meeting by a stockholder, such stockholder must be a stockholder of record of the Company at the time the notice provided for in this Section 4 is delivered to the Secretary of the Company, must be entitled to vote at the meeting and must give timely notice in writing thereof to the Secretary of the Company in accordance with this Section 4 and, in the case of business other than nominations, such other business must be a proper matter for stockholder action. To be considered timely, a stockholder's notice must be received by the Secretary at the principal executive offices of the Company not less than 120, and not more than 150, calendar days before the anniversary of the date of the Company's proxy statement released to stockholders in connection with the prior year's annual meeting. A stockholder's notice shall set forth: (a) as to each person whom the stockholder proposes to nominate for election or re-election as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors pursuant to Regulation 14A under the Securities Exchange Act of 1934, including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected; (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the bylaws of the Company, the language of the proposed amendment), the reasons for conducting such business at

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the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made and (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Company's books, and of such beneficial owner, (ii) the number of shares of stock held of record and beneficially by such stockholder and such beneficial owner, (iii) the name in which all such shares of stock are registered on the stock transfer books of the Company, (iv) a representation that the stockholder intends to appear at the meeting in person or by proxy to submit the business specified in such notice, (v) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (a) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Company's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (b) otherwise to solicit proxies from stockholders in support of such proposal or nomination and (vi) all other information relating to the proposed business which may be required to be disclosed under applicable law. In addition, a stockholder seeking to submit such business at the meeting shall promptly provide any other information reasonably requested by the Company. The chairman shall, if the facts warrant, determine and declare that any putative business was not properly brought before the meeting in accordance with the procedures prescribed by this bylaw, in which case such business shall not be transacted. Notwithstanding the foregoing provisions of this bylaw, a stockholder who seeks to have any proposal included in the Company's proxy materials shall comply with the requirements of Rule 14a-8 under Regulation 14A of the Securities Exchange Act of 1934. The foregoing notice requirements of this Section 4 shall be deemed satisfied by a stockholder if the stockholder has notified the Company of his, her or its intention to present a proposal or nomination at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder's proposal or nomination has been included in a proxy statement that has been prepared by the Company to solicit proxies for such annual meeting. Nothing in this Section 4 shall be deemed to affect any rights (a) of stockholders to request inclusion of proposals or nominations in the Company's proxy statement pursuant to applicable rules and regulations promulgated under the Exchange Act or (b) of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation. Notwithstanding the foregoing provisions of this Section 4, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Company to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Company. For purposes of this Section 4, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

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5. Meetings of the stockholders may be held at such places, if any, either within or without the State of Delaware as the Board of Directors may determine.
  6. Any action required or permitted to be taken by the stockholders of the Company must be effected at a duly called annual or special meeting of such stockholders and may not be effected by any consent in writing by such stockholders. Except as otherwise required by law and subject to the rights under Article FOURTH of the Certificate of Incorporation of the Company of the holders of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation, special meetings of stockholders of the Company may be called only by the Chairman of the Board or by the Board of Directors pursuant to a resolution approved by a majority of the entire Board of Directors.
  7. Except as hereinafter provided or as may be otherwise required by law, notice of the place, if any, date and hour of holding each annual and special meeting of the stockholders shall be given, as permitted by applicable law, not less than ten days nor more than 60 days before such meeting to each person who appears on the books of the Company as a stockholder entitled to vote at such meeting. The notice of every special meeting, besides stating the time and place, if any, of such meeting, shall state briefly the purpose or purposes thereof; and no business other than that specified in such notice or germane thereto shall be transacted at the special meeting. Notice of any meeting of stockholders shall not be required to be given to any stockholder entitled to participate in any action proposed to be taken at such meeting who shall attend such meeting in person or by proxy, except where the stockholder attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened, or who before or after any such meeting shall waive notice thereof in writing or by electronic transmission. Notice of any adjourned meeting need not be given if the time and place, if any, are announced at the meeting at which the adjournment is taken. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.
  8. At all meetings of stockholders of the Company, except as otherwise provided by law, the holders of a majority in voting power of the outstanding shares of the Company, present in person or by proxy and entitled to vote thereat, shall constitute a quorum for the transaction of business. In the absence of a quorum the holders of a majority in voting power of the outstanding shares of stock so present or represented and entitled to vote may adjourn the meeting from time to time until a quorum is present. At any such adjourned meeting at which a quorum is present any business may be transacted which might have been transacted at the meeting as originally called.
  9. The Chairman of the Board shall preside as chairman at every meeting of stockholders. In the absence of the Chairman of the Board, the Chief Executive Officer shall preside as chairman at the meeting of stockholders. The Chairman of the Board may designate another officer of the Company to preside as chairman of a meeting of stockholders in place of the Chairman of the Board and the Chief Executive Officer and in the absence of

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the Chairman of the Board, the Chief Executive Officer and an officer designated by the Chairman of the Board to preside as chairman of the meeting, the Board of Directors may designate an officer to preside as chairman of the meeting. In the event the Chairman of the Board and the Board of Directors fail to so designate a chairman of the meeting the stockholders may designate an officer or stockholder as chairman. The Secretary shall act as secretary of the meeting, or, in the absence of the Secretary, the presiding officer shall appoint a secretary of the meeting

- 10 Except as may otherwise be provided in the Certificate of Incorporation of the Company, at each meeting of the stockholders every stockholder of record entitled to vote thereat shall be entitled to one vote for each share of the Company standing in that stockholder's name on the books of the Company. The vote on shares may be given by the stockholder entitled thereto in person or by proxy duly appointed by an instrument in writing subscribed by such stockholder or that stockholder's duly authorized attorney (or in any other manner prescribed by the General Corporation Law of the State of Delaware), and delivered to the secretary of the meeting; provided, however, that no proxy shall be valid after the expiration of three years from the date of its execution unless the stockholder executing it shall have specified therein the length of time it is to continue in force, which shall be for some limited period. At all meetings of stockholders, a quorum being present, all matters, except as otherwise provided by applicable law, rule or regulation, by the rules or regulations of any securities exchange applicable to the Company or its securities, or by the Certificate of Incorporation of the Company or these bylaws, shall be decided by the holders of a majority in voting power of the outstanding shares of stock of the Company present in person or by proxy and entitled to vote thereon. A share vote may be by ballot and each ballot shall state the name of the stockholder voting and the number of shares owned by that stockholder and shall be signed by such stockholder or by that stockholder's proxy. Except as otherwise required by law or by these bylaws all voting may be viva voce.
11. The Secretary or other officer in charge of the stock ledger of the Company shall prepare and make at least ten days before every meeting of stockholders a complete list of the stockholders entitled to vote at the meeting arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting during ordinary business hours for a period of at least ten days prior to the meeting at the principal place of business of the Company or as otherwise provided by law. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list required by this bylaw or to vote in person or by proxy at any meeting of stockholders.
12. At all elections of directors and when otherwise required by law, the chairman of the meeting shall appoint one or more inspectors of election. The inspectors shall be responsible for receiving, tabulating and reporting the result of the votes taken. No director or candidate for the office of director shall be appointed such inspector.

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- 13 The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person presiding over any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the presiding person of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the corporation, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

#### **BOARD OF DIRECTORS**

- 14 The property, business and affairs of the Company shall be managed by or under the direction of the Board of Directors, which may exercise all such powers of the Company and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these bylaws directed or required to be exercised or done by the stockholders.
- 15
- (a) The number of directors may be fixed from time to time by a majority vote of the entire Board of Directors.
  - (b) Except as otherwise provided by the Certificate of Incorporation, by these bylaws or by law, at each meeting of the stockholders for the election of directors at which a quorum shall be present, the persons receiving a plurality of the votes cast shall be directors. Such election shall be by ballot.
  - (c) The directors shall be elected as specified in the Certificate of Incorporation and by these bylaws.



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- (d) Except as otherwise provided in the Certificate of Incorporation or in these bylaws, each director shall continue in office until the next annual meeting of stockholders and until a successor shall have been elected and shall have qualified, or until the director shall have resigned, or, in the case of a director who is an employee of the Company other than a Chief Executive Officer or a retired Chief Executive Officer, until the director shall have resigned from employment with the Company or the director's employment shall have been terminated by the Company. In addition, a director who is not an employee of the Company or who is the Chief Executive Officer of the Company or a retired Chief Executive Officer of the Company shall retire from the position of director at the Annual Meeting following attainment of age 72; an employee who is a director of the Company (other than the Chief Executive Officer or a retired Chief Executive Officer) shall retire from the position of director on the effective date of the director's retirement as an employee of the Company. Any director of the Company may resign at any time by giving notice to the Chairman of the Board or to the Secretary of the Company, in writing or by electronic transmission. Such resignation shall take effect at the time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Exceptions to the requirements for the retirement of a director may be made by the Board of Directors.
- (e) Subject to the rights under Article FOURTH of the Certificate of Incorporation of the Company of the holders of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation to elect directors under specified circumstances, newly created directorships resulting from any increase in the number of directors and any vacancies on the Board of Directors resulting from death, resignation, retirement, disqualification, removal or other cause shall be filled only 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. Any director elected in accordance with the preceding sentence (i) prior to the 2006 annual meeting of stockholders shall hold office for the remainder of the full term of the class of directors in which the vacancy occurred or (ii) after such meeting shall hold office until the next annual meeting of stockholders and, in either case, until such director's successor shall have been elected and qualified.
- 16 The directors may hold their meetings and keep the books of the Company at such place or places as they may from time to time determine.
- 17 Regular meetings of the Board of Directors may be held at such time as may be fixed from time to time by resolution of the Board of Directors. Unless required by said resolution, notice of any such meeting need not be given.
- 18 Special meetings of the Board of Directors shall be held whenever called by direction of the Chairman of the Board, the Chief Executive Officer (so long as such person is a director) or any of three of the directors for the time being in office. Notice of each such special meeting shall be mailed, postage prepaid, to each director, addressed to the

