

**BYLAWS**  
**OF**  
**AMERICAN COLLEGE OF COMMERCIAL FINANCE LAWYERS, INC.**

(a Tennessee corporation organized under the Tennessee Nonprofit Corporation Act)

**(Amended and Restated as of September 10, 2016)**

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**ARTICLE I**  
**NAME OF ORGANIZATION**

The name of the corporation is American College of Commercial Finance Lawyers, Inc. (the “College”).

**ARTICLE II**  
**PURPOSE OF ORGANIZATION**

The College is a professional association of distinguished lawyers, jurists and academics dedicated to improving and enhancing the practice of commercial finance law and the ethics of the profession. The College’s mission is to bring together highly qualified members of the legal profession who, by reason of their character, skill and ability, will contribute to the goals, accomplishments and good fellowship of the College.

**ARTICLE III**  
**FELLOWS**

**3.1 Fellows.** The members of the College (hereinafter “**Fellows**”) are those individuals who have been elected and inducted into the College, are not deceased, and have not resigned, been expelled or otherwise ceased to be Fellows as provided in these Bylaws.

**3.2 Membership Qualification Requirements and Procedures.**

(a) Only lawyers, jurists and academics who meet the membership qualifications that are established by the Board of Regents are eligible to be elected and inducted as Fellows.

(b) The Board of Regents shall establish from time to time membership qualifications and procedures for nomination, election and induction as a Fellow pursuant to written “Qualification Requirements and Procedures for Membership” (as in effect at the applicable time the “**Qualification Requirements and Procedures**”) consistent with these Bylaws and the purpose of the College.

(c) The College does not discriminate on the basis of race, color, gender, sexual orientation, age, political affiliation, citizenship, religion, disability, marital status, national origin or any other legally protected category.

### **3.3 Nomination, Election and Induction of Fellows to the College.**

(a) A lawyer, jurist or academic eligible for election as a Fellow may be nominated by:

(i) the Fellows Nominating Committee appointed by the President as provided in Section 3.3(b), or

(ii) the Board of Regents, on its own initiative.

(b) At least sixty (60) days before each annual meeting of the Fellows, the then President of the College shall appoint a Fellows Nominating Committee and shall designate a member of the Fellows Nominating Committee to serve as its Chair. The size and membership of the Fellows Nominating Committee shall be determined by the President, subject to the requirements that all members of the Fellows Nominating Committee shall be Fellows and at least one member of the Fellows Nominating Committee shall be a Regent. Each member of the Fellows Nominating Committee shall be appointed for a one-year term and may be reappointed for subsequent years.

(c) The Fellows Nominating Committee shall, in accordance with the Qualification Requirements and Procedures, solicit proposed nominations of candidates for election to the College from the Fellows.

(d) The Fellows Nominating Committee shall make its nominations of candidates for election to the College in a written report to the President. Whenever practical, a nomination shall be acted upon by the Board of Regents at its next meeting.

(e) The affirmative vote of two-thirds of the Regents entitled to vote and in attendance at a meeting of the Board of Regents at which a quorum is present is required to elect a nominee to the College. The Board of Regents may reconsider its decision to elect a nominee to the College at any time before the nominee is inducted into the College.

(f) Induction of new Fellows shall be at the annual meeting of the Fellows or at such other times and places as shall be determined by the Board of Regents.

### **3.4 Fees and Dues.**

(a) The Board of Regents shall, from time to time, establish:

(i) the amount of the induction fee, if any, payable by a newly inducted Fellow, and

(ii) the annual dues payable by Fellows.

(b) Fellows in any of the following categories shall be exempt from paying induction fees, if any, and annual dues:

(i) A member of the judiciary; *provided* that in the calendar year following such Fellow's leaving judicial office, he or she shall become a dues-paying Fellow unless another exemption in this Section 3.4(b) applies.

(ii) A person serving principally in a full-time academic position at a law school; *provided* that in the calendar year following such Fellow's leaving such academic position, he or she shall become a dues-paying Fellow unless another exemption in this Section 3.4(b) applies.

