

Letter to the World Health Organization

 smoke-free-world.org/newsroom/letter-world-health-organization

September 29, 2017

This is a letter sent by the Foundation for a Smoke-Free World founder and president-designate Dr. Derek Yach, on September 29, 2017, to officials at the World Health Organization to correct the mischaracterizations the World Health Organization has made about the Foundation for a Smoke-Free World.

Dr. Vera Luiza da Costa e Silva
World Health Organization
WHO Headquarters Avenue Appia 20
1211
Geneva 27

Dear Dr. Costa e Silva,

I'm writing to you in my capacity as founder of the Foundation for a Smoke-Free World (Foundation), and as a long-standing tobacco control advocate who, as you know, was extensively involved in the development of the WHO Framework Convention on Tobacco Control (FCTC). The Foundation aims to work with others committed to accelerating the end of smoking among the world's one billion smokers, and ensure we are ready to address the consequences of reduced tobacco use for millions of tobacco farmers.

While I and others involved in the Foundation strongly support the FCTC and the mission of WHO, we were surprised and deeply disappointed by your press releases, dated September 19, 2017 and September 28, 2017, which mischaracterize the nature, structure and purpose of the Foundation.

I'd like to respectfully correct some of the more significant misperceptions WHO seems to have regarding the Foundation. My hope is that, upon reflection and consideration of the facts, you will remove the press releases from your website, at least until we have an opportunity for dialogue and WHO is able to complete proper due diligence on the Foundation.

The Foundation is an independent non-profit organization which, through its governing documents, has fully insulated itself from the influence of the tobacco industry. The Foundation would certainly welcome WHO and others to scrutinize our independence when we develop a research agenda -- which will be open to input from the public health community and subject to peer review -- and begin our work. However, it is premature for you to judge our independence and attempt to characterize our activities at this point.

You wrongly assert that the Foundation intends to breach the WHO FCTC, and specifically Article 5.3. However, the goals and objectives of the Foundation are squarely in line with WHO's mission, the FCTC and Article 5.3. Our goal is not, as you claim, to interfere in public policy or to advance corporate interests. Rather, the Foundation aims to collaboratively research and build consensus on the mix of initiatives that the evidence base demonstrates will most rapidly and effectively eliminate harm and deaths from smoking around the world. With more than 7 million smoking-related deaths a year, I'm sure we can agree there is an urgent need to do more to find new, scientifically validated ways to stop smoking. Recent advances in a range of technologies create the opportunity to disrupt the tobacco sector in ways that enhance health.

The Foundation is and will remain legally, operationally and philosophically distinct and separate from the tobacco industry. I would not have it any other way. Yet, your press releases unfairly attempt to discredit the Foundation at its inception, and do so without the sort of due diligence the Framework of Engagement with non-state Actors calls upon WHO to conduct. If WHO had properly conducted such due diligence, WHO would have learned that, as a separate legal entity, the Foundation is not controlled by the tobacco industry, and, as a philanthropic foundation, it is explicitly prohibited from working to advance the commercial interests of its funders.

The Certificate of Incorporation and the Bylaws are the fundamental legal documents for any Foundation. Both documents are publicly available for review and comment on our website, www.smoke-freeworld.org. The Certificate defines the Foundation's intended operations and, in Article Third, it clearly states the Foundation shall be operated **exclusively** for charitable, scientific and educational purposes.¹ It also commits that we will support independent scientific research **free from the influence** of any commercial entity that may be affected by the research outcome. The Bylaws of the Foundation could not be any clearer in declaring that, with respect to its independent research agenda and other activities, the Foundation must pay no heed to the impact of its work on the tobacco industry.

To further underscore the Foundation's independence, and its resolution to be free from influences not in line with its mission, the Foundation's Bylaws specifically provide in Article IX, Scientific Integrity, that the Foundation shall operate "in a manner that ensures the Corporation's freedom and independence from the influence of any commercial entity." This Bylaw requires the Foundation to act freely and independently from any commercial enterprise, clearly including the tobacco industry.

Moreover, as part of its independent research agenda, the goal of the Foundation is to promote and support significant scientific research that advances the field of tobacco harm reduction and reduces the public health burden of smoking-related diseases. On this exact issue, the Bylaws provide adamantly as follows: "The Corporation shall not take into account the potential impact of that research on the image of the tobacco industry or any other industry or commercial entity."

Clearly, the Foundation's purpose comports with Article 5.3 of the FCTC, the aim of which is to protect against interference not only by the tobacco industry but also, as appropriate, by organizations that advance the interests of the tobacco industry. ("Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control") The Foundation's explicit purpose is to support harm reduction and reduce the public health burden of smoking-related diseases – which is totally aligned with WHO's goals.

If, after you have had a chance to observe the transparent and collaborative manner in which the Foundation will function and the many ways it will seek to end the public health threat of smoking, you still feel the Foundation doesn't align with both the spirit and the letter of the FCTC, then, by all means, raise the point. But taking action now is premature. Let us rather focus our combined energies on reducing smoking.

