

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 16, 2000

(June 9, 2000)

ACTIVISION, INC.

(Exact Name of Registrant as Specified in Charter)

Delaware

0-12699

94-2606438

(State or Other Jurisdiction
of Incorporation)

(Commission
File Number)

(IRS Employer
Identification No.)

3100 Ocean Park Blvd., Santa Monica, CA

90405

(Address of Principal Executive Offices)

(Zip Code)

Registrant's telephone number, including area code (310) 255-2000

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

Item 5. Other Events.

Effective on June 9, 2000, Activision, Inc., a Delaware corporation (the "Company"), reorganized into a holding company form of organizational structure, whereby Activision Holdings, Inc., a Delaware corporation ("Activision Holdings"), became the holding company. The new holding company organizational structure will allow Activision Holdings to manage its entire organization more effectively and broadens the alternatives for future financing.

The holding company organizational structure was effected by a merger conducted pursuant to Section 251(g) of the General Corporation Law of the State of Delaware (the "Merger"), which provides for the formation of a holding company structure without a vote of the stockholders of the constituent corporations. In the Merger, ATVI Merger Sub, Inc., a Delaware corporation (the "Merger Sub"), merged with and into the Company, with the Company as the surviving corporation (the "Surviving Corporation"). Prior to the Merger, Activision Holdings was a direct, wholly-owned subsidiary of the Company, and Merger Sub was a direct, wholly owned subsidiary of Activision Holdings and was organized for the purpose of implementing the holding company organizational structure. Pursuant to the Merger, (i) each issued and outstanding share of common stock, \$.000001 par value per share, of the Company (including treasury shares) was converted into one share of common stock, \$.000001 par value per share of Activision Holdings, (ii) each issued and outstanding share of Merger Sub was converted into one share of the Surviving Corporation's common stock, and Merger Sub's corporate existence ceased and (iii) all of the issued and outstanding shares of Activision Holdings owned by the Company were automatically canceled and retired. As a result of the Merger, the Company became a direct, wholly owned subsidiary of Activision Holdings.

Immediately following the Merger, the Company changed its name to Activision Publishing, Inc. and Activision Holdings changed its name to Activision, Inc. Activision Holdings common stock will trade on The Nasdaq National Market under the ticker symbol ATVI.

The conversion of shares of the Company's common stock in the Merger occurred without an exchange of certificates. Accordingly, certificates formerly representing shares of outstanding common stock of the

Company are deemed to represent the same number of shares of common stock of Activision Holdings. The change to the holding company structure was tax free for federal income tax purposes for stockholders.

A copy of the press release further describing the transaction is attached hereto as Exhibit 99.1.

The Company hereby incorporates by reference the Agreement and Plan of Merger attached hereto as Exhibit 2.4, Amended and Restated Certificate of Incorporation of Activision Holdings dated as of June 1, 2000 attached hereto as Exhibit 2.5, Amended and Restated By-laws of Activision Holdings attached hereto as Exhibit 2.6, Certificate of Amendment of Amended and Restated Certificate of Incorporation of Activision Holdings dated as of June 9, 2000 attached hereto as Exhibit 2.7, and the press release attached hereto as Exhibit 99.1, each made a part hereof, into this Item 5.

ITEM 7. FINANCIAL STATEMENTS, PRO FORMA FINANCIAL INFORMATION AND EXHIBITS.

(c) The following Exhibits are filed as part of this report:

EXHIBIT NO.	DESCRIPTION
2.4	Agreement and Plan of Merger dated as of June 9, 2000 among Activision, Inc., Activision Holdings, Inc. and ATVI Merger Sub, Inc.
2.5	Amended and Restated Certificate of Incorporation of Activision Holdings dated as of June 1, 2000.
2.6	Amended and Restated By-Laws of Activision Holdings.
2.7	Certificate of Amendment of Amended and Restated Certificate of Incorporation of Activision Holdings dated as of June 9, 2000.
99.1	Press release issued by the Company on June 16, 2000.

SIGNATURES

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

ACTIVISION, INC.

By: /s/ Brian G. Kelly

Name: Brian G. Kelly
Title: Co-Chairman

Dated: June 16, 2000

EXHIBIT INDEX

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AGREEMENT AND PLAN OF MERGER

AMONG

ACTIVISION, INC.,

ACTIVISION HOLDINGS, INC.

AND

ATVI MERGER SUB, INC.

DATED AS OF JUNE 9, 2000

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER (the "Agreement"), entered into as of June __, 2000, by and among Activision, Inc., a Delaware corporation (the "Company"), Activision Holdings, Inc., a Delaware corporation ("Holdings") and a direct, wholly owned subsidiary of the Company, and ATVI Merger Sub, Inc., a Delaware corporation ("Merger Sub") and a direct, wholly owned subsidiary of Holdings.

PRELIMINARY STATEMENTS

1. As of the date hereof, the Company's authorized capital stock consists of fifty-five million (55,000,000) shares, of which (i) fifty million (50,000,000) shares are designated common stock, par value \$.000001 per share (the "Company Common Stock"), (ii) four million five hundred thousand (4,500,000) shares are designated preferred stock, par value \$.000001 per share (the "Company Preferred Stock") and (iii) five hundred thousand (500,000) shares are designated Series A Junior Preferred Stock, par value \$.000001 per share (the "Company Series A Preferred Stock"). As of May 18, 2000, 25,905,761 shares of Company Common Stock were issued and outstanding and 576,734 shares were held in the Company's treasury, and no shares of Company Preferred Stock or Company Series A Preferred Stock were issued and outstanding.

2. As of the date hereof, Holdings' authorized capital stock consists of fifty-five million (55,000,000) shares, of which (i) fifty million (50,000,000) shares are designated common stock, par value \$.000001 per share (the "Holdings Common Stock"), (ii) four million five hundred thousand (4,500,000) shares are designated preferred stock, par value \$.000001 per share (the "Holdings Preferred Stock") and (iii) five hundred thousand (500,000) shares are designated Series A Junior Preferred Stock, par value \$.000001 per share (the "Holdings Series A Preferred Stock"). As of the date hereof, one hundred (100) shares of Holdings Common Stock were issued and outstanding and owned by the Company and no shares were held in Holdings' treasury and no shares of Holdings Preferred Stock or Holdings Series A Preferred Stock were issued and outstanding.

3. As of the date hereof, Merger Sub's authorized capital stock consists of two hundred (200) shares of common stock, par value \$.01 per share (the "Merger Sub Common Stock"), of which one hundred (100) shares are issued and outstanding on the date hereof and owned by Holdings.

4. The designations, rights and preferences, and the qualifications, limitations and restrictions of the Holdings Common Stock are the same as those of the Company Common Stock.

5. The Amended and Restated Certificate of Incorporation of Holdings (the "Holdings Charter") and the By-laws of Holdings (the "Holdings By-laws") in effect immediately after the Effective Date (as hereinafter defined) will contain provisions identical to the Amended and Restated Certificate of Incorporation of the Company, as amended from time to time (the "Company Charter"), and By-laws of the Company (the "Company By-laws") in effect immediately before the Effective Date (other than as required by Section 251(g) of the General Corporation Law of the State of Delaware (the "DGCL")).

6. The directors and executive officers of the Company immediately prior to the Merger (as hereinafter defined) will be the directors and executive officers of Holdings as of the Effective Date.

7. Holdings and Merger Sub are newly formed corporations organized for the purpose of participating in the transactions herein contemplated.

8. The Company desires to create a new holding company structure by

merging Merger Sub with and into the Company, with (a) the Company continuing as the surviving corporation of such merger and (b) each outstanding share (or any fraction thereof) of Company Common Stock being converted in such merger into a like number of shares of Holdings Common Stock, all in accordance with the terms of this Agreement (the "Merger").

9. The boards of directors of Holdings, Merger Sub and the Company, the Company, in its capacity as the sole stockholder of Holdings, and Holdings, in its capacity as the sole stockholder of Merger Sub, have approved this Agreement and the Merger upon the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the covenants and agreements contained in this Agreement, and intending to be legally bound hereby, the Company, Holdings and Merger Sub hereby agree as follows:

ARTICLE I THE MERGER

1.1 The Merger. In accordance with Section 251(g) of the DGCL and subject to, and upon the terms and conditions of, this Agreement, Merger Sub shall, at the Effective Date, be merged with and into the Company, the separate corporate existence of Merger Sub shall cease, and the Company shall continue as the surviving corporation of the Merger (the "Surviving Corporation"). At the Effective Date, the effects of the Merger shall be as provided in Section 259 of the DGCL.