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director at the director's residence or usual place of business, at least two days before the day on which the meeting is to be held, or shall be sent to the director at such place by electronic transmission, or be delivered personally or by telephone, not later than the day before the day on which the meeting is to be held. Every such notice shall state the time and place but, except as provided by these bylaws or by resolution of the Board of Directors, need not state the purposes, of the meetings

19. Anything in these bylaws or in any resolution adopted by the Board of Directors to the contrary notwithstanding, notice of any meeting of the Board of Directors need not be given to any director, if, before or after any such meeting, notice thereof shall be waived by such director in writing or by electronic transmission. Any meeting of the Board of Directors shall be a legal meeting without any notice having been given or regardless of the giving of any notice or the adoption of any resolution in reference thereto, if all the directors shall be present thereat, except when a director attends for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened, or shall have so waived notice thereof. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting, if all members of the Board of Directors consent in writing or by electronic transmissions and such written consent or consents or electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors
20. A majority of the number of directors fixed by the Board of Directors pursuant to 15(a) above, in office at the time of any regular or special meeting of the Board of Directors shall constitute a quorum for the transaction of business at such meeting. Except as may be otherwise specifically provided by statute or by the Certificate of Incorporation or by these bylaws, the act of a majority of the directors present at any such meeting at which a quorum is present shall be the act of the Board of Directors. In the absence of a quorum a majority of the directors present may adjourn any meeting from time to time until a quorum is present. Notice of any adjourned meeting need not be given. The directors shall act only as a board and the individual directors shall have no power as such.
21. At each meeting of the Board of Directors the Chairman of the Board shall preside. In the absence of the Chairman of the Board, the Chief Executive Officer (so long as such person is a director) shall preside at meetings of the Board of Directors. The Chairman of the Board may designate another member of the Board of Directors to preside as chairman of a meeting in place of the Chairman of the Board and the Chief Executive Officer, and in the absence of the Chairman of the Board, the Chief Executive Officer and any member of the Board of Directors designated by the Chairman of the Board to preside as chairman of the meeting, a majority of the directors present may designate a member of the Board of Directors as chairman to preside at the meeting. The Secretary of the Company or, in the absence of the Secretary, a person appointed by the chairman of the meeting, shall act as secretary of the Board of Directors. The Board of Directors may adopt such rules and regulations for the conduct of their meetings and the management of the affairs of the Company, as they shall deem proper and not inconsistent with the law or with these bylaws. At all meetings of the Board of Directors business shall be transacted in such order as the Board of Directors may determine.

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22 Each director shall be paid such fee, if any, for each meeting of the Board attended and/or such annual fee as shall be determined from time to time by resolution of the Board of Directors.

23.

(a) Definitions. As used herein, the term "director" shall include each present and former director of the Company and the term "officer" shall include each present and former officer of the Company as such, and the terms "director" and "officer" shall also include each employee of the Company, who, at the Company's request, is serving or may have served as a director or officer of another corporation in which the Company owns directly or indirectly, shares of capital stock or of which it is a creditor. The term "officer" also includes each assistant or divisional officer. The term "expenses" shall include, but not be limited to, reasonable amounts for attorney's fees, costs, disbursements and other expenses and the amount or amounts of judgments, fines, penalties and other liabilities.

(b) Indemnification Granted. Each director and officer shall be and hereby is indemnified by the Company, to the full extent permitted by law, against:

(i) expenses incurred or paid by the director or officer in connection with any claim made against such director or officer, or any actual or threatened action, suit or proceeding (civil, criminal, administrative, investigative or other, including appeals and whether or not relating to a date prior to the adoption of this bylaw) in which such director or officer may be involved as a party or otherwise, by reason of being or having been a director or officer of the Company, or of serving or having served at the request of the Company as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, or by reason of any action taken or not taken by such director or officer in such capacity, and

(ii) the amount or amounts paid by the director or officer in settlement of any such claim, action, suit or proceeding or any judgment or order entered therein, however, notwithstanding anything to the contrary herein where a director or officer seeks indemnification in connection with a proceeding voluntarily initiated by such director or officer the right to indemnification granted hereunder shall be limited to proceedings where such director or officer has been wholly successful on the merits.

(c) Miscellaneous.

(i) Expenses incurred and amounts paid in settlement with respect to any claim, action, suit or proceeding of the character described in paragraph (b)(i) above may be advanced by the Company prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the recipient to repay such amounts as shall not ultimately be determined to be payable to such recipient under this bylaw.

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- (ii) The rights of indemnification herein provided for shall be severable, shall not be exclusive of other rights to which any director or officer now or hereafter may be entitled, shall continue as to a person who has ceased to be an indemnified person and shall inure to the benefit of the heirs, executors, administrators and other legal representatives of such a person.
  - (iii) The provisions of this bylaw shall be deemed to be a contract between the Company and each director or officer who serves in such capacity at any time while such bylaw is in effect.
  - (iv) The Board of Directors shall have power on behalf of the Company to grant indemnification to any person other than a director or officer to such extent as the Board in its discretion may from time to time determine

24. Anything in these bylaws to the contrary notwithstanding, the adoption of any stockholder rights plan, rights agreement or any other form of "poison pill" which is designed to or has the effect of making acquisition of large holdings of the Company's shares of stock more difficult or expensive ("Stockholder Rights Plan") or the amendment of any such Stockholder Rights Plan which has the effect of extending the term of any rights or options provided thereunder, shall require the affirmative vote of two-thirds of the Board of Directors, and any Stockholder Rights Plan so adopted or amended shall expire no later than one year following the later of the date of its adoption and the date of its last such amendment, unless such Stockholder Rights Plan or amendment thereto is approved by the affirmative vote of the holders of record of a majority of the shares of the Company

#### COMMITTEES OF THE BOARD

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- (a) The Board of Directors may, by resolution or resolutions, passed by a majority of the whole Board of Directors, designate an Executive Committee (and may discontinue the same at any time) to consist of three or more of the Directors of the Company. The members shall be appointed by the Board of Directors and shall hold office during the pleasure of the Board of Directors; provided, however, that in the absence or disqualification of any member of the Executive Committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not the member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. The Executive Committee shall have and may exercise, during the intervals between the meetings of the Board of Directors, all of the powers of the Board of Directors in the management of the business and affairs of the Company (and shall have power to authorize the seal of the Company to be affixed to all papers which may

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require it), except that the Executive Committee shall have no power to (i) elect Directors to fill any vacancies or appoint any officers; (ii) fix the compensation of any officer or the compensation of any Director for serving on the Board of Directors or on any committee; (iii) declare any dividend or make any other distribution to the stockholders of the Company; (iv) submit to stockholders any action that needs stockholder authorization; (v) amend or repeal the bylaws or adopt any new bylaw; (vi) amend or repeal any resolution of the Board of Directors which by its terms shall not be so amendable or repealable; or (vii) take any final action with respect to acquisitions, divestitures and equity investment transactions in excess of \$25 million in upfront payments or \$100 million in upfront and conditional milestone payments

- (b) The Audit Committee shall consist of three or more independent directors of the Company designated by the Committee on Directors and Corporate Governance and approved by a majority of the whole Board of Directors by resolution or resolutions. Any director who is a present or former employee of the Company may not serve on the Audit Committee. The members of the Audit Committee shall hold office during the pleasure of the Board of Directors. A majority of the members of the Audit Committee will constitute a quorum for the transaction of business. The responsibilities and duties of the Audit Committee shall be set forth in an Audit Committee Charter that shall be approved by the entire Board of Directors, from time to time.
- (c) The Board of Directors may, by resolution or resolutions passed by a majority of the whole Board of Directors, designate such other committees as may be deemed advisable (and may discontinue the same at any time), to consist of two or more of the directors of the Company. The members shall be appointed by and shall hold office during the pleasure of the Board of Directors, provided, however, that in the absence or disqualification of any member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not the member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. The Board of Directors shall prescribe the name or names of such committees, the number of their members and their duties and powers.
- (d) Any action required or permitted to be taken at any meeting of any committee may be taken without a meeting, if all members of the committee consent in writing or by electronic transmission and such written consent or consents and such electronic transmission or transmissions are filed with the minutes of proceedings of the committee.