(iii) A Fellow who has attained age 70, for all years following the calendar year in which such Fellow attains age 70; *provided* that notwithstanding the foregoing, if a Fellow is age 67 or older at the time he or she is inducted into the College, such Fellow, unless another exemption in this Section 3.4(b) applies, shall pay the induction fee, if any, and shall pay annual dues for at least three consecutive years before becoming exempt from paying annual dues under this clause (iii).

(iv) A Fellow who is granted an exemption by the Board of Regents, in its discretion, upon such Fellow's retirement from the active practice of law or from an academic or judicial position, while such Fellow is so retired, for all calendar years following the calendar year in which he or she retires.

(v) A Fellow who is granted an exemption by the Board of Regents, in its discretion, for financial hardship or other good cause, subject to any conditions established by the Board of Regents.

Each Fellow who is exempt from paying induction fees, if any, and/or annual dues shall nevertheless have all the rights and privileges of a Fellow.

(c) The Treasurer of the College shall annually send each Fellow who is obligated to pay dues, by first class mail or electronic mail, addressed to such Fellow at his or her address as listed in the records of the College, a statement of the dues payable by such Fellow for the next calendar year, specifying that the dues are payable on receipt of the statement.

(d) If applicable, promptly following induction of a Fellow into the College, the Treasurer of the College shall send to such Fellow, by first class mail or electronic mail, addressed to such Fellow at his or her address as listed in the records of the College, a statement of the amount of the induction fee, if any, and the dues for the calendar year in which such Fellow is inducted, specifying that the amount is payable on receipt of the statement.

(e) The Board of Regents may, from time to time, adopt policies and procedures regarding the consequences of non-payment of dues or non-payment of the induction fee, including expulsion of a Fellow.

### **3.5 Annual and Other Meetings of Fellows; Business Conducted at a Meeting; Quorum.**

(a) The College shall hold an annual meeting of the Fellows at a time and place selected by the Board of Regents.

(b) Special meetings of the Fellows may be called:

(i) by the President,

(ii) by the Board of Regents, or

(iii) upon a written call signed by not fewer twenty percent (20%) of the Fellows.

(c) At least ten (10) days' advance notice of the time, place and purpose of any annual or special meeting of the Fellows shall be given by the Secretary by first class mail or electronic mail addressed to each Fellow at his or her address as listed in the records of the College.

(d) Only business within the purpose or purposes described in the notice of an annual or special meeting of the Fellows may be conducted at such meeting.

(e) Fellows present in person at any annual or special meeting of the Fellows totaling at least fifteen percent (15%) of all Fellows then in the College shall constitute a quorum for the transaction of business at such meeting.

(f) Voting by proxy shall not be permitted at any meeting of the Fellows.

### **3.6 Expulsion of Fellows.**

(a) The right to expel or call for resignation of any Fellow is vested in the Board of Regents.

(b) Any Fellow may be expelled or called upon to resign from the College for non-payment of induction fees or annual dues, misconduct in his or her relations with the College, or conduct discreditable to the College or the legal profession, injurious to the College or inconsistent with the purposes of the College (collectively referred to as "**misconduct**").

(c) A Fellow charged with misconduct shall be given at least fifteen (15) days' prior written notice of the nature of the charges of misconduct against him or her and the time and place at which he or she may have an opportunity to be heard in person or through a representative. The notice shall be sent by first class mail or certified mail to the Fellow at his or her address as listed in the records of the College. If exigent circumstances exist, the Board of Regents may proceed without a hearing and act upon such charges of misconduct, including expulsion of the Fellow so charged, by such procedures as are fair and reasonable taking into consideration all of the facts and circumstances.

(d) When a Fellow is disbarred from the practice of law in a state or other jurisdiction in which such Fellow is admitted to practice, he or she shall, upon such disbarment becoming final, automatically cease to be a Fellow.