1.2 Effective Date. If all the conditions to the Merger set forth in Article III shall have been fulfilled or waived in accordance herewith, the parties hereto shall cause a Certificate of Merger satisfying the requirements of the DGCL to be properly executed, verified and delivered for filing in accordance with the DGCL on the date hereof. The Merger shall become effective upon the acceptance for record of the Certificate of Merger by the Secretary of State of the State of Delaware in accordance with the DGCL or at such later time which the parties hereto shall have agreed upon and designated in the Certificate of Merger in accordance with applicable law as the effective time of the Merger (the "Effective Date").

1.3 Certificate of Incorporation. From and after the Effective Date, the Company Charter, as in effect immediately prior to the Effective Date, shall be the certificate of incorporation of the Surviving Corporation (the "Surviving Corporation Charter") until thereafter duly amended as provided therein or by the DGCL, except as follows:

(a) Article FIRST thereof shall be amended so as to read in its entirety as follows:

"The name of the Corporation is Activision Publishing, Inc."

(b) Article FOURTH thereof shall be amended so as to read in its entirety as follows:

"The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is 200 shares of common stock, par value \$.01 per share. The Common Stock is sometimes hereinafter referred to as the 'Capital Stock'."

A new Article TENTH shall be added thereto which shall be and read in its entirety as follows:

"10. Vote of Stockholders of Activision Holdings, Inc. Required to Approve Certain Actions.

Any act or transaction by or involving the Corporation that requires for its adoption under the General Corporation Law of the State of Delaware or this Amended and Restated Certificate of Incorporation the approval of the stockholders of the Corporation shall, pursuant to Section 251(g) of the General Corporation Law of the State of Delaware, require, in addition, the approval of the stockholders of Activision Holdings, Inc., a Delaware corporation, or any successor thereto by merger, by the same vote that is required by the General Corporation Law

of the State of Delaware or this Amended and Restated Certificate of Incorporation, as the case may be."

1.4 By-Laws. From and after the Effective Date, the Company By-laws, as in effect immediately prior to the Effective Date, shall constitute the By-laws of the Surviving Corporation (the "Surviving Corporation By-laws") until thereafter duly amended as provided therein or by applicable law.

1.5 Directors. The directors of the Company in office immediately prior to the Effective Date shall automatically become the directors of the Surviving Corporation as of the Effective Date and will continue to hold office from the Effective Date until their successors are duly elected or appointed and qualified in the manner provided in the Surviving Corporation Charter and Surviving Corporation By-laws, or as otherwise provided by law.

1.6 Officers. The officers of the Company in office immediately prior to the Effective Date shall automatically become the officers of the Surviving Corporation as of the Effective Date and will continue to hold office from the Effective Date until the earlier of their resignation or removal or until their successors are duly elected or appointed and qualified in the manner provided in the Surviving Corporation Charter and Surviving Corporation By-laws, or as otherwise provided by law.

ARTICLE II CONVERSION OF SECURITIES.

2.1 Conversion of Company Common Stock and Company Rights. At the Effective Date, by virtue of the Merger and without any action on the part of Holdings, Merger Sub, the Company or the holder thereof, (i) each share of Company Common Stock (or fraction of a share of Company Common Stock) issued and outstanding immediately prior to the Effective Date (including treasury shares) shall be converted into and thereafter represent one duly issued, fully paid and nonassessable share (or equal fraction of a share) of Holdings Common Stock and (ii) each right to purchase one one-hundredth of a share of Company Series A Preferred Stock (each, a "Company Right") associated with each share of Company Common Stock (or fraction of a Company Right) issued and outstanding immediately prior to the Effective Date shall be converted into and thereafter represent one right to purchase one one-hundredth of a share of Holdings Series A Preferred Stock (each, a "Holdings Right") (or equal fraction of a Holdings Right) on the same terms and conditions as the Company Rights, and Holdings shall for all purposes be deemed to be a successor to the Company under the Rights Agreement (as hereinafter defined).

2.2 Conversion of Merger Sub Common Stock. At the Effective Date each share of Merger Sub Common Stock issued and outstanding immediately prior to the Effective Date shall be converted into and thereafter represent one duly issued, fully paid and nonassessable share of common stock, par value \$.01 per share, of the Surviving Corporation.

2.3 Cancellation of Holdings Common Stock. At the Effective Date, each share of Holdings Common Stock that is owned by the Company immediately prior to the Merger shall automatically be canceled and retired and shall cease to exist.

2.4 Rights of Certificate Holders. From and after the Effective Date, holders of certificates formerly evidencing shares of Company Common Stock and Company Rights shall cease to have any rights as stockholders of the Company, except as provided by law; except, however, that such holders shall have the rights set forth in Section 2.5 below.

2.5 No Surrender of Certificates. Until thereafter surrendered for transfer or exchange, each outstanding stock certificate that, immediately prior to the Effective Date, evidenced Company Common Stock and the associated Company Right shall be deemed and treated for all corporate purposes to evidence the ownership of the number of shares of Holdings Common Stock and Holdings Rights into which such shares of Company Common Stock and Company Rights were converted pursuant to the provisions of Section 2.1 above.

2.6 Conversion of Company Stock Options and Warrants.

(a) At the Effective Date, each option and warrant, whether or not exercisable, to purchase shares of Company Common Stock which is then

outstanding and unexercised (a "Company Option" or a "Company Warrant," as the case may be) shall cease to represent a right to acquire shares of Company Common Stock and shall be converted automatically into an option or warrant to acquire, under the same terms and conditions as were applicable to such Company Option or Company Warrant immediately prior to the Effective Date, shares of Holdings Common Stock, and Holdings shall assume each Company Option and Company Warrant and each option and warrant plan or agreement pursuant to which such Company Option and Company Warrant was granted, as the case may be. The number of shares of Holdings Common Stock purchasable upon exercise of such Company Option or Company Warrant shall be equal to the number of shares of Company Common Stock that were purchasable under such Company Option or Company Warrant immediately prior to the Effective Date. The terms of each Company Option and Company Warrant shall, in accordance with its terms, be subject to adjustment as appropriate to reflect any stock split, stock dividend, recapitalization or other similar transaction with respect to Holdings Common Stock on or subsequent to the Effective Date. Notwithstanding the foregoing, the number of shares and the per share exercise price of each Company Option which is intended to be an "incentive stock option" (as defined in Section 422 of the Internal Revenue Code (the "Code")) shall be adjusted in accordance with the requirements of Section 424 of the Code. Accordingly, with respect to any incentive stock options, fractional shares shall be rounded down to the nearest whole number of shares and where necessary the per share exercise price shall be rounded up to the nearest cent.

(b) At or prior to the Effective Date, Holdings shall reserve for issuance the number of shares of Holdings Common Stock necessary to satisfy Holdings' obligations under Section 2.6(a).

2.7 Conversion of Company Notes.

(a) At the Effective Date, each 6 3/4% Convertible Subordinated Note due 2005 of the Company, convertible in whole or in part into shares of Company Common Stock which is then issued and outstanding (a "Company Note") shall cease to be convertible into shares of Company Common Stock and shall be convertible, under the same terms and conditions as were applicable to such Company Note immediately prior to the Effective Date, into shares of Holdings Common Stock. The number of shares of Holdings Common Stock issuable upon conversion of such Company Note shall be equal to the number of shares of Company Common Stock that were issuable under the Company Note immediately prior to the Effective Date.

(b) As soon as practicable after the Effective Date, Holdings shall deliver to each holder of an outstanding Company Note an appropriate notice setting forth such holder's rights pursuant thereto, and such Company Note shall continue in effect on the same terms and conditions (including antidilution provisions).

(c) At or prior to the Effective Date, Holdings shall reserve for issuance the number of shares of Holdings Common Stock necessary to satisfy Holdings' obligations under Section 2.7(a).

ARTICLE III CONDITIONS OF MERGER

3.1 Conditions Precedent. The obligations of the parties to this Agreement to consummate the Merger and the transactions contemplated hereby shall be subject to fulfillment or waiver by the parties hereto of each of the following conditions:

(a) Prior to the Effective Date, no order, statute, rule, regulation, executive order, injunction, stay, decree, judgment or restraining order shall have been enacted, entered, promulgated or enforced by any court or governmental or regulatory authority or instrumentality which prohibits or makes illegal the consummation of the Merger or the transactions contemplated hereby.

(b) Prior to the Effective Date, the Company shall have received the consent of PNC Bank, National Association, under that certain Credit Agreement dated as of June 21, 1999, among the Company, Head Games Publishing, Inc., Expert Software, Inc., the financial institutions signatory thereto and PNC Bank, to consummate the Merger and create the holding company structure contemplated hereby.