In the spirit of collaboration and dialogue, I invite you to meet in person in the next few weeks to discuss the Foundation's plans, structure and intent. In the meantime, should you have further questions, please let me know and, again, I would very much appreciate your removal of the press releases from your website until you have been able to complete proper due diligence on the Foundation.

Sincerely,
Dr. Derek Yach

cc: Dr. Ian Smith; Dr. Douglas Bettcher

¹ To further bolster this requirement, the Foundation intends to file for tax-exempt status with the United States Internal Revenue Service.

Delaware

The First State

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I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "FOUNDATION FOR A SMOKE-FREE WORLD, INC.", FILED IN THIS OFFICE ON THE EIGHTH DAY OF SEPTEMBER, A.D. 2017, AT 2:08 O`CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.


Jeffrey W. Bullock, Secretary of State

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SR# 20176078972

You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 203189408
Date: 09-08-17

**CERTIFICATE OF INCORPORATION
OF**

FOUNDATION FOR A SMOKE-FREE WORLD, INC.

The undersigned, for the purpose of organizing a non-profit, non-stock corporation under the General Corporation Law of the State of Delaware, hereby certifies as follows:

FIRST: The name of the corporation shall be Foundation for a Smoke-Free World, Inc. (hereinafter, the "Corporation").

SECOND: The address of the Corporation's registered office in the State of Delaware is 251 Little Falls Drive, in the city of Wilmington, County of New Castle, State of Delaware, zip code 19808. The name of the Corporation's registered agent at such address is Corporation Service Company.

THIRD: The Corporation is organized and shall be operated exclusively for charitable, scientific and educational purposes within the meaning of section 501(c)(3) of the Code, including, without limitation, to support independent scientific research free from the influence of any commercial entity that may be affected by the research outcome. In furtherance thereof, but without limitation thereon, the Corporation shall hold, invest and administer assets received as charitable gifts, bequests and contributions and use such assets or the income therefrom to (i) make grants and other distributions to academic, health-related, research and science centers and institutions and other collaborating centers and institutions, and to scientists and health-related experts, to support research and projects regarding alternatives to cigarettes and other combustible tobacco products and how to best achieve a smoke-free world and advance the field of tobacco harm reduction; (ii) fund global research initiatives and publish reports regarding, among other things, the attitudes and opinions of the general public towards tobacco harm reduction; (iii) fund scientific verification studies to assess the impact of smoke-free and reduced risk products on public health outcomes and how such products affect the general population; (iv) scrutinize, comment on, and inform the general public regarding the activities of the tobacco industry, other commercial entities and other stakeholders which may have an impact, either positive or negative, on achieving a smoke-free world and advancing the field of tobacco harm reduction; (v) research the effect of the reduced demand for leaf tobacco on farmers and other stakeholders and explore and promote sustainable agricultural and nutritional alternatives for tobacco farmers, tobacco land and other stakeholders; (vi) research sustainability issues and solutions related to the management of smoke-free and reduced risk products-related waste materials; and (vii) conduct global conferences, forums, panels and similar programs to focus on the evolving science regarding alternatives to cigarettes and other combustible tobacco products and how to best realize a smoke-free world.

No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its members, directors, officers, other private individuals or organizations organized and operated for a profit (except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes as hereinabove stated). The Corporation shall not

carry on propaganda or otherwise attempt to influence legislation to such extent as would result in the loss of exemption under section 501(c)(3) of the Code. The Corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

Notwithstanding any other provision herein, the Corporation shall not carry on any activities not permitted to be carried on: (i) by an organization exempt from federal income taxation under section 501(a) of the Code, as an organization described in section 501(c)(3) of the Code; or (ii) by an organization, contributions to which are deductible under sections 170(c)(2), 2055(a)(2), or 2522(a)(2) of the Code.

FOURTH: To further the Corporation's objects and purposes, the Corporation shall have all the general powers enumerated in the Delaware General Corporation Law that are consistent with Article THIRD of this Certificate. Without limiting the generality of the foregoing, the Corporation shall have the power to receive grants, gifts, contributions and other sums of a like nature, outright, in trust, or in any other form, and the power to maintain a fund or funds of real or personal property for any corporate purpose.

FIFTH: The Corporation is not organized for profit and shall not have authority to issue capital stock.

SIXTH: The Corporation shall have perpetual existence.

SEVENTH: The directors of the Corporation shall be the members of the Corporation for all purposes. All actions, consents and approvals taken by the directors shall be deemed to be taken by them as members whenever so required, whether or not the specific action, consent or approval specifically references them as acting as members at the time.

