

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

**FORM 8-K**

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

Date of Report (Date of earliest event reported): December 6, 2007

**NEKTAR THERAPEUTICS**

(Exact name of Registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction  
of incorporation)

**0-24006**  
(Commission  
File Number)

**94-3134940**  
(IRS Employer  
Identification No.)

**201 Industrial Road  
San Carlos, California 94070**  
(Address of principal executive offices and Zip Code)

Registrant's telephone number, including area code: (650) 631-3100

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

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

(b) On December 6, 2007, the decision was made that Timothy Harkness would no longer serve as Senior Vice President and Chief Financial Officer of Nektar Therapeutics (“Nektar”). In connection with his departure, Nektar and Mr. Harkness have entered into a Separation and General Release Agreement (the “Separation Agreement”) on December 10, 2007. The Separation Agreement provides for the following: (i) Mr. Harkness will receive a lump sum severance payment of \$385,000, as well as monthly severance payments of \$27,500 each for up to 12 months (unless Mr. Harkness commences employment with another employer prior to the expiration of this 12-month period), less all applicable withholdings and standard deductions and subject to certain delays in payments; (ii) Nektar will be responsible for approximately 12 months of COBRA continuation coverage (unless Mr. Harkness commences employment with another employer prior to the expiration of this 12-month period); (iii) Mr. Harkness became immediately vested in options to purchase 12,500 shares of Nektar’s common stock and will have the right to exercise his vested stock options until December 10, 2008, and (iv) Mr. Harkness and Nektar entered into a mutual general release of all claims, obligations and liabilities.

(c) On December 6, 2007, John Nicholson was appointed by Nektar’s Board of Directors to succeed Mr. Harkness as Senior Vice President and Chief Financial Officer. In connection with this appointment, Nektar and Mr. Nicholson entered into a Letter Agreement (“the Letter Agreement”) on December 10, 2007.

Mr. Nicholson, age 56, joined Nektar on October 2, 2007 as Senior Vice President of Corporate Development and Business Operations. Before joining Nektar, Nicholson spent 18 years in various executive roles at Schering Berlin, Inc., the U.S. management holding company of Bayer Schering Pharma AG, a pharmaceutical company. From 1997, he served as Schering Berlin Inc.’s Vice President of Corporate Development and Treasurer. Since 2001, he served concurrently as the President of Schering Berlin Insurance Co., and since 2007, he served concurrently as President of Bayer Pharma Chemicals Co. and Schering Berlin Capital Corp. Mr. Nicholson holds a B.B.A. from the University of Toledo.

Under the terms of the Letter Agreement, Mr. Nicholson’s annual base salary is \$425,000 and his annual performance bonus target is at least 50% of his base annual salary (“Performance Bonus Target”) pro-rated for his partial period of service in 2007. Mr. Nicholson’s actual annual performance bonus will range from 0% to 150% of the Performance Bonus Target based on the Compensation Committee’s assessment (in consultation with the Chief Executive Officer) of his achievement of a combination of corporate and personal objectives. On December 10, 2007, in connection with his appointment as Chief Financial Officer, Mr. Nicholson was granted a restricted stock unit award with respect to 10,000 shares of Nektar’s common stock. The restricted stock units (“RSUs”) will vest according to a 4-year vesting schedule with 25% of the RSUs vesting on the one-year anniversary of the date of grant and the remainder vesting annually on a pro-rata basis over the remaining 3 years. Mr. Nicholson is also eligible to participate in Nektar’s standard executive benefits program including Nektar’s change of control severance benefit plan.

If Nektar terminates Mr. Nicholson’s employment without cause or if Mr. Nicholson terminates his employment for good reason (as such terms are defined in the Letter Agreement), Mr. Nicholson will be entitled, subject to the terms of the Letter Agreement, to (i) a cash severance payment equal to Mr. Nicholson’s total annual cash compensation target (including base salary and the then-effective Performance Bonus Target) for the year in which his termination occurs, (ii) pro-rata vesting credit for his stock option granted October 2, 2007 if the date of termination occurs prior to the first anniversary of the grant date, (iii) a 12-month period following the termination date in which to exercise the vested and unexercised portion of all stock options held by him, and (iv) payment by Nektar of all applicable COBRA payments for him and his family until the first anniversary of the termination date (or, if earlier, the date on which he becomes eligible for comparable benefits with another employer).

(e) Reference is made to Items 5.02(b) and (c) with respect to the description of the terms and conditions of the Separation Agreement and Letter Agreement, which descriptions are incorporated by reference into this Item 5.02(e) in their entirety.

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

On December 6, 2007, the Board of Directors approved an amendment to Nektar’s current bylaws and adopted an Amended and Restated Bylaws (the “Amended and Restated Bylaws”). The amendment to Article VII Section 34 of the Bylaws clarifies the process by which certificated and uncertificated shares are issued and transferred. This amendment was adopted to permit Nektar to be eligible for participation in the Direct Registration System which, effective as of January 1, 2008, will be required of all NASDAQ Stock Market listed companies. The Direct Registration System allows stockholders to have securities registered in their names in electronic (book-entry) form without issuance of physical certificates and allows stockholders to transfer securities electronically to broker-dealers in order to effect transactions without the risks and delays associated with transferring physical certificates.

The Board of Directors also amended the title of the Bylaws to reflect Nektar’s current name, Nektar Therapeutics.

A copy of the Amended and Restated Bylaws of Nektar is filed herewith as Exhibit 3.1 and is incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits:

<u>Exhibit No.</u>	<u>Description</u>
3.1	Amended and Restated Bylaws of Nektar Therapeutics, dated December 6, 2007
10.1	Separation and General Release Agreement between Nektar and Timothy Harkness, dated December 10, 2007
10.2	Letter Agreement between Nektar and John Nicholson, dated December 10, 2007

**SIGNATURES**

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

By: /s/ Gil M. Labrucherie

Gil M. Labrucherie  
*General Counsel and Secretary*

Date: December 12, 2007

**AMENDED AND RESTATED  
BYLAWS  
OF  
NEKTAR THERAPEUTICS  
(A DELAWARE CORPORATION)**

**ARTICLE I**

**OFFICES**

**SECTION 1. REGISTERED OFFICE.** The registered office of the corporation in the State of Delaware shall be in the City of Wilmington, County of New Castle.

**SECTION 2. OTHER OFFICES.** The corporation shall also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and may also have offices at such other places, both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require.

**ARTICLE II**

**CORPORATE SEAL**

**SECTION 3. CORPORATE SEAL.** The corporate seal shall consist of a die bearing the name of the corporation and the inscription, "Corporate Seal-Delaware." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

**ARTICLE III**

**STOCKHOLDERS' MEETINGS**

**SECTION 4. PLACE OF MEETINGS.** Meetings of the stockholders of the corporation shall be held at such place, either within or without the State of Delaware, as may be designated from time to time by the Board of Directors, or, if not so designated, then at the office of the corporation required to be maintained pursuant to Section 2 hereof.

**SECTION 5. ANNUAL MEETINGS.**

(a) The annual meeting of the stockholders of the corporation, for the purpose of election of directors and for such other business as may lawfully come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors.