ARTICLE IV COVENANTS

4.1 Election of Directors. The Company, in its capacity as the sole stockholder of Holdings, shall elect each person who is then a member of the

board of directors of the Company as a director of Holdings (and to be the only directors of Holdings), each of whom shall serve until the next annual meeting of shareholders of Holdings and until his successor shall have been elected and qualified or until such director's earlier resignation or removal.

4.2 Intentionally Omitted.

4.3 Rights Plan and Stock Option Plans. The Company and Holdings shall take or cause to be taken all actions necessary or desirable in order for Holdings to assume the Rights Agreement, between the Company and Continental Stock Transfer & Trust Company, as rights agent, dated as of April 18, 2000, pursuant to which the Company Rights were issued (the "Rights Agreement"), and each stock option and warrant plan or agreement pursuant to which the Company Options and Company Warrants were granted, as the case may be.

4.4 Further Assurances. Subject to the terms of this Agreement, the parties hereto shall take all such reasonable and lawful actions which may be necessary or appropriate in order to effectuate the Merger, which shall include executing and delivering an Assumption Agreement, effective upon the Merger, in such form as the Company and Holdings determine to be appropriate to evidence the Company's assignment to and Holdings' assumption of such rights, interests, obligations and liabilities as the Company and Holdings determine to be appropriate. If, at any time after the Effective Date, the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation its right, title or interest in, to or under any of the rights, properties or assets of either of Merger Sub or the Company acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger or otherwise to carry out this Agreement, the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and on behalf of each of Merger Sub and the Company, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of each of Merger Sub and the Company or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Surviving Corporation or otherwise to carry out this Agreement.

ARTICLE V TERMINATION AND AMENDMENT

5.1 Termination. This Agreement may be terminated and the Merger contemplated hereby may be abandoned at any time prior to the Effective Date by action of the board of directors of the Company, Holdings or Merger Sub if it is determined that for any reason the completion of the transactions provided for herein would be inadvisable or not in the best interest of such corporation or its stockholders. In the event of such termination and abandonment, this Agreement shall become void and neither the Company, Holdings or Merger Sub nor their respective stockholders, directors or officers shall have any liability or rights with respect to such termination and abandonment.

5.2 Amendments. This Agreement may be supplemented, amended or modified by the mutual consent of the boards of directors of the parties to this Agreement; provided, however, that, any amendment effected subsequent to stockholder approval shall be subject to the restrictions contained in the DGCL. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by all of the parties hereto.

ARTICLE VI MISCELLANEOUS PROVISIONS

6.1 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws.

6.2 Counterparts. This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original but all of which shall constitute one and the same agreement.

6.3 Entire Agreement. This Agreement, including the documents and instruments referred to herein, constitutes the entire agreement and supersedes all other prior agreements, arrangements and understandings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof.

IN WITNESS WHEREOF, Holdings, Merger Sub and the Company have caused this Agreement to be executed as of the date first written above by the respective officers thereunto duly authorized.

ACTIVISION, INC.

By:/s/ Brian G. Kelly

Name: Brian G. Kelly
Title:Co-Chairman

ACTIVISION HOLDINGS, INC.

By:/s/ Brian G. Kelly

Name: Brian G. Kelly
Title:President

ATVI MERGER SUB, INC.

By:/s/ Brian G. Kelly

Name: Brian G. Kelly
Title:President

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
ACTIVISION HOLDINGS, INC.
A Delaware corporation

It is hereby certified that:

1. ACTIVISION HOLDINGS, INC., a Delaware corporation (the "Corporation"), has not received any payment for any of its stock.

2. The Certificate of Incorporation of the Corporation is hereby amended and restated to read in full as follows:

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

SECOND: The registered office of the Corporation is to be located at 1013 Centre Road, in the City of Wilmington, in the County of New Castle, in the State of Delaware. The name of its registered agent at that address is Corporation Service Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware, as it may be amended from time to time (the "Delaware Code").

FOURTH: The total number of shares of capital stock which the Corporation shall have authority to issue is fifty five million (55,000,000) shares, of which four million five hundred thousand (4,500,000) shares are designated Preferred Stock (the "Preferred Stock"), par value \$.000001 per share and aggregate par value of four and one-half Dollars (\$4.50), and of which five hundred thousand (500,000) shares are designated Series A Junior Preferred Stock (the "Series A Preferred Stock"), par value \$.000001 per share and aggregate par value of half one dollar (\$0.50) and of which fifty million (50,000,000) shares are designated Common Stock (the "Common Stock"), par value \$.000001 per share and aggregate par value of fifty Dollars (\$50).

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

A. SERIES A JUNIOR PREFERRED STOCK. The terms of the Series A Junior Preferred Stock shall be as follows:

1. Designation and Amount. The shares of such series shall be designated as "Series A Junior Preferred Stock" (the "Series A Preferred Stock") and the number of shares constituting such series shall be 500,000. Such number of shares of Series A Preferred Stock may be increased or decreased by resolution of the Board of Directors; provided that no decrease shall reduce the number of shares of Series A Preferred Stock to a number less than the number of shares then outstanding plus the number of shares issuable upon exercise of conversion of outstanding rights, options or other securities issued by the Corporation.

2. Dividends and Distributions.

(a) Subject to the provisions for adjustment hereinafter set forth, and subject to the rights of the holders of any shares of any series of Preferred Stock ranking prior and superior to the Series A Preferred Stock with respect to dividends, the holders of shares of Series A Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, (i) cash dividends in an amount per share (rounded to the nearest cent) equal to 100 times the aggregate per share amount of all cash dividends declared or paid on the Common Stock, \$.000001 par value per share, of the Corporation (the "Common Stock") and (ii) a preferential cash dividend (the "Preferential Dividends"), if any, in preference to the holders of Common Stock, on the first business day of January, April, July and October, of each year (each a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Preferred Stock, payable in an amount (except in the case of the first Quarterly Dividend Payment if the date of the first issuance of Series A Preferred Stock is a date other than a Quarterly Dividend Payment Date, in which case such payment shall be a prorated portion of such amount) equal to \$.000001 per share of Series A Preferred Stock less the per share amount of all cash dividends declared on the Series A Preferred Stock pursuant to clause (i) of this sentence since the immediately preceding Quarterly

Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Preferred Stock. In the event the Corporation shall, at any time after the issuance of any share or fraction of a share of Series A Preferred Stock, make any distribution on the shares of Common Stock of the Corporation, whether by way of a dividend or a reclassification of stock, a recapitalization, reorganization or partial liquidation of the Corporation or otherwise, which is payable in cash or any debt security, debt instrument, real or personal property or any other property (other than cash dividends subject to the immediately preceding sentence, a distribution of shares of Common Stock or other capital stock of the Corporation or a distribution of options, rights or warrants to acquire any such share, including any debt security convertible into or exchangeable for any such share, at a price less than the Fair Market Value (as hereinafter defined) of such share of Common Stock), then, and in each such event, the Corporation shall simultaneously pay on each then outstanding share of Series A Preferred Stock of the Corporation a distribution, in like kind, of 100 times such distribution paid on a share of Common Stock (subject to the provisions for adjustment hereinafter set forth). The dividends and distributions on the Series A Preferred Stock to which holders thereof are entitled pursuant to clause (i) of the first sentence of this paragraph and pursuant to the second sentence of this paragraph are hereinafter referred to as "Dividends" and the multiple of such cash and non-cash dividends on the Common Stock applicable to the determination of the Dividends, which shall be 100 initially but shall be adjusted from time to time as hereinafter provided, is hereinafter referred to as the "Dividend Multiple". In the event the Corporation shall at any time after April 18, 2000 declare or pay any dividend or make any distribution on Common Stock payable in shares of Common Stock, or effect a subdivision or split or a combination, consolidation or reverse split of the outstanding shares of Common Stock into a greater or lesser number of shares of Common Stock, then in each such case the Dividend Multiple thereafter applicable to the determination of the amount of Dividends which holders of shares of Series A Preferred Stock shall be entitled to receive shall be the Dividend Multiple applicable immediately prior to such event multiplied by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(b) The Corporation shall declare each Dividend at the same time it declares any cash or non-cash dividend or distribution on the Common Stock in respect of which a Dividend is required to be paid. No cash or non-cash dividend or distribution on the Common Stock in respect of which a Dividend is required to be paid shall be paid or set aside for payment on the Common Stock unless a Dividend in respect of such dividend or distribution on the Common Stock shall be simultaneously paid, or set aside for payment, on the Series A Preferred Stock.

(c) Preferential Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issuance of any shares of Series A Preferred Stock. Accrued but unpaid Preferential Dividends shall not bear interest. Preferential Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall not be more than 60 days prior to the date fixed for the payment thereof.

