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

FORM 8-K

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

Date of Report (Date of earliest event reported): June 15, 2021

GRUBHUB INC.

(Exact name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-36389
(Commission
File Number)

46-2908664
(IRS Employer
Identification No.)

111 W. Washington Street, Suite 2100,
Chicago, Illinois
(Address of Principal Executive Offices)

60602
(Zip Code)

Registrant's Telephone Number, Including Area Code: (877) 585-7878

Not Applicable

(Former Name or Former Address, if Changed Since Last Report)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.0001 par value per share	GRUB	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Introductory Note

This Current Report on Form 8-K is being filed in connection with the consummation, on June 15, 2021 (the “Closing Date”), of the Mergers (as defined below) pursuant to that certain Agreement and Plan of Merger, dated June 10, 2020 (the “Initial Merger Agreement”), by and among Grubhub Inc., a Delaware corporation (“Grubhub” or the “Company”), Just Eat Takeaway.com N.V., a public company with limited liability (*naamloze vennootschap*) incorporated under the laws of the Netherlands (“Just Eat Takeaway.com”), Checkers Merger Sub I, Inc., a Delaware corporation and wholly owned subsidiary of Just Eat Takeaway.com (“Merger Sub”), and Checkers Merger Sub II, Inc., a Delaware corporation and wholly owned subsidiary of Just Eat Takeaway.com (“Merger Sub II” and together with Merger Sub, the “Merger Subs”), as amended by that certain First Amendment to the Merger Agreement, by and among Just Eat Takeaway.com, the Merger Subs and the Company, dated September 4, 2020 (the “First Amendment”), and by that certain Second Amendment to the Merger Agreement, by and among Just Eat Takeaway.com, the Merger Subs and the Company, dated March 12, 2021 (the “Second Amendment” and, together with the Initial Merger Agreement and the First Amendment, the “Merger Agreement”). Pursuant to the terms of the Merger Agreement, on the Closing Date, (i) Merger Sub merged with and into the Company (the “Initial Merger”), with the Company continuing as the surviving company in the Initial Merger (the “Initial Surviving Company”), and (ii) immediately thereafter, the Initial Surviving Company merged with and into Merger Sub II (the “Subsequent Merger” and, together with the Initial Merger, the “Mergers”), with Merger Sub II continuing as the surviving company.

Item 2.01. Completion of Acquisition or Disposition of Assets.

On the Closing Date, the Company completed the Mergers. On and subject to the terms and conditions set forth in the Merger Agreement, at the effective time of the Initial Merger (the “First Effective Time”), each issued and outstanding share of the Company’s common stock, par value \$0.0001 per share (“Company Common Stock”) (other than any shares of Company Common Stock owned by the Company and any shares of Company Common Stock owned by Just Eat Takeaway.com, Merger Sub, Merger Sub II or any other direct or indirect wholly owned subsidiary of Just Eat Takeaway.com), was converted into and became one validly issued, fully paid and nonassessable share of common stock, par value \$0.0001 per share, of the Initial Surviving Company (the “Initial Surviving Company Stock”). Each such share of Initial Surviving Company Stock was immediately thereafter automatically exchanged for 3.355 American Depository Shares of Just Eat Takeaway.com (“Just Eat Takeaway.com ADSs”), with each Just Eat Takeaway.com ADS representing one-fifth of an ordinary share in the share capital of Just Eat Takeaway.com with a nominal value of €0.04 per share (“Just Eat Takeaway.com Ordinary Share”).

In connection with the Mergers, each option that represented the right to acquire shares of Company Common Stock and that was outstanding immediately prior to the First Effective Time (the “Options”), whether or not then vested or exercisable, was at the First Effective Time converted into an option (the “Assumed Options”) to purchase Just Eat Takeaway.com ADSs (or, as determined by Just Eat Takeaway.com, Just Eat Takeaway.com Ordinary Shares) with respect to that number of Just Eat Takeaway.com ADSs (or Just Eat Takeaway.com Ordinary Shares), rounded down to the nearest number of whole Just Eat Takeaway.com ADSs (or Just Eat Takeaway.com Ordinary Shares), that is equal to the product of (a) the number of shares of Company Common Stock subject to such Option as of immediately prior to the First Effective Time and (b) (i) in the case of Assumed Options in respect of Just Eat Takeaway.com ADSs, 3.355, and (ii) in the case of Assumed Options in respect of Just Eat Takeaway.com Ordinary Shares, 0.6710. The exercise price per share of each Assumed Option was equal to the exercise price per share of the corresponding Option divided by (A) in the case of Assumed Options in respect of Just Eat Takeaway.com ADSs, 3.355, and (B) in the case of Assumed Options in respect of Just Eat Takeaway.com Ordinary Shares, 0.6710, rounded up to the nearest whole cent. Following the First Effective Time, each Assumed Option are subject to such other terms and conditions as applied to the corresponding Option immediately prior to the First Effective Time.

In addition, each restricted stock unit award with respect to shares of Company Common Stock that was outstanding immediately prior to the First Effective Time (the “Company RSUs”) was, at the First Effective Time, converted into a restricted stock unit (each, an “Assumed RSU”) with respect to a number of Just Eat Takeaway.com ADSs (or, as determined by Just Eat Takeaway.com, Just Eat Takeaway.com Ordinary Shares) equal to the number of shares of Company Common Stock subject to such Company RSU immediately prior to the First Effective Time multiplied by (1) in the case of Assumed RSUs in respect of Just Eat Takeaway.com ADSs, 3.355, and (2) in the case of Assumed RSUs in respect of Just Eat Takeaway.com Ordinary Shares, 0.6710, rounded to the nearest number of whole Just Eat Takeaway.com ADSs (or Just Eat Takeaway.com Ordinary Shares), and otherwise are subject to the same terms and conditions that applied to the corresponding Company RSU immediately prior to the First Effective Time.

The foregoing description of the Merger Agreement, the Mergers and the other transactions contemplated thereby does not purport to be complete and is subject to, and qualified in its entirety by reference to, the full text of the Initial Merger Agreement, the First Amendment and the Second Amendment, which were filed as Exhibits 2.1 to the Current Reports on Form 8-K filed by the Company with the SEC on June 12, 2020, September 4, 2020 and March 12, 2021, respectively, and are incorporated by reference into this Item 2.01.

The information set forth in the Introductory Note and the disclosure regarding the Mergers and the Merger Agreement under Items 3.01 and 5.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.01.

Item 3.01. Notice or Delisting for Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.