(b) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be: (A) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (B) otherwise properly brought before the meeting by or at the direction of the Board of Directors, or (C) otherwise properly brought before

the meeting by a stockholder. For business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the corporation not later than the close of business on the sixtieth (60th) day nor earlier than the close of business on the ninetieth (90th) day prior to the first anniversary of the preceding year's annual meeting; PROVIDED, HOWEVER, that in the event that no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than thirty (30) days from the date contemplated at the time of the previous year's proxy statement, notice by the stockholder to be timely must be so received not earlier than the close of business on the ninetieth (90th) day prior to such annual meeting and not later than the close of business on the later of the sixtieth (60th) day prior to such annual meeting or, in the event public announcement of the date of such annual meeting is first made by the corporation fewer than seventy (70) days prior to the date of such annual meeting, the close of business on the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the corporation. A stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting: (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and address, as they appear on the corporation's books, of the stockholder proposing such business, (iii) the class and number of shares of the corporation which are beneficially owned by the stockholder, (iv) any material interest of the stockholder in such business and (v) any other information that is required to be provided by the stockholder pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "1934 Act"), in his capacity as a proponent to a stockholder proposal. Notwithstanding the foregoing, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholder's meeting, stockholders must provide notice as required by the regulations promulgated under the 1934 Act. Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at any annual meeting except in accordance with the procedures set forth in this paragraph (b). The chairman of the annual meeting shall, if the facts warrant, determine and declare at the meeting that business was not properly brought before the meeting and in accordance with the provisions of this paragraph (b), and, if he should so determine, he shall so declare at the meeting that any such business not properly brought before the meeting shall not be transacted.

(c) Only persons who are nominated in accordance with the procedures set forth in this paragraph (c) shall be eligible for election as directors. Nominations of persons for election to the Board of Directors of the corporation may be made at a meeting of stockholders by or at the direction of the Board of Directors or by any stockholder of the corporation entitled to vote in the election of directors at the meeting who complies with the notice procedures set forth in this paragraph (c). Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the corporation in accordance with the provisions of paragraph (b) of this Section 5. Such stockholder's notice shall set forth (i) as to each person, if any, whom the stockholder proposes to nominate for election or re-election as a director: (A) the name, age, business address and residence address of such person, (B) the principal occupation or employment of such person, (C) the class and number of shares of the corporation which are beneficially owned by such person, (D) a description of all arrangements or understandings between the stockholder and each nominee and

any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder, and (E) any other information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the 1934 Act (including without limitation such person's written consent to being named in the proxy statement, if any, as a nominee and to serving as a director if elected); and (ii) as to such stockholder giving notice, the information required to be provided pursuant to paragraph (b) of this Section 5. At the request of the Board of Directors, any person nominated by a stockholder for election as a director shall furnish to the Secretary of the corporation that information required to be set forth in the stockholder's notice of nomination which pertains to the nominee. No person shall be eligible for election as a director of the corporation unless nominated in accordance with the procedures set forth in this paragraph (c). The chairman of the meeting shall, if the facts warrant, determine and declare at the meeting that a nomination was not made in accordance with the procedures prescribed by these Bylaws, and if he should so determine, he shall so declare at the meeting, and the defective nomination shall be disregarded.

(d) For purposes of this Section 5, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act.

#### **SECTION 6. SPECIAL MEETINGS.**

(a) Special meetings of the stockholders of the corporation may be called, for any purpose or purposes, by (i) the Chairman of the Board of Directors, (ii) the Chief Executive Officer, (iii) the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption), or (iv) by the holders of the shares entitled to cast not less than ten percent (10%) of the votes at the meeting, and shall be held at such place, on such date, and at such time as the Board of Directors, shall fix.

(b) If a special meeting is called by any person or persons other than the Board of Directors, the request shall be in writing, specifying the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered mail or by telegraphic or other facsimile transmission to the Chairman of the Board of Directors, the Chief Executive Officer, or the Secretary of the corporation. No business may be transacted at such special meeting otherwise than specified in such notice. The Board of Directors shall determine the time and place of such special meeting, which shall be held not less than thirty-five (35) nor more than one hundred twenty (120) days after the date of the receipt of the request. Upon determination of the time and place of the meeting, the officer receiving the request shall cause notice to be given to the stockholders entitled to vote, in accordance with the provisions of Section 7 of these Bylaws. If the notice is not given within sixty (60) days after the receipt of the request, the person or persons requesting the meeting may set the time and place of the meeting and give the notice. Nothing contained in this paragraph (b) shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board of Directors may be held.

**SECTION 7. NOTICE OF MEETINGS.** Except as otherwise provided by law or the Certificate of Incorporation, written notice of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, date and hour and purpose or purposes of the meeting. Notice of the time, place and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof, either before or after such meeting, and will be waived by any stockholder by his attendance thereat in person or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

**SECTION 8. QUORUM.** At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, all action taken by the holders of a majority of the vote cast, excluding abstentions, at any meeting at which a quorum is present shall be valid and binding upon the corporation; PROVIDED, HOWEVER, that directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by the statute or by the Certificate of Incorporation or these Bylaws, a majority of the outstanding shares of such class or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter and, except where otherwise provided by the statute or by the Certificate of Incorporation or these Bylaws, the affirmative vote of the majority (plurality, in the case of the election of directors) of the votes cast, including abstentions, by the holders of shares of such class or classes or series shall be the act of such class or classes or series.

**SECTION 9. ADJOURNMENT AND NOTICE OF ADJOURNED MEETINGS.** Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the shares casting votes, excluding abstentions. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) 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.



**SECTION 10. VOTING RIGHTS.** For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 12 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote shall have the right to do so either in person or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period.

**SECTION 11. JOINT OWNERS OF STOCK.** If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the General Corporation Law of Delaware, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) shall be a majority or even-split in interest.

**SECTION 12. LIST OF STOCKHOLDERS.** The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior 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 specified, at the place where the meeting is to be held. The list shall be produced and kept at the time and place of meeting during the whole time thereof and may be inspected by any stockholder who is present.

**SECTION 13. ACTION WITHOUT MEETING.** (a) No action shall be taken by the stockholders except at an annual or special meeting of stockholders called in accordance with these Bylaws, and no action shall be taken by the stockholders by written consent.

**SECTION 14. ORGANIZATION.**

(a) At every meeting of stockholders, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the President, or, if the President is absent, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairman. The Secretary, or, in his absence, an Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

(b) The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

#### **ARTICLE IV**

#### **DIRECTORS**

**SECTION 15. NUMBER AND TERM OF OFFICE.** The authorized number of directors of the corporation shall be fixed in accordance with the Certificate of Incorporation. Directors need not be stockholders unless so required by the Certificate of Incorporation. If for any cause, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws.

**SECTION 16. POWERS.** The powers of the corporation shall be exercised, its business conducted and its property controlled by the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

**SECTION 17. CLASSES OF DIRECTORS.** Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the directors shall be divided into three classes as provided in the Company's Certificate of Incorporation, as amended from time to time.

**SECTION 18. VACANCIES.** Unless otherwise provided in the Certificate of Incorporation, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors. Any director elected in accordance with the preceding

sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this Bylaw in the case of the death, removal or resignation of any director.

**SECTION 19. RESIGNATION.** Any director may resign at any time by delivering his written resignation to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made, it shall be deemed effective at the pleasure of the Board of Directors. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each Director so chosen shall hold office for the unexpired portion of the term of the Director whose place shall be vacated and until his successor shall have been duly elected and qualified.

**SECTION 20. REMOVAL.** Subject to the rights of the holders of any series of Preferred Stock, no director shall be removed without cause. Subject to any limitations imposed by law, the Board of Directors or any individual director may be removed from office at any time with cause by the affirmative vote of the holders of a majority of the voting power of all the then-outstanding shares of voting stock of the corporation, entitled to vote at an election of directors (the "Voting Stock").