3. Voting Rights. In addition to any other voting rights required by law, the holders of shares of Series A Preferred Stock shall have the following voting rights:

(a) Subject to the provisions for adjustment hereinafter set forth, each share of Series A Preferred Stock shall entitle the holder thereof to 100 votes on all matters submitted to a vote of the holders of the Common Stock. The number of votes which a holder of Series A Preferred Stock is entitled to cast, as the same may be adjusted from time to time as hereinafter provided, is hereinafter referred to as the "Vote Multiple". In the event the Corporation shall at any time after April 18, 2000 declare or pay any dividend on Common Stock payable in shares of Common Stock, or effect a subdivision or split or a combination, consolidation or reverse split of the outstanding shares of Common Stock into a greater or lesser number of shares of Common Stock, then in each such case the Vote Multiple thereafter applicable to the determination of the number of votes per share to which holders of shares of Series A Preferred Stock shall be entitled after such event shall be the Vote Multiple immediately prior to such event multiplied by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the

number of shares of Common Stock that were outstanding immediately prior to such event.

(b) Except as otherwise provided in the Amended and Restated Certificate of Incorporation or by law, the holders of shares of Series A Preferred Stock and the holders of shares of Common Stock shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(c) In the event that the Preferential Dividends accrued on the Series A Preferred Stock for six or more quarterly dividend periods, whether consecutive or not, shall not have been declared and paid or irrevocably set aside for payment, the holders of record of Preferred Stock of the Corporation of all series (including the Series A Preferred Stock), other than any series in respect of which such right is expressly withheld by the Amended and Restated Certificate of Incorporation or the authorizing resolutions included in any Certificate of Designation therefor, shall have the right, at the next meeting of stockholders called for the election of directors, to elect two members to the Board of Directors, which directors shall be in addition to the number required prior to such event, to serve until the next Annual Meeting and until their successors are elected and qualified or their earlier resignation, removal or incapacity or until such earlier time as all accrued and unpaid Preferential Dividends upon the outstanding shares of Series A Preferred Stock shall have been paid (or irrevocably set aside for payment) in full. The holders of shares of Series A Preferred Stock shall continue to have the right to elect directors as provided by the immediately preceding sentence until all accrued and unpaid Preferential Dividends upon the outstanding shares of Series A Preferred Stock shall have been paid (or set aside for payment) in full. Such directors may be removed and replaced by such stockholders, and vacancies in such directorships may be filled only by such stockholders (or by the remaining director elected by such stockholders, if there be one) in the manner permitted by law; provided, however, that any such action by stockholders shall be taken at a meeting of stockholders and shall not be taken by written consent thereto.

(d) Except as otherwise required by the Amended and Restated Certificate of Incorporation or by law or as set forth herein, holders of Series A Preferred Stock shall have no other special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for the taking of any corporate action.

4. Certain Restrictions.

(a) Whenever Preferential Dividends or Dividends payable on the Series A Preferred Stock as provided in Section 2 are in arrears or the Corporation shall be in default of payment thereof, thereafter and until all accrued and unpaid Preferential Dividends and Dividends, whether or not declared, on shares of Series A Preferred Stock outstanding shall have been paid, or set irrevocably aside for payment, in full, and in addition to any and all other rights which any holder of shares of Series A Preferred Stock may have in such circumstances, the Corporation shall not:

(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration, any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock;

(ii) declare or pay dividends on or make any other distributions on any shares of stock ranking on a parity as to dividends with the Series A Preferred Stock, unless dividends are paid ratably on the Series A Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled if the full dividends accrued thereon were to be paid;

(iii) except as permitted by subparagraph (iv) of this paragraph 4(A), redeem or purchase or otherwise acquire for consideration shares of any stock ranking on a parity with or junior to (either as to dividends or upon liquidation, dissolution or winding up) the Series A Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity or junior stock in exchange for shares of any stock of the Corporation ranking junior (both as to dividends and upon liquidation, dissolution or winding up) to the Series A Preferred Stock; or

(iv) purchase or otherwise acquire for consideration any shares of Series A Preferred Stock, or any shares of stock ranking

on a parity with the Series A Preferred Stock (either as to dividends or upon liquidation, dissolution or winding up), except in accordance with a purchase offer made to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(b) The Corporation shall not permit any Subsidiary (as hereinafter defined) of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner. A "Subsidiary" of the Corporation shall mean any corporation or other entity of which securities or other ownership interests having ordinary voting power sufficient to elect a majority of the board of directors of such corporation or other entity or other persons performing similar functions are beneficially owned, directly or indirectly, by the Corporation or by any corporation or other entity that is otherwise controlled by the Corporation.

(c) The Corporation shall not issue any shares of Series A Preferred Stock except upon exercise of Rights issued pursuant to that certain Rights Agreement dated as of April 18, 2000 between the Corporation and Continental Stock Transfer & Trust Company, as Rights Agent, as it may be amended from time to time, a copy of which is on file with the Secretary of the Corporation at its principal executive office and shall be made available to stockholders of record without charge upon written request therefor addressed to said Secretary. Notwithstanding the foregoing sentence, nothing contained in the provisions of this Amended and Restated Certificate of Incorporation shall prohibit or restrict the Corporation from issuing for any purpose any series of Preferred Stock with rights and privileges similar to, different from, or greater than, those of the Series A Preferred Stock.

5. Reacquired Shares. Any shares of Series A Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares upon their retirement and cancellation shall become authorized but unissued shares of Preferred Stock, without designation as to series, and such shares may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors.

6. Liquidation, Dissolution or Winding Up. Upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, no distribution shall be made (i) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock unless, prior thereto, the holders of shares of Series A Preferred Stock shall have received for each share of Series A Preferred Stock, subject to adjustment as hereinafter provided, (A) \$4,000 plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment or, (B) if greater than the amount specified in clause (i)(A) of this sentence, an amount equal to 100 times the aggregate amount to be distributed per share to holders of Common Stock, as the same may be adjusted as hereinafter provided and (ii) to the holders of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, unless simultaneously therewith distributions are made ratably on the Series A Preferred Stock and all other shares of such parity stock in proportion to the total amounts to which the holders of shares of Series A Preferred Stock are entitled under clause (i)(A) of this sentence and to which the holders of such parity shares are entitled, in each case upon such liquidation, dissolution or winding up. The amount to which holders of Series A Preferred Stock may be entitled upon liquidation, dissolution or winding up of the Corporation pursuant to clause (i)(B) of the foregoing sentence is hereinafter referred to as the "Participating Liquidation Amount" and the multiple of the amount to be distributed to holders of shares of Common Stock upon the liquidation, dissolution or winding up of the Corporation applicable pursuant to said clause to the determination of the Participating Liquidation Amount, as said multiple may be adjusted from time to time as hereinafter provided, is hereinafter referred to as the "Liquidation Multiple". In the event the Corporation shall at any time after April 18, 2000 declare or pay any dividend on Common Stock payable in shares of Common Stock, or effect a subdivision or split or a combination, consolidation or reverse split of the outstanding shares of Common Stock into a greater or lesser number of shares of Common Stock, then, in each such case, the Liquidation Multiple thereafter applicable to the determination of the Participating Liquidation Amount to which holders of Series A Preferred Stock shall be entitled after such event shall be the Liquidation Multiple applicable immediately prior to such event multiplied by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of

shares of Common Stock that were outstanding immediately prior to such event.

7. Certain Reclassifications and Other Events.

(a) In the event that holders of shares of Common Stock of the Corporation receive after April 18, 2000, in respect of their shares of Common Stock any share of capital stock of the Corporation (other than any share of Common Stock of the Corporation), whether by way of reclassification, recapitalization, reorganization, dividend or other distribution or otherwise (a "Transaction"), then, and in each such event, the dividend rights, voting rights and rights upon the liquidation, dissolution or winding up of the Corporation of the shares of Series A Preferred Stock shall be adjusted so that after such event the holders of Series A Preferred Stock shall be entitled, in respect of each share of Series A Preferred Stock held, in addition to such rights in respect thereof to which such holder was entitled immediately prior to such adjustment, to (i) such additional dividends as equal the Dividend Multiple in effect immediately prior to such Transaction multiplied by the additional dividends which the holder of a share of Common Stock shall be entitled to receive by virtue of the receipt in the Transaction of such capital stock, (ii) such additional voting rights as equal the Vote Multiple in effect immediately prior to such Transaction multiplied by the additional voting rights which the holder of a share of Common Stock shall be entitled to receive by virtue of the receipt in the Transaction of such capital stock and (iii) such additional distributions upon liquidation, dissolution or winding up of the Corporation as equal the Liquidation Multiple in effect immediately prior to such Transaction multiplied by the additional amount which the holder of a share of Common Stock shall be entitled to receive upon liquidation, dissolution or winding up of the Corporation by virtue of the receipt in the Transaction of such capital stock, as the case may be, all as provided by the terms of such capital stock.