26 All committees shall keep written minutes of their proceedings and report the same to the Board of Directors when required

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## OFFICERS

- 27 The officers of the Company shall be a Chairman of the Board, a Chief Executive Officer, two or more Vice Presidents (which shall include Senior Vice President, Executive Vice President and other Vice President titles), a Treasurer, a Secretary, a Controller, and such other officers as may be appointed in accordance with these bylaws (such as a Vice Chairman of the Board or a President). The Secretary and Treasurer may be the same person, or a Vice President may hold at the same time the office of Secretary, Treasurer, or Controller.
- 28 The Board of Directors shall designate certain officers to be members of a senior management team (the "Senior Management Team") The Senior Management Team shall be called the Management Committee, or such other name as the Chief Executive Officer shall determine. The members of the Senior Management Team, the Treasurer, Secretary and Controller shall be appointed by the Board of Directors. Each other officer shall be appointed by a member of the Senior Management Team, or by an officer of the Company to whom such power may from time to time be delegated by a member of the Senior Management Team. Each officer shall hold office until a successor shall have been duly chosen and shall have qualified or until the death or retirement of the officer or until the officer shall resign or shall have been removed in the manner hereinafter provided. The Chairman of the Board and Vice Chairman of the Board, if appointed, shall be chosen from among the directors.
- 29 The Board of Directors may appoint such other officers, committees or agents, as the business of the Company may require, including one or more Assistant Treasurers and one or more Assistant Secretaries, each of whom shall hold office for such period, and have such authority and perform such duties as are provided in these bylaws or as the Board of Directors may from time to time determine. The Board of Directors may delegate to any officer or committee the power to appoint and to remove any such subordinate officer or agent.
- 30 Subject to the provisions of any written agreement, any officer may be removed, either with or without cause, by a vote of the majority of the whole Board of Directors at a regular meeting or a special meeting called for the purpose. Any officer, except an officer elected by the Board of Directors, may also be removed, with or without cause, by any committee or superior officer upon whom such power of removal may be conferred by the Board of Directors.
- 31 Subject to the provisions of any written agreement, any officer may resign at any time by giving notice, in writing or by electronic transmission, to the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the Secretary of the Company. Any such resignation shall take effect at the time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.
- 32 Except as otherwise provided in these bylaws, in the event any officer shall be unable to perform the duties of the office held, whether by reason of absence, disability or

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otherwise, each of the Chairman of the Board and the Chief Executive Officer may designate another officer of the Company to assume the duties of the officer who is unable to carry out the duties of the office; in the event the Chairman of the Board shall be absent and unable to perform the duties of the office of Chairman of the Board, the Chief Executive Officer (so long as such person is a director) shall assume the duties of the Chairman of the Board; in the event the Chairman of the Board and the Chief Executive Officer shall be absent and unable to perform the duties of the office of Chairman of the Board, the Chairman of the Board shall designate another director to assume the duties of the Chairman of the Board; if another director has not been designated by the Chairman of the Board to assume the duties of the Chairman of the Board, then the Board of Directors shall designate another director to assume the duties of the Chairman of the Board. Any person designated to assume the duties of another officer shall have all the powers of and be subject to all the restrictions imposed upon the officer whose duties have been assumed

33. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled for the unexpired portion of the term in the manner prescribed by these bylaws for the regular appointment or election to such office
34. The Chairman of the Board shall preside at all meetings of the stockholders and of the Board of Directors. The Chairman of the Board shall have the power to perform all of the duties usually incumbent upon a Chairman of the Board of a corporation and incident to the office of the Chairman of the Board. The Chairman of the Board shall also have such powers and perform such duties as are assigned by these bylaws and shall have such other powers and perform such other duties, not inconsistent with these bylaws, as may from time to time be assigned by the Board of Directors. The Board of Directors may, by resolution, provide that the Chairman of the Board shall be the Chief Executive Officer of the Company.
35. In the absence of the Chairman of the Board, the Chief Executive Officer shall preside at all meetings of the stockholders and of the Board of Directors. The Chief Executive Officer shall have general supervision of the business and operations of the Company, subject, however, to the control of the Board of Directors. The Chief Executive Officer shall perform all of the duties usually incumbent upon a Chief Executive Officer of a corporation and incident to the office of Chief Executive Officer. The Chief Executive Officer shall also have such powers and perform such duties as are assigned by these bylaws and shall have such other powers and perform such other duties, not inconsistent with these bylaws, as may from time to time be assigned by the Board of Directors.
36. The Vice Chairman, if one shall be appointed, shall have such powers and perform such duties as are assigned by these bylaws and shall have such other powers and perform such other duties, not inconsistent with these bylaws, as from time to time may be assigned by the Board of Directors or the *Chairman of the Board*
37. The President, if one shall be appointed, shall have such powers and perform such duties as are assigned by these bylaws and shall have such other powers and perform such other duties, not inconsistent with these bylaws, as from time to time may be assigned by the Board of Directors or the *Chairman of the Board*

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38 Each Vice President shall have such powers and perform such duties as are assigned by these bylaws and shall have such other powers and perform such other duties, not inconsistent with these bylaws, as from time to time may be assigned by the Board of Directors or the Chairman of the Board

39 The Treasurer shall have charge and custody of, and be responsible for, all funds of the Company. The Treasurer shall regularly enter or cause to be entered in books to be kept by the Treasurer or under the Treasurer's direction for this purpose full and adequate account of all moneys received or paid by the Treasurer for the account of the Company; the Treasurer shall exhibit such books of account and records to any of the directors of the Company at any time upon request at the office of the Company where such books and records shall be kept and shall render a detailed statement of these accounts and records to the Board of Directors as often as it shall require the same. The Treasurer shall also have such powers and perform such duties as are assigned the Treasurer by these bylaws and shall have such other powers and perform such other duties, not inconsistent with these bylaws, as from time to time may be assigned by the Board of Directors

40 It shall be the duty of the Secretary to act as Secretary of all meetings of the Board of Directors and of the stockholders of the Company, and to keep the minutes of all such meetings in the proper book or books to be provided for that purpose; the Secretary shall see that all notices required to be given by or for the Company or the Board of Directors or any committee are duly given and served; the Secretary shall be custodian of the seal of the Company and shall affix the seal, or cause it to be affixed, to all documents, the execution of which on behalf of the Company, under its seal shall have been duly authorized in accordance with the provisions of these bylaws. The Secretary shall have charge of the share records and also of the other books, records, and papers of the Company relating to its organization and management as a corporation and shall see that the reports, statements and other documents required by law are properly kept and filed; and shall in general perform all the duties usually incident to the office of Secretary. The Secretary shall also have such powers and perform such duties as are assigned by these bylaws, and shall have such other powers and perform such other duties, not inconsistent with these bylaws, as from time to time may be assigned by the Board of Directors.

41 The Controller shall perform the usual duties pertaining to the office of the Controller. The Controller shall have charge of the supervision of the



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- 43 The compensation of the Chairman of the Board, the Chief Executive Officer, members of the Senior Management Team, Treasurer, Secretary and Controller shall be fixed by the Board of Directors. The compensation of such other officers as may be appointed in accordance with the provisions of these bylaws may be fixed by any member of the Senior Management Team, or by an officer of the Company to whom such power may from time to time be delegated by a member of the Senior Management Team. No officer shall be prevented from receiving such compensation by reason of also being a director of the Company.

CONTRACTS, CHECKS, DRAFTS, BANK ACCOUNTS, ETC.

- 44 The Board of Directors except as in these bylaws otherwise provided, may authorize any officer or officers, agent or agents, in the name of and on behalf of the Company, to enter into any contract or execute and deliver any instrument, and such authority may be general or confined to specific instances; and, unless so authorized by the Board of Directors or expressly authorized by these bylaws, no officer or agent or employee shall have any power or authority to bind the Company by any contract or engagement or to pledge its credit or to render it pecuniarily liable for any purpose or to any amount.
- 45 No loans shall be contracted on behalf of the Company and no negotiable paper shall be issued in its name unless authorized by resolution of the Board of Directors. When authorized by the Board of Directors, any officer or agent of the Company thereunto authorized may effect loans and advances at any time for the Company from any bank, trust company, or other institution, or from any firm, corporation or individual, and for such loans and advances may make, execute and deliver promissory notes, bonds, or other certificates or evidences of indebtedness of the Company and, when authorized so to do, may pledge, hypothecate or transfer any securities or other property of the Company as security for any such loans or advances. Such authority may be general or confined to specified instances.
- 46 All checks, drafts and other orders for the payment of moneys out of the funds of the Company and all notes or other evidences of indebtedness of the Company shall be signed on behalf of the Company in such manner as shall from time to time be determined by resolution of the Board of Directors.
- 47 All funds of the Company not otherwise employed shall be deposited from time to time to the credit of the Company in such banks, trust companies or other depositories as the Board of Directors may select or as may be selected by any officer or officers, agent or agents of the Company to whom such power may from time to time be delegated by the Board of Directors; and for the purpose of such deposit, the Chairman of the Board, the Chief Executive Officer, a Vice President, the Treasurer, the Controller, the Secretary or any other officer or agent or employee of the Company to whom such power may be delegated by the Board of Directors, may endorse, assign and deliver checks, drafts and other orders for the payment of moneys which are payable to the order of the Company.

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### CERTIFICATES AND TRANSFERS OF SHARES

- 48 The shares of the Company shall be represented by certificates or shall be uncertificated. Certificates for shares of the Company shall be in such form as shall be approved by the Board of Directors. Such certificates shall be numbered and registered in the order in which they are issued and shall be signed by the Chairman of the Board, the President or a Vice President and the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer. Where any such certificate is countersigned by a transfer agent, other than the Company or its employee, or by a registrar, other than the Company or its employee, any other signature on such certificate may be a facsimile, engraved, stamped or printed. In the event that an officer whose facsimile signature appears on such certificate ceases for any reason to hold the office indicated and the Company or its transfer agent has on hand a supply of share certificates bearing such officer's facsimile signature, such certificates may continue to be issued and registered until such supply is exhausted.
- 49 Transfers of shares of the Company shall be made only on the books of the Company by the holder thereof, or by the holder's attorney thereunto duly authorized and on either the surrender of the certificate or certificates for such shares properly endorsed or upon receipt of proper transfer instructions from the registered owner of uncertificated shares. Every certificate surrendered to the Company shall be marked "Cancelled," with the date of cancellation, and no new certificate shall be issued in exchange therefor until the old certificate has been surrendered and cancelled, except as hereinafter provided. Uncertificated shares shall be cancelled and issuance of new equivalent uncertificated shares shall be made to the person entitled thereto and the transaction shall be recorded upon the books of the Company.
- 50 The holder of any shares of the Company shall immediately notify the Company of any loss, destruction or mutilation of the certificate therefor and the Company may issue a new certificate in the place of any certificate theretofore issued by it alleged to have been lost, destroyed or mutilated. The Board of Directors may, in its discretion, as conditions to the issue of any such new certificate, require the owner of the lost or destroyed certificate or the owner's legal representatives to make proof satisfactory to the Board of Directors of the loss or destruction thereof and to give the Company a bond in such form, in such sum and with such surety or sureties as the Board of Directors may direct, to indemnify the Company against any claim that may be made against it on account of any such certificate so alleged to have been lost or destroyed.