**SECTION 21. MEETINGS.**

(a) **ANNUAL MEETINGS.** The annual meeting of the Board of Directors shall be held immediately before or after the annual meeting of stockholders and at the place where such meeting is held. No notice of an annual meeting of the Board of Directors shall be necessary and such meeting shall be held for the purpose of electing officers and transacting such other business as may lawfully come before it.

(b) **REGULAR MEETINGS.** Except as hereinafter otherwise provided, regular meetings of the Board of Directors shall be held in the office of the corporation required to be maintained pursuant to Section 2 hereof. Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may also be held at any place within or without the State of Delaware which has been designated by resolution of the Board of Directors or the written consent of all directors.

(c) **SPECIAL MEETINGS.** Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board, the President or any two of the directors.

(d) **TELEPHONE MEETINGS.** Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(e) **NOTICE OF MEETINGS.** Notice of the time and place of all special meetings of the Board of Directors shall be orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means, during normal business hours, at least twenty-four (24) hours before the date and time of the meeting, or sent in writing to each director by first class mail, charges prepaid, at least three (3) days before the date of the meeting. Notice of any meeting may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

(f) **WAIVER OF NOTICE.** The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present shall sign a written waiver of notice. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

#### **SECTION 22. QUORUM AND VOTING.**

(a) Unless the Certificate of Incorporation requires a greater number and except with respect to indemnification questions arising under Section 43 hereof, for which a quorum shall be one-third of the exact number of directors fixed from time to time in accordance with the Certificate of Incorporation, a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation; PROVIDED, HOWEVER, at any meeting whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by the affirmative vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation or these Bylaws.

**SECTION 23. ACTION WITHOUT MEETING.** Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, 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 such writing or writings are filed with the minutes of proceedings of the Board of Directors or committee.

**SECTION 24. FEES AND COMPENSATION.** Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so

approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor.

#### **SECTION 25. COMMITTEES.**

(a) **EXECUTIVE COMMITTEE.** The Board of Directors may appoint an Executive Committee to consist of one (1) or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and provided in the resolution of the Board of Directors shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by Delaware the General Corporation Law to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any bylaw of the corporation.

(b) **OTHER COMMITTEES.** The Board of Directors may, from time to time, appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one (1) or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws.

(c) **TERM.** Each member of a committee of the Board of Directors shall serve a term on the committee coexistent with such member's term on the Board of Directors. The Board of Directors, subject to the provisions of subsections (a) or (b) of this Bylaw may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any 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.

(d) **MEETINGS.** Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 25 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be

held at any place which has been determined from time to time by such committee, and may be called by any director who is a member of such committee, upon written notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of written notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. A majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

**SECTION 26. ORGANIZATION.** At every meeting of the directors, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the President, or if the President is absent, the most senior Vice President, or, in the absence of any such officer, a chairman of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his absence, an Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

## **ARTICLE V**

### **OFFICERS**

**SECTION 27. OFFICERS DESIGNATED.** The officers of the corporation shall include, if and when designated by the Board of Directors, the Chairman of the Board of Directors, the Chief Executive Officer, the President, one or more Vice Presidents, the Secretary, the Chief Financial Officer, the Treasurer and the Controller, all of whom shall be elected at the annual organizational meeting of the Board of Directors. The Board of Directors may also appoint one or more Assistant Secretaries, Assistant Treasurers, Assistant Controllers and such other officers and agents with such powers and duties as it shall deem necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors.

### **SECTION 28. TENURE AND DUTIES OF OFFICERS.**

(a) **GENERAL.** All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors.

(b) DUTIES OF CHAIRMAN OF THE BOARD OF DIRECTORS. The Chairman of the Board of Directors, when present, shall preside at all meetings of the stockholders and the Board of Directors. The Chairman of the Board of Directors shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. If there is no President, then the Chairman of the Board of Directors shall also serve as the Chief Executive Officer of the corporation and shall have the powers and duties prescribed in paragraph (c) of this Section 28.

(c) DUTIES OF PRESIDENT. The President shall preside at all meetings of the stockholders and at all meetings of the Board of Directors, unless the Chairman of the Board of Directors has been appointed and is present. Unless some other officer has been elected Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. The President shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

(d) DUTIES OF VICE PRESIDENTS. The Vice Presidents may assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. The Vice Presidents shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(e) DUTIES OF SECRETARY. The Secretary shall attend all meetings of the stockholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute book of the corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties given him in these Bylaws and other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. The President may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(f) DUTIES OF CHIEF FINANCIAL OFFICER. The Chief Financial Officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. The President may direct the Treasurer or any Assistant Treasurer, or the Controller or any Assistant Controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and each Controller and Assistant Controller shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

**SECTION 29. DELEGATION OF AUTHORITY.** The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

**SECTION 30. RESIGNATIONS.** Any officer may resign at any time by giving written notice to the Board of Directors or to the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer.

**SECTION 31. REMOVAL.** Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written consent of the directors in office at the time, or by any committee or superior officers upon whom such power of removal may have been conferred by the Board of Directors.

## ARTICLE VI

### EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

**SECTION 32. EXECUTION OF CORPORATE INSTRUMENTS.** The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation. Unless otherwise specifically determined by the Board of Directors or otherwise required by law, promissory notes, deeds of trust, mortgages and other evidences of indebtedness of the corporation, and other corporate instruments or documents requiring the corporate seal, and certificates of shares of stock owned by the corporation, shall be executed, signed or endorsed by the Chairman of the Board of Directors, or the President or any Vice President, and by the Secretary or Treasurer or any Assistant Secretary or Assistant Treasurer. All other instruments and documents requiring the corporate signature, but not requiring the corporate seal, may be executed as aforesaid or in such other manner as may be directed by the Board of Directors. All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do. Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.



**SECTION 33. VOTING OF SECURITIES OWNED BY THE CORPORATION.** All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman of the Board of Directors, the Chief Executive Officer, the President, or any Vice President.

**ARTICLE VII**  
**SHARES OF STOCK**

**SECTION 34. FORM AND EXECUTION OF CERTIFICATES.** Shares of the capital stock of the Corporation may be certificated or uncertificated, as provided under the Delaware General Corporation Law. Every holder of stock represented by certificates shall be entitled to have a certificate signed by or in the name of the corporation by the Chairman of the Board of Directors, Chief Executive Officer, or the President or any Vice President and by the Chief Financial Officer, Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by him in the corporation. Certificates for the shares of stock of the corporation shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Any or all of the signatures on the certificates may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

**SECTION 35. LOST CERTIFICATES.** A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed.

**SECTION 36. TRANSFERS.**

(a) Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and upon the surrender of a properly endorsed certificate or certificates for a like number of shares.

(b) The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the General Corporation Law of Delaware.

**SECTION 37. FIXING RECORD DATES.** (a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; PROVIDED, HOWEVER, that the Board of Directors may fix a new record date for the adjourned meeting.