EIGHTH: Except as otherwise provided by law, the Bylaws of the Corporation or this Certificate, the Corporation shall be governed by its Board of Directors, which shall have (subject to the limitations set forth in this Certificate) all powers conferred by law to manage the Corporation and its activities. The qualifications and rights, including voting rights, of the directors shall be as set forth in the Bylaws of the Corporation.

NINTH: The Corporation shall indemnify its directors and officers for the defense of civil or criminal actions or proceedings as set forth in the Bylaws of the Corporation. The personal liability of the directors and officers of the Corporation is hereby eliminated to the fullest extent permitted by section 102(b)(7) of the Delaware General Corporation Law.

TENTH: Upon dissolution or final liquidation of the Corporation, the Board of Directors, after paying or making provision for the payment of all lawful debts and liabilities of the Corporation, shall distribute the assets of the Corporation to such organization or organizations as the Board of Directors shall select, provided such organization or organizations are organized and operated exclusively for purposes consistent with the charitable, scientific or educational purposes of the Corporation and are exempt from federal income taxation under section 501(a) of the Code, as an organization or as organizations described in sections 170(c)(2) and 501(c)(3) of the Code. Any assets not so distributed shall be disposed of by a court of

competent jurisdiction of the county in which the principal office of the Corporation is then located, exclusively for one or more exempt purposes within the meaning of section 501(c)(3) of the Code, or to a state or local government for a public purpose, or to such organization or organizations, which are organized and operated exclusively for such exempt purposes, as such court shall determine.

ELEVENTH: For any period the Corporation is a private foundation described in section 509(a) of the Code:

(a) The Corporation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by section 4942 of the Code;

(b) The Corporation shall not engage in any act of "self-dealing" as defined in section 4941(d) of the Code;

(c) The Corporation shall not retain any "excess business holdings" as defined in section 4943(c) of the Code;

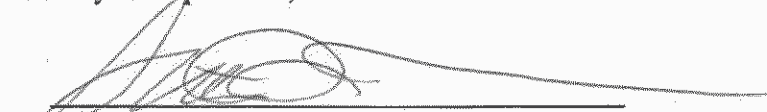
(d) The Corporation shall not make any investments in such manner as to subject it to tax under section 4944 of the Code; and

(e) The Corporation shall not make any "taxable expenditures" as defined in section 4945(d) of the Code.

TWELFTH: References herein to sections of the "Code" are to sections of the Internal Revenue Code of 1986, as amended from time to time, or to the corresponding provisions of any future United States internal revenue law. References herein to the Delaware General Corporation Law are to the provisions of such law, as amended from time to time, or to the corresponding provisions of any subsequent Delaware corporation law.

THIRTEENTH: The name and mailing address of the incorporator are Scott Weiser, Baker & Hostetler LLP, 45 Rockefeller Plaza, New York, New York 10111.

IN WITNESS WHEREOF, I, the undersigned, have subscribed and acknowledged this Certificate this 8th day of September, 2017.



Scott Weiser, Incorporator

The bylaws of the Foundation for a Smoke-Free World were amended and restated on September 19, 2017. The newly adopted bylaws reflect a revision in the second sentence in Article IX, Paragraph A, which now reads, “The Corporation shall not take into account the potential impact of that research on the image of the tobacco industry or any other industry or commercial entity.”

The above revision replaces the second sentence in Article IX, Paragraph A in the original bylaws as adopted on September 12, 2017. The previous version of the bylaws read, “No resources shall be devoted to the potential impact of that research on the image of the tobacco industry or any other industry or commercial entity.”

FIRST AMENDED AND RESTATED
BYLAWS
OF
FOUNDATION FOR A SMOKE-FREE WORLD, INC

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BYLAWS
OF
FOUNDATION FOR A SMOKE-FREE WORLD, INC.

ARTICLE I

Offices and Registered Agent

Section 1. Principal Office. The principal office of Foundation for a Smoke-Free World, Inc., a non-profit, non-stock corporation incorporated under the laws of the State of Delaware (hereinafter the “Corporation”), shall be at such suitable place within or without the State of Delaware as the Board of Directors may from time to time determine.

Section 2. Registered Office and Agent. The Corporation shall have and continuously maintain a registered office in the State of Delaware (which may be identical with the principal office) and the Board of Directors of the Corporation shall appoint and continuously maintain in service a registered agent in the State of Delaware, who shall be an individual resident of the State of Delaware or an authorized corporate registered agent.

Section 3. Other Offices. The Corporation may have such other office or offices, at such suitable place or places within or without the State of Delaware as the Board of Directors may from time to time determine as necessary for the conduct of the affairs of the Corporation.

ARTICLE II

Membership

The Directors of the Corporation shall be the Members of the Corporation for all purposes. All actions, consents and approvals taken by the Directors shall be deemed to be taken by them as Members whenever so required, whether or not the specific action, consent or approval specifically references them as acting as Members at the time.