In connection with the closing of the Initial Merger, the Company notified the New York Stock Exchange (the “NYSE”) that the Initial Merger had been consummated and that, at the First Effective Time, each share of Company Common Stock (other than any shares of Company Common Stock owned by the Company and any shares of Company Common Stock owned by Just Eat Takeaway.com, Merger Sub, Merger Sub II or any other direct or indirect wholly owned subsidiary of Just Eat Takeaway.com) issued and outstanding as of immediately prior to the First Effective Time was converted into and became one validly issued, fully paid and nonassessable share of Initial Surviving Company Stock. Each such share of Initial Surviving Company Stock was immediately thereafter automatically exchanged for 3.355 Just Eat Takeaway.com ADSs, with each Just Eat Takeaway.com ADS representing one-fifth of a Just Eat Takeaway.com Ordinary Share. In addition, the Company requested that the NYSE

delist the Company Common Stock, and, as a result, trading of Company Common Stock, which trades under the ticker symbol “GRUB” on the NYSE, was suspended on June 15, 2021. The Company also requested that the NYSE file a notification of removal from listing and registration on Form 25 with the SEC to effect the delisting of the Company Common Stock from the NYSE and the deregistration of the Company Common Stock under Section 12(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”).

The Company intends to file a Form 15 with the SEC requesting the termination of the registration of Company Common Stock under Section 12(g) of the Exchange Act and the suspension of the Company’s reporting obligations under Sections 13 and 15(d) of the Exchange Act.

The information set forth in the Introductory Note and under Item 2.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.01.

Item 3.03. Material Modification to Rights of Security Holders.

At the First Effective Time, as a result of the Initial Merger, each holder of shares of Company Common Stock issued and outstanding immediately prior to the First Effective Time ceased to have any rights as stockholders of the Company (other than the right (other than with respect to any shares of Company Common Stock owned by the Company, any shares of Company Common Stock owned by Just Eat Takeaway.com, Merger Sub, Merger Sub II or any other direct or indirect wholly owned subsidiary of Just Eat Takeaway.com) to receive shares of Initial Surviving Company Stock, with each such shares to be immediately thereafter automatically exchanged for 3.355 Just Eat Takeaway.com ADSs, with each Just Eat Takeaway.com ADS representing one-fifth of a Just Eat Takeaway.com Ordinary Share).

The information set forth in the Introductory Note and under Items 2.01, 3.01, 5.01 and 5.03 of this Current Report on Form 8-K is incorporated by reference into this Item 3.03.

Item 5.01. Changes in Control of Registrant.

As a result of the Initial Merger, a change in control of the Company occurred, and the Company is now a wholly owned subsidiary of Just Eat Takeaway.com N.V.

The information set forth in the Introductory Note and under Items 2.01, 5.02 and 5.03 of this Current Report on Form 8-K is incorporated by reference into this Item 5.01.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Directors

At the First Effective Time, pursuant to the terms of the Merger Agreement, David Fisher, Lloyd Frink, David Habiger, Linda Johnson Rice, Katrina Lake, Girish Lakshman, Matthew Maloney, Brian McAndrews and Keith Richman ceased serving as the directors of the Company, and Brett Wissink, the director of Merger Sub, became the director of the Initial Surviving Company.

Officers

At the First Effective Time, pursuant to the terms of the Merger Agreement, all of the officers of the Company became officers of the Initial Surviving Company.

The information set forth in the Introductory Note and under Item 2.01 of this Current Report on Form 8-K is incorporated by reference into this Item 5.02.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

At the First Effective Time, pursuant to the terms of the Merger Agreement, the certificate of incorporation of the Initial Surviving Company was amended and restated in its entirety. The certificate of incorporation of Merger Sub, as in effect immediately prior to the First Effective Time, became the certificate of incorporation of the Initial Surviving Company, except that all references to the name of Merger Sub were replaced with the name of the Initial Surviving Company. A copy of such amended and restated certificate of incorporation of the Initial Surviving Company is attached hereto as Exhibit 3.1 and is incorporated herein by reference.

At the First Effective Time, pursuant to the terms of the Merger Agreement, the bylaws of the Initial Surviving Company were amended and restated in their entirety. The bylaws of Merger Sub, as in effect immediately prior to the First Effective Time, became the bylaws of the Initial Surviving Company, except that all references to the name of Merger Sub were replaced with the name of the Initial Surviving Company. A copy of such amended and restated bylaws of the Initial Surviving Company are attached hereto as Exhibit 3.2 and is incorporated herein by reference.

The information set forth in the Introductory Note and under Item 2.01 of this Current Report on Form 8-K is incorporated by reference into this Item 5.03.

Item 8.01. Other Events.

On June 15, 2021, the Company and Just Eat Takeaway.com issued a joint press release announcing the completion of the Mergers. A copy of the press release is attached hereto as Exhibit 99.1 and incorporated herein by reference.

The Company previously disclosed that it intended to hold its Annual Meeting of Shareholders (the “Annual Meeting”) on June 18, 2021. In consideration of the closing of the Mergers, the Company has determined to cancel the Annual Meeting.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Description
2.1	<u>Agreement and Plan of Merger, by and among Just Eat Takeaway.com N.V., Checkers Merger Sub I, Inc., Checkers Merger Sub II, Inc. and Grubhub Inc., dated June 10, 2020 (incorporated herein by reference to Exhibit 2.1 to the Current Report on Form 8-K filed by the Company on June 12, 2020).</u>*
2.2	<u>First Amendment to Agreement and Plan of Merger, by and among Just Eat Takeaway.com N.V., Checkers Merger Sub I, Inc., Checkers Merger Sub II, Inc. and Grubhub Inc., dated September 4, 2020 (incorporated herein by reference to Exhibit 2.1 to the Current Report on Form 8-K filed by the Company on September 4, 2020).</u>
2.3	<u>Second Amendment to Agreement and Plan of Merger, by and among Just Eat Takeaway.com N.V., Checkers Merger Sub I, Inc., Checkers Merger Sub II, Inc. and Grubhub Inc., dated March 12, 2021 (incorporated herein by reference to Exhibit 2.1 to the Current Report on Form 8-K filed by the Company on March 12, 2021).</u>
3.1	<u>Amended and Restated Certificate of Incorporation of Grubhub Inc.</u>
3.2	<u>Amended and Restated Bylaws of Grubhub Inc.</u>
99.1	<u>Joint Press Release dated June 15, 2021, issued by Grubhub Inc. and Just Eat Takeaway.com N.V.</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

* All schedules to the Merger Agreement have been omitted pursuant to Item 601(b)(2) of Regulation S-K. Grubhub Inc. hereby agrees to furnish supplementally a copy of any omitted schedule to the SEC upon request.

SIGNATURES

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

Date: June 15, 2021

GRUBHUB INC.

/s/ Adam DeWitt

Adam DeWitt

President and Chief Financial Officer

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
GRUBHUB INC.

FIRST: The name of the corporation (hereinafter called the "Corporation") is Grubhub Inc.