(e) The Board of Regents may, in its discretion and upon such terms as it shall determine, reinstate the membership of a Fellow who has been expelled, has resigned or has or otherwise ceased to be a Fellow as provided in these Bylaws.

## **ARTICLE IV BOARD OF REGENTS**

### **4.1 Number of Regents; Membership of the Board of Regents; Past Presidents.**

(a) The Board of Regents shall consist of the incumbent Executive Officers (as defined in Section 5.1), the immediate past President and not fewer twelve (12) or more than twenty-four (24) additional members elected by the Fellows. The number of additional members shall be determined from time to time by resolution of the Board of Regents.

(b) Each past Presidents (other than the immediate past President) shall be an *ex officio* member of the Board of Regents, but shall not be counted for quorum purposes or have the right to vote as a Regent. For the avoidance of doubt, this exclusion of past Presidents from voting as Regents shall not preclude them from being appointed as voting members of the Regents Nominating Committee, the Officers Nominating Committee, the Fellows Nominating Committee or any other committee mandated by these Bylaws or appointed by the Board of Regents or the Executive Committee (individually a “Committee” and collectively “Committees”).

**4.2 Eligibility.** Only Fellows at the time of the annual meeting of the Fellows are eligible for election to the Board of Regents. Past Presidents shall not be eligible for election as Regents.

### **4.3 Election and Term of Office; Vacancies.**

(a) The elected members of the Board of Regents shall be divided into four classes, with the terms of such members being allocated among the classes so that as nearly as possible all classes are of equal size.

(b) At each annual meeting of the Fellows, by the affirmative vote of a majority of those Fellows present, a class of Regents shall be elected for a term of four years to succeed Regents whose terms are expiring at such annual meeting. Each such elected member of the Board of Regents shall serve until his or her respective successor class of Regents is elected or until his or her earlier death, resignation or removal, or his or her having ceased to be a Fellow as provided in these Bylaws.

(c) Vacancies on the Board of Regents may, but shall not be required to, be filled for unexpired terms by the affirmative vote of a majority of those Fellows present at the next annual meeting of the Fellows after any such vacancy arises. Each such elected member of the Board of Regents shall serve until his or her successor is elected or until his or her earlier death, resignation or removal, or his or her having ceased to be a Fellow as provided in these Bylaws.

#### **4.4 Nomination.**

(a) Nomination of candidates for election to the Board of Regents may be made by:

(i) the Regents Nominating Committee appointed by the President as provided in Section 4.4(b), or

(ii) petition of Fellows as provided in Section 4.4(f).

(b) At least sixty (60) days before each annual meeting of the Fellows, the then President shall appoint a Regents Nominating Committee consisting of three (3) Regents and shall designate a member of the Regents Nominating Committee to serve as its Chair. Each member of the Regents Nominating Committee shall be appointed for a one-year term and may be reappointed for subsequent years.

(c) The Board of Regents shall annually inform the Regents Nominating Committee as to the number of Regents to be elected at the next annual meeting of the Fellows (including nominations to fill the unexpired term of any Regent who has resigned or otherwise ceased to hold office for the remainder of the term for which such Regent was elected).

(d) The Regents Nominating Committee may consider any eligible Fellow (other than the incumbent Executive Officers (as defined in Section 5.1) and the immediate past President) for nomination for election as a Regent.

(e) As soon as practical, but not later than thirty (30) days before the annual meeting of the Fellows, the Regents Nominating Committee shall report its nominations to the President and the Secretary. If, after the Regents Nominating Committee has submitted its report and before such annual meeting, a vacancy arises on the Board of Regents for a term of an elected Regent not expiring at such annual meeting, or a nominated Fellow is not eligible or withdraws from consideration, the Regents Nominating Committee, as soon as practical, shall submit a supplemental report to the President and Secretary of its supplemental nomination(s), and if practical, the President or Secretary shall notify the Fellows of the supplemental nomination(s) prior to such annual meeting of the Fellows by first class mail or electronic mail addressed to each Fellow at his or her address as listed in the records of the College.