ARTICLE III

Board of Directors

Section 1. Classes, Number, Election and Term of Office. There shall be one class of Directors. The number of Directors shall be fixed by the Directors from time to time. Each Director shall hold office for a term of two (2) years and until his or her successor is duly elected and qualified or until his or her earlier resignation, removal from office or death. Directors shall be elected at each Annual Meeting of Directors, or if such meeting is not held or Directors are not elected thereat, at a special meeting of Directors called for that purpose. Each Director shall be considered for quorum purposes and shall be entitled to vote at any meeting of the Directors. As used in this Article III, “year” shall mean the period from one Annual Meeting of Directors until the close of the next Annual Meeting of Directors, and if a Director is elected at a special meeting, it shall mean the period from such special meeting until the close of the next Annual Meeting of Directors.

Section 2. Resignation or Removal. Any Director, by notice in writing to the Board of Directors, may resign at any time. Any Director may be removed from office with or without cause at a meeting of Members by a majority vote of all of the Members.

Section 3. Vacancies. A vacancy in a Director shall be filled by a majority vote of all of the Directors then serving at a special Meeting.

Section 4. Quorum. Except with respect to the filling of a vacancy in the Board, a majority of the Directors then serving entitled to vote shall constitute a quorum for the transaction of business at any meeting of the Directors.

Section 5. Meetings of Directors. The Annual Meeting of Directors shall be held at such date, time and place within the first twelve (12) months following the end of the

fiscal year of the Corporation as may be fixed by the Directors, or by an officer of the Corporation authorized by the Board, and as stated in the notice of the meeting. Special Meetings of the Directors may be called by the President, or, in the case of the President's absence, death or disability, by the Vice President, or by a majority of the Directors.

Section 6. Notice of Meetings of Board of Directors. Written notice of the time and place of each meeting of the Directors shall be given to each Director by the Secretary or by the person or persons calling the meeting by personal delivery, mail, telegram, telecopy or electronic mail not less than five (5) days before the date of such meeting. Such notice need not specify the purposes of the meeting. Notice of any meeting shall be considered given if mailed or otherwise sent or delivered in writing to the Director at his or her address as specified in the records of the Corporation or when delivery by telecopy or electronic transmission is confirmed. Notice shall be deemed to have been waived by any Director who shall attend and participate in such meeting without protesting, prior to or at the commencement of such meeting, the lack of proper notice and may be waived, in writing, by any Director either before, at or after such meeting.

Section 7. Voting. Except as otherwise specifically provided in these Bylaws, the Certificate of Incorporation or as is required by law, action approved by the affirmative vote of a majority of the Directors voting at a meeting at which a quorum is present shall be the action of the Board of Directors; provided, however, that for purposes of dissolution of the Corporation pursuant to Section 276 of the Delaware General Corporation Law, any action taken pursuant to Section 276 of the Delaware General Corporation Law shall require the approval by the affirmative vote of two-thirds ($\frac{2}{3}$) of the Directors then serving entitled to vote.

Section 8. Powers. The Board of Directors shall have general charge of the affairs, property and assets of the Corporation. It shall be the duty of the Directors to carry out the aims and purposes of the Corporation and, to this end, to manage and control all of its property and assets.

Section 9. Action Without Meeting. Any action required or permitted to be taken at any meeting of the Directors may be taken without a meeting by writing or writings signed by all of the Directors. The writing or writings evidencing an action taken without a meeting shall be filed with the Secretary of the Corporation and inserted in the permanent records relating to meetings of the Directors.

Section 10. Meetings Held Through Communications Equipment. Meetings of the Directors may be held through communications equipment if all persons participating can hear each other, and such participation shall constitute presence at such a meeting.

Section 11. Advisor Directors. The Board of Directors may from time to time appoint non-voting Advisor Directors. Such Advisor Directors shall serve at the pleasure of the Directors and may be removed with or without cause at any time. Persons appointed as Advisor Directors may be invited to attend meetings of the Board of Directors. Advisor Directors who attend a Board of Directors meeting may participate in such meeting, but they shall not be counted for quorum purposes and shall not be entitled to vote on any Corporation business.

ARTICLE IV

Officers

Section 1. Election. The officers of the Corporation shall consist of a President, a Secretary and a Treasurer and such number of Vice Presidents and other officers as the Directors shall designate from time to time. The officers shall be elected at the Annual Meeting of the Directors. Each officer shall hold office until the date fixed in accordance with

these Bylaws for the Annual Meeting of the Directors next following the election of such officers and until his or her successor is elected and qualified; provided, any officer may be removed with or without cause by the Directors.

Section 2. President. The President shall be the chief executive officer of the Corporation and, subject to the overall guidance and supervision of the Board of Directors, shall actively direct, manage and control the business affairs of the Corporation. The President may sign, with the Secretary or any other officer of the Corporation so authorized by the Board of Directors, any deeds, mortgages, bonds, contracts or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors, these Bylaws or by statute to some other officer or agent of the Corporation; and in general, the President shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

Section 3. Vice President. The Vice President, if any be elected, shall assist the President in managing the affairs of the Corporation. During the absence or disability of the President, the Vice President shall have all the powers and functions of the President and shall preside at meetings of the Board of Directors. The Vice President shall also have other powers and perform such other duties as the Board of Directors may from time to time prescribe.