### DETERMINATION OF RECORD DATE

- 51 In order that the Company may determine the stockholders entitled to notice of or to vote at any meeting of stockholders 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

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Board of Directors, and which record date: (1) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting and (2) in the case of any other action, shall not be more than sixty (60) days prior to such other action. If no record date is fixed: (1) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders 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 stockholders 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 stockholders of record entitled to notice of or to vote at a meeting of stockholders 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.

#### REGISTERED STOCKHOLDERS

- 52 The Company shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided by the laws of Delaware

#### FISCAL YEAR

- 53 The fiscal year shall begin on the first day of January and end on the thirty-first day of December in each year

#### NOTICES

- 54 Whenever under the provision of these bylaws notice is required to be given to any director or stockholder, it shall be construed to mean personal notice, but such notice may be given in writing, by mail, by depositing the same in a post office or letter box, in a postpaid sealed wrapper, addressed to such director or stockholder at such address as appears on the books of the Company and such notice shall be deemed to be given at the time when the same shall be thus mailed. Any such notice may also be given by electronic transmission in accordance with applicable law
- 55 Any notice required to be given under these bylaws may be waived in writing or by electronic transmission, given by the person or persons entitled to said notice, whether before or after the time stated therein

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AMENDMENTS

56. Except as otherwise provided in the Certificate of Incorporation of the Company and consistent therewith, these bylaws may be altered, amended or repealed or new bylaws may be made by the affirmative vote of the holders of record of a majority of the shares of the Company entitled to vote, at any annual or special meeting, provided that such proposed action shall be stated in the notice of such meeting, or, by a vote of the majority of the whole Board of Directors, at any regular meeting without notice, or at any special meeting provided that notice of such proposed action shall be stated in the notice of such special meeting

# EXHIBIT F

# UAL CORP /DE/ (UALZQ)

1200 ALGONQUIN ROAD  
ELK GROVE TOWNSHIP, IL 60007  
847.700.4000

## EX-3.2

(I) ARTICLES OF INCORPORATION; (II) BYLAWS  
8-K Filed on 02/01/2006 - Period: 02/01/2006  
File Number 001-06033



AMENDED AND RESTATED BYLAWS  
OF UAL CORPORATION

(as amended and restated on February 1, 2006)

ARTICLE 1

Definitions

As used in these Restated Bylaws, unless the context otherwise requires, the following terms shall have the following meanings:

1 1 "Assistant Secretary" means an Assistant Secretary of the Corporation.

1 2 "Assistant Treasurer" means an Assistant Treasurer of the Corporation.

1 3 "Board" means the Board of Directors of the Corporation.

1 4 "Chairman" means the Chairman of the Board of Directors of the Corporation.

1 5 "Change in Ownership" means any sale, disposition, transfer or issuance or series of sales, dispositions, transfers and/or issuances of shares of the capital stock by the Corporation or any holders thereof which results in any person or group of persons (as the term "group" is used under the Securities Exchange Act of 1934, as amended), other than the holders of Common Stock and PBGC Preferred Stock as of the date of issuance of the PBGC Preferred Stock, owning capital stock of the Corporation possessing the voting power (under ordinary circumstances and without regard to cumulative voting rights) to elect a majority of the Board.

1 6 "Chief Executive Officer" means the Chief Executive Officer of the Corporation.

1 7 "Common Stock" means the common stock, par value \$0.01 per share, of the Corporation.

1 8 "Corporation" means UAL Corporation.

1 9 "Director" means a director of the Corporation.

1 10 "Entire Board" means all Directors who would be in office if there were no vacancies.

1 11 "Fundamental Change" means the occurrence of any of the following: (a) any sale, transfer or disposition of more than 50% of the property or assets of the Corporation and its subsidiaries on a consolidated basis (measured either by book value in accordance with generally accepted accounting principles consistently applied or by fair market value determined in the reasonable good faith judgment of the Board) in any transaction or series of transactions (other than sales in the ordinary course of business) and (b) any merger or consolidation to which the Corporation is a party, except for (x) a merger which is effected solely to change the state of incorporation of the Corporation or (y) a merger in which the Corporation is the surviving person, the terms of the PBGC Preferred Stock are not changed or altered in any respect, the PBGC Preferred Stock is not exchanged for cash, securities or other property or assets, and after giving effect to such merger, the holders of the capital stock of the Corporation as of the date prior to the merger or consolidation shall continue to own the outstanding capital stock of the Corporation possessing the voting power (under ordinary circumstances) to elect a majority of the Board.

1 12 "General Counsel" means the General Counsel of the Corporation.

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- 1.13 "GCL" means the General Corporation Law of the State of Delaware, as amended from time to time
- 1.14 "PBGC Preferred Stock" means the 2% convertible preferred stock, par value \$0.01, of the Corporation
- 1.15 "Preferred Stock" means the serial preferred stock, without par value, of the Corporation and the PBGC Preferred Stock.
- 1.16 "President" means the President of the Corporation
- 1.17 "Restated Certificate" means the Restated Certificate of Incorporation of the Corporation, as amended from time to time
- 1.18 "Restated Bylaws" means the Amended and Restated Bylaws of the Corporation, as amended from time to time
- 1.19 "Rights Plan" means an arrangement for distribution to Stockholders of Common Stock or Preferred Stock purchase rights that provide all Stockholders, other than persons who meet certain criteria specified in the arrangement, with the right to purchase Common Stock or Preferred Stock at less than the prevailing market price (sometimes referred to as a "poison pill").
- 1.20 "Secretary" means the Secretary of the Corporation
- 1.21 "Stockholders" means the stockholders of the Corporation
- 1.22 "Treasurer" means the Treasurer of the Corporation
- 1.23 "Union Directors" means those directors of the Corporation elected by the holders of Class IAM Preferred Stock and the Class Pilot MEC Preferred Stock pursuant to Article Fourth, Parts III and IV of the Restated Certificate
- 1.24 "Vice President" means a Vice President of the Corporation

## ARTICLE 2

### Stockholders' Meetings

2.1 *Annual Meeting* A meeting of Stockholders shall be held annually for the election of Directors and the transaction of other business at an hour and date as shall be determined by the Board and designated in the notice of meeting.

2.2 *Special Meetings* Subject to the Restated Certificate, a special meeting of the Stockholders may be called only by the Chief Executive Officer, the Chairman or the Board, and at an hour and date as shall be determined by them. At any special meeting of Stockholders, no business other than that set forth in the notice thereof given pursuant to Section 2.4 may be transacted.

2.3 *Place of Meetings* All meetings of Stockholders shall be held at such places, within or without the State of Delaware, as may from time to time be fixed by the Board or as specified or fixed in the respective notices. The Board may, in its sole discretion, determine that a meeting of the Stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the GCL (or any successor provision thereto). Any previously scheduled meeting of the Stockholders may be postponed by action of the Board taken prior to the time previously scheduled for such annual meeting of Stockholders.

2.4 *Notices of Stockholders' Meetings* Except as otherwise provided in Section 2.5 or otherwise required by the Restated Certificate or applicable law, written notice of each meeting of Stockholders, whether annual or special, shall be given to each Stockholder required or permitted to take any action at or entitled to notice of such meeting not less than ten (10) nor more than sixty (60) days before the date on which the meeting is to be



held, by delivering such notice to him, personally or by mail. If mailed, such notice shall be deemed to be given when deposited in the United States mail, with postage prepaid, directed to the Stockholder at his address as it appears on the stock books of the Corporation. Every notice of a meeting of Stockholders shall state the place, date and hour of the meeting and the purpose or purposes for which the meeting is called.

2.5 *Waivers of Notice.* Notwithstanding any other provision in these Restated Bylaws, notice of any meeting of Stockholders shall not be required as to any Stockholder who shall attend such meeting in person or be represented by proxy, except when such Stockholder attends such meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business at such meeting because the meeting is not lawfully called or convened. If any Stockholder shall, in person or represented by proxy, waive notice of any meeting, whether before or after such meeting, notice thereof shall not be required as to such Stockholder.

2.6 *Quorum Requirements and Required Vote at Stockholder Meetings*

(a) Except as otherwise required by applicable law, the Restated Certificate or these Restated Bylaws, at all meetings of Stockholders the presence, in person or represented by proxy, of the holders of outstanding shares representing at least a majority of the total voting power entitled to vote at a meeting of Stockholders shall constitute a quorum for the transaction of business; *provided, however,* that where a separate vote of a class or classes or series of stock is required the presence in person or represented by proxy of the holders of outstanding shares representing at least a majority of the total voting power of all outstanding shares of such class or classes or series shall constitute a quorum thereof entitled to take action with respect to such separate vote.

(b) Except as otherwise required by applicable law, the Restated Certificate or these Restated Bylaws, including, without limitation, Section 3.3 hereof, the affirmative vote of a majority in voting power of the shares present in person or represented by proxy and entitled to vote on the subject matter at a meeting of Stockholders at which a quorum is present shall be the act of the Stockholders.

(c) The holders of a majority in voting power of the shares entitled to vote and present in person or represented by proxy at any meeting of Stockholders, whether or not a quorum is present, may adjourn such meeting to another time and place. At any such adjourned meeting at which a quorum shall be present, any business may be transacted that might have been transacted at the meeting as originally called. Unless otherwise required by applicable law, the Restated Certificate or these Restated Bylaws, no notice of an adjourned meeting need be given.