**SECTION 38. REGISTERED STOCKHOLDERS.** The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

## **ARTICLE VIII**

### **OTHER SECURITIES OF THE CORPORATION**

**SECTION 39. EXECUTION OF OTHER SECURITIES.** All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 34), may be signed by the Chairman of the Board of Directors, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; PROVIDED, HOWEVER, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

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**ARTICLE IX**

**DIVIDENDS**

**SECTION 40. DECLARATION OF DIVIDENDS.** Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

**SECTION 41. DIVIDEND RESERVE.** Before payment of any dividend, there may be set aside 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 absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

**ARTICLE X**

**FISCAL YEAR**

**SECTION 42. FISCAL YEAR.** The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

**ARTICLE XI**

**INDEMNIFICATION**

**SECTION 43. INDEMNIFICATION OF DIRECTORS, EXECUTIVE OFFICERS, OTHER OFFICERS, EMPLOYEES AND OTHER AGENTS.**

(a) **DIRECTORS AND EXECUTIVE OFFICERS.** The corporation shall indemnify its directors and executive officers (for the purposes of this Article XI, "executive officers" shall have the meaning defined in Rule 3b-7 promulgated under the 1934 Act) to the fullest extent not prohibited by the Delaware General Corporation Law; PROVIDED, HOWEVER, that the corporation may modify the extent of such indemnification by individual contracts with its directors and executive officers; and, PROVIDED, FURTHER, that the corporation shall not be required to indemnify any director or executive officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the corporation, (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the Delaware General Corporation Law or (iv) such indemnification is required to be made under subsection (d).

(b) OTHER OFFICERS EMPLOYEES AND OTHER AGENTS. The corporation shall have power to indemnify its other officers, employees and other agents as set forth in the Delaware General Corporation Law.

(c) EXPENSES. The corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or executive officer, of the corporation, or is or was serving at the request of the corporation as a director or executive officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or executive officer in connection with such proceeding upon receipt of an undertaking by or on behalf of such person to repay said amounts if it should be determined ultimately that such person is not entitled to be indemnified under this Bylaw or otherwise. Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (e) of this Bylaw, no advance shall be made by the corporation to an executive officer of the corporation (except by reason of the fact that such executive officer is or was a director of the corporation in which event this paragraph shall not apply) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to the proceeding, or (ii) if such quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

(d) ENFORCEMENT. Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and executive officers under this Bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or executive officer. Any right to indemnification or advances granted by this Bylaw to a director or executive officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. The claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting his claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the Delaware General Corporation Law for the corporation to indemnify the claimant for the amount claimed. In connection with any claim by an executive officer of the corporation (except in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such executive officer is or was a director of the corporation) for advances, the corporation shall be entitled to raise a defense as to any such action clear and convincing evidence that such person acted in bad

faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation, or with respect to any criminal action or proceeding that such person acted without reasonable cause to believe that his conduct was lawful. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

(e) **NON-EXCLUSIVITY OF RIGHTS.** The rights conferred on any person by this Bylaw shall not be exclusive of any other right which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaws, 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 office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the Delaware General Corporation Law.

(f) **SURVIVAL OF RIGHTS.** The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director, officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) **INSURANCE.** To the fullest extent permitted by the Delaware General Corporation Law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Bylaw.

(h) **AMENDMENTS.** Any repeal or modification of this Bylaw shall only be prospective and shall not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

(i) **SAVING CLAUSE.** If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and executive officer to the full extent not prohibited by any applicable portion of this Bylaw that shall not have been invalidated, or by any other applicable law.

(j) **CERTAIN DEFINITIONS.** For the purposes of this Bylaw, the following definitions shall apply: (1) The term "proceeding" shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative. (2) The term "expenses" shall be broadly construed and shall include, without limitation, court costs, attorneys' fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding. (3) The term the "corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any

constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Bylaw with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued. (4) References to a "director," "executive officer," "officer," "employee," or "agent" of the corporation shall include, without limitation, situations where such person is serving at the request of the corporation as, respectively, a director, executive officer, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise. (5) References to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this Bylaw.

## **ARTICLE XII**

### **NOTICES**

#### **SECTION 44. NOTICES.**

(a) **NOTICE TO STOCKHOLDERS.** Whenever, under any provisions of these Bylaws, notice is required to be given to any stockholder, it shall be given in writing, timely and duly deposited in the United States mail, postage prepaid, and addressed to his last known post office address as shown by the stock record of the corporation or its transfer agent.

(b) **NOTICE TO DIRECTORS.** Any notice required to be given to any director may be given by the method stated in subsection (a), or by facsimile, telex or telegram, except that such notice other than one which is delivered personally shall be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director.

(c) **AFFIDAVIT OF MAILING.** An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained.

(d) TIME NOTICES DEEMED GIVEN. All notices given by mail, as above provided, shall be deemed to have been given as at the time of mailing, and all notices given by facsimile, telex or telegram shall be deemed to have been given as of the sending time recorded at time of transmission.

(e) METHODS OF NOTICE. It shall not be necessary that the same method of giving notice be employed in respect of all directors, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

(f) FAILURE TO RECEIVE NOTICE. The period or limitation of time within which any stockholder may exercise any option or right, or enjoy any privilege or benefit, or be required to act, or within which any director may exercise any power or right, or enjoy any privilege, pursuant to any notice sent him in the manner above provided, shall not be affected or extended in any manner by the failure of such stockholder or such director to receive such notice.

(g) NOTICE TO PERSON WITH WHOM COMMUNICATION IS UNLAWFUL. Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the Delaware General Corporation Law, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

(h) NOTICE TO PERSON WITH UNDELIVERABLE ADDRESS. Whenever notice is required to be given, under any provision of law or the Certificate of Incorporation or Bylaws of the corporation, to any stockholder to whom (i) notice of two consecutive annual meetings, and all notices of meetings or of the taking of action by written consent without a meeting to such person during the period between such two consecutive annual meetings, or (ii) all, and at least two, payments (if sent by first class mail) of dividends or interest on securities during a twelve-month period, have been mailed addressed to such person at his address as shown on the records of the corporation and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall be taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the corporation a written notice setting forth his then current address, the requirement that notice be given to such person shall be reinstated. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the Delaware General Corporation Law, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to this paragraph.

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**ARTICLE XIII**

**AMENDMENTS**

**SECTION 45. AMENDMENTS.** Subject to paragraph (h) of Section 43 of the Bylaws, the Bylaws may be altered or amended or new Bylaws adopted by the affirmative vote of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all of the then-outstanding shares of the Voting Stock. The Board of Directors shall also have the power to adopt, amend, or repeal Bylaws.

**ARTICLE XIV**

**LOANS TO OFFICERS**

**SECTION 46. LOANS TO OFFICERS.** The corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a Director of the corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in these Bylaws shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.



**SEPARATION AND GENERAL RELEASE AGREEMENT**

In exchange for the terms, conditions and releases set forth below, Nektar Therapeutics (“**Nektar**” or the “**Company**”) and Tim Harkness (“**you**”) hereby agree as follows:

1. **Effective Date.** This Agreement will become effective on the eighth day after you sign and deliver this Agreement to the Company (the “**Effective Date**”), provided that you do not revoke this Agreement before such date pursuant to Paragraph 7(c) below.

2. **Termination of Employment.** Your employment as Senior Vice President and Chief Financial Officer of the Company, as well as your employment in any other capacity for the Company or any of its affiliates, shall terminate, effective December 10, 2007 (the “**Termination Date**”). Following the Termination Date, you shall not be authorized to transact any business on behalf of the Company or any its affiliates or subsidiaries.