Section 4. Secretary. The Secretary shall keep minutes of the meetings of the Board of Directors in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; be custodian of the corporate records of the Corporation; receive the annual statements and disclosures required by Article VIII hereof and in general perform all duties incident to the office of Secretary and

such other duties as from time to time may be assigned to the Secretary by the President or the Board of Directors.

Section 5. Treasurer. The Treasurer shall be the chief financial officer of the Corporation and shall have charge and custody of and be responsible for all funds and securities of the Corporation; receive and give receipts for moneys due and payable to the Corporation from any source whatsoever, and deposit all such moneys in the name of the Corporation in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of these Bylaws; render reports on 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 the Treasurer by the President or by the Board of Directors.

ARTICLE V

Committees

Section 1. General Committees. The Board of Directors shall have an Audit Committee and a Science Oversight Committee and by resolution, may designate, and appoint the members of, one or more committees consisting of one or more persons, including, but not limited to, directors and others, which committees shall have such authority as the Board of Directors shall determine; provided, however, no committee having members who are not directors shall have or exercise the authority of the Board of Directors in the management of the Corporation.

Section 2. Audit Committee. The Audit Committee shall have responsibility for overseeing the accounting and financial reporting system and processes of the Corporation including, overseeing the compilation, review or audit of the financial statements of the Corporation and selecting an independent accountant or auditor to compile, review or audit the financial statements of the Corporation.

Section 3. Science Oversight Committee: The Science Oversight Committee shall be comprised of independent and experienced researchers, scientists and policy experts and one or more directors and shall be chaired by a member of the Board of Directors, and shall have such responsibilities and duties as may be prescribed by the Board of Directors from time to time.

Section 4. Committees of the Board. The Board of Directors, by resolution, may designate, and appoint the members of, one or more committees consisting of one or more directors, which committees, to the extent provided by the Board of Directors, shall have and exercise the authority of the Board of Directors in the management of the Corporation, except that no such committee shall have the authority of the Board of Directors to amend, alter or repeal these Bylaws; to elect, appoint or remove any member of any such committee or any director or officer of the Corporation; to amend or restate the Certificate of Incorporation of the Corporation; to adopt a plan of merger or plan of consolidation with another corporation; to authorize the sale, lease, exchange or mortgage of all or substantially all of the property and assets of the Corporation; to authorize the voluntary dissolution of the Corporation or revoke proceedings therefor; to adopt a plan for the distribution of the assets of the Corporation; or to amend, alter or repeal any resolution of the Board of Directors which by its terms provides that it shall not be amended, altered or repealed by such committee. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any individual director, of any responsibility imposed by law and/or the Bylaws.

Section 5. Term of Office. Each member of a committee shall serve as such until his or her successor is appointed and qualified, unless the committee shall be sooner

terminated, such member is removed from such committee, or such member shall cease to qualify as a member thereof.

Section 6. Removal. Any member of a committee may be removed by the Board of Directors at any time, with or without cause.

Section 7. Vacancies. Vacancies in the membership of any committee may be filled by the Board of Directors at any time.

Section 8. Quorum and Manner of Acting. Unless otherwise provided by the Board of Directors, a majority of the whole committee shall constitute a quorum, and the act of a majority of the members present at a committee meeting at which a quorum is present shall be the act of the committee.

Section 9. Action Without Meeting. Any action which can be taken at any meeting of a committee may be taken without a meeting by writing or writings signed by all of the members of such committee. The writing or writings evidencing an action taken without a meeting shall be filed with the Secretary of the Corporation and inserted in the permanent records relating to meetings of the members of such committee.

Section 10. Rules. Each committee may adopt rules for its own governance not inconsistent with these Bylaws or with rules adopted by the Board of Directors.

ARTICLE VI

Contracts, Checks, Deposits and Funds

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

Section 2. Checks, Drafts, etc. All checks, drafts or orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instruments shall be signed by the Treasurer and countersigned by the President or the Vice President of the Corporation.

Section 3. Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositaries as the appropriate officer or officers, agent or agents of the Corporation may select.

Section 4. Gifts. The Board of Directors may accept on behalf of the Corporation any contribution, gift, bequest or devise for the general purposes or for any special purpose of the Corporation.

ARTICLE VII

Indemnification

Section 1. Authorization.