2.7 *Proxies.* Each Stockholder entitled to vote at a meeting of Stockholders may authorize another person or persons to act for him by proxy, but such proxy shall no longer be valid eleven months after the date of such proxy.

2.8 *Judges.* At every meeting of Stockholders, the votes shall be conducted by two judges appointed for that purpose by the Board. All questions with respect to the qualification of voters, the validity of the proxies and the acceptance or rejection of votes shall be decided by such judges. Before acting at any meeting, the judges shall be sworn faithfully to execute their duties with strict impartiality and according to the best of their ability. If any judge appointed to act at any meeting shall fail to be present or shall decline to act, the Board or the Chairman shall appoint another judge to act in his place.

2.9 *Conduct of Stockholders' Meetings.* The Chairman or, in his absence, a Director or officer designated by the Chairman, shall preside at all meetings of Stockholders and may establish such rules of procedure for conducting the meetings as he or she deems fair and reasonable.

2.10 *Proposing Business or Nominating Directors, other than Union Directors, at Stockholders' Meetings*

(a) No business may be transacted at an annual meeting of Stockholders unless (1) specified in the notice of such meeting or any supplement thereto, given by or at the direction of the Board (or any duly authorized committee of the Board); (2) otherwise properly brought before the annual meeting by or at the direction of the Board (or any duly authorized committee of the Board); or (3) otherwise properly brought before the annual meeting by any Stockholder who (A) is a Stockholder of record on the date of the giving of the notice provided for in this Section 2.10 and, as of the record date for the determination of Stockholders, is entitled to vote at such annual meeting on the matter that is being brought before the meeting by such Stockholder, and (B) complies with the notice procedures set forth in this Section 2.10.

(b) Nominations for Directors, other than Union Directors, may be made at any annual meeting of Stockholders or at any special meeting of Stockholders called for the purpose of electing such Directors (the annual meeting or any special meeting of Stockholders herein called the "Stockholders' Meeting"), (1) by or at the direction of the Board (or any duly authorized committee of the Board), or (2) by any Stockholder who (A) is a Stockholder of record on the date of the giving of the notice provided for in this Section 2.10 and, as of the record date for the determination of Stockholders, is entitled to vote at such Stockholders' Meeting on the election of such Directors, and (B) complies with the notice procedures set forth in this Section 2.10.

(c) In addition to any other applicable requirements for business to be properly brought before, or for a nomination of a Director, other than a Union Director, to be made at, a Stockholders' Meeting by a Stockholder, such Stockholder must have given timely notice in writing to the Secretary. For a Stockholders' Meeting that is an annual meeting, a timely written notice must be delivered to, or mailed to and received by, the Secretary at the principal executive offices of the Corporation not less than one hundred-twenty (120) days prior to the anniversary date of the immediately preceding annual meeting of Stockholders. In the event the annual meeting is called for a date that is more than thirty (30) days earlier than or more than sixty (60) days later than such anniversary date, or if the Stockholders' Meeting is a special meeting, notice by the Stockholder, in order to be timely, must be received not later than the close of business on the tenth (10th) calendar day following the day on which notice of the date of the Stockholders' Meeting was mailed or public disclosure of the date of the Stockholders' Meeting was first made, whichever first occurs. In no event shall any adjournment of a Stockholders' Meeting or any announcement or notice thereof commence a new time period for the giving of a notice as described above.

(1) When proposing business other than the election of Directors in accordance with this Section, a Stockholder's notice to the Secretary must set forth (A) a brief description of the business desired to be brought before the Stockholders' Meeting and the reasons for conducting such business at the Stockholders' Meeting, (B) the name and record address of such Stockholder, (C) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such Stockholder, (D) a description of all arrangements or understandings between such Stockholder and any other person or persons (including their names) in connection with the proposal of such business by such Stockholder and any material interest of such Stockholder in such business and (E) a representation that such Stockholder intends to appear in person or by proxy at the Stockholders' Meeting to bring such business before the meeting.

(2) When proposing to nominate a Director, other than a Union Director, a Stockholder's notice to the Secretary must set forth (A) as to each person whom the Stockholder proposes to nominate for election as a Director, other than a Union 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, (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 (the "Exchange Act"), and the rules and regulations promulgated thereunder, (v) the written consent of such person to be named as a nominee and to serve as a Director if so elected and (vi) such other information as may be reasonably necessary (as defined by the Board) to permit the Corporation to determine that (y) the person satisfies any qualification requirements of the Restated Certificate and (z) no violation of the Clayton Act will occur; and (B) as to the Stockholder giving notice, (i) the name and record address of such Stockholder, (ii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such Stockholder, (iii) a description of all arrangements or understandings between such Stockholder 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 Stockholder, (iv) a representation that such Stockholder intends to appear in person or by proxy at the Stockholders' Meeting to nominate the persons named in its notice and (v) any other information relating to such Stockholder 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 and the rules and regulations promulgated thereunder. The Board shall have the power to determine all matters necessary for assessing compliance with the foregoing requirements.

(3) A Stockholder may propose to nominate a Director at a Stockholders' Meeting that is a special meeting by complying with the notice requirements of this Section only if such Stockholders' Meeting has been called for the purpose of electing Directors. A Stockholder may not propose any other

business to be brought before a Stockholders' Meeting that is a special meeting regardless of the purpose for which such Stockholders' Meeting has been called

(4) Nominations for Union Directors shall only be made by the holders of the class of stock eligible to elect such class of Directors, and then only in accordance with the procedures and qualification requirements of the Restated Certificate and any stockholder agreements applicable to such nomination process

(d) If the chairman of the Stockholders' Meeting determines that a nomination was not made in accordance with the foregoing procedures, the chairman shall declare to the Stockholders' Meeting that the nomination was defective and such defective nomination shall be disregarded.

(e) No business shall be conducted at a Stockholders' Meeting except business brought before the Stockholders' Meeting in accordance with the procedures set forth in Article 2 of these Restated Bylaws; provided, however, that, once business has been properly brought before the Stockholders' Meeting in accordance with such procedures, nothing in this Section 2.10 shall be deemed to preclude discussion by any Stockholder of any such business. If the chairman of a Stockholders' Meeting determines that business was not properly brought before the Stockholders' Meeting in accordance with the foregoing procedures, the chairman shall declare to the Stockholders' Meeting that the business was not properly brought before the meeting and such business shall not be transacted

2.11 *List of Stockholders.* It shall be the duty of the Secretary or other officer who has charge of the stock ledger to prepare and make, at least ten (10) days before each Stockholders' Meeting, a complete list of the stockholders entitled to vote at such meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in such stockholder's name. Such list shall be produced and kept available at the times and places required by law.

### ARTICLE 3

#### Board Of Directors

3.1 *Number and Term of Office* The number and term of office of Directors on the Board shall be determined as provided in the Restated Certificate

3.2 *Powers* The Board may, except as otherwise provided in the Restated Certificate or the GCL, exercise all such powers and do all such acts and things as may be exercised or done by the Corporation.

3.3 *Election* Except as otherwise required by applicable law or the Restated Certificate, and notwithstanding Section 2.6(c) hereof, Directors shall be elected by a plurality of the votes cast at a meeting of Stockholders by the holders of shares entitled to vote on their election.

3.4 *Place of Meetings* Meetings of the Board may be held either within or without the State of Delaware

3.5 *Organization Meeting.* The Board shall meet as soon as practicable after each annual meeting of Stockholders at the place of such annual meeting for the purpose of organization and the transaction of other business. No notice of such meeting of the Board shall be required. Such organization meeting may be held at any other time or place specified in a notice given as hereinafter provided for special meetings of the Board, or in a consent and waiver of notice thereof, signed by all of the Directors.

3.6 *Stated Meetings.* The Board shall from time to time, by resolution adopted by the affirmative vote of at least a majority of the votes entitled to be cast by the entire Board, appoint the time and place for holding stated meetings of the Board; and such meetings shall thereupon be held at the time and place so appointed, without the giving of any special notice with regard thereto. Any and all business may be transacted at any stated meeting.

3.7 *Special Meetings.* Special meetings of the Board shall be held whenever called by the Secretary of the Board, at the direction of any three Directors, or by the Chairman, or, in the event that the office of the Chairman is vacant, by the Chief Executive Officer, or in the event that the office of the Chairman and Chief Executive Officer

are vacant, by the President. Notice of a special meeting shall set forth a description of such meeting and be sent to the Directors as provided in Section 3.8.

3.8 *Notices of Board Meetings.* Notice of any meeting shall be sent to each Director at his residence or usual place of business either (a) by reputable overnight delivery service in circumstances to which such service guarantees next day delivery, not later than on the day that is the second business day immediately preceding the day of such meeting, or (b) by facsimile, telex, telegram or electronic mail, not later than twenty-four (24) hours before the time of such meeting. If sent by overnight delivery service, such notice shall be deemed to be given when delivered to such service; if sent by facsimile, telex, telegram or electronic mail, such notice shall be deemed to be given when transmitted. Notice of any meeting of the Board need not however be given to any Director, if waived by him in writing or if, subject to applicable law, he shall be present at the meeting. Any meeting of the Board shall be a legal meeting without any notice thereof having been given if all of the Directors shall be present thereat, except when a Director attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

3.9 *Quorum and Manner of Acting.* Except as otherwise required by applicable law, the Restated Certificate or these Restated Bylaws, the presence at any organization, stated or special meeting of Directors having at least a majority of the votes entitled to be cast by the Entire Board shall constitute a quorum for the transaction of business; and, except as otherwise required by applicable law, the Restated Certificate or these Restated Bylaws, the affirmative vote of a majority of the votes entitled to be cast by the Directors present at any meeting at which a quorum is present shall be the act of the Board. In the absence of a quorum, the affirmative vote of a majority of the votes entitled to be cast by the Directors present may adjourn any meeting, from time to time, until a quorum is present.