(f) Nominations by Fellows may be made by a petition addressed to the President and signed by not fewer than twenty (20) Fellows. The petition shall state that the Fellow so nominated has agreed to serve and must be received by the President and the Secretary at least thirty (30) days before the annual meeting of the Fellows.

(g) The Secretary shall include information regarding eligible nominees in the notice of the annual meeting of the Fellows in accordance with Section 3.5(c).

(h) At the annual meeting of the Fellows, the Chair of the Regents Nominating Committee or, in his or her absence, the President, shall announce the Regents Nominating

Committee's nominations, and the President shall announce any nominations by petition that have been made in compliance with Section 4.4(f).

**4.5 Quorum.** A majority of the members of the Board of Regents entitled to vote shall constitute a quorum for the transaction of business at any meeting of the Board of Regents.

**4.6 Powers and Duties.** The Board of Regents shall have the power and duty to manage the business and conduct the affairs of the College, including the power to:

(a) adopt the Qualification Requirements and Procedures;

(b) fix induction fees and annual dues;

(c) in addition to any committees mandated by these Bylaws, create committees of the Board of Regents and committees composed of Fellows who may, but need not, be Regents, and appoint members thereof;

(d) create any executive and administrative offices that may be deemed necessary and fill those offices;

(e) amend these Bylaws as provided in Article VIII;

(f) amend the Charter of the College to the extent permitted by the Tennessee Nonprofit Corporation Act;

(g) expel Fellows in accordance with these Bylaws; and

(h) transact all other business for and on behalf of the College not otherwise provided for in these Bylaws and not reserved to the Fellows.

#### **4.7 Meetings.**

(a) The Board of Regents shall meet immediately before the annual meeting of the Fellows.

(b) Other meetings of the Board of Regents may be held:

(i) at the call of the President or in the event of his or her unavailability or inability to act, by the President-Elect, or

(ii) upon a written call signed by not fewer twenty percent (20%) of the Regents.

(c) Each meeting of the Board of Regents shall be announced by a notice specifying the time and place thereof. The notice shall be given to each Regent by first class mail or electronic mail at the address listed in the records of the College at least two (2) days before the meeting.

#### **4.8 Removal and Resignation of Regents.**

(a) Any Regent may be removed from office, with or without cause, by a two-thirds vote of the Board of Regents present and voting at a meeting of the Board of Regents at which a quorum is present.

(b) Any Regent may resign from the Board of Regents at any time by giving written notice to the President and Secretary. The acceptance of such resignation shall not be necessary to make it effective, but such resignation shall be effective when it is delivered.

(c) Expulsion or resignation as, or otherwise ceasing to be, a Fellow is effective as a removal or resignation as a Regent.

#### **4.9 Executive Committee.**

(a) The Executive Committee shall consist of the President, the President-Elect, the immediate past President, the Vice President, the Secretary and the Treasurer. The President shall be the Chair of the Executive Committee.

(b) During the intervals between meetings of the Board of Regents, the Executive Committee shall exercise all of the powers of the Board of Regents in the management of the business and the conduct of the affairs of the College, but shall not have the power to:

(i) amend these Bylaws or the Charter of the College;

(ii) fix induction fees and annual dues;

(iii) expel any Fellow;

(iv) approve the merger or dissolution of the College or sale of all or substantially all of the assets of the College, or pledge, mortgage or encumber in any way the assets of the College;

(v) incur any indebtedness for borrowed money;

(vi) elect, appoint or remove Regents or fill vacancies on the Board of Regents;

(vii) elect, appoint or remove any officer or fill any officer vacancies; or

(viii) take any other action that would not be permitted under the Tennessee Nonprofit Corporation Act.

The Executive Committee may not adopt rules or regulations in regard to any power that it may not exercise.

(c) The acts of the Executive Committee shall be reported periodically to the Board of Regents.