SECOND: The address, including street, number, city and county, of the registered office of the Corporation in the State of Delaware is 251 Little Falls Drive, Wilmington, DE 19808, County of New Castle, and the name of the registered agent of the Corporation in the State of Delaware at such address is Corporation Service Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the the laws of the State of Delaware (particularly Title 8, Chapter 1 of the Delaware Code and acts amendatory thereof and supplemental thereto, and known, as identified, and referred to as the "General Corporation Law of the State of Delaware").

FOURTH: The aggregate number of shares that the Corporation shall have authority to issue is 10,000 shares of Common Stock, par value \$0.0001 per share.

FIFTH: In furtherance and not in limitation of the powers conferred upon it by law, the Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the Bylaws of the Corporation.

SIXTH: A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the General Corporation Law of the State of Delaware or (d) for any transaction from which the director derived an improper personal benefit. If the General Corporation Law of the State of Delaware is amended after the effective date of this Certificate to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law of the State of Delaware, as so amended.

Any amendment, repeal or modification of this Article SIXTH by either of (i) the stockholders of the Corporation or (ii) an amendment to the General Corporation Law of the State of Delaware, shall not adversely affect any right or protection existing at the time of such amendment, repeal or modification with respect to any acts or omissions occurring before such amendment, repeal or modification of a person serving as a director at the time of such amendment, repeal or modification.

SEVENTH: Unless and except to the extent that the Bylaws of the Corporation shall so require, the election of directors of the Corporation need not be by written ballot.

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AMENDED AND RESTATED

BYLAWS

OF

GRUBHUB INC.

(the “Corporation”)

ARTICLE I

Meetings of Stockholders: Stockholders’

Consent in Lieu of Meeting

SECTION 1.01. Annual Meeting. The annual meeting of the stockholders shall be held at such place, date and hour as shall be fixed by the board of directors of the Corporation (the “Board of Directors”) and designated in the notice or waiver of notice thereof; except that no annual meeting need be held if all actions, including the election of directors, required by the General Corporation Law of the State of Delaware (the “DGCL”) to be taken at a stockholders’ annual meeting are taken by written consent in lieu of a meeting pursuant to Section 1.05 of these Bylaws.

SECTION 1.02. Special Meetings. A special meeting of the stockholders for any purpose or purposes may be called by the Board of Directors, the Chairperson of the Board of Directors (the “Chairperson”), if any, the President of the Corporation (the “President”) or the Secretary of the Corporation (the “Secretary”) or the holders of record of at least a majority of the shares of common stock, par value \$0.0001 per share, of the Corporation (“Common Stock”) entitled to vote, such meeting to be held at such place, date and hour as shall be designated in the notice or waiver of notice thereof.

SECTION 1.03. Place of Meetings. Meetings of the stockholders may be held at such place or places within or without the State of Delaware as the Board of Directors, the President, the Secretary or the stockholders requesting the meeting may specify in the notice or waiver of notice thereof.

SECTION 1.04. Notice of Meetings; Waiver of Notice. Written notice of each meeting of stockholders shall be given to each stockholder entitled to vote at the meeting, except that (i) it shall not be necessary to give notice to any stockholder who submits a signed waiver of notice before or after the meeting, and (ii) no notice of an adjourned meeting need be given except when required under Section 1.06 of these Bylaws or by law. Each notice of a meeting shall be given, personally or by mail, not less than 10 nor more than 60 days before the meeting and shall state the place, if any, date and time of the meeting, the means of remote communications, if any, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. If mailed, notice shall be considered given when mailed to a stockholder at his address on the Corporation's records. The attendance of any stockholder at a meeting, without protesting at the beginning of the meeting that the meeting is not lawfully called or convened, shall constitute a waiver of notice by him or her.

SECTION 1.05. Stockholders' Consent in Lieu of Meeting. Any action required by the DGCL to be taken at any annual or special meeting of the stockholders of the Corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing or by electronic transmission, setting forth the action so taken, shall be signed or electronically transmitted by the holders of outstanding Common 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 of Common Stock entitled to vote thereon were present and voted. All such consents shall be filed with the Secretary. Prompt notice of the taking of any such action without a meeting by less than unanimous consent shall be given, to the extent required by applicable law, to those stockholders who did not consent in writing or by electronic transmission and who, if the action had been taken at a meeting, would have been entitled to notice of such meeting.

SECTION 1.06. Quorum and Adjournment. Except as otherwise provided by law, by the Certificate of Incorporation of the Corporation (the "Certificate of Incorporation") or by these Bylaws, the presence, in person or by proxy, of the holders of a majority of the issued and outstanding shares of Common Stock, entitled to vote thereat, shall constitute a quorum for the transaction of business at all meetings of stockholders. If, however, such a quorum shall not be present in person or represented by proxy at any meeting of stockholders, a majority of the issued and outstanding shares of Common Stock present in person or represented by proxy or, if no stockholders are present, any officer of the Corporation entitled to preside at or to act as secretary of the meeting, shall have the power to adjourn the meeting. At any adjourned meeting at which a quorum is present, any action may be taken which might have been taken at the meeting as originally called. No notice of an adjourned meeting need be given if the time and place are announced at the meeting at which the adjournment is taken except that, if adjournment is for more than 30 days or if, after the adjournment, a new record date is fixed for the meeting, notice of the adjourned meeting shall be given pursuant to Section 1.04 of these Bylaws.

SECTION 1.07. Voting; Proxies. Each stockholder of record shall be entitled to one vote for every share of Common Stock registered in his or her name. When a quorum is present at any meeting of stockholders, the affirmative vote of the majority of the issued and outstanding shares of Common Stock present in person or represented by proxy at the meeting

and entitled to vote on the subject matter shall constitute the act of the stockholders, unless by express provision of law, the Certificate of Incorporation or these Bylaws a different vote is required, in which case such express provision shall govern and control. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. Every proxy must be signed by the stockholder or his or her attorney-in-fact. Proxies need not be filed with the Secretary until the meeting is called to order, but shall be filed before being voted. Each stockholder shall be entitled to vote each share of Common Stock having voting power registered in his or her name on the books of the Corporation on the record date fixed, as provided in Section 6.07 of these Bylaws, for the determination of stockholders entitled to vote at such meeting. No election of directors need be by written ballot.

SECTION 1.08. List of Stockholders. Not less than 10 days prior to the date of any meeting of stockholders, the Secretary shall prepare a complete list of 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 his name. For a period of not less than 10 days prior to the meeting, the list shall be available for inspection by any stockholder for any purpose germane to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) at the Corporation's principal place of business during ordinary business hours. If the meeting is held at a place, then the list shall also be available for inspection by stockholders at the time and place of the meeting. If the meeting is to be held solely by means of remote

communication, then the list shall also be available for inspection by stockholders during the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

ARTICLE II

Board of Directors

SECTION 2.01. General Powers. The management of the affairs of the Corporation shall be vested in the Board of Directors, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or by the Certificate of Incorporation directed or required to be exercised or done by the stockholders.