3.10 *Telephone Meetings.* Directors or members of any committee of the Board may participate in a meeting of the Board or of such committee by means of 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 3.10 shall constitute presence in person at such meeting.

3.11 *Chairman of the Board Pro Tempore.* In the absence of both the Chairman and the Chief Executive Officer at any meeting of the Board, the Board may appoint from among its members a Chairman of the Board pro tempore, who shall preside at such meeting, except where otherwise provided by law.

3.12 *Removal of Directors.* Any Director or the entire Board may be removed with or without cause as provided under the GCL.

3.13 *Vacancies and Newly Created Directorships.* Except as otherwise provided in the Restated Certificate, vacancies and newly created directorships resulting from any increase in the authorized number of Directors may be filled by a majority of the Directors then in office, even if less than a quorum, or by a sole remaining Director, and the Directors so chosen shall hold office until the next election of Directors and until their successors are duly elected and qualified or until earlier resignation or removal. If there are no Directors in office, then an election of Directors may be held in the manner provided by statute.

3.14 *Directors' Fees.* The Board shall have authority to determine, from time to time, the amount of compensation that shall be paid to its members for attendance at meetings of the Board or of any committee of the Board, which compensation may be payable currently or deferred.

3.15 *Action Without Meeting.* Any action required or permitted to be taken at any meeting of the Board or any committee of the Board may be taken without a meeting if all of the members of the Board or of any such committee, as the case may be, consent thereto in writing, by electronic transmission or transmissions, or as otherwise permitted by law and, if required by law, the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or of such committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

3.16 *Emergency Bylaws.* In the event of any emergency, disaster or catastrophe, as referred to in Section 110 of the GCL, or other similar emergency condition, as a result of which a quorum of the Board or a standing committee of the Board cannot readily be convened for action, then the director or directors in attendance at the meeting shall constitute a quorum. Such director or directors in attendance may further take action to appoint

one or more of themselves or other directors to membership on any standing or temporary committees of the Board as they shall deem necessary and appropriate, provided that such appointments comply with any and all applicable laws, as well as rules of any securities exchange to which the Corporation is subject

## ARTICLE 4

### Board Committees

#### 4.1 Designation

(a) Except as otherwise provided in the Restated Certificate, the Board may, by resolution adopted by the affirmative vote of at least a majority of the votes entitled to be cast by the entire Board designate one or more committees of the Board, each such committee to consist of one or more Directors. Except as otherwise provided in the Restated Certificate, unless sooner discharged by the affirmative vote of a majority of the votes entitled to be cast by the entire Board, members of each committee of the Board shall hold office until the organization meeting of the Board in the next subsequent year and until their respective successors are appointed. The Nominating/Governance Committee of the Board shall have power to recommend to the Board a chairman of each committee of the Board by the affirmative vote of a majority of the votes entitled to be cast by all of the members of the Nominating/Governance Committee. The Board shall have the power to appoint one of its members to act as chairman of each committee of the Board.

(b) So far as practicable, members of each committee of the Board shall be appointed annually at the organization meeting of the Board. The Board may designate one or more Directors as alternate members of any committee of the Board, who may replace any absent or disqualified member at any meeting of such committee.

(c) Notwithstanding the foregoing, the Board shall at all times maintain an Audit Committee, a Human Resources Committee and a Nominating/Governance Committee.

(d) Notwithstanding the foregoing, except as required by law, no committee of the Board will have the authority to (i) issue dividends, distributions or securities, except for issuances of cash or securities pursuant to employee benefit plans; (ii) to approve a Fundamental Change or Change in Ownership, except as may be required in the exercise of fiduciary duties; or (iii) to take any action that would require the approval of the Stockholders pursuant to the GCL. Notwithstanding Section 8.1, this Section 4.1(d) may only be amended by the affirmative vote of the holders of at least a majority in voting power of the stock entitled to vote thereon, at an annual meeting of Stockholders or at a special meeting thereof, the notice of which meeting shall include the form of the proposed amendment to this Section 4.1(d).

#### 4.2 Meetings

(a) Stated meetings of any committee of the Board shall be held at such times and at such places as shall be fixed, from time to time, by resolution adopted by the Board or by the affirmative vote of a majority of the votes entitled to be cast by the members of such committee of the Board and upon notification pursuant to Section 4.3 to all the members of such committee. Any and all business may be transacted at any stated meeting of any committee of the Board.

(b) Special meetings of any committee of the Board may be called at any time by the chairman of such committee or by any two members of such committee. Notice of a special meeting of any committee of the Board shall set forth a description of the business to be transacted at such meeting and be sent to the members of such committee of the Board as provided in Section 4.3.

4.3 *Notice of Board Committee Meetings* Notice of any meeting of any committee of the Board shall be sent to each member of such committee at his residence or usual place of business either (a) by reputable overnight delivery service in circumstances to which such service guarantees next day delivery, not later than on the day that is the second business day immediately preceding the day of such meeting, or (b) by facsimile, telex, telegram or electronic mail, not later than twenty-four (24) hours before the time of such meeting. If sent by overnight delivery service, such notice shall be deemed to be given when delivered to such service; if sent by facsimile, telex, telegram or electronic mail, such notice shall be deemed to be given when transmitted. Notice of any meeting of a committee of the Board need not however be given to any member of such committee, if waived by him in writing or if, subject to applicable law, he shall be present at the meeting. Any meeting of a committee of

the Board shall be a legal meeting without any notice thereof having been given if all of the members shall be present thereat except when a Director attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened

4.4 *Place of Meetings* Meetings of any committee of the Board may be held either within or without the State of Delaware

4.5 *Quorum and Voting Requirements of Board Committees*

(a) The presence of Directors entitled to cast at least a majority of the aggregate number of votes entitled to be cast by all Directors on a committee of the Board shall constitute a quorum for the transaction of business, and any act of a committee of the Board shall require the affirmative vote of at least a majority of the votes entitled to be cast by the Directors present at a meeting of such committee at which a quorum is present

(b) The members of any committee of the Board shall act only as a committee of the Board, and the individual members of the Board shall have no power as such

4.6 *Records* Each committee of the Board shall keep a record of its acts and proceedings and shall report the same, from time to time, to the Board. The Secretary, or, in his absence, an Assistant Secretary, shall act as secretary to each committee of the Board, or a committee of the Board may, in its discretion, appoint its own secretary.

4.7 *Vacancies* Except as otherwise provided in the Restated Certificate, any vacancy in any committee of the Board shall be filled by a majority of the Directors then in office.

4.8 *Executive Committee*

(a) In addition to any requirements set forth in the Restated Certificate, an Executive Committee shall be appointed, to consist of the Chairman, ex officio, and two or more other Directors; *provided, however*, that at least a majority of the Executive Committee shall consist of Directors who are neither officers nor employees of the Corporation or of any of its affiliated corporations.

(b) Subject to the provisions of the GCL, the Executive Committee shall have and may exercise all the powers of the Board in the management of the business and affairs of the Corporation, including, without limitation, the power to authorize the seal of the Corporation to be affixed to all papers that may require it, but excluding any powers granted by the Board to any other committee of the Board; *provided*, that neither the Executive Committee nor any other committee of the Board shall be authorized to (i) elect any officer designated as such in Section 5.1 or to fill any vacancy in any such office, (ii) designate the Chief Executive Officer, (iii) fill any vacancy in the Board or any newly created Directorship, (iv) amend these Restated Bylaws or (v) take any action that under these Restated Bylaws is required to be taken by vote of a specified proportion of the entire Board or of the Directors at the time in office

(c) Subject to any provision in the Restated Certificate or the GCL, any action herein authorized to be taken by the Executive Committee and which is duly taken by it in accordance herewith shall have the same effect as if such action were taken by the Board

## ARTICLE 5

### Officers, Employees and Agents: Powers And Duties

5.1 *Officers* The officers of the Corporation, who shall be elected by the Board, may be a Chairman of the Board (who shall be a Director), a Treasurer and one or more Assistant Treasurers, and shall be a Chief Executive Officer (who shall be a Director), a President, one or more Vice Presidents, a General Counsel, a Secretary and one or more Assistant Secretaries. The Board may also elect such other officers and select such other employees or agents as, from time to time, may appear to be necessary or advisable in the conduct of the affairs of the Corporation. Any officer may also be elected to another office or offices

5 2 *Term of Office* Subject to the provisions of the Restated Certificate, so far as practicable, each officer shall be elected at the organization meeting of the Board in each year, and shall hold office until the organization meeting of the Board in the next subsequent year and until his successor is chosen or until his earlier death, resignation or removal in the manner hereinafter provided.