A. In the event that any person who was or is a party or is threatened to be made a party to any threatened, pending or completed civil, criminal, administrative or investigative action, suit or proceeding seeks indemnification from the Corporation against expenses (including attorneys' fees) and, in the case of actions other than those by or in the right of the Corporation, judgments, fines and amounts paid in settlement, actually and reasonably incurred by such person in connection with such action, suit or proceeding by reason of the fact that such person is or was a Director or officer of the Corporation, or while a Director or officer of the Corporation is or was serving at the request of the Corporation as a trustee, director, officer, employee, agent or volunteer of another corporation (domestic or foreign, nonprofit, or for

profit), partnership, joint venture, trust, or other enterprise, then, unless such indemnification is ordered by a court, the Corporation shall determine or cause to be determined in the manner provided in Section 145 of the Delaware General Corporation Law whether or not indemnification is proper in the circumstances because the person claiming such indemnification has met the applicable standards of conduct set forth in Subsections (a) and (b) of Section 145 of the Delaware General Corporation Law and, to the extent that it is so determined that such indemnification is proper, the person claiming such indemnification shall be indemnified.

B. Expenses, including attorneys' fees, incurred by a Director or officer in defending any action, suit or proceeding referred to in Paragraph A of this Section may be paid by the Corporation as they are incurred in advance of the final disposition of such action, suit or proceeding, as authorized by the Directors in the specific case upon receipt of an undertaking by or on behalf of the Director or officer to repay such amount if it ultimately is determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article.

C. The indemnification authorized by Paragraph A of this Section shall not be deemed exclusive of, and shall be in addition to, any other rights granted to those seeking indemnification, pursuant to the Certificate of Incorporation, these Bylaws, any agreement, vote of Members or disinterested Directors, or otherwise, both as to action in their official capacities and as to action in another capacity while holding their offices or positions, and shall continue as to a person who has ceased to be a Director or officer and shall inure to the benefit of the heirs, executors, and administrators of such a person.

D. The Corporation may, to the extent authorized from time to time, grant rights to indemnification and to the advancement of expenses to any employee, agent or volunteer of the

Corporation to the fullest extent of the provisions of this Article VII with respect to the indemnification and advancement of expenses of Directors and officers of the Corporation.

E. For purposes of this Article, the term “volunteer” means a Director, officer, or agent of the Corporation, or another person associated with the Corporation, who satisfies both of the following: (1) Performs services for or on behalf of, and under the authority or auspices of, the Corporation; and (2) Does not receive compensation, either directly or indirectly, for performing those services.

F. The provisions of Section 145 of the Delaware General Corporation Law applicable to automatic advance payment of expenses shall not apply to this Corporation.

Section 2. Insurance. The Corporation, to the extent permitted by the Delaware General Corporation Law, may purchase and maintain insurance or furnish similar protection including, but not limited to, trust funds, letters of credit or self-insurance for or on behalf of any person who is or was a Director, officer, employee, agent or volunteer of the Corporation, or is or was serving at the request of the Corporation as a trustee, director, officer, employee, agent or volunteer of another corporation (domestic or foreign, nonprofit, or for profit), partnership, joint venture, trust or other enterprise.

Section 3. Limitation. Anything to the contrary notwithstanding, the Corporation shall not indemnify Directors or officers or other persons or entities, pay their expenses in advance, or pay insurance premiums on their behalf if such indemnification payment, advance expense payment, or payment of insurance premium shall constitute an “excess benefit transaction” within the meaning of Section 4958 of the Code or an act of “self-dealing” within the meaning of Section 4941(d) of the Code.

ARTICLE VIII

Conflict of Interest Policy

Section 1. Purpose. The purpose of this conflict of interest policy is to protect the Corporation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a Director, officer, member of a committee with Board-delegated powers, a staff member of the Corporation, or any of their first degree relative(s). This policy is intended to supplement but not replace any applicable state laws governing conflicts of interest applicable to nonprofit and charitable corporations.

Section 2. Definitions.

A. Interested Person. Any Director, officer, member of a committee with Board-delegated powers, staff member of the Corporation, or any of their first degree relative(s) who has a direct or indirect Financial Interest, as defined below, is an “Interested Person”.

B. Financial Interest. A person has a “Financial Interest” if the person has, directly or indirectly, through business, investment or family

1. an ownership or investment interest in any entity with which the Corporation has a transaction or arrangement, or

2. a compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement, or

3. a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Corporation is negotiating a transaction or arrangement, or

4. an ownership or investment interest in a tobacco and/or nicotine-containing products company or in any commercial entity involved in the tobacco reduction or

cessation field or that otherwise may be affected by the scientific research conducted or funded by the Corporation.

Compensation includes direct and indirect remuneration as well as gifts or favors that are substantial in nature. An Interested Person's Financial Interest shall be considered as a conflict of interest unless waived by the Board of Directors or appropriate committee.

Section 3. Procedures.