SECTION 2.02. Number and Term of Office. The number of directors which shall constitute the whole Board of Directors shall be fixed from time to time by a vote of a majority of the whole Board of Directors; provided that the Board of Directors shall consist of at least one director. The term “whole Board of Directors” is used herein to refer to the total number of directors that the Corporation would have if there were no vacancies. Directors need not be stockholders. Each director shall hold office until his or her successor is elected and qualified, or until his or her earlier death or resignation or removal in the manner hereinafter provided.

SECTION 2.03. Resignation, Removal and Vacancies. Any director may resign at any time by giving written notice of his or her resignation to the Board of Directors, the Chairperson, if any, the President or the Secretary. Such resignation shall take effect at the time specified therein or, if the time is not specified, upon receipt thereof; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Any director or the whole Board of Directors may be removed, with or without cause, at any time by the holders of a majority of the shares of Common Stock then entitled to vote at an election of directors or by written consent of the stockholders pursuant to Section 1.05 of these Bylaws.

Any vacancies in the Board of Directors, including vacancies resulting from any increase in the authorized number of directors, may be filled by either (i) a majority vote or consent of the directors then in office, although less than a quorum, or by a sole remaining director or (ii) the stockholders of the Corporation.

SECTION 2.04. Meetings. (a) Annual and Regular Meetings. As soon as practicable after each annual meeting of stockholders, the Board of Directors shall meet for the purpose of organization and the transaction of other business, unless it shall have transacted all such business by written consent pursuant to Section 2.05 of these Bylaws. Regular meetings of the Board of Directors may be held without notice at such times, dates and places as the Board of Directors determines. If the day fixed for a regular meeting is a legal holiday, the meeting shall be held on the next business day.

(b) Special Meetings. Special meetings of the Board of Directors shall be held at such times and places as the Board of Directors, the Chairperson, if any, or the President shall from time to time determine.

(c) Notice of Meetings. The Secretary shall give notice to each director of each special meeting, including the time, place and purpose of such meeting. Notice of each such meeting shall be mailed to each director, addressed to him or her at his or her residence or usual place of business, at least two days before the day on which such meeting is to be held, or shall be sent to him or her at such place by telegraph, cable, wireless or other form of recorded communication, or be delivered personally or by telephone not later than the day before the day on which such meeting is to be held, but notice need not be given to any director who shall

attend such meeting. A written waiver of notice, signed by the person entitled thereto, whether before or after the time of the meeting stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any meeting of directors need be specified in any waiver of notice. Notice of any adjourned meeting need not be given, other than by announcement at the meeting at which the adjournment is taken.

(d) Place of Meetings. The Board of Directors may hold its meetings at such place or places within or without the State of Delaware as the Board of Directors may from time to time determine, or as shall be designated in the respective notices or waivers of notice thereof.

(e) Quorum and Manner of Acting. One third of the total number of directors then in office (or the sole director if there is not more than one director then in office) shall be present in person at any meeting of the Board of Directors in order to constitute a quorum for the transaction of business at such meeting, and the vote of a majority of those directors (or the sole director if there is not more than one director then in office) present at any such meeting at which a quorum is present shall be necessary for the passage of any resolution or act of the Board of Directors, except as otherwise expressly required by law or these Bylaws. In the absence of a quorum for any such meeting, a majority of the directors present thereat may adjourn such meeting from time to time until a quorum shall be present.

(f) Organization. At each meeting of the Board of Directors, one of the following shall act as chairperson of the meeting and preside, in the following order of precedence:

- (i) the Chairperson (if any);
- (ii) the President (if the President shall be a member of the Board of Directors at such time); and
- (iii) any director chosen by a majority of the directors present.

The Secretary or, in the case of his or her absence, any person (who shall be an Assistant Secretary of the Corporation, if an Assistant Secretary of the Corporation is present) whom the Chairperson, if any, shall appoint shall act as secretary of such meeting and keep the minutes thereof.

SECTION 2.05. Directors' Consent in Lieu of Meeting. Action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission and the writings or electronic transmissions are filed with the minutes or the proceedings of the Board of Directors or committee.

SECTION 2.06. Action by Means of Conference Telephone or Similar Communications Equipment. Any one or more members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors or any 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 by such means shall constitute presence in person at such meeting.

ARTICLE III

Committees of the Board

SECTION 3.01. Executive Committee. The Board of Directors, by resolution adopted by a majority of the whole Board of Directors, may designate an Executive Committee of one or more directors that shall have all the powers and authority of the Board of Directors, except as otherwise provided in the resolution, Section 141(c) of the DGCL or any other applicable law. The members of the Executive Committee shall serve at the pleasure of the Board of Directors. All actions of the Executive Committee shall be reported to the Board of Directors at its next meeting.

SECTION 3.02. Other Committees. The Board of Directors, by resolution adopted by a majority of the whole Board of Directors, may designate one or more other committees of one or more directors, which shall serve at the Board of Director's pleasure and have such powers and duties as the Board of Directors determines.

SECTION 3.03. Rules Applicable to Committees. 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 any member of a committee, the member or members present at a meeting of the committee and not disqualified, whether or not a quorum, may unanimously appoint another director to act at the meeting in place of the absent or disqualified member. All action of a committee shall be reported to the Board of Directors at its next meeting. Each committee shall adopt rules of procedure and shall meet as provided by those rules or by resolutions of the Board of Directors.

ARTICLE IV

Officers

SECTION 4.01. Executive Officers. The executive officers of the Corporation shall be a President, a Secretary and a Treasurer and may include a Chairperson of the Board of Directors, one or more Vice Presidents, one or more Assistant Secretaries or Assistant Treasurers and such other officers with such titles as the resolution of the Board of Directors choosing them shall designate. Any two or more offices may be held by the same person.

SECTION 4.02. Authority and Duties. All officers, as between themselves and the Corporation, shall have such authority and perform such duties in the management of the Corporation as may be provided in these Bylaws or, to the extent not so provided, by the Board of Directors.

SECTION 4.03. Term of Office, Resignation and Removal. All officers shall be elected or appointed by the Board of Directors and shall hold office until his or her successor has been elected or appointed and qualified or his or her earlier death or resignation or removal in the manner hereinafter provided. The Chairperson, if any, shall be elected or appointed from among the members of the Board of Directors. The Board of Directors may require any officer to give security for the faithful performance of his or her duties.

Any officer may resign at any time by giving written notice to the President or the Secretary, and such resignation shall take effect at the time specified therein or, if the time when it shall become effective is not specified therein, at the time it is accepted by action of the Board of Directors. Except as aforesaid, the acceptance of such resignation shall not be necessary to make it effective.