5 3 *Removal of Officers* Any officer may be removed at any time, either for or without cause, by the affirmative vote of at least a majority of the votes entitled to be cast by the entire Board, at any meeting called for that purpose

5 4 *Vacancies* If any vacancy occurs in any office, the Board may elect a successor to fill such vacancy for the remainder of the term

5 5 *Chief Executive Officer.* The Chief Executive Officer shall have general and active control of the business and affairs of the Corporation. He shall have general power (a) to execute bonds, deeds and contracts in the name of the Corporation, (b) to affix the corporate seal, (c) to sign stock certificates, (d) subject to the provisions of the Restated Certificate, these Restated Bylaws and the approval of the Board, to select all employees and agents of the Corporation whose selection is not otherwise provided for and to fix the compensation thereof, (e) to remove or suspend any employee or agent who shall not have been selected by the Board, (f) to suspend for cause, pending final action by the Board any employee or agent who shall have been selected by the Board and (g) to exercise all the powers usually and customarily performed by the chief executive officer of a corporation

5 6 *Chairman of the Board*

(a) The Board may elect a Director as Chairman of the Board

(b) The Chairman shall preside at all meetings of Stockholders and of the Board at which he may be present. The Chairman shall have such other powers and duties as he may be called upon by the Board to perform

5 7 *President* The President, if not designated as Chief Executive Officer of the Corporation, shall perform such duties as are delegated by the Board, the Chairman or the Chief Executive Officer. In the event of an absence, disability or vacancy in the office of the Chief Executive Officer, the President shall act in the place of the Chief Executive Officer with authority to exercise all his powers and perform his duties.

5 8 *Vice Presidents and Other Officers* The several Vice Presidents and other elected officers, including, without limitation, the General Counsel, shall perform all such duties and services as shall be assigned to or required of them, from time to time, by the Board, or the Chief Executive Officer, respectively. In the event of the absence or disability of both the Chairman and the Chief Executive Officer, the President may designate one of the several Vice Presidents to act in his place with authority to exercise all of his powers and perform his duties, provided that the Board may change such designation, or if the President fails or is unable to make such designation, the Board may make such designation at a regular or special meeting called for that purpose.

5 9 *Secretary* The Secretary shall attend to the giving of notice of all meetings of Stockholders and the Board and shall keep and attest true records of all proceedings thereat. He shall have charge of the corporate seal and have authority to attest any and all instruments or writings to which the same may be affixed. He shall keep and account for all books, documents, papers and records of the Corporation, except those which are directed to be in charge of the Treasurer. He shall have authority to sign stock certificates and shall generally perform all the duties usually appertaining to the office of secretary of a corporation. In the absence of the Secretary, an Assistant Secretary or Secretary pro tempore shall perform his duties.

5 10 *Treasurer* The Treasurer, if any, shall be responsible for the collection, receipt, care, custody and disbursement of the funds of the Corporation and shall deposit or cause to be deposited all funds of the Corporation in and with such depositories as the Board shall, from time to time, direct. He shall have the care and custody of all securities owned by the Corporation, and shall deposit such securities with such banks or in such safe deposit vaults, and under such controls, as the Board shall, from time to time, direct. He shall disburse funds of the Corporation on the basis of vouchers properly approved for payment by the controller of the Corporation or his duly authorized representative. He shall be responsible for the maintenance of detailed records of cash and security transactions and shall prepare such reports thereof as may be required. He shall have the power to sign stock certificates and to endorse for deposit or collection or otherwise all checks, drafts, notes, bills of exchange or other commercial paper payable to the Corporation and to give proper receipts or discharges therefor. He shall have such other duties as are

commonly incidental to the office of treasurer of a corporation. In the absence of the Treasurer, an Assistant Treasurer shall perform his duties.

5.11 *Additional Powers and Duties* In addition to the foregoing especially enumerated duties and powers, the officers of the Corporation shall perform such other duties and exercise such further powers as may be provided in these Restated Bylaws or as the Board may, from time to time, determine or as may be assigned to them by any competent superior officer.

5.12 *Compensation* Except as otherwise provided in the Restated Certificate, the compensation of all officers of the Corporation shall be fixed, from time to time, by the Board.

## ARTICLE 6

### Stock And Transfers Of Stock

6.1 *Stock Certificates* The Common Stock shall be uncertificated. The shares of the Corporation other than the Common Stock shall be represented by certificates or shall be uncertificated. The Board shall have the power and authority to make such rules and regulations as it may deem expedient concerning the issue, transfer and registration of uncertificated shares or certificates for shares of stock of the Corporation. Each certificate shall be signed by the Chairman or the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, certifying the number of certificated shares owned by such Stockholder in the Corporation. Any or all of the signatures on the 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 cease 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 he were such officer, Transfer Agent or Registrar at the date of issuance.

6.2 *Transfer Agents and Registrars* The Board may, in its discretion, appoint responsible banks or trust companies as the Board may deem advisable, from time to time, to act as Transfer Agents and Registrars of the stock of the Corporation; and, when such appointments shall have been made, no stock certificate shall be valid until countersigned by one of such Transfer Agents and registered by one of such Registrars.

6.3 *Transfers of Stock* Except as otherwise provided in the Restated Certificate, and subject to any other transfer restriction applicable thereto, shares of stock may be transferred by delivery of the certificates therefor, accompanied either by an assignment in writing on the back of the certificates or by written power of attorney to sell, assign and transfer the same, signed by the record holder thereof; but no transfer shall affect the right of the Corporation to pay any dividend upon the stock to the holder of record thereof, or to treat the holder of record as the holder in fact thereof for all purposes, and no transfer shall be valid, except between the parties thereto, until such transfer shall have been made upon the books of the Corporation. No transfer of stock in violation of the provisions of Article Fourth, Part IV, Sections 4 and 5 of the Restated Certificate shall be valid as against the Corporation for any purpose.

6.4 *Lost Certificates* In case any certificate of stock shall be lost, stolen or destroyed, the Board, in its discretion, may authorize the issuance of a substitute certificate in place of the certificate lost, stolen or destroyed and may cause such substitute certificate to be countersigned by the appropriate Transfer Agent (if any) and registered by the appropriate Registrar (if any), provided that, in each such case, the applicant for a substitute certificate shall furnish to the Corporation and to such of its Transfer Agents and Registrars as may require the same, evidence to their satisfaction, in their discretion, of the loss, theft or destruction of such certificate and of the ownership thereof, and also such security or indemnity as may be required by them.

#### 6.5 *Record Date*

(a) In order that the Corporation may determine the Stockholders entitled to notice of or to vote at any meeting of Stockholders or any adjournment thereof, or, subject to applicable law, to express consent to corporate action in writing without a meeting, 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 is authorized, from time to time, to fix, in advance, a record date, which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action.



(b) A determination of Stockholders of record entitled to notice of or to vote at a meeting of Stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board may fix a new record date for the adjourned meeting

## ARTICLE 7

### Miscellaneous

7.1 *Fiscal Year* The fiscal year of the Corporation shall be the calendar year

7.2 *Surety Bonds* The Treasurer, each Assistant Treasurer and such other officers or agents of the Corporation as the Board may direct, from time to time, shall be bonded for the faithful performance of their duties in such amounts and by such surety companies as the Board may determine. The premiums on such bonds shall be paid by the Corporation and the bonds so furnished shall be in the custody of the Chief Executive Officer or the chief financial officer.

7.3 *Signature of Negotiable Instruments* All bills, notes, checks or other instruments for the payment of money shall be signed or countersigned by such officer or officers and in such manner as, from time to time, may be prescribed by resolution (whether general or special) of the Board

7.4 *Subject to Law and Restated Certificate* All powers, duties and responsibilities provided for in these Restated Bylaws, whether or not explicitly so qualified, are qualified by the provisions of the Restated Certificate and all applicable laws

7.5 *Voting of Stocks* Unless otherwise ordered by the Board of Directors, the Chairman of the Board, President and General Counsel shall each have full power and authority, in the name of and on behalf of the Corporation, to attend, act and vote at any meeting of stockholders of a corporation in which the Corporation may hold stock, and, in connection with any such meeting, shall possess and may exercise any and all rights and powers incident to the ownership of such stock which, as the owner thereof, the Corporation might possess and exercise. The Board of Directors from time to time may confer like powers upon any other person or persons

7.6 *Rights Plan* The Board shall not adopt a Rights Plan without the approval of the Stockholders; *provided that* the Board may determine to adopt a Rights Plan without first submitting it to a vote of the Stockholders if, under the circumstances then existing, the Board, including a majority of

the notice of which meeting shall include the form of the proposed amendment or supplement to or modification of these Restated Bylaws or of the proposed new bylaws, or a summary thereof.

# EXHIBIT G



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## Governance Weekly

### Shareholders Continue Efforts to Limit Poison Pills

By Thaddeus C. Kopinski, Staff Writer

In an interesting development at this month's annual meeting of **Ryan's Restaurant Group Inc.**, it was management and not dissatisfied investors that urged shareholder-friendly changes to the company's "poison pill" takeover defense. The management proposal was ratified with 61.75 percent of the shares cast.

The changes reduce the shareholder vote required to redeem the rights from two-thirds to a majority in the event of a qualified offer. In such case, a special meeting of shareholders to vote on the offer is mandatory. The pill has a number of other progressive features, including a 20 percent trigger, no dead-hand provision, a three-year sunset provision and a shareholder redemption feature.

According to the company, the changes would still provide sufficient time and bargaining power for the board. In the case of offers deemed to be coercive, abusive, or opportunistic and hostile, the board would have time to consider alternative offers, and to negotiate the best price for shareholders if a change of control transaction is to occur.

Management is also asking shareholders to approve a new poison pill policy at **Catellus Development Corp.**'s May 3 annual meeting. This follows a decision by the board in March of last year to require a non-binding shareholder vote on the adoption or material amendment of a poison pill policy. A month later, the board voted to make binding any shareholder vote on the issue. Last year management poison pill proposals were endorsed by shareholders at **ChevronTexaco**, **Eagle Materials** and **Independence Federal Savings**.

At last week's **Caterpillar Corp.**'s annual meeting, a proposal by shareholder activist John Chevedden to redeem or have stockholders vote on the company's poison pill won 51 percent support. "I believe the support for my poison pill proposal is understated. I do not have equal access to the company treasury to fund a solicitation to respond to the Caterpillar special vote-no solicitation on this topic," Chevedden told *The Friday Report*.