3. **Consideration.** Provided that you comply with all of the terms of this Agreement, the Company shall provide you with the following severance benefits (the “**Severance Benefits**”): (a) the Company will make a severance payment to you within three (3) business days following the Effective Date in the amount of \$385,000.00, less all applicable withholdings and standard deductions (the “**First Severance Payment**”); (b) the Company will also make monthly severance payments to you in the amount of \$27,500.00, less all applicable withholdings and standard deductions (the “**Monthly Severance Payment**”) commencing on the one month anniversary of the Effective Date and continuing on each one-month anniversary of the Effective Date and ending on the twelve month anniversary of the Effective Date; provided, however, following the first two (2) Monthly Severance Payments, you shall not be paid, and instead will accrue, the Monthly Severance Payments until the first business day following the six month anniversary of the Effective Date when all previously accrued but unpaid Monthly Severance Payment will be paid to you, and thereafter, you will be paid Monthly Severance Payments on or before each monthly anniversary of the Effective Date; and provided, further that (except as set forth in the next parenthetical phrase) you shall cease accruing or being entitled to receive Monthly Severance Payments on the earlier to occur of (i) the date you commence new employment; or (ii) on the one-year anniversary of the Effective Date (it being understood that if you obtain new employment during the one year period after the Termination Date, you will be entitled to a proportionate payment at the next regularly scheduled payment date, in respect of the Monthly Severance Payments, based on the number of days elapsed since the Termination Date until the date you obtain such new employment; thus, for example, if you obtain employment on the 95th day after the Termination Date, you will receive a Monthly Severance Payment on the six month anniversary of the Termination Date, equal to  $\$27,500 \times 12 \times 95/360$ , less amounts previously paid to you, i.e., the first two Monthly Severance Payments described above); (c) in accordance with your offer letter, dated August 9, 2007 (the “**Offer Letter**”) and as set forth below in Paragraph 17, you shall become immediately vested in those shares of the Company’s common stock that would have vested pursuant to your Option (as such term is defined below in Paragraph 17) as if your Option allowed monthly vesting during your first year of your employment with the Company; and (d) in accordance with your Offer Letter and as set forth below in Paragraph 17, your deadline to exercise your right to acquire the shares of the Company’s common stock underlying the vested portion of your Option will be extended to the twelve month anniversary of the Termination Date; and (e) provided that you timely exercise

your right to continue your health insurance coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“**COBRA**”), the Company will pay the monthly health insurance coverage payments for you and your eligible dependents for a period commencing on the Termination Date and ending on the earlier to occur of (i) the twelve month anniversary of the Termination Date, and (b) the date you become eligible to receive health insurance coverage from a subsequent employer. You shall notify the Company promptly upon accepting employment with any other person or entity, but no later than three calendar days prior to commencing such employment, and at the same time, you shall notify the Company whether you are eligible to receive health coverage in connection with such employment. You acknowledge that the Severance Benefits represent payments that you would not otherwise be entitled to receive, now or in the future, without entering into this Agreement, and constitutes valuable consideration for the promises and undertakings set forth in this Agreement.

**4. Payment of Salary and Expenses.** On your Termination Date, the Company will pay to you all accrued and unpaid salary and any accrued but unused paid time off as of the Termination Date (collectively, the “**Accrued Obligations**”). In the event that you have a negative paid time off balance, you agree that such amount will be deducted from the Company’s payment to you of your Accrued Obligations. By signing below, you acknowledge and represent that, upon receiving the Accrued Obligations, you will have received all salary, wages, bonuses, accrued vacation and paid time off, and all other benefits and compensation due to you through the Termination Date. You agree that, within ten (10) days after the Termination Date, you will submit your final documented expense reimbursement statement reflecting all business expenses you incurred through the Termination Date, if any, for which you seek reimbursement. The Company will reimburse you for these expenses pursuant to its regular business practice.

**5. Return of Property; Proprietary Information Agreement.** Within five days following the Termination Date, you shall return to the Company any and all Company property, including, but not limited to, documents (in whatever paper or electronic form they exist), things relating to the business of the Company and all intellectual, electronic and physical property belonging to the Company that is in your possession or control, including but not limited to any emails, documents, power point presentations, business plans, financial plans, personnel information and/or financial statements belonging to the Company or that contain confidential information of the Company. Your signature below constitutes your certification that you have returned all documents and other items provided to you by the Company, developed or obtained by you as a result of your employment with the Company, or otherwise belonging to the Company. Notwithstanding the foregoing, you may keep your computer and your cellular telephone (and corresponding telephone number for your personal use) and the Company will provide to you reasonable IT assistance in transitioning your calendar and contacts information from the Company’s network to your personal system; provided, however, you will, at the earliest practicable date, deliver your computer to the Company’s IT department for the purpose of creating a mirror data back-up copy for the Company’s archival records. You hereby reaffirm and agree to observe and abide by the terms of your Employment Agreement (the “**Employment Agreement**”) with the Company, specifically including the provisions therein regarding assignment of inventions, nondisclosure of the Company’s trade secrets and confidential and proprietary information, and non-solicitation of Company employees. The obligations under the Employment Agreement that survive the termination of your employment are specifically incorporated herein by reference.

6. **Release of Claims.** You agree that the foregoing consideration represents settlement in full of all outstanding obligations owed to you by the Company and its officers, directors, agents and employees, and is satisfactory consideration for the release of claims set forth herein. On behalf of yourself, and your respective heirs, family members, executors and assigns, you hereby fully and forever release the Company and its past and present subsidiaries and affiliates, and each of their past, present and future officers, agents, directors, employees, investors, stockholders, administrators, attorneys, representatives, affiliates, divisions, subsidiaries, parents, predecessor and successor corporations, and assigns (the “**Releasees**”), from, and agree not to sue or institute, prosecute or pursue, or cause to be instituted, prosecuted, or pursued, any claim, cause of action, charge, controversy, duty, obligation, demand, loss, cost, debt, damages, penalties, judgment, order, or liability relating to or arising out of any matters of any kind, whether presently known or unknown, suspected or unsuspected, that you may possess against any of the Releasees arising from any omissions, acts or facts that have occurred up until and including the date you sign this Agreement (collectively “**Claims**”). The released Claims include, but are not limited to: (i) any and all Claims relating to or arising from your employment relationship with the Company and the termination of that relationship, including any Claims with respect to wages, bonuses, commissions, vacation pay, or any other form or amount of compensation, or any Claim arising out of your offer letter, dated August 24, 2007, or the Company’s Change of Control Severance Plan; (ii) any and all Claims relating to, or arising from, your right to receive or purchase any form of equity in the Company or any Releasee, including, without limitation, any claims for fraud, misrepresentation, breach of fiduciary duty, breach of duty under applicable state corporate law, and securities fraud under any state or federal law; (iii) any and all Claims for wrongful discharge of employment; termination in violation of public policy; discrimination; harassment; retaliation; breach of contract, both express and implied; breach of a covenant of good faith and fair dealing, both express and implied; promissory estoppel; negligent or intentional infliction of emotional distress; negligent or intentional misrepresentation; negligent or intentional interference with contract or prospective economic advantage; unfair business practices; defamation; libel; slander; negligence; personal injury; assault; battery; invasion of privacy; false imprisonment; and conversion; (iv) any and all Claims for violation of any federal, state or municipal law, regulation, ordinance, constitution or common law, including, but not limited to, Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990; the Fair Labor Standards Act; the Employee Retirement Income Security Act of 1974; The Worker Adjustment and Retraining Notification Act; the Sarbanes-Oxley Act; the California Fair Employment and Housing Act; the California Family Rights Act; and the California Labor Code, including, but not limited to section 201, *et seq.*, section 970, *et seq.*, sections 1400-1408; and all amendments to each such Act as well as the regulations issued thereunder; and (v) any and all Claims for attorneys’ fees and costs.