All officers and agents elected or appointed by the Board of Directors shall be subject to removal at any time by the Board of Directors with or without cause.

SECTION 4.04. Vacancies. If an office becomes vacant for any reason, the Board of Directors shall fill such vacancy. Any officer so appointed or elected by the Board of Directors shall serve only until such time as the unexpired term of his or her predecessor shall have expired unless reelected or reappointed by the Board of Directors.

SECTION 4.05. Chairperson of the Board of Directors. If there shall be a Chairperson of the Board of Directors, he or she shall preside at meetings of the Board of Directors and of the stockholders at which he or she is present, and shall give counsel and advice to the Board of Directors and the officers of the Corporation on all subjects touching the welfare of the Corporation and the conduct of its business. He or she shall perform such other duties as the Board of Directors may from time to time determine.

SECTION 4.06. President. The President shall be the Chief Executive Officer of the Corporation and, unless the Chairperson, if any, is present or the Board of Directors has provided otherwise by resolution, he or she shall preside at all meetings of the Board of Directors and the stockholders at which he or she is present except, in the case of a meeting of the Board of Directors, if the President is not a member of the Board of Directors at such time. He or she shall have general and active management and control of the business and affairs of the Corporation subject to the control of the Board of Directors and the Executive Committee, if any, and shall see that all orders and resolutions of the Board of Directors and the Executive Committee, if any, are carried into effect.

SECTION 4.07. Vice Presidents. The Vice President of the Corporation, if any, or if there be more than one, the Vice Presidents in the order of their seniority or in any other order determined by the Board of Directors, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall generally assist the President and perform such other duties as the Board of Directors or the President shall prescribe.

SECTION 4.08. Secretary. The Secretary shall, to the extent practicable, attend all meetings of the Board of Directors and all meetings of the stockholders and shall record all votes and the minutes of all proceedings in a book to be kept for that purpose, and shall perform like duties for the standing committees when required. He or she shall give, or cause to be given, notice of all meetings of the stockholders and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or the President, under whose

supervision he or she shall perform such duties. He or she shall keep in safe custody the seal of the Corporation and affix the same to any duly authorized instrument requiring it and, when so affixed, it shall be attested by his or her signature or by the signature of the Treasurer or an Assistant Secretary or Assistant Treasurer. He or she shall keep in safe custody the certificate books and stockholder records and such other books and records as the Board of Directors may direct and shall perform all other duties as from time to time may be assigned to him or her by the Chairperson, if any, the President or the Board of Directors.

SECTION 4.09. Assistant Secretaries. The Assistant Secretary of the Corporation, if any, or if there be more than one, the Assistant Secretaries in order of their seniority or in any other order determined by the Board of Directors shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall perform such other duties as the Board of Directors or the Secretary shall prescribe.

SECTION 4.10. Treasurer. The Treasurer shall have the care and custody of the corporate funds and other valuable effects, including securities, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation, and shall deposit all moneys and other valuable effects to the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and directors, at the regular meetings of the Board of Directors, or whenever they may require it, an account of all his or her transactions as Treasurer and of the financial condition of the Corporation; and, in general, perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the President or the Board of Directors.

SECTION 4.11. Assistant Treasurers. The Assistant Treasurer of the Corporation, if any, or if there be more than one, the Assistant Treasurers in the order of their seniority or in any other order determined by the Board of Directors, shall in the absence or disability of the Treasurer perform the duties and exercise the powers of the Treasurer and shall perform such other duties as the Board of Directors or the Treasurer shall prescribe.

ARTICLE V
Indemnification

SECTION 5.01. Definitions. For purposes of this Article V:

(a) “Corporate Status” describes the status of a person who is serving or has served (i) as a Director of the Corporation, (ii) as an Officer of the Corporation, (iii) as a Non-Officer Employee of the Corporation, or (iv) as a director, partner, trustee, officer, employee or agent of any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan, foundation, association, organization or other legal entity which such person is or was serving at the request of the Corporation. For purposes of this Section 5.01(a), a Director, Officer or Non-Officer Employee of the Corporation who is serving or has served as a director, partner, trustee, officer, employee or agent of a Subsidiary shall be deemed to be serving at the request of the Corporation. Notwithstanding the foregoing, “Corporate Status” shall not include the status of a person who is serving or has served as a director, officer, employee or agent of a constituent corporation absorbed in a merger or consolidation transaction with the Corporation with respect to such person’s activities prior to said transaction, unless specifically authorized by the Board of Directors or the stockholders of the Corporation;

(b) “Corporation” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed into the Corporation in a consolidation or merger if such corporation would have been permitted (if its corporate

existence had continued) under applicable law to indemnify its directors, officers, employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request, or to represent the interests of, such constituent corporation as an Officer of any affiliated entity shall stand in the same position under the provisions of this Article V with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued;

(c) “Director” means any person who serves or has served the Corporation as a director on the Board of Directors of the Corporation;

(d) “Disinterested Director” means, with respect to each Proceeding in respect of which indemnification is sought hereunder, a Director of the Corporation who is not and was not a party to such Proceeding;

(e) “Expenses” means all attorneys’ fees, retainers, court costs, transcript costs, fees of expert witnesses, private investigators and professional advisors (including, without limitation, accountants and investment bankers), travel expenses, duplicating costs, printing and binding costs, costs of preparation of demonstrative evidence and other courtroom presentation aids and devices, costs incurred in connection with document review, organization, imaging and computerization, telephone charges, postage, delivery service fees, and all other disbursements, costs or expenses of the type customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, settling or otherwise participating in, a Proceeding;

(f) “Liabilities” means judgments, damages, liabilities, losses, penalties, excise taxes, fines and amounts paid in settlement;

(g) “Non-Officer Employee” means any person who serves or has served as an employee or agent of the Corporation, but who is not or was not a Director or Officer;

(h) “Officer” means any person who serves or has served the Corporation as an officer of the Corporation appointed by the Board of Directors of the Corporation;

(i) “Proceeding” means any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, inquiry, investigation, administrative hearing or other proceeding, whether civil, criminal, administrative, arbitrative or investigative; and

(j) “Subsidiary” shall mean any corporation, partnership, limited liability company, joint venture, trust or other entity of which the Corporation owns (either directly or through or together with another Subsidiary of the Corporation) either (i) a general partner, managing member or other similar interest or (ii) (A) fifty percent (50%) or more of the voting power of the voting capital equity interests of such corporation, partnership, limited liability company, joint venture or other entity, or (B) fifty percent (50%) or more of the outstanding voting capital stock or other voting equity interests of such corporation, partnership, limited liability company, joint venture or other entity.