A proposal by Chevedden's father, Ray Chevedden, at the **PG&E Corp.** to require that any future poison pills be redeemed or put to a shareholder vote within four months, rather than the current 12 months, received a 28 percent vote at the April 20 annual meeting.

#### Market Trends

Shareholder activists have been speaking up against poison pills for well over a decade now, because of their potential to dilute investors' voting rights and to ward off a takeover bid. Yet many companies continue to adopt the pills as an anti-takeover device. Thus far this year alone, some dozen companies have adopted poison pill plans that do not require shareholder approval. [See box at the end of the story].

"The trend is for companies to redeem their existing poison pill provision and

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pledge not to institute new ones without shareholder approval," said Kathy Cohen, who follows the issue for Institutional Shareholder Services.

Thus far this year, shareholder poison pill proposals have been withdrawn at: **Bank of New York, Millicron, Newmont Mining, and Servicemaster Co.** Other companies that have dropped their pills or ended them early in response to shareholder resolutions include **Cisco Systems, Nicor and Electronic Data Systems.** At Nicor and Bank of New York, a majority of shareholders voted against poison pills in 2004; last year 25 companies dropped their poison pills. While institutional investors originally announced they would file several dozen poison pill proposals during the 2005 proxy season, in fact only about a dozen have made it to the ballot. This compares with more than 50 filed during last year.

Shareholder proposals that would require majority approval of prospective poison pills are on the agenda of the following upcoming annual meetings: **R.H. Donnelly Corp** (April 26); **McGraw-Hill Cos.** (April 27); **IMS Health Inc.** (April 29); **Pentair** (April 29); **Sierra Pacific Resources** (May 2); **Liberty Corp.** (May 3); **3M** (May 10); and **Comcast** (June 1). At the annual meeting of **CoBiz Inc.** set for May 19 shareholders are requesting that the company's poison pill be dropped.

A number of companies adopted a "fiduciary out" that would allow the board to institute a poison pill without shareholder approval if, acting in its fiduciary capacity, it found the pill in shareholders' interests. Generally, these companies promised to put such a plan to a shareholder vote the following year. **ChevronTexaco Corp.** took the unusual step of submitting its fiduciary-out provision to a shareholder vote, winning 85 percent support. When **Praxair** asked shareholders to approve its poison pill, it won the support of 77.5 percent of the votes.

#### **Controversial History**

The controversy over whether poison pills are legitimate instruments to fend off unsolicited take-over attempts, or constitute merely a management entrenchment tool has simmered since their inception in 1983. Poison pills are the most prevalent takeover defense among S&P 500 companies. The vast majority of pills were instituted after November 1985, when the Delaware Supreme Court upheld a company's right to adopt a poison pill without shareholder approval in *Moran v. Household International Inc.*

They typically take the form of rights or warrants issued to shareholders and are triggered only by a hostile acquisition attempt. When triggered, poison pills generally allow shareholders to purchase shares from, or sell shares back to, the target company ("flip-in" pill) and/or the potential acquirer ("flip-over" pill) at a price usually considerably below fair market value. Depending on the type of plan, the triggering event can either transfer wealth from the target company or dilute the equity holdings of current shareholders.

Opponents argue that poison pills insulate management from the threat of a change in control. They provide a target's board with veto power over takeover bids that may be in shareholders' best interests. Furthermore, poison pills amount to major *de facto* shifts of voting rights away from shareholders on matters pertaining to a sale of the company. Accordingly, shareholders should be asked whether they want to relinquish such power before poison pills are implemented.

Proponents of poison pills argue that, because pills force would-be acquirers to negotiate with the target company's board, they protect shareholders from coercive tactics such as two-tiered, back-end offers. Moreover, pills enhance shareholder value because such negotiations lead to higher premiums in the event of a purchase. Courts have traditionally allowed target company boards much leeway in deciding when a poison pill should be redeemed, even in the event of *bona fide* offers. Because poison pills are implemented as warrants or rights offerings, they can be put in place without shareholder approval.

**ISS Policy Change**

In its 2005 policy updates, ISS modified its guidelines on poison pills to recommend withholding votes from all directors (except from new nominees) if the company has adopted or renewed a poison pill without shareholder approval since the company's last annual meeting, does not put the pill to a vote at the current annual meeting, and there is no requirement to put the pill to shareholder vote within 12 months of its adoption. If a company that triggers this policy commits to putting its pill to a shareholder vote within 12 months of its adoption, ISS will not recommend a withhold vote.

ISS continues to recommend withholding votes from all directors (except from new nominees) of companies that have dead-hand or modified dead-hand features (e.g. slow-hand) in shareholder rights plan. A dead-hand restricts the board from redeeming the pill unless there are "continuing" or "independent" directors serving on the board, AND continuing or independent means "not affiliated with the acquirer." This means, if there were a proxy fight, and the dissident board won, the new team could not consummate the merger until the pill expires. Thus the dead hand appellation.

A slow hand is like a dead hand, but instead of restricting the new board from ever redeeming the pill, it restricts them for a period of time--usually 180 days. "Dead-hand provisions are so regressive I would hope that no respectable company would adopt one and hope that existing dead-hand pills will be axed by responsible companies," John Chevedden told *The Friday Report*.

ISS believes that shareholders should be permitted to approve poison pills. Plans with the following features are considered shareholder friendly: three-year independent director evaluation, sunset provision, qualified offer clause, and a trigger threshold of 20 percent or more.

**New pills adopted in 2005 without shareholder approval:**

Bentley Pharmaceuticals  
Beverly Enterprises Inc.  
Calgon Carbon Corp.  
Digitas Inc.  
Digital Impact  
Indus International  
Pentair  
Pozen Inc.  
SINA Corporation  
Senomyx Inc.  
Waters Instruments  
Wheeling-Pittsburgh Corp.

# EXHIBIT H

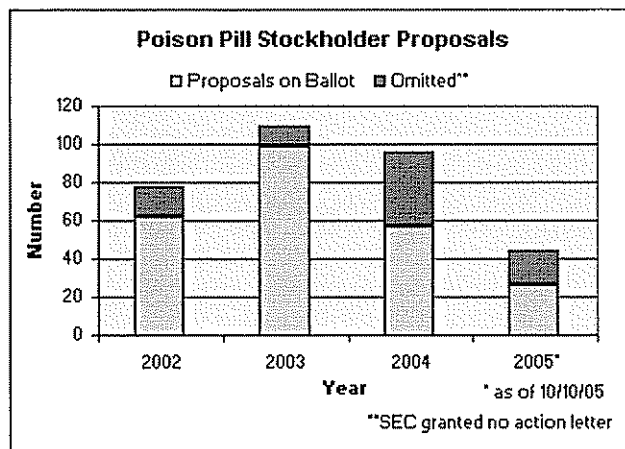


## Research Spotlight

### Poison Pill Policy

New York - October 11, 2005 [John Laide](#)

On October 7, a group of institutional shareholders sued News Corporation (NWS) in the Delaware Chancery Court to live up to its promise not to extend its poison pill beyond 12 months without stockholder approval. At issue is a policy adopted by the company at the time of its reincorporation in Delaware in November 2004. The policy provides that if a poison pill is adopted by the company, it will expire after one year unless it is ratified by stockholders. News Corp. adopted the poison pill policy while negotiating with institutional investors to approve the company's change of corporate domicile from Australia to Delaware. On August 8, the company announced its Board amended the policy, without shareholder approval, in order to extend the poison pill another two years beyond the original November 8, 2005 expiration date. The company originally adopted the poison pill in response to Liberty Media Corporation's disclosure that it was increasing its stake in the company. At the time the company announced it was extending the poison pill, the company stated it was necessary to prevent potential future acquisitions by Liberty Media, which continued to own approximately 18% of the company's Class B Common Stock.



Poison pill policies similar to the one adopted by News Corp. have emerged on the corporate governance landscape over the last couple of years. The adoption of these policies became more common in 2004 following a SEC ruling that a company with such a policy could exclude a poison pill stockholder proposal from its proxy statement on the grounds that it has been "substantially implemented." While the policies vary from company to company, the typical policy provides that the company will not adopt a poison pill without stockholder approval unless the Board, in its exercise of its fiduciary responsibilities, determines under the circumstances existing at the time of adoption that it is in the best interests of the stockholders to adopt the poison pill without the delay that would come from seeking prior stockholder approval (a so-called fiduciary-out clause). Some policies also include a "sunset" clause which provides that a poison pill adopted without approval under the fiduciary-out clause will expire within a year of adoption unless ratified by stockholders. The 2004 SEC ruling had an immediate affect on the number of stockholder poison pill proposals making it to the ballot. The number of pill proposals being voted on decreased from 99 in 2003 to 57 in 2004, and the number of proposals where the company successfully sought and received no action relief from the SEC to omit the proposal from their proxy statement increased from 11 in 2003 to 39 in 2004.

According to SharkRepellent.net, 78 companies have adopted a poison pill policy. Because these policies are not added to a company's certificate of incorporation (charter) or bylaws, the Board retains the ability to remove or amend the policy at any time without stockholder approval (as News Corp.'s Board did). However, News Corp. is the first example of a company that did not abide by its poison pill policy. It is not unheard of for a company to include a formal provision in its charter or bylaws requiring stockholder approval of any poison pill. Within the SharkRepellent.net universe, there are nine companies, including SLM Corporation (Sallie Mae), The Advisory Board Company, The Bear Stearns Companies Inc., and UGI Corporation, that include in their charter or bylaws a provision limiting the Board's ability to unilaterally adopt a poison pill.

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