(b) In the event that holders of shares of Common Stock of the Corporation receive after April 18, 2000, in respect of their shares of Common Stock any right or warrant to purchase Common Stock (including as such a right, for all purposes of this paragraph, any security convertible into or exchangeable for Common Stock) at a purchase price per share less than the Fair Market Value of a share of Common Stock on the date of issuance of such right or warrant, then and in each such event the dividend rights, voting rights and rights upon the liquidation, dissolution or winding up of the Corporation of the shares of Series A Preferred Stock shall each be adjusted so that after such event the Dividend Multiple, the Vote Multiple and the Liquidation Multiple shall each be the product of the Dividend Multiple, the Vote Multiple and the Liquidation Multiple, as the case may be, in effect immediately prior to such event multiplied by a fraction the numerator of which shall be the number of shares of Common Stock outstanding immediately before such issuance of rights or warrants plus the maximum number of shares of Common Stock which could be acquired upon exercise in full of all such rights or warrants and the denominator of which shall be the number of shares of Common Stock outstanding immediately before such issuance of rights or warrants plus the number of shares of Common Stock which could be purchased, at the Fair Market Value of the Common Stock at the time of such issuance, by the maximum aggregate consideration payable upon exercise in full of all such rights or warrants.

(c) In the event that holders of shares of Common Stock of the Corporation receive after April 18, 2000, in respect of their shares of Common Stock any right or warrant to purchase capital stock of the Corporation (other than shares of Common Stock), including as such a right, for all purposes of this paragraph, any security convertible into or exchangeable for capital stock of the Corporation (other than Common Stock), at a purchase price per share less than the Fair Market Value of such shares of capital stock on the date of issuance of such right or warrant, then and in each such event the dividend rights, voting rights and rights upon liquidation, dissolution or winding up of the Corporation of the shares of Series A Preferred Stock shall each be adjusted so that after such event each holder of a share of Series A Preferred Stock shall be entitled, in respect of each share of Series A Preferred Stock held, in addition to such rights in respect thereof to which such holder was entitled immediately prior to such event, to receive (i) such additional dividends as equal the Dividend Multiple in effect immediately prior to such event multiplied, first, by the additional dividends to which the holder of a share of Common Stock shall be entitled upon exercise of such right or warrant by virtue of the capital stock which could be acquired upon such exercise and multiplied again by the Discount Fraction (as hereinafter defined) and (ii) such additional voting rights as equal the Vote Multiple in effect immediately prior to such event multiplied, first, by the additional voting rights to which the holder of a share of Common Stock shall be entitled upon exercise of such right or warrant by virtue of the capital stock which could be acquired upon such exercise and multiplied again by the Discount Fraction and (iii) such additional distributions upon liquidation, dissolution or winding up of the

Corporation as equal the Liquidation Multiple in effect immediately prior to such event multiplied, first, by the additional amount which the holder of a share of Common Stock shall be entitled to receive upon liquidation, dissolution or winding up of the Corporation upon exercise of such right or warrant by virtue of the capital stock which could be acquired upon such exercise and multiplied again by the Discount Fraction. For purposes of this paragraph, the "Discount Fraction" shall be a fraction the numerator of which shall be the difference between the Fair Market Value of a share of the capital stock subject to a right or warrant distributed to holders of shares of Common Stock of the Corporation as contemplated by this paragraph immediately after the distribution thereof and the purchase price per share for such share of capital stock pursuant to such right or warrant and the denominator of which shall be the Fair Market Value of a share of such capital stock immediately after the distribution of such right or warrant.

(d) For purposes of this Amended and Restated Certificate of Incorporation, the "Fair Market Value" of a share of capital stock of the Corporation (including a share of Common Stock) on any date shall be deemed to be the average of the daily closing price per share thereof over the 30 consecutive Trading Days (as such term is hereinafter defined) immediately prior to such date; provided, however, that, in the event that such Fair Market Value of any such share of capital stock is determined during a period which includes any date that is within 30 Trading Days after (i) the ex-dividend date for a dividend or distribution on stock payable in shares of such stock or securities convertible into shares of such stock, or (ii) the effective date of any subdivision, split, combination, consolidation, reverse stock split or reclassification of such stock, then, and in each such case, the Fair Market Value shall be appropriately adjusted by the Board of Directors of the Corporation to take into account such dividend, distribution, subdivision, split, combination, consolidation or reclassification. The closing price for any day shall be the last sale price, regular way, or, in case, no such sale takes place on such day, the average of the closing bid and asked prices, regular way (in either case, as reported in the applicable transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange), or, if the shares are not listed or admitted to trading on the New York Stock Exchange, as reported in the applicable transaction reporting system with respect to securities listed on the principal national securities exchange on which the shares are listed or admitted to trading or, if the shares are not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated Quotation System ("NASDAQ") or such other system then in use, or if on any such date the shares are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the shares selected by the Board of Directors of the Corporation. The term "Trading Day" shall mean a day on which the principal national securities exchange on which the shares are listed or admitted to trading is open for the transaction of business or, if the shares are not listed or admitted to trading on any national securities exchange, on which the New York Stock Exchange or such other national securities exchange as may be selected by the Board of Directors of the Corporation is open. If the shares are not publicly held or not so listed or traded on any day within the period of 30 Trading Days applicable to the determination of Fair Market Value thereof as aforesaid, "Fair Market Value" shall mean the fair market value thereof per share as determined in good faith by the Board of Directors of the Corporation. In either case referred to in the foregoing sentence, the determination of Fair Market Value shall be described in a statement filed with the Secretary of the Corporation.

8. Consolidation, Merger, etc. In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case each outstanding share of Series A Preferred Stock shall at the same time be similarly exchanged for or changed into the aggregate amount of stock, securities, cash and/or other property (payable in like kind), as the case may be, for which or into which each share of Common Stock is changed or exchanged multiplied by the highest of the Vote Multiple, the Dividend Multiple or the Liquidation Multiple in effect immediately prior to such event.

9. Effective Time of Adjustments.

(a) Adjustments to the Series A Preferred Stock required by the provisions hereof shall be effective as of the time at which the event requiring such adjustments occurs.

(b) The Corporation shall give prompt written notice to each holder of a share of Series A Preferred Stock of the effect of any adjustment

to the voting rights, dividend rights or rights upon liquidation, dissolution or winding up of the Corporation of such shares required by the provisions of this Amended and Restated Certificate of Incorporation. Notwithstanding the foregoing sentence, the failure of the Corporation to give such notice shall not affect the validity of or the force or effect of or the requirement for such adjustment.

10. No Redemption. The shares of Series A Preferred Stock shall not be redeemable at the option of the Corporation or any holder thereof. Notwithstanding the foregoing sentence of this Section, the Corporation may acquire shares of Series A Preferred Stock in any other manner permitted by law and the provisions hereof and the Amended and Restated Certificate of Incorporation of the Corporation.

11. Ranking. Unless otherwise provided in the Amended and Restated Certificate of Incorporation of the Corporation, or a Certificate of Designation relating to a subsequent series of preferred stock of the Corporation, the Series A Preferred Stock shall rank junior to all other series of the Corporation's preferred stock as to the payment of dividends and the distribution of assets on liquidation, dissolution or winding up and senior to the Common Stock.

12. Amendment. The provisions hereof and the Amended and Restated Certificate of Incorporation of the Corporation shall not be amended in any manner which would adversely affect the rights, privileges or powers of the Series A Preferred Stock without, in addition to any other vote of stockholders required by law, the affirmative vote of the holders of two-thirds or more of the outstanding shares of Series A Preferred Stock, voting together as a single class."

B. ADDITIONAL SERIES OF PREFERRED STOCK. The Preferred Stock, other than the Series A Junior Preferred Stock, authorized by this Amended and Restated Certificate of Incorporation may be issued by the Board of Directors from time to time in one or more series. Subject to Article SEVENTH, the Board of Directors is hereby authorized to fix or alter the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption, including sinking fund provisions, the redemption price or prices, and the liquidation preferences of any wholly unissued class or series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or any of them.

C. COMMON STOCK. The terms of the Common Stock shall be as follows:

1. Dividend. Holders of Common Stock will be entitled to receive such dividends as may be declared by the Board of Directors.