SECTION 5.02. Indemnification of Directors and Officers.

(a) Subject to the operation of Section 5.04 of these Bylaws, each Director and Officer shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), and to the extent authorized in this Section 5.02.

(i) Actions, Suits and Proceedings Other than By or In the Right of the Corporation. Each Director and Officer shall be indemnified and held harmless by the Corporation against any and all Expenses and Liabilities that are incurred or paid by such Director or Officer or on such Director's or Officer's behalf in connection with any Proceeding or any claim, issue or matter therein (other than an action by or in the right of the Corporation), which such Director or Officer is, or is threatened to be made, a party to or participant in by reason of such Director's or Officer's Corporate Status, if such Director or Officer acted in good faith and in a manner such Director or Officer reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful.

(ii) Actions, Suits and Proceedings By or In the Right of the Corporation. Each Director and Officer shall be indemnified and held harmless by the Corporation against any and all Expenses that are incurred by such Director or Officer or on such Director's or Officer's behalf in connection with any Proceeding or any claim, issue or matter therein by or in the right of the Corporation, which such Director or Officer is, or is threatened to be made, a party to or participant in by reason of such Director's or Officer's Corporate Status, if such Director or Officer acted in good faith and in a manner such Director or Officer reasonably believed to be in or not opposed to the best interests of the Corporation; provided, however, that no indemnification shall be made under this Section 5.02(a)(2) in respect of any claim, issue or matter as to which such Director or Officer shall have been finally adjudged by a court of competent jurisdiction to be liable to the Corporation, unless, and only to the extent that, the Court of Chancery or another

court in which such Proceeding was brought shall determine upon application that, despite adjudication of liability, but in view of all the circumstances of the case, such Director or Officer is fairly and reasonably entitled to indemnification for such Expenses that such court deems proper.

(iii) Survival of Rights. The rights of indemnification provided by this Section 5.02 shall continue as to a Director or Officer after he or she has ceased to be a Director or Officer and shall inure to the benefit of his or her heirs, executors, administrators and personal representatives.

(iv) Actions by Directors or Officers. Notwithstanding the foregoing, the Corporation shall indemnify any Director or Officer seeking indemnification in connection with a Proceeding initiated by such Director or Officer only if such Proceeding (including any parts of such Proceeding not initiated by such Director or Officer) was authorized in advance by the Board of Directors of the Corporation, unless such Proceeding was brought to enforce such Officer's or Director's rights to indemnification or, in the case of Directors, advancement of Expenses under these Bylaws in accordance with the provisions set forth herein.

SECTION 5.03. Indemnification of Non-Officer Employees. Subject to the operation of Section 5.04 of these Bylaws, each Non-Officer Employee may, in the discretion of the Board of Directors of the Corporation, be indemnified by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended, against any or all Expenses and Liabilities that are incurred by such Non-Officer Employee or on such Non-Officer Employee's behalf in connection with any threatened, pending or completed Proceeding, or any claim, issue or matter therein, which such Non-Officer Employee is, or is threatened to be

made, a party to or participant in by reason of such Non-Officer Employee's Corporate Status, if such Non-Officer Employee acted in good faith and in a manner such Non-Officer Employee reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. The rights of indemnification provided by this Section 5.03 shall exist as to a Non-Officer Employee after he or she has ceased to be a Non-Officer Employee and shall inure to the benefit of his or her heirs, personal representatives, executors and administrators. Notwithstanding the foregoing, the Corporation may indemnify any Non-Officer Employee seeking indemnification in connection with a Proceeding initiated by such Non-Officer Employee only if such Proceeding was authorized in advance by the Board of Directors of the Corporation.

SECTION 5.04. Determination. Unless ordered by a court, no indemnification shall be provided pursuant to this Article V to a Director, to an Officer or to a Non-Officer Employee unless a determination shall have been made that such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal Proceeding, such person had no reasonable cause to believe his or her conduct was unlawful. Such determination shall be made by (a) a majority vote of the Disinterested Directors, even though less than a quorum of the Board of Directors, (b) a committee comprised of Disinterested Directors, such committee having been designated by a majority vote of the Disinterested Directors (even though less than a quorum), (c) if there are no such Disinterested Directors, or if a majority of Disinterested Directors so directs, by independent legal counsel in a written opinion, or (d) by the stockholders of the Corporation.

SECTION 5.05. Advancement of Expenses to Directors Prior to Final Disposition.

(a) The Corporation shall advance all Expenses incurred by or on behalf of any Director in connection with any Proceeding in which such Director is involved by reason of such Director's Corporate Status within thirty (30) days after the receipt by the Corporation of a written statement from such Director requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by such Director and shall be preceded or accompanied by an undertaking by or on behalf of such Director to repay any Expenses so advanced if it shall ultimately be determined that such Director is not entitled to be indemnified against such Expenses. Notwithstanding the foregoing, the Corporation shall advance all Expenses incurred by or on behalf of any Director seeking advancement of expenses hereunder in connection with a Proceeding initiated by such Director only if such Proceeding (including any parts of such Proceeding not initiated by such Director) was (i) authorized by the Board of Directors of the Corporation, or (ii) brought to enforce such Director's rights to indemnification or advancement of Expenses under these Bylaws.

(b) If a claim for advancement of Expenses hereunder by a Director is not paid in full by the Corporation within thirty (30) days after receipt by the Corporation of documentation of Expenses and the required undertaking, such Director may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and if successful in whole or in part, such Director shall also be entitled to be paid the expenses of prosecuting such claim. The failure of the Corporation (including its Board of Directors or any committee thereof, independent legal counsel, or stockholders) to make a determination concerning the

permissibility of such advancement of Expenses under this Article V shall not be a defense to an action brought by a Director for recovery of the unpaid amount of an advancement claim and shall not create a presumption that such advancement is not permissible. The burden of proving that a Director is not entitled to an advancement of expenses shall be on the Corporation.

(c) In any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that the Director has not met any applicable standard for indemnification set forth in the DGCL.

SECTION 5.06. Advancement of Expenses to Officers and Non-Officer Employees Prior to Final Disposition

(a) The Corporation may, at the discretion of the Board of Directors of the Corporation, advance any or all Expenses incurred by or on behalf of any Officer or any Non-Officer Employee in connection with any Proceeding in which such person is involved by reason of his or her Corporate Status as an Officer or Non-Officer Employee upon the receipt by the Corporation of a statement or statements from such Officer or Non-Officer Employee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by such Officer or Non-Officer Employee and shall be preceded or accompanied by an undertaking by or on behalf of such person to repay any Expenses so advanced if it shall ultimately be determined that such Officer or Non-Officer Employee is not entitled to be indemnified against such Expenses.

(b) In any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that the Officer or Non-Officer Employee has not met any applicable standard for indemnification set forth in the DGCL.