## **ARTICLE V OFFICERS**

**5.1 Officers.** The officers of the College shall be a President, a President-Elect, a Vice-President, a Secretary and a Treasurer (hereinafter “**Executive Officers**”). The Board of Regents may from time to time establish additional offices and appoint persons to fill such offices (“**Non-Executive Officers**”). As used in these Bylaws, “officers” refers to Executive Officers and Non-Executive Officers unless otherwise stated.

### **5.2 Eligibility, Election and Terms of Office.**

(a) Only Regents or former Regents are eligible to become Executive Officers. Non-Executive Officers may, but need not, be Regents or former Regents.

(b) Officers shall be elected by a majority vote of the Regents entitled to vote and in attendance at a duly constituted annual meeting of the Board of Regents.

(c) Officers shall serve for a term of one year or until their respective successors are duly elected or until their earlier death, resignation or removal, or their having ceased to be a Fellow as provided in these Bylaws.

(d) The President, President-Elect and Vice President shall not be permitted to succeed themselves in the same office except when they are filling the unexpired term of a predecessor as provided in Section 5.3.

### **5.3 Vacancies.**

(a) A vacancy in any office that is not filled as required by other provisions of these Bylaws shall be filled by majority vote of the Regents entitled to vote and in attendance at a duly constituted meeting of the Board of Regents.

(b) Any person appointed to a vacancy shall serve for the unexpired term of his or her predecessor.

### **5.4 Nominations of Executive Officers.**

(a) Each year the five (5) most recent past Presidents of the College who are Fellows and are willing to so serve shall constitute the Officers Nominating Committee for the nomination of Executive Officers for full terms of office as well as to fill vacancies. The most recent past President of the College willing to so serve will be Chair of the Officers Nominating Committee.

(b) At least two (2) days before the annual meeting of the Board of Regents, the Officers Nominating Committee shall submit to the Board of Regents, by first class mail or electronic mail at the address of each Regent listed in the records of the College, nominations for Executive Officers of the College for the ensuing year.

(c) Any Regent or other Fellow may, in advance of the meeting of the Board of Regents, submit to the Board of Regents nominations for Executive Officers in addition to the nominations submitted by the Officers Nominating Committee.

**5.5 Duties of President.** The President shall preside at all meetings of the Fellows, the Board of Regents and the Executive Committee. Unless otherwise determined by the Board of Regents, the President shall also serve as an *ex officio* member of all Committees, and shall discharge any other duties that are incident to the office or that the Board of Regents may require.

**5.6 Duties of President-Elect.** The President-Elect shall, in the absence of the President, preside at meetings of the Fellows, the Board of Regents and the Executive Committee, and shall discharge any other duties that are incident to the office or that the President or the Board of Regents may require. In the event of the President's death, disability, resignation or removal, or the President ceasing to be a Fellow as provided in these Bylaws, the President-Elect shall discharge the duties and exercise the powers of the President for the remainder of the President's unexpired term, or in the case of disability ending before the expiration of the term, until the disability is ended.

**5.7 Duties of Vice-President.** The Vice President shall, in the absence of the President and the President-Elect, preside at meetings of the Fellows, the Board of Regents and the Executive Committee, and shall discharge any other duties that are incident to the office or that the President or the Board of Regents may require. In the event of both the President's and the President-Elect's death, disability, resignation or removal, or the President and President-Elect ceasing to be Fellows as provided in these Bylaws, the Vice-President shall discharge the duties and exercise the powers of the President for the remainder of the President's unexpired term, or in the case of disability ending before the expiration of the term, until the disability is ended.

**5.8 Duties of Secretary.** The Secretary shall keep the minutes of the meetings of the Fellows, the Board of Regents and the Executive Committee, shall see that all notices are duly given in accordance with the provisions of these Bylaws, shall keep the records of the College including the roster of Fellows and the Charter and Bylaws of the College and all amendments thereto, shall make any reports to the Executive Committee and to the Board of Regents that may be required from time to time, and shall discharge any other duties that are incident to the office or that the President or the Board of Regents may require.