2. Distribution of Assets. In the event of the voluntary or involuntary liquidation, distribution or winding up of the Corporation, holders of Common Stock will be entitled to receive pro rata all of the remaining assets of the Corporation available for distribution to its stockholders.

3. Voting Rights. The holders of Common Stock shall have the general right to vote for all purposes, including the election of directors, as provided by law. Each holder of Common Stock shall be entitled to one vote for each share thereof held.

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

A. The number of directors of the Corporation shall be such as from time to time shall be fixed by, or in the manner provided in the by-laws. Election of directors need not be by ballot unless the by-laws so provide.

B. The Board of Directors shall have power without the assent or vote of the stockholders to make, alter, amend, change, add to or repeal the by-laws of the Corporation as provided in the by-laws of the Corporation; to fix and vary the amount to be reserved for any proper purpose; to authorize and cause to be executed mortgages and liens upon all or any part of the property of the Corporation; to determine the use and disposition of any surplus or net profits; and to fix the times for the declaration and payment of dividends.

C. The directors in their discretion may submit any contract or act for approval or ratification at any annual meeting of the stockholders or at any meeting of the stockholders called for the purpose of considering any such act or contract, and any contract or act that shall be approved or be ratified by the vote of the holders of a majority of the stock of the Corporation which is represented in person or by proxy at such meeting and entitled to vote thereat (provided that a lawful quorum of stockholders be

there represented in person or by proxy) shall be as valid and binding upon the Corporation and upon all stockholders as though it had been approved or ratified by every stockholder of the Corporation, whether or not the contract or act would otherwise be open to legal attack because of directors' interest, or for any other reason.

D. In addition to the powers and authorities hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation; subject, nevertheless, to the provisions of the statutes of Delaware, of this certificate, and to any by-laws from time to time made by the stockholders; provided, however, that no by-law so made shall invalidate any prior act of the directors which would have been valid if such by-law had not been made.

SIXTH: A. The personal liability of the directors of the Corporation is hereby eliminated to the fullest extent permitted by paragraph (7) of subsection (b) of Section 102 of the General Corporation Law of the State of Delaware, as the same may be amended and supplemented.

B. The Corporation, to the fullest extent permitted by Section 145 of the General Corporation Law of the State of Delaware, as the same may be amended and supplemented, shall indemnify any and all persons whom it shall have power to indemnify under said section from and against any and all of the expenses, liabilities or other matter referred to in or covered by said section, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any by-law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administration of such a person.

C. Any modification of this Paragraph 6 by the stockholders of the Corporation shall be prospective only and shall not adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such appeal on modification.

SEVENTH: Pursuant to Section 1123(a)(6) of the Bankruptcy Code of 1978, as amended, the Corporation shall be prohibited from authorizing the issuance of any class, or series thereof, of nonvoting equity shares, within the meaning of such section.

EIGHTH: The Corporation shall not be governed by Section 203 of the Delaware Code.

The amendments of the Certificate of Incorporation of the Corporation herein certified were duly adopted, pursuant to the provisions of Section 241 of the Delaware Code.

Dated: June 9, 2000.

/s/ Brian G. Kelly

Brian G. Kelly

AMENDED AND RESTATED
BY-LAWS
OF
ACTIVISION HOLDINGS, INC.

ARTICLE I

OFFICES

1.1. Registered Office: The registered office of Activision Holdings, Inc. (the "Corporation") within the State of Delaware shall be established and maintained at the location of the registered agent of the Corporation.

1.2. Other Offices: The Corporation may have other offices, either within or without the State of Delaware, at such place or places as the Board of Directors may from time to time appoint or the business of the Corporation may require.

ARTICLE II.

STOCKHOLDERS

2.1. Place of Stockholders' Meetings. All meetings of the stockholders of the Corporation shall be held at such place or places, within or without the State of Delaware as may be fixed by the Board of Directors from time to time or as shall be specified in the respective notices thereof.

2.2. Date and Hour of Annual Meetings of Stockholders. An annual meeting of stockholders shall be held on such date as may be determined by the Board of Directors.

2.3. Purposes of Annual Meetings. At each annual meeting, the stockholders shall elect the members of the Board of Directors for the succeeding year. At any such annual meeting any further proper business may be transacted.

2.4. Special Meetings of Stockholders. Special meetings of the stockholders or of any class or series thereof entitled to vote may be called by the President, the Board of Directors, the Chairman of the Board, or at the request in writing by one or more stockholders holding shares in the aggregate entitled to cast not less than ten percent (10%) of the votes at that meeting.

2.5. Notice of Meetings of Stockholders. Except as otherwise expressly required or permitted by law, not less than ten days nor more than sixty days before the date of every stockholders' meeting the Secretary shall give to each stockholder of record entitled to vote at such meeting written notice, served personally, by mail or by telegram, stating the place, date and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Such notice, if mailed, shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address for notices to such stockholder as it appears on the records of the Corporation.

2.6. Quorum of Stockholders. (a) Unless otherwise provided by the Certificate of Incorporation or by law, at any meeting of the stockholders, the presence in person or by proxy of stockholders entitled to cast a majority of the votes thereat shall constitute a quorum.

(b) At any meeting of the stockholders at which a quorum shall be present, a majority of those present in person or by proxy may adjourn the meeting from time to time without notice other than announcement at the meeting. In the absence of a quorum, the officer presiding thereat shall have power to adjourn the meeting from time to time until a quorum shall be present. Notice of any adjourned meeting, other than announcement at the meeting, shall not be required to be given, except as provided in paragraph (d) below and except where expressly required by law.

(c) At any adjourned session at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting originally called but only those stockholders entitled to vote at the meeting as originally noticed shall be entitled to vote at any adjournment or adjournments thereof, unless a new record date is fixed by the Board of Directors.

(d) If an adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record

entitled to vote at the meeting.

2.7. Chairman and Secretary of Meeting. The Chairman of the Board of Directors, or, in his absence, the President or a Vice President, shall preside at meetings of the stockholders. The Secretary or, in his absence, an Assistant Secretary, shall act as secretary of the meeting shall act, or if neither is present, then the presiding officer may appoint a person to act as secretary of the meeting.

2.8. Voting by Stockholders. Except as may be otherwise provided by the Certificate of Incorporation or these by-laws, at every meeting of the stockholders each stockholder shall be entitled to one vote for each share of stock standing in his name on the books of the Corporation on the record date for the meeting. All elections and questions shall be decided by the vote of a majority in interest of the stockholders present in person or represented by proxy and entitled to vote at the meeting.

2.9. Proxies. Any stockholder entitled to vote at any meeting of stockholders may vote either in person or by proxy. Every proxy shall be in writing, subscribed by the stockholder or his duly authorized attorney-in-fact, but need not be dated, sealed, witnessed or acknowledged.

2.10. Inspectors. The election of directors and any other vote by ballot at any meeting of the stockholders shall be supervised by at least two inspectors. Such inspectors may be appointed by the presiding officer before or at the meeting; or if one or both inspectors so appointed shall refuse to serve or shall not be present, such appointment shall be made by the officer presiding at the meeting.

2.11. List of Stockholders. (a) The Corporation shall keep at its principal executive office, or at the office of its transfer agent or registrar, if either be appointed and as determined by resolution of the board of directors, a record of its stockholders, giving the names and addresses of all stockholders and the number and class of shares held by each stockholder.

(b) A stockholder or stockholders of the Corporation holding at least five percent (5%) in the aggregate of the outstanding voting shares of the Corporation or who holds at least one percent (1%) of such voting shares and has filed a Schedule 14B with the Securities and Exchange Commission relating to the election of directors, may (i) inspect and copy the records of stockholders' names and addresses and shareholdings during usual business hours on five (5) days' prior written demand on the Corporation, (ii) obtain from the transfer agent of the Corporation, on written demand and on the tender of such transfer agent's usual charges for such list, a list of the names and addresses of the stockholders who are entitled to vote for the election of directors, and their shareholdings, as of the most recent record date for which that list has been compiled or as of a date specified by the stockholder after the date of demand. Such list shall be made available to any such stockholder by the transfer agent on or before the later of five (5) days after the demand is received or five (5) days after the date specified in the demand as the date as of which the list is to be compiled.

The record of stockholders shall also be open to inspection on the written demand of any stockholder or holder of a voting trust certificate, at any time during usual business hours, for a purpose reasonably related to the holder's interests as a stockholder or as the holder of a voting trust certificate. In addition, during ordinary business hours, for a period of at least ten days prior to the meeting, such list shall be open to examination by any stockholder for any purpose germane to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or if not so specified, at the place where the meeting is to be held.