Notwithstanding the foregoing, nothing in this Paragraph 6 shall release (i) any obligations owed by the Company expressly described in this Agreement, (ii) any claims you may have for indemnification under any of the Company’s charter documents, or under California Labor Code Section 2802 or other applicable law, or for coverage under any of the Company’s directors and officers insurance policies; (iii) your claims for any benefits that are vested as of the Termination Date under the Company’s health, welfare, 401k or stock option plans; (iv) your claims for underlying workers’ compensation benefits; or (v) any claims pursuant to Paragraph 7(e) of this Agreement.

Except for those obligations created by or arising out of this Agreement, or any intentional misappropriation of trade secrets, a breach of fiduciary duty that you would not otherwise be entitled to indemnification by the Company under Section 145 of the Delaware General Corporation Law, theft, embezzlement and/or other crimes committed by you, the Company hereby covenants not to sue and fully releases and discharges you from and with respect to any and all claims, agreements, obligations, demands and causes of action, known or unknown, suspected or unsuspected, including without limitation those arising out of or in any way connected with your employment or termination of employment with the Company.

7. **Acknowledgment of Waiver of Claims under ADEA.** You acknowledge that you are waiving and releasing any rights you may have under the Age Discrimination in Employment Act of 1967 (“ADEA”) and that this waiver and release is knowing and voluntary. You and the Company agree that this waiver and release does not apply to any rights or claims that may arise under the ADEA after the Effective Date of this Agreement. You acknowledge that the consideration given for this waiver and release Agreement is in addition to anything of value to which you were already entitled. You further acknowledge that you have been advised by this writing that:

(a) you should consult with an attorney prior to executing this Agreement;

(b) you have at least twenty-one (21) days within which to consider this Agreement;

(c) you have seven (7) days following the date that you sign this Agreement to revoke the Agreement; provided, however, that any such revocation must be in writing and delivered to Howard W. Robin at the Company’s principal office, by close of business on or before the seventh day from the date that you sign this Agreement;

(d) this Agreement shall not be effective until the eighth day after you execute and do not revoke this Agreement; and

(e) nothing in this Agreement prevents or precludes you from challenging or seeking a determination in good faith of the validity of this waiver under the ADEA, nor does it impose any condition precedent, penalties or costs from doing so, unless specifically authorized by federal law.

8. **Civil Code Section 1542/Unknown Claims.** Each party represents that such party is not aware of any claims against the other party other than the claims that are released by this Agreement. Each party acknowledges that such party has had the opportunity to be advised by legal counsel and is familiar with the provisions of California Civil Code 1542, below, which provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

Being aware of said code section, each party agrees to expressly waive any rights such party may have thereunder, as well as under any statute or common law principles of similar effect.

9. **No Pending or Future Lawsuits.** Each party represents that such party has no lawsuits, claims, or actions pending in such party's name, or on behalf of any other person or entity, against the other party or any of the Releasees. Each party also represents that such party does not intend to bring any claims on such party's own behalf or on behalf of any other person or entity against the other party or any of the Releasees. You also promise to opt out of any class or representative action and to take such other steps as you have the power to take to disassociate yourself from any class or representative action seeking relief against the Company and/or any other Releasee regarding any of the claims released in this Agreement.

10. **Confidentiality of Agreement.** You agree to keep the existence and terms of this Agreement in the strictest confidence and, except as required by law, not reveal the existence or terms of this Agreement to any persons except your immediate family, your attorney, and your financial advisors (and to them only provided that they also agree to keep the information completely confidential), and the court in any proceedings to enforce the terms of this Agreement.

11. **Non-Disparagement.** Each party agrees not to make any oral or written statement that disparages or criticizes the other party, and in your case, the Company's management, employees, products or services, or damages the other party's reputation or impairs the other party's normal operations; provided, however, that nothing in this Agreement shall prohibit either party from providing truthful information or testimony in response to any court order, subpoena, or government investigation, or in connection with any legal proceeding between the Company and you. For the purposes of this Section 11, the reference to the Company as a party to this Agreement includes only the Company's Section 16(b) officers and the members of its Board of Directors.

12. **Entire Agreement.** Except for the Employment Agreement and Equity Award Agreements, the terms of which are specifically incorporated herein as set forth herein in Paragraphs 5 and 17, this Agreement constitutes the entire agreement between you and the Company concerning your employment with and separation from the Company and all the events leading thereto and associated therewith, and supersedes and replaces any and all prior agreements and understandings, both written and oral, concerning your relationship with the Company.

13. **No Admission of Liability.** Each party understands and acknowledges that this Agreement constitutes a compromise and settlement of any and all potential disputed claims. No action taken by the either party hereto, either previously or in connection with this Agreement, shall be deemed or construed to be: (a) an admission of the truth or falsity of any potential claims; or (b) an acknowledgment or admission by such party of any fault or liability whatsoever to the other party or to any third party.

14. **Authority.** The Company represents and warrants that the undersigned has the authority to act on behalf of the Company and to bind the Company and all who may claim through it to the terms and conditions of this Agreement. Similarly, you represent and warrant that you have the capacity to act on your own behalf and on behalf of all who might claim through you to bind them to the terms and conditions of this Agreement. The Company and you each warrant and represent that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein.

15. **Solicitation of Employees.** You agree that for a period of twelve (12) months immediately following the Termination Date, you shall not either directly or indirectly solicit, induce, recruit or encourage any of the Company's employees to terminate their employment with the Company, or attempt to solicit, induce, recruit, or encourage employees of the Company to become employed or engaged as a consultant, either for yourself or for any other person or entity. Furthermore, you understand and acknowledge that the Company may at its sole discretion notify any new employer of your ongoing rights and obligations under this Agreement and the Employment Agreement.

16. **Material Breaches of Agreement.** You acknowledge and agree that any breach of Paragraphs 5, 6, 7, 9, 11, or 15 shall constitute a material breach of the Agreement and in the case of a breach by you, shall entitle the Company immediately to recover the consideration discussed in Paragraph 3 above, except as provided by law. In the event that the Company or you brings an action to enforce or effect their rights under this Agreement, the prevailing party shall be entitled to recover their reasonable attorneys' fees and expenses incurred in connection with such an action.

17. **Equity Interests.** The Company has previously granted an option to you to acquire 200,000 shares of the Company's common stock (the "**Options**") and a restricted stock unit for 10,000 shares (the "**RSU**"). Prior to entering into this Agreement you did not have any vested right to acquire any of the shares underlying the Options or RSU. In accordance with the terms of your Offer Letter and subject to the terms of Paragraph 3 above, as of the Effective Date, you shall become immediately vested in 12,500 shares of the Company's common stock underlying the Options (the "**Vested Option Shares**"), which represent those shares that would have vested as of the Termination Date if you were entitled to monthly vesting of your Options during the first year of your employment. Your deadline to exercise your right to acquire all or any portion of the Vested Option Shares shall be extended to the one year anniversary of the Termination Date. The remaining 187,500 shares of the Company's common stock underlying the Options and all of the shares of the Company's common stock underlying the RSU are hereby forfeited by you in accordance with the terms of your stock option agreement and related stock option notice, and your RSU Agreement and related RSU notice and the Company's 2000 Equity Incentive Plan (collectively, the "**Equity Award Agreements**"). You hereby acknowledge and waive that, except as set forth in this Paragraph 17, you have no further right or benefits under any agreement to receive or acquire any security or derivative security in or with respect to the Company or any of its affiliates or subsidiaries.