**5.9 Duties of Treasurer.** The Treasurer shall keep and maintain all financial records of the College and be responsible for the funds of the College, shall cause to be prepared and filed all tax returns and reports for the College to be filed with taxing authorities and the Tennessee Secretary of State in order to maintain the income tax exemption and good standing of the College, shall make reports to the Executive Committee and the Board of Regents that may be required from time to time, and shall discharge any other duties that are incident to the office or that the President or the Board of Regents may require.

**5.10 Duties and Designations of Additional Officers.** If the Board of Regents creates Non-Executive Officers as provided in Section 5.1, the Board of Regents shall specify:

- (i) the duties of such Non-Executive Officers, and

(ii) the titles of such Non-Executive Officers (which shall distinguish such officers from the Executive Officers).

### **5.11 Removal and Resignation of Officers.**

(a) Any officer may be removed from office, with or without cause, by a majority vote of the Board of Regents present and voting at a meeting of the Board of Regents at which a quorum is present.

(b) Any officer may resign from his or her office at any time by giving written notice to the President (or to the President-Elect if the President is resigning) and Secretary (or to the President-Elect if the Secretary is resigning), and the acceptance of such resignation shall not be necessary to make it effective, but such resignation shall be effective when it is delivered.

(c) Removal or resignation as a Fellow is effective as a removal or resignation as an officer. Removal or resignation as a Regent is effective as a removal or resignation as an officer who is also a Regent.

## **ARTICLE VI TELEPHONIC MEETINGS; ACTION BY CONSENT**

### **6.1 Telephonic Meetings.**

(a) Any one or more members of the Board of Regents or any Committee may participate in a meeting of the Board of Regents or such Committee, as the case may be, through use of a conference telephone or similar communications equipment by which all persons participating in the meeting can hear one another. Participation by such means shall constitute presence in person at the meeting.

(b) Any one or more Fellows may participate in a special meeting of the Fellows (but not the annual meeting of the Fellows) through use of a conference telephone or similar communications equipment by which all persons participating in the meeting can hear one another. Participation by such means shall constitute presence in person at the meeting.

**6.2 Action by Consent.** Any action required or permitted to be taken by the Board of Regents or any Committee may be taken without a meeting if all members of the Board of Regents or such Committee, as the case may be, entitled to vote consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the Board of Regents or such Committee shall be filed with the minutes of the College.

## **ARTICLE VII INDEMNIFICATION**

**7.1 Mandatory Indemnification.** The College, to the extent legally permissible, shall indemnify each person who may serve or who has served at any time as (i) a Regent, (ii) a member of any Committee, (iii) an Executive Officer or Non-Executive Officer of the College, or (iv) a Fellow appointed by the Regents or the Executive Committee to be an official observer on behalf of, or representative of, the College to or prepare a comment letter or other statement

on behalf of the College submitted to legislative or other law reform projects that are organized and conducted by third party organizations or governmental authorities (each person in clauses (i) through (iv), together with the persons described in Section 7.6, a “**Covered Person**” and collectively “**Covered Persons**”) against all expenses and liabilities (including counsel fees at all levels, judgments, fines, excise taxes, penalties and amounts payable in settlement), imposed upon or reasonably incurred by such person in connection with any threatened, pending or completed action, suit or other proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal, in which such person may become involved by reason of serving or having served in any such capacity (other than a proceeding voluntarily initiated by such person, unless (x) he or she is successful on the merits, (y) the proceeding was authorized by the College or (z) the proceeding seeks a declaratory judgment regarding her or his own conduct); *provided* that no indemnification shall be provided for any such person with respect to any matter as to which he or she shall have been finally adjudicated in any proceeding (i) to have breached the duty of loyalty to the College or the Fellows, or (ii) to have committed acts or omissions not in good faith or which involved intentional misconduct or intentional violation of law; and *provided, further*, that as to any matter disposed of by a settlement by such person, pursuant to a consent decree or otherwise, the payment and indemnification thereof have been approved in writing by the College, which approval shall not unreasonably be withheld, conditioned or delayed, or by a court of competent jurisdiction. Such indemnification, upon receipt of an undertaking by the person indemnified to repay such payment if he or she shall be adjudicated to be not entitled to indemnification under this Article VII (which undertaking may be accepted without regard to the financial ability of such person to make repayment), shall include payment by the College of expenses incurred in defending a civil or criminal action or proceeding in advance of the final disposition of such action or proceeding.