A. Duty to Disclose, Defer and Cease. If an Interested Person has any actual or possible conflicts of interest, such person must disclose the existence and nature of his or her Financial Interest and all material facts to the Board of Directors or committee members considering the proposed transaction or arrangement. Any person who believes an action may be a conflict of interest shall defer or cease engaging in such activity until such time as a final written determination is made under this Article that proceeding is not inappropriate under the circumstances. The Board of Directors shall make such determinations in its sole and unreviewable discretion.

B. Determining Whether a Conflict of Interest Exists. After disclosure of the Financial Interest and all material facts, and after discussion with the Interested Person, such person shall leave the Board or committee meeting while the determination of a conflict of interest or the appropriateness to waive it is discussed and voted upon.

C. Procedures for Addressing Conflicts of Interest.

1. An Interested Person may make a presentation at the Board or committee meeting, but after such presentation, he or she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement that results in the conflict of interest.

2. The chairperson of the Board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

3. After exercising due diligence, the Board or committee shall determine whether the Corporation can obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest.

4. If a more advantageous transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the Board or committee shall determine by a majority vote of the disinterested Directors whether the transaction or arrangement is in the Corporation's best interest, for its own benefit and whether the transaction is fair and reasonable to the Corporation and shall make its decision as to whether to enter into the transaction or arrangement in conformity with such determination.

D. Violations of the Conflicts of Interest Policy.

1. If the Board or committee has reasonable cause to believe that a person has failed to disclose actual or potential conflicts of interest or to provide full disclosure regarding a possible conflict of interest, it shall inform the person of the basis for such belief and afford the person an opportunity to explain the alleged failure to disclose.

2. If, after hearing the response of the person and making such further investigation as may be warranted in the circumstances, the Board or committee determines that the person has in fact failed to appropriately disclose an actual or possible conflict of interest, it shall take whatever disciplinary action, corrective action, or both, it deems appropriate in its sole and unreviewable discretion.

Section 4. Records of Proceedings. The minutes of the Board and all committees with board-delegated powers shall contain

A. The names of the persons who disclosed or otherwise were found to have a Financial Interest in connection with an actual or possible conflict of interest, the nature of the Financial Interest, any action taken to determine whether a conflict of interest was present, and the Board's or committee's decision as to whether a conflict of interest in fact existed, and whether to waive it.

B. The names of the persons who were present for discussions and votes relating to the transaction or arrangement; the content of the discussion, including all material facts, any alternatives to the proposed action or arrangement, and a record of any votes taken in connection therewith.

Section 5. Compensation Committees. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation.

Section 6. Annual Statements and Disclosures.

A. Statements. Each Director, officer, member of a committee with Board-delegated powers and staff member shall annually sign a statement which affirms that such person:

1. has received a copy of the conflict of interest policy;
2. has read and understands the policy;
3. has agreed to comply with the policy; and

4. understands that the Corporation is a charitable organization and that in order to maintain its federal tax exemption, it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

B. Initial and Annual Written Disclosures. Each Director, officer, member of a committee with Board-delegated powers and staff member, prior to his or her initial election, appointment or employment, and thereafter on an annual basis, shall disclose in writing to the Secretary of the Corporation, to the best of such person's knowledge, (i) any entity of which such person is an officer, director, trustee, member, owner, or employee with which the Corporation has a relationship; (ii) any transaction in which the Corporation is a participant and in which such person might have a conflicting interest; (iii) any ownership or investment interest, direct or indirect, through business, investment or family, in a tobacco and/or nicotine-containing products company or in any commercial entity involved in the tobacco reduction or cessation field or that otherwise may be affected by the scientific research conducted or funded by the Corporation; and (iv) any past or present financial relationship, including, but not limited to, salary or wages, remuneration, consulting fees, honoraria, expert testimony fees or speaking engagement fees received by such person from the tobacco industry, or from any commercial entity involved in the development and/or commercialization of nicotine-containing products or tobacco reduction or cessation field or that otherwise may be affected by the scientific research conducted or funded by the Corporation. The Secretary of the Corporation shall provide copies of all completed initial and annual written disclosures to the chairperson of the Board of Directors.

C. Grant and Contract Recipients and Grant Application Reviewers. The Corporation shall require, during the process for screening, reviewing and awarding grants and contracts, that each grant and contract recipient, as may be appropriate, and grant application

reviewer, disclose in writing to the Corporation (i) any ownership or investment interest, direct or indirect, through business, investment or family, in a tobacco company or in any commercial entity involved in the development and/or commercialization of nicotine-containing products or the tobacco reduction or cessation field or that otherwise may be affected by the scientific research conducted or funded by the Corporation and (ii) any past or present financial relationship, including, but not limited to, salary or wages, remuneration, consulting fees, honoraria, expert testimony fees or speaking engagement fees received by such person from the tobacco industry, or from any commercial entity involved in the development and/or commercialization of nicotine-containing products or tobacco reduction or cessation field or that otherwise may be affected by the scientific research conducted or funded by the Corporation.