18. **Waivers; Modifications.** No waiver of any provision or consent to any exception to the terms of this Agreement shall be effective unless in writing and signed by the party to be bound and, then, only to the specific purpose, extent and instance so provided. This Agreement may not be modified, amended, altered or supplemented except by the execution and delivery of a written agreement executed by you and an authorized representative of the Company.

19. **Severability.** If any provision of the Agreement or the application thereof is held invalid, such invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provisions or application.

20. **Counterparts.** The Agreement may be executed in counterparts, and each counterpart when executed shall have the efficacy of a signed original. Photographic copies of such signed counterparts may be used in lieu of the originals for any purpose.

21. **Choice of Law.** The Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

22. **Public Statements.** In its public statements regarding your departure, the Company will state only that: "Tim Harkness has left the Company."

23. **Voluntary Execution of Agreement.** This Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the parties hereto, with the full intent of releasing all claims. The parties acknowledge that: (a) they have read this Agreement; (b) they understand the terms and consequences of this Agreement and of the releases it contains; and (c) they are fully aware of the legal and binding effect of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth below.

**AGREED AND ACCEPTED:**

**Nektar Therapeutics**

**Tim Harkness**

/s/ Gil M. Labrucherie

/s/ Tim Harkness

By: Gil M. Labrucherie

Tim Harkness

Title: General Counsel

Date: 12/10/2007

Date: 12/10/2007



December 10, 2007

Mr. John Nicholson  
c/o Nektar Therapeutics  
201 Industrial Road  
San Carlos, CA 94070

Dear John:

I am pleased and excited that you have accepted the position of Senior Vice President and Chief Financial Officer at Nektar Therapeutics (“Nektar” or the “Company”) reporting directly to me. Accordingly, I present you with this offer letter agreement setting forth certain terms and conditions of your employment. Capitalized terms used herein and not defined shall have the meanings ascribed to them in the Company’s Change of Control Severance Benefit Plan, as it may be amended from time to time (the “COC Plan”). This offer letter agreement supersedes the offer letter agreement you entered into with Nektar on September 18, 2007 and any other understandings and agreements, written or oral, between you and the Company with respect to the subject matter herein.

Your annual cash compensation will consist of two components: base salary and an annual performance bonus. Your base salary will be \$425,000 on an annual basis and paid in accordance with Nektar’s regular payroll schedule. Your annual performance bonus target each year will be at least 50% of your annual base salary for each annual period and pro-rated for your partial period of service in 2007 (“Target Annual Bonus”). Your base salary and Target Annual Bonus shall be subject to annual performance review by the Compensation Committee of the Board of Directors (“Compensation Committee”) in consultation with me for appropriate upward adjustment. The actual amount of your annual performance bonus will range from 0% to 150% of the Target Annual Bonus based on the Compensation Committee’s assessment in consultation with me of the achievement of a combination of annual corporate objectives and your achievement of personal objectives agreed upon by you and me at the beginning of each annual performance period; provided that your objectives for your partial period of service in 2007 will be agreed upon by you and me as soon as practicable following your start date. Your annual performance bonus for the prior year will be paid in the first calendar quarter of each year within the period of time required to avoid taxes and penalties under Section 409A of the Internal Revenue Code.

On October 2, 2007, your first day of full-time employment with the Company (the “Start Date”), you were granted a stock option to purchase 200,000 shares of Nektar common stock (the “Initial Option,” which together with any subsequent stock options you may receive, are the “Stock Options”) under Nektar’s 2000 Equity Incentive Plan (“2000 Plan”). In connection with your new appointment as Senior Vice President and Chief Financial Officer effective December 10, 2007 (the “Appointment Date”), the Compensation Committee granted you a restricted stock



unit award with respect to 10,000 shares ("RSU") of Nektar common stock. The maximum number of shares subject to the Stock Options will be granted as incentive stock options within the meaning of Section 422 of the Internal Revenue Code to the extent permissible under Section 10(d) of the 2000 Plan. The remainder of shares subject to the Stock Options will be granted as non-statutory stock options. The exercise price for the Initial Option was the closing price of Nektar's common stock on Nasdaq on October 2, 2007. The shares subject to the Initial Option will vest according to a 4-year vesting schedule for so long as you provide Continuous Service (as defined in the 2000 Plan) to the Company with 25% of the shares subject to the Initial Option vesting on the one year anniversary of your Start Date and the remainder vesting monthly on a pro-rata basis over the following 3 years. The RSUs will vest according to a 4-year vesting schedule for so long as you provide Continuous Service to the Company with 25% of the RSUs vesting on the one-year anniversary of your Appointment Date and the remainder vesting on an annual pro-rata basis over the following 3 years.

You will be eligible for annual equity awards, in the sole discretion of the Compensation Committee, based on the Compensation Committee's review, in consultation with me, of your individual performance and annual equity compensation levels of senior executive officers with similar roles at comparator companies as analyzed by a reputable, nationally-recognized, independent compensation consultancy firm.

Commencing with your first day of employment, you and your family will be eligible to participate in Nektar's executive benefits program including medical, dental and vision insurance, term life insurance, 401(k), the flexible health spending plan, short & long-term disability upon the terms specified in those plans, and the COC Plan. There will be no restrictions that will limit you or your family's participation in Nektar's medical insurance plan.

Nektar will also provide you with the following additional benefits related to your relocation to the San Francisco Bay Area from your current home in Parsippany, New Jersey ("New Jersey Home"):

- (1) Reimbursement for normal and customary closing costs actually incurred on the sale of your New Jersey Home including but not limited to up to a 6% real estate sales commission. Closing costs not considered deductible by you for tax purposes will be "grossed up" and added to those costs that are considered deductible (which will be subject to standard withholding).
- (2) Reimbursement for normal and customary closing costs actually incurred in connection with the purchase of a home in the San Francisco Bay Area ("California Home") including but not limited to up to 3% of the loan amount for points/commission etc. Closing costs not considered deductible by you for tax purposes will be "grossed up" and added to those costs that are considered deductible (which will be subject to standard withholding).
- (3) Reimbursement for shipment of your household goods from your New Jersey Home to your California Home.

- (4) Temporary housing for you in the San Francisco Bay Area and reasonable expenses incurred in connection therewith for up to 9 months following your Start Date and this benefit will be provided to you on a “grossed up” basis if determined to be taxable to you.
- (5) Nektar will reimburse you for your reasonable travel expenses to and from Northern California and your New Jersey Home prior to your family’s relocation to your California Home.
- (6) Following your relocation to California, you will then be entitled to a one-time relocation bonus of \$75,000 on “grossed up” basis (i.e. the total you receive after applicable withholding will be \$75,000).

Your employment is by continued mutual agreement and may be terminated at will with or without cause by either you or Nektar at any time with or without advanced notice. You will also be required to enter into Nektar’s standard Employment Agreement, a copy of which is attached as Exhibit A hereto.

In the event of your death or Disability (as defined in the 2000 Plan), (a) 50% of the unvested shares under your Stock Options will automatically vest in the event of your Disability and 100% shall automatically vest in the event of your death, (b) Nektar will pay to you or your estate, as applicable, all unreimbursed expenses, all of your then accrued but unpaid base salary, and your target bonus prorated for the portion of the last year in which you were employed by Nektar prior to death or Disability, and (c) you and your dependents shall be entitled to continued medical, dental, and vision insurance for yourself and your dependents, at your or their expense, at the same level of coverage as was provided to you and your dependents under Nektar’s insurance and benefits plans immediately prior to the termination by electing COBRA continuation coverage in accordance with applicable law.