SECTION 5.07. Contractual Nature of Rights.

(a) The provisions of this Article V shall be deemed to be a contract between the Corporation and each Director and Officer entitled to the benefits hereof at any time while this Article V is in effect, in consideration of such person's past or current and any future performance of services for the Corporation. Neither amendment, repeal or modification of any provision of this Article V nor the adoption of any provision of the Certificate of Incorporation inconsistent with this Article V shall eliminate or reduce any right conferred by this Article V in respect of any act or omission occurring, or any cause of action or claim that accrues or arises or any state of facts existing, at the time of or before such amendment, repeal, modification or adoption of an inconsistent provision (even in the case of a proceeding based on such a state of facts that is commenced after such time), and all rights to indemnification and advancement of Expenses granted herein or arising out of any act or omission shall vest at the time of the act or omission in question, regardless of when or if any proceeding with respect to such act or omission is commenced. The rights to indemnification and to advancement of expenses provided by, or granted pursuant to, this Article V shall continue notwithstanding that the person has ceased to be a director or officer of the Corporation and shall inure to the benefit of the estate, heirs, executors, administrators, legatees and distributees of such person.

(b) If a claim for indemnification hereunder by a Director or Officer is not paid in full by the Corporation within sixty (60) days after receipt by the Corporation of a written claim for indemnification, such Director or Officer may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim, and if successful in whole or in part, such

Director or Officer shall also be entitled to be paid the expenses of prosecuting such claim. The failure of the Corporation (including its Board of Directors or any committee thereof, independent legal counsel, or stockholders) to make a determination concerning the permissibility of such indemnification under this Article V shall not be a defense to an action brought by a Director or Officer for recovery of the unpaid amount of an indemnification claim and shall not create a presumption that such indemnification is not permissible. The burden of proving that a Director or Officer is not entitled to indemnification shall be on the Corporation.

(c) In any suit brought by a Director or Officer to enforce a right to indemnification hereunder, it shall be a defense that such Director or Officer has not met any applicable standard for indemnification set forth in the DGCL.

SECTION 5.08. Non-Exclusivity of Rights. The rights to indemnification and to advancement of Expenses set forth in this Article V shall not be exclusive of any other right which any Director, Officer, or Non-Officer Employee may have or hereafter acquire under any statute, provision of the Certificate or these Bylaws, agreement, vote of stockholders or Disinterested Directors or otherwise.

SECTION 5.09. Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any Director, Officer or Non-Officer Employee against any liability of any character asserted against or incurred by the Corporation or any such Director, Officer or Non-Officer Employee, or arising out of any such person's Corporate Status, whether or not the Corporation would have the power to indemnify such person against such liability under the DGCL or the provisions of this Article V.

SECTION 5.10. Other Indemnification. The Corporation's obligation, if any, to indemnify or provide advancement of Expenses to any person under this Article V as a result of

such person serving, at the request of the Corporation, as a director, partner, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount such person may collect as indemnification or advancement of Expenses from such other corporation, partnership, joint venture, trust, employee benefit plan or enterprise (the "Primary Indemnitor"). Any indemnification or advancement of Expenses under this Article V owed by the Corporation as a result of a person serving, at the request of the Corporation, as a director, partner, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall only be in excess of, and shall be secondary to, the indemnification or advancement of Expenses available from the applicable Primary Indemnitor(s) and any applicable insurance policies.

ARTICLE VI

Shares

SECTION 6.01. Certificates for Shares. Every owner of stock of the Corporation shall be entitled to have a certificate certifying the number and class of shares owned by him or her in the Corporation, which shall otherwise be in such form as shall be prescribed by the Board of Directors; provided that the Board of Directors may provide by resolution that some or all of any or all classes or series of the Corporation's stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Certificates of each class shall be issued in consecutive order and shall be numbered in the order of their issue, and shall be signed by, or in the name of the Corporation by the President or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Corporation.

SECTION 6.02. Record. A record (herein called the “stock record”) in one or more counterparts shall be kept of the name of the person, firm or corporation owning the shares represented by each certificate for stock of the Corporation issued, the number of shares represented by each such certificate, the date thereof and, in the case of cancellation, the date of cancellation. Except as otherwise expressly required by law, the person, firm or corporation in whose name shares of stock stand on the stock record of the Corporation shall be deemed the owner thereof for all purposes as regards the Corporation.

SECTION 6.03. Transfers. Registration of transfers of shares of the Corporation shall be made only on the books of the Corporation upon request of the registered holder thereof, or of his or her attorney thereunto authorized by power of attorney duly executed and filed with the Secretary, and upon the surrender of the certificate or certificates for such shares properly endorsed or accompanied by a stock power duly executed.

SECTION 6.04. Addresses of Stockholders. Each stockholder shall designate to the Secretary an address at which notices of meetings and all other corporate notices may be served or mailed to him or her, and, if any stockholder shall fail to designate such address, corporate notices may be served upon him or her by mail directed to him or her at his or her post office address, if any, as the same appears on the share record books of the Corporation or at his or her last known post office address.

SECTION 6.05. Lost, Destroyed and Mutilated Certificates. The Board of Directors or a committee designated thereby with power so to act may, in its discretion, cause to be issued a new certificate or certificates for stock of the Corporation in place of any certificate issued by it and reported to have been lost, destroyed or mutilated, upon the surrender of the mutilated certificates or, in the case of loss or destruction of the certificate, upon satisfactory

proof of such loss or destruction, and the Board of Directors or such committee may, in its discretion, require the owner of the lost or destroyed certificate or his or her legal representative to give the Corporation a bond in such sum and with such surety or sureties as it may direct to indemnify the Corporation against any claim that may be made against it on account of the alleged loss or destruction of any such certificate.

SECTION 6.06. Regulations. The Board of Directors may make such rules and regulations as it may deem expedient, not inconsistent with these Bylaws, concerning the issue, transfer and registration of certificates for stock of the Corporation.

SECTION 6.07. Fixing Date for Determination of Stockholders of Record. 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 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 of Directors may fix, in advance, a record date, which shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other action. A determination of stockholders entitled to notice of or to vote at a meeting of the 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.

ARTICLE VII

Contracts, Checks, Drafts, Bank Accounts, etc.

SECTION 7.01. Execution of Documents. The Board of Directors shall designate the officers, employees and agents of the Corporation who shall have power to execute and deliver deeds, contracts, mortgages, bonds, debentures, checks, drafts and other orders for

the payment of money and other documents for and in the name of the Corporation, and may authorize such officers, employees and agents to delegate such power (including authority to redelegate) by written instrument to other officers, employees or agents of the Corporation; and, unless so designated or expressly authorized by these Bylaws, no officer or agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable pecuniarily for any purpose or to any amount.