Any inspection and copying under this Section 2.11 may be made in person or by an agent or attorney of the stockholder or holder of a voting trust certificate making the demand.

(c) The list shall also be produced and kept at the time and place of the meeting during the whole time of the meeting, and it may be inspected by any stockholder who is present.

(d) The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this Section 2.11 or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

2.12. Procedure at Stockholders' Meetings. Except as otherwise provided by these by-laws or any resolutions adopted by the stockholders or Board of Directors, the order of business and all other matters of procedure at every meeting of stockholders shall be determined by the presiding

officer. Not less than 15 minutes following the presentation of any resolution to any meeting of stockholders, the presiding officer may announce that further discussion on such resolution shall be limited to not more than three persons who favor and not more than three persons who oppose such resolution, each of whom shall be designated by the presiding officer and shall thereupon be entitled to speak thereon for not more than five minutes. After such persons, or such a lesser number thereof as shall advise the presiding officer of their desire so to speak, shall have spoken on such resolution, the presiding officer may direct a vote on such resolution without further discussion thereon at the meeting.

2.13. Action By Consent Without Meeting. Unless otherwise provided by the Certificate of Incorporation, any action required to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

ARTICLE III

DIRECTORS

3.1. Powers of Directors. The property, business and affairs of the Corporation shall be managed by its Board of Directors which may exercise all the powers of the Corporation except such as are by the law of the State of Delaware or the Certificate of Incorporation or these by-laws required to be exercised or done by the stockholders.

3.2. Number. Method of Election, Terms of Office of Directors. The number of directors which shall constitute the entire Board of Directors shall such number as the Board of Directors may determine from time to time. Until changed by action of the Board of Directors, the number of directors constituting the entire Board of Directors shall be seven (7). Each director shall hold office until the next annual meeting of stockholders and until his successor is elected and qualified, provided, however, that a director may resign at any time. Directors need not be stockholders.

3.3. Vacancies on Board of Directors; Removal.

(a) Any director may resign his office at any time by delivering his resignation in writing to the President or the Secretary. It will take effect at the time specified therein or, if no time is specified, it will be effective at the time of its receipt by the Corporation. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

(b) Any vacancy, or newly created directorship resulting from any increase in the authorized number of directors, may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and any director so chosen shall hold office until the next annual election of directors by the stockholders and until his successor is duly elected and qualified or until his earlier resignation or removal.

(c) Removal. Any director may be removed with or without cause at any time by the affirmative vote of stockholders holding of record in the aggregate at least a majority of the outstanding shares of stock of the Corporation, given at a special meeting of the stockholders called for that purpose.

3.4 Meetings of the Board of Directors. (a) The Board of Directors may hold their meetings, both regular and special, either within or without the State of Delaware.

(b) Regular meetings of the Board of Directors may be held at such time and place as shall from time to time be determined by resolution of the Board of Directors. No notice of such regular meetings shall be required. If the date designated for any regular meeting be a legal holiday, then the meeting shall be held on the next day which is not a legal holiday.

(c) The first meeting of each newly elected Board of Directors shall be held immediately following the annual meeting of the stockholders for the election of officers and the transaction of such other business as may come before it. If such meeting is held at the place of the stockholders' meeting, no notice thereof shall be required.

(d) Special meetings of the Board of Directors shall be held

whenever called by direction of the Chairman of the Board of Directors or at the written request of any one director.

(e) The Secretary shall give notice to each director of any special meeting of the Board of Directors by mailing the same at least three days before the meeting or by telegraphing, telexing, or delivering the same not later than the day before the meeting. Unless required by law, such notice need not include a statement of the business to be transacted at, or the purpose of, any such meeting. Any and all business may be transacted at any meeting of the Board of Directors. No notice of any adjourned meeting need be given. No notice to or waiver by any director shall be required with respect to any meeting at which the director is present.

3.5. Quorum and Action. Unless provided otherwise by law or the Certificate of Incorporation, a majority of the entire board shall constitute a quorum for the transaction of business; but if there shall be less than a quorum at any meeting of the Board, a majority of those present may adjourn the meeting from time to time. The vote of a majority of the directors present at any meeting at which a quorum is present shall be necessary to constitute the act of the Board of Directors.

3.6. Presiding Officer and Secretary of Meeting. The Chairman of the Board of Directors, or, in his absence, the President or any Vice President, or, in their absence a member of the Board of Directors selected by the members present, shall preside at meetings of the Board. The Secretary shall act as secretary of the meeting, but in his absence the presiding officer may appoint a secretary of the meeting.

3.7. Action by Consent Without Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all members of the Board of Directors or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes or proceedings of the Board of Directors or committee.

3.8. Action by Telephonic Conference. Members of the Board of Directors, or any committee designated by such board, may participate in a meeting of such board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in such a meeting shall constitute presence in person at such meeting.

32.9. Committees. (a) The Board of Directors may, by resolution or resolutions passed by a majority of the whole board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board 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 or such committee or committees, the member or members thereof present at any such meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(b) Any such committee, to the extent provided in the resolution or resolutions of the Board of Directors, or in these by-laws, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power of authority in reference to amending the Certificate of Incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution, or amending the by-laws of the Corporation; and unless the resolution, these by-laws, or the Certificate of Incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock.

3.10. Compensation of Directors. Directors shall receive such reasonable compensation for their service on the Board of Directors or any committees thereof, whether in the form of salary or a fixed fee for attendance at meetings, or both, with expenses, if any, as the Board of Directors may from time to time determine. Nothing herein contained shall be construed to preclude any director from serving in any other capacity and receiving compensation therefor.

ARTICLE IV

OFFICERS

4.1. Officers, Title, Elections, Terms. (a) The elected officers of the Corporation shall be a Chairman of the Board of Directors, a President, a Treasurer and a Secretary, and the Board of Directors may also elect or appoint at any time one or more Vice Presidents and such other officers as it may determine. Two or more offices may be held by the same person.

(b) Unless otherwise specified by the Board of Directors, each officer shall be elected or appointed to hold office until the annual meeting of the Board of Directors next following his election or appointment and until his successor, if any, has been elected or appointed and qualified, or until his earlier resignation or renewal.

(c) Any vacancy in any office may be filled for the unexpired portion of the term by the Board of Directors.

(d) Any officer may resign his office at any time. Such resignation shall be made in writing and shall take effect at the time specified therein or, if no time be specified, at the time of its receipt by the Corporation. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

(e) Any officer elected or appointed by the Board of Directors may be removed by the Board of Directors with or without cause.

(f) The salaries of all officers of the Corporation shall be fixed by the Board of Directors.

4.2. Removal of Elected Officers. Any elected officer may be removed at any time, either with or without cause, by resolution adopted at any regular or special meeting of the Board of Directors by a majority of the directors then in office.

4.3. Duties. The officers, agent and employees of the Corporation shall each have such powers and perform such duties in the management of the affairs, property and business of the Corporation, subject to the control of and limitation by the Board of Directors, as generally pertain to their respective offices, as well as such powers and duties as may be authorized from time to time by the Board of Directors.

ARTICLE V

CAPITAL STOCK

5.1. Stock Certificates. (a) Every holder of stock in the Corporation shall be entitled to have a certificate signed by, or in the name of, the Corporation by the Chairman or the President or a Vice President, and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary, certifying the number of shares owned by him.

(b) If such certificate is countersigned by a transfer agent other than the Corporation or its employee, or by a registrar other than the Corporation or its employee, the signatures of the officers of the Corporation may be facsimiles, and, if permitted by law, any other signature may be a facsimile.

(c) In case any officer who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer at the date of issue.

(d) Certificates of stock shall be issued in such form not inconsistent with the Certificate of Incorporation as shall be approved by the Board of Directors. They shall be numbered and registered in the order in which they are issued.

(e) All certificates surrendered to the Corporation shall be cancelled with the date of cancellation, and shall be retained by the Secretary, together with the powers of attorney to transfer and the assignments of the shares represented by such certificates, for such period of time as shall be prescribed from time to time by resolution of the Board of Directors.

5.2. Record Ownership. A record of the name and address of the holder of each certificate, the number of shares represented thereby and the date of issue thereof shall be made on the Corporation's books. The Corporation shall be entitled to treat the holder of any share of stock as the holder in fact thereof, and accordingly shall not be bound to recognize any equitable or other claim to or interest in any share on the part of any other person, whether or not it shall have express or other notice thereof, except as required by law.

5.3. Transfer of Record Ownership. Transfers of stock shall be made on the books of the corporation only by direction of the person named in the certificate or his attorney, lawfully constituted in writing, and only upon the surrender of the certificate therefor and a written assignment of the shares evidenced thereby. Whenever any transfer of stock shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer if, when the certificates are presented to the Corporation for transfer, both the transferor and transferee request the Corporation to do so.