**7.2 Approval of Indemnification.** Where indemnification hereunder requires authorization or approval by the College, such authorization or approval shall be conclusively deemed to have been obtained, and in any case where a Regent votes to approve the payment of indemnification, such Regent shall be wholly protected, if:

(i) the payment has been approved or ratified:

(x) by a majority vote of a quorum of the Regents consisting of persons who are not at that time parties to the proceeding, or

(y) by a majority vote of a committee of one or more Regents who are not at that time parties to the proceeding and are selected for this purpose by the full Board of Regents (in which selection Regents who are parties may participate); or

(ii) the action is taken in reliance upon the opinion of independent legal counsel (who may be counsel to the College), appointed for the purpose by the Board of Regents or in the manner specified in this clause (ii) or the preceding clause (i); or

(iii) the payment is approved by a court of competent jurisdiction; or

(iv) the Regents have otherwise acted in accordance with the applicable legal standard of conduct.

**7.3 Payment of Indemnification.** Any indemnification or advance of expenses under this Article VII shall be paid promptly, and in any event within thirty (30) days, after the receipt by the Secretary of the College (or if the Secretary is making such request, the President of the College) of a written request therefor from the person to be indemnified, unless with respect to a claim for indemnification the College shall have determined that the person is not entitled to indemnification or advance of expenses. If the College denies the request or if payment is not made within such thirty (30) day period, the person seeking to be indemnified or seeking advance of expenses may at any time thereafter seek to enforce her or his rights under this Article VII in a court of competent jurisdiction and, if successful in whole or in part, he or she shall be entitled also to indemnification for the expenses of prosecuting such action. Unless otherwise provided by law, the burden of proving that the person is not entitled to indemnification and advance of expenses shall be on the College.

**7.4 Implied Contract.** The right of indemnification and advancement of expenses under this Article VII shall be a contract right inuring to the benefit of the Covered Persons entitled to be indemnified hereunder and no amendment or repeal of this Article VII shall adversely affect any right of such person existing at the time of such amendment or repeal.

**7.5 Beneficiaries.** The indemnification and advancement of expenses provided hereunder shall inure to the benefit of the heirs, executors and administrators of any Covered Person entitled to indemnification hereunder.

**7.6 Non-Exclusive Rights.** The right of indemnification and advancement of expenses under this Article VII shall be in addition to and not exclusive of all other rights to which a Covered Person may be entitled. Nothing contained in this Article VII shall affect any rights to indemnification to which College employees or agents (other than Covered Persons) may be entitled by contract or by law. The Board of Regents may further obligate the College to indemnify and advance expenses to any Covered Person to the fullest extent lawfully permitted.

**7.7 Savings Provision.** If this Article VII or any portion of it is invalidated on any ground by a court of competent jurisdiction, the College nevertheless shall indemnify Covered Persons to the fullest extent permitted by all portions of this Article VII that have not been invalidated and to the fullest extent permitted by law.

## **ARTICLE VIII AMENDMENT OF BYLAWS**

These Bylaws may be amended:

(a) By a two-thirds vote of the Regents entitled to vote at a meeting of the Board of Regents at which a quorum is present, *provided* that the notice of such meeting shall (x) be sent to each Regent at least ten (10) days prior the meeting by first class mail or electronic mail at his or her address as listed in the records of the College, and (y) include a description of the proposed amendment; or

(b) By a two-thirds vote of the Fellows present at any meeting of the Fellows at which a quorum is present, *provided* that the notice of such meeting shall include a description of the proposed amendment.

(b) By a two-thirds vote of the Fellows present at any meeting of the Fellows at which a quorum is present, *provided* that the notice of such meeting shall include a description of the proposed amendment.