Section 7. Periodic Reviews. To ensure that the Corporation operates in a manner consistent with its charitable purposes and that it does not engage in activities that could jeopardize its status as an organization exempt from federal income tax, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

A. whether compensation arrangements and benefits are reasonable and are the result of arm's-length bargaining; and

B. whether partnership and joint venture arrangements, and arrangements with management service organizations conform to written policies, are properly recorded, reflect reasonable payments for goods and services, further the Corporation's charitable purposes and do not result in private inurement or impermissible private benefit.

Section 8. Use of Outside Experts. In conducting periodic reviews provided for herein, the Corporation may, but need not, use outside advisors. If outside experts are used,

their use shall not relieve the Board of Directors of its responsibility for ensuring that periodic reviews are conducted.

ARTICLE IX

Scientific Integrity

The Corporation shall be operated consistent with the following criteria and principles in accomplishing the Corporation's objects and purposes: (i) as set forth in Article THIRD of the Corporation's Certificate of Incorporation; and (ii) in a manner that ensures the Corporation's freedom and independence from the influence of any commercial entity:

A. **Independent** Research Agenda: The goal of the Corporation is to promote and support significant scientific research that advances the field of tobacco harm reduction and reduces the public health burden of smoking-related diseases. The Corporation shall not take into account the potential impact of that research on the image of the tobacco industry or any other industry or commercial entity. The Corporation's research program shall be guided by experienced researchers, scientists and policy experts in accordance with the Corporation's objects and purposes. The Corporation shall review past models of funding tobacco control research and identify the feasibility of incorporating additional independence and transparency elements, or other best practices, into the process for screening, reviewing and awarding grants and other distributions in furtherance of the Corporation's objects and purposes.

B. Governance: The Board of Directors of the Corporation, or a specially designated committee, as may be designated by resolution of the Board of Directors, shall oversee all aspects of the process for screening, reviewing and awarding grants and other distributions in furtherance of the Corporation's objects and purposes.

C. Transparency and Independence: The process for screening, reviewing and awarding grants and other distributions shall be conducted in a transparent manner and include explicit and clear guidelines for grant applicants. The grant selection process shall be conducted by the Corporation, supported by independent peer review with no influence, involvement or participation from the tobacco industry or any other industry or commercial entity;

D. Competitive Funding Process: The Corporation shall employ a competitive funding process in screening, reviewing and awarding grants and other distributions that ensures that the grant selection process is based on explicit, well established scientific criteria;

E. Protection Against Conflicts of Interest: The Corporation shall maintain a written conflicts of interest policy which includes, *inter alia*, adequate protections in place to guard against potential conflicts of interest on the part of grant recipients and grant application reviewers. The conflicts of interest policy shall govern the disclosure of relevant financial relationships, including, but not limited to, salary or wages, remuneration, consulting fees, honoraria, expert testimony fees or speaking engagement fees received by grant recipients or grant application reviewers from the tobacco industry or any other industry or commercial entity; and

F. Ownership of Data and Freedom to Publish: To safeguard the scientific integrity of each research endeavor the Corporation shall ensure, unless prohibited by law, that grant recipients shall have the freedom to publish their findings, studies and results in the form submitted to the Corporation. Irrespective of which party owns the data, to the extent legally possible, the Corporation shall require grant recipients to make their raw research data available for secondary analyses and review on an open access platform.

ARTICLE X

Fiscal Year

The fiscal year of the Corporation shall end on the last day of December, or on such other date as may be fixed from time to time by the Board of Directors.

ARTICLE XI

Future Laws

All references in these Bylaws to sections of the “Code” are to sections of the Internal Revenue Code of 1986, as amended from time to time, or to the corresponding provisions of any future United States internal revenue law. All references herein to the Delaware General Corporation Law are to the provisions of such law, as amended from time to time, or to the corresponding provisions of any subsequent Delaware corporation law.

ARTICLE XII

Miscellaneous

Record of Members and Directors

The Secretary of the Corporation shall keep a record of the names of all Members and Directors, together with the last known mailing address, and email address, of each Member and Director, which record may be included in and be a part of the book containing the minutes of meetings of Members and of Directors. There shall also be stated therein the date upon which each Member or Director became such, and upon the termination of any membership or Directorship for any cause, the facts relating thereto shall be recorded in said book, together with the date of such termination. It shall be the duty of every Member and Director, upon becoming such, to furnish forthwith to the Secretary of the Corporation, for inclusion in such record, his or her then mailing address and email address, and likewise to report promptly to the Secretary for inclusion in such record any change in any such addresses.

ARTICLE XIII

Amendments

The Certificate of Incorporation and these Bylaws may be amended or repealed and new Certificate of Incorporation or Bylaws may be adopted upon the affirmative vote of two-thirds ($\frac{2}{3}$) of the Directors then serving entitled to vote. An amendment shall be effective immediately after adoption by the Directors unless a later effective date is specifically adopted at the time the amendment is enacted.