SECTION 7.02. Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation or otherwise as the Board of Directors or Treasurer or any other officer of the Corporation to whom power in this respect shall have been given by the Board of Directors shall select.

SECTION 7.03. Proxies in Respect of Stock or Other Securities of Other Corporations. The Board of Directors shall designate the officers of the Corporation who shall have authority from time to time to appoint an agent or agents of the Corporation to exercise in the name and on behalf of the Corporation the powers and rights which the Corporation may have as the holder of stock or other securities in any other corporation, and to vote or consent in respect of such stock or securities; such designated officers may instruct the person or persons so appointed as to the manner of exercising such powers and rights; and such designated officers may execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal, or otherwise, such written proxies, powers of attorney or other instruments as they may deem necessary or proper in order that the Corporation may exercise its said powers and rights.

ARTICLE VIII

Fiscal Year

The fiscal year of the Corporation shall end on the 31st day of December in each year unless changed by resolution of the Board of Directors.

ARTICLE IX

Waiver of Notice

Whenever any notice is required to be given by these Bylaws or the Certificate of Incorporation or the DGCL, the person entitled thereto may, in person or by attorney thereunto authorized, in writing or by telegraph, cable or other form of recorded communication, waive such notice, whether before or after the meeting or other matter in respect of which such notice is given, and in such event such notice need not be given to such person and such waiver shall be deemed equivalent to such notice.

ARTICLE X

Amendments

Any By-law (including these Bylaws) may be adopted, amended or repealed by the stockholders or by the Board of Directors in any manner not inconsistent with the DGCL or the Certificate of Incorporation.

NOT FOR RELEASE, PUBLICATION OR DISTRIBUTION, IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY, IN, INTO OR FROM ANY JURISDICTION WHERE TO DO SO WOULD CONSTITUTE A VIOLATION OF THE RELEVANT LAWS OF THAT JURISDICTION.

FOR IMMEDIATE RELEASE

Amsterdam, 15 June 2021

Just Eat Takeaway.com completes acquisition of Grubhub

Just Eat Takeaway.com N.V. (AMS: TKWY, LSE: JET, NASDAQ: GRUB), hereafter the “Company” or “Just Eat Takeaway.com”, and Grubhub Inc. (NYSE: GRUB) (“Grubhub”) are pleased to announce the completion of the Company’s acquisition of 100% of the shares of Grubhub in an all-share combination (the “Transaction”).

The Transaction represents Just Eat Takeaway.com’s entry into online food delivery in the United States and builds on the strategic rationale for the Company’s merger with Just Eat plc. As a result of the Transaction, the Enlarged Group is now built around four of the world’s most attractive markets in online food delivery: the United States, the United Kingdom, the Netherlands and Germany, increasing the Enlarged Group’s ability to deploy capital and resources to strengthen its competitive positions in all markets.

Statement from Jitse Groen, CEO and founder of Just Eat Takeaway.com:

“I have always believed that the combination of Takeaway.com, Just Eat and Grubhub is a winning combination. The new company is the market leader in Europe, Canada and Australia, with very strong positions in the most important markets in the United States. It is humbling to run such a company after our start in Holland more than twenty years ago. We welcome Matt and his team to this great company.”

Statement from Matt Maloney, founder of Grubhub:

“I couldn’t be more excited to enter this next chapter of Grubhub’s story with the global leadership and experience of the Just Eat Takeaway team. Our companies share an unwavering focus on supporting restaurants and our communities around the world. Together we will continue to innovate and break new ground in our industry as we each have separately for the past 20 years.”

As a result of the Transaction, New Just Eat Takeaway.com Shares (represented by New Just Eat Takeaway.com ADSs) have now been issued for the benefit of Grubhub Stockholders in satisfaction of the consideration due under the terms of the Transaction. As a result, Grubhub Stockholders have received New Just Eat Takeaway.com ADSs representing approximately 30% of the Company’s issued share capital as of completion of the Transaction. In addition, Grubhub requested that the New York Stock Exchange (“NYSE”) delist Grubhub’s common stock, and, as a result, trading of the Grubhub common stock, which traded under the ticker symbol “GRUB” on the NYSE, was suspended following the close of trading on 14 June 2021. The New Just Eat Takeaway.com ADSs are expected to begin trading on Nasdaq under the ticker symbol “GRUB” on 15 June 2021.

The Company also confirms that, as described in the prospectus published by the Company on 12 May 2021 (the “**Prospectus**”), the admission of 62,798,005 New Just Eat Takeaway.com Shares to the premium listing segment of the UK Official List and to trading on the London Stock Exchange’s main market for listed securities took place at 8:00 am BST / 9.00 am CET, 15 June 2021 and that the admission of 62,798,005 New Just Eat Takeaway.com Shares to listing and trading on Euronext Amsterdam also took place at 8:00 am BST / 9.00 am CET, 15 June 2021.

Consequently, Just Eat Takeaway.com's total issued share capital as at 15 June 2021 comprises 211,621,200 ordinary shares of €0.04 each with voting rights. The Company holds no shares in treasury. The total number of voting rights in the Company is therefore 211,621,200 and this figure may be used by shareholders as the denominator for the calculations by which they will determine if they are required to notify their interest in, or a change in their interest in, the share capital of the Company under the FCA's Disclosure Guidance and Transparency Rules and the Dutch Financial Markets Supervision Act (*Wet op het financieel toezicht*).

As a result of the Transaction, it is expected that Matt Maloney's appointment to the Just Eat Takeaway.com management board, and the appointments of Lloyd Frink and David Fisher to the Just Eat Takeaway.com supervisory board, will become effective shortly after completion, subject only to receiving from each of them formal confirmation that they accept their respective appointments.

Capitalised terms not otherwise defined in this announcement have the same meaning given to them in the Prospectus.

Just Eat Takeaway.com

Jitse Groen, CEO
Brent Wissink, CFO
Jörg Gerbig, COO

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About Just Eat Takeaway.com

Just Eat Takeaway.com (LSE: JET, AMS: TKWY, NASDAQ: GRUB) is a leading global online food delivery marketplace.

Headquartered in Amsterdam, the Company is focused on connecting consumers and restaurants through its platforms, offering consumers a wide variety of food choice. Just Eat Takeaway.com mainly collaborates with delivery restaurants, but also provides its proprietary restaurant delivery services for restaurants that do not deliver themselves.

The Company has rapidly grown to become a leading online food delivery marketplace with operations in the United States, United Kingdom, Germany, the Netherlands, Canada, Australia, Austria, Belgium, Bulgaria, Denmark, France, Ireland, Israel, Italy, Luxembourg, New Zealand, Norway, Poland, Portugal, Romania, Spain and Switzerland, as well as through partnerships in Colombia and Brazil.

Disclaimers

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