5.4. Lost, Stolen or Destroyed Certificates. Certificates representing shares of the stock of the Corporation shall be issued in place of any certificate alleged to have been lost, stolen or destroyed in such manner and on such terms and conditions as the Board of Directors from time to time may authorize.

5.5. Transfer Agent; Registrar; Rules Respecting Certificates. The Corporation may maintain one or more transfer offices or agencies where stock of the Corporation shall be transferable. The Corporation may also maintain one or more registry offices where such stock shall be registered. The Board of Directors may make such rules and regulations as it may deem expedient concerning the issue, transfer and registration of stock certificates.

5.6. Fixing Record Date for Determination of Stockholders of Record. The Board of Directors may fix, in advance, a date as the record date for the purpose of determining stockholders entitled to notice of, or to vote at, any meeting of the stockholders or any adjournment thereof, or the stockholders entitled to receive payment of any dividend or other distribution or the allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock, or to express consent to corporate action in writing without a meeting, or in order to make a determination of the stockholders for the purpose of any other lawful action. Such record date in any case shall be not more than sixty days nor less than ten days before the date of a meeting of the stockholders, nor more than sixty days prior to any other action requiring such determination of the stockholders. A determination of stockholders of record entitled to notice or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

5.7. Dividends. Subject to the provisions of the Certificate of Incorporation, the Board of Directors may, out of funds legally available therefor at any regular or special meeting, declare dividends upon the capital stock of the Corporation as and when they deem expedient. Before declaring any dividend there may be set apart out of any funds of the Corporation available for dividends, such sum or sums as the Board of Directors from time to time in their discretion deem proper for working capital or as a reserve fund to meet contingencies or for equalizing dividends or for such other purposes as the Board of Directors shall deem conducive to the interests of the Corporation.

ARTICLE VI

SECURITIES HELD BY THE CORPORATION

6.1. Voting. Unless the Board of Directors shall otherwise order, the Chairman of the Board of Directors, the President, any Vice President, the Secretary or the Treasurer shall have full power and authority, on behalf of the Corporation, to attend, act and vote at any meeting of the stockholders of any corporation in which the Corporation may hold stock, and at such meeting to exercise any or all rights and powers incident to the ownership of such stock, and to execute on behalf of the corporation a proxy or proxies empowering another or others to act as aforesaid. The Board of Directors from time to time may confer like powers upon any other person or persons.

6.2. General Authorization to Transfer Securities Held by the Corporation. (a) Any of the following officers, to wit: the Chairman of the Board of Directors, the President, any Vice President and the Treasurer shall be, and they hereby are, authorized and empowered to transfer, convert, endorse, sell, assign, set over and deliver any and all shares of stock, bonds, debentures, notes, subscription warrants, stock purchase warrants, evidence of indebtedness, or other securities now or hereafter standing in the name of or owned by the Corporation, and to make, execute and deliver, under the seal of the Corporation, any and all written instruments of assignment and transfer necessary or proper to effectuate the authority hereby conferred.

(b) Whenever there shall be annexed to any instrument of assignment and transfer executed pursuant to and in accordance with the foregoing paragraph (a), a certificate of the Secretary of the Corporation in

office at the date of such certificate setting forth the provisions of this Section 6.2 and stating that they are in full force and effect and setting forth the names of persons who are then officers of the Corporation, then all persons to whom such instrument and annexed certificate shall thereafter come, shall be entitled, without further inquiry or investigation and regardless of the date of such certificate, to assume and to act in reliance upon the assumption that the shares of stock or other securities named in such instrument were theretofore duly and properly transferred, endorsed, sold, assigned, set over and delivered by the Corporation, and that with respect to such securities the authority of these provisions of the by-laws and of such officers is still in full force and effect.

ARTICLE VII

MISCELLANEOUS

7.1. Signatories. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

7.2. Seal. The seal of the Corporation shall be in such form and shall have such content as the Board of Directors shall from time to time determine.

7.3. Notice and Waiver of Notice. Whenever any notice of the time, place or purpose of any meeting of the stockholders, directors or a committee is required to be given under the law of the State of Delaware, the Certificate of Incorporation or these by-laws, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the holding thereof, or actual attendance at the meeting in person or, in the case of any stockholder, by his attorney-in-fact, shall be deemed equivalent to the giving of such notice to such persons.

7.4. Amendment of By-Laws. (a) By Board of Directors. The by-laws of the Corporation may be altered, amended or repealed or new by-laws may be made or adopted by the Board of Directors at any regular or special meeting of the Board; provided that paragraph (c) of Section 3.3 and this Section 7.4(a) of these By-Laws may be altered, amended or repealed only by action of the stockholders acting pursuant to Section 7.4(b) hereof.

(b) By Stockholders. The by-laws of the Corporation may also be altered, amended or repealed or new by-laws may be made or adopted by the vote of a majority in interest of the stockholders represented and entitled to vote upon the election of directors, at any meeting at which a quorum is present.

7.5. Indemnity. The Corporation shall indemnify its directors and officers to the fullest extent allowed by law.

7.6. Fiscal Year. Except as from time to time otherwise determined by the Board of Directors, the fiscal year of the Corporation shall end on March 31.

CERTIFICATE OF AMENDMENT
OF
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
ACTIVISION HOLDINGS, INC.

ACTIVISION HOLDINGS, INC., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware,

DOES HEREBY CERTIFY:

FIRST: That pursuant to consent in writing of all of the directors of Activision Holdings, Inc., resolutions were duly adopted setting forth a proposed amendment of the Amended and Restated Certificate of Incorporation of such corporation, declaring said amendment to be advisable and calling for consideration thereof by the sole stockholder. The resolution setting forth the proposed amendment is as follows:

RESOLVED, that the Amended and Restated Certificate of Incorporation of this corporation be amended by changing the Article thereof numbered "1" so that, as amended, said Article shall be and read as follows:

"1. The name of the corporation is Activision, Inc."

SECOND: That thereafter, pursuant to resolution of all of its directors, the sole stockholder of the corporation considered the amendment and consented to the amendment, in writing duly signed by said stockholder.

THIRD: That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

FOURTH: That the capital of said corporation shall not be reduced under or by reason of said amendment.

IN WITNESS WHEREOF, said ACTIVISION HOLDINGS, INC. has caused this certificate to be signed by its President this 9 day of June, 2000.

ACTIVISION HOLDINGS, INC.

By: /s/ Brian G. Kelly

Brian G. Kelly, President

ACTIVISION ANNOUNCES NEW HOLDING COMPANY REORGANIZATION

Santa Monica, CA, June 16, 2000 - Activision, Inc. (NASDAQ: ATVI) announced today that on June 9, 2000, it reorganized into a holding company structure. The purpose of the reorganization was to provide the company with a more flexible organizational and capital structure and to enhance its financing options. The business operations of Activision, Inc. will not change as a result of the reorganization. The company's existing stock certificates represent shares of the new holding company. The common stock of the new holding company will continue to trade on the NASDAQ National Market under the symbol "ATVI."

As a result of the reorganization, a new parent company, Activision Holdings, Inc., a Delaware corporation, owns 100 percent of the previously publicly held Activision, Inc. As part of the reorganization, the former Activision, Inc. changed its name to Activision Publishing, Inc. and Activision Holdings, Inc. changed its name to Activision, Inc. Outstanding shares of capital stock of the former Activision, Inc. were automatically converted, on a share for share basis, into identical shares of common stock of the new holding company.

Under Delaware law, the reorganization was structured in a manner that did not require action by Activision's stockholders, whose rights, privileges and interests will remain the same with respect to the new holding company. The change to the holding company structure was tax free to the company's stockholders. The by-laws, executive officers and board of directors of the new holding company will remain the same.

Headquartered in Santa Monica, California, Activision, Inc. is a leading worldwide developer, publisher and distributor of interactive entertainment and leisure products.

Activision maintains operations in the US, Canada, the United Kingdom, France, Germany, Japan, Australia and the Netherlands. More information about Activision and its products can be found on the company's World Wide Web site, which is located at <http://www.activision.com>.

The statements contained in this release that are not historical facts are "forward-looking statements." The Company cautions readers of this press release that a number of important factors could cause Activision's actual future results to differ materially from those expressed in any such forward-looking statements. These important factors, and other factors that could affect Activision, are described in Activision's Annual Report on Form 10-K for the fiscal year ended March 31, 1999, which was filed with the United States Securities and Exchange Commission. Readers of this press release are referred to such filings.