In the event your employment is terminated for reasons not related to a Change of Control (a) by the Company without Cause; or (b) by you for a Good Reason Resignation, then you and the Company will meet in good faith to discuss the terms of an appropriate separation. In any event, at a minimum, the Company will enter into a severance arrangement with you which will include the following: (i) a fully-effective mutual waiver and release in such form as the Company may reasonably require, (ii) a cash severance payment equal to your total annual cash compensation target (defined as your current monthly base salary annualized for 12 months, plus your bonus target multiplied by the expected pay-out percentage used by the Company for its GAAP financial statements in the previous calendar quarter, but not to exceed 100%), payable in accordance with the severance payment schedule described in the COC Plan and subject to such delay in payment required for compliance with Section 409A, (iii) pro-rata vesting credit (based on conversion of the vesting schedule to a monthly vesting schedule) on your Initial Option through the date of termination if your termination occurs prior to the first anniversary of the Start Date, based on months completed since your Start Date, (iv) the exercise period for the vested and unexercised portion of your Initial Option shall be 12 months following the termination date and (v) the Company shall pay all applicable COBRA payments for you and your family for one year after the termination date (such payments shall cease in the event that you become eligible for comparable benefits with another employer).

In compliance with the terms of the Federal Immigration Reform and Control Act, you will be required to provide us with proof of authorization to work and proof of identity.

The terms, compensation and benefits set forth in this letter, which shall be governed by California law, without reference to principles of conflicts of laws, may not be reduced without your prior written consent and shall be binding upon and inure to the benefit of (a) your heirs, executors, and legal representatives upon your death and (b) any person or entity which at any time, whether by purchase, merger, or otherwise, directly or indirectly acquires all or a majority of the assets, business, capital stock, or voting stock of Nektar. Any such person or entity shall be deemed substituted for Nektar under this letter for all purposes.

John, I am delighted at the prospect of your leadership at Nektar as Senior Vice President and Chief Financial Officer.

Sincerely,

/s/ Howard W. Robin

Howard W. Robin  
President and Chief Executive Officer

OFFER ACCEPTED:

/s/ John Nicholson

John Nicholson



EXHIBIT A

EMPLOYEE AGREEMENT

In consideration of my employment or continued employment by Nektar Therapeutics, its subsidiaries or affiliates (collectively, the "Company"), I, \_\_\_\_\_ (name) residing at \_\_\_\_\_ (address), agree as of the date I was first employed by Company as follows:

1. Entire Agreement: This Agreement sets forth the complete and entire agreement between Company and me and supersedes any and all previous oral or written communications, discussions and agreements between Company and me with respect to the subject of this Agreement.

2. Employment:

a. Duty of Loyalty. During the period of my employment by the Company, I shall devote my full time and best efforts to the business of the Company, and I shall neither pursue any business opportunity outside the Company nor take any position with any organization other than as authorized in writing by the Chief Executive Officer of the Company. While employed by the Company, I will avoid all conflicts of interest and will not compete with the Company or undertake other acts of disloyalty.

b. Change in Jobs. I agree that all of my obligations under this Agreement will remain in full force and effect should I receive a promotion, demotion or experience a change in job title or duties while employed by the Company.

c. Employment at Will. I agree that this Agreement does not guarantee my continued employment with the Company. I acknowledge that, unless I enter into a written employment agreement with the Company that provides for a specified period of employment, I am employed "at-will," meaning that either the Company or I may terminate the employment relationship at any time, for any or no reason, with or without cause or prior notice.

3. Assignment of Developments:

a. Assignment to Company. If at any time or times during my employment or other association with the Company, I shall (either alone or with others) make, conceive, create, discover, invent or reduce to practice any development that (i) relates to the business of the Company or any of the products or services being explored, developed, manufactured or sold by the Company or which may be used in relation therewith; or (ii) results from tasks assigned to me by the Company; or (iii) results from the use of premises or personal property (whether tangible or intangible) owned, leased or contracted for by the Company (hereinafter collectively referred to as "Developments"), then all such Developments and the benefits thereof are and shall immediately become the sole and absolute property of the Company and its assigns, as works made for hire or otherwise. I shall promptly disclose to the Company (or any persons

designated by it) each such Development. I hereby assign all rights (including, but not limited to, rights to inventions, patentable subject matter, copyrights and trademarks) I may have or may acquire in the Developments, as well as all benefits and/or rights resulting therefrom, to the Company and its assigns without further compensation and shall communicate, without cost or delay, and without disclosing to others the same, all available information relating thereto (with all necessary plans and models) to the Company.

b. Requirement to Provide Assistance. I agree to assist the Company, or its designee, at the Company's expense, in every proper way to secure the Company's rights in the Developments and any copyrights, patents, trademarks, and trade secret rights or other intellectual property rights in connection with any such Developments in any and all countries, including the disclosure to the Company of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments and all other instruments which the Company shall deem necessary in order to apply for and obtain such rights and in order to assign and convey to the Company, its successors, assigns, and nominees the sole and exclusive rights, title and interest in and to such Developments, and any copyrights, patents, trademark and other intellectual property rights relating thereto. I further agree that my obligation to execute or cause to be executed, when it is in my power to do so, any such instrument or papers shall continue after the termination of this Agreement. If the Company is unable, because of my mental or physical incapacity or for any other reason, to secure my signature to apply for or to pursue any application for any United States or foreign patents or copyright registrations covering Developments or original works of authorship assigned to the Company as above, then I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney in fact, to act for and in my behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent or copyright registrations thereon with the same legal force and effect as if executed by me.

c. Works Made For Hire. I will promptly disclose to the Company all material which I produce, compose or write, individually or in collaboration with others, which arises out of work delegated to me by the Company. I agree that all such material constitutes a work for hire, and at the expense of the Company, I will assign to the Company all my interest in such copyrightable material and will sign all papers and do all other acts necessary to assist the Company to obtain copyrights on such material in any and all countries.

d. Ongoing Notice Obligation. I agree that for a period of one (1) year following the termination of my employment for any reason, I will notify the Company immediately of any and all creations, discoveries, inventions or other developments made by me (either alone or with others) that relate to the business of the Company or relate to research and development in which I was involved during the course of my employment by the Company. Any such creation, discovery, invention or other development relating to the Company's business made by me (either alone or with others) within one (1) year following the termination of my employment shall be presumed to be owned by the Company.



e. Inventions Not Assigned to Company. I understand and acknowledge that the assignment of Developments under this Agreement does not apply to an invention which qualifies fully for protection under section 2870 California Labor Code section, a copy of which is attached as Appendix A, which pertains to any rights I may have acquired in connection with an invention, discovery or improvement that was developed entirely on my own time for which no equipment, supplies, facilities or trade secret information of the Company was used and (a) that does not relate directly or indirectly to the business of the Company or to the Company's actual or demonstrably anticipated research or development, or (b) that does not result from any work performed by me for the Company.

f. Disclosure of Prior Inventions. I represent that the creations, discoveries, inventions or other developments identified in Appendix B attached hereto ("Prior Developments"), if any, comprise all the Prior Developments that I made or conceived prior to my employment by the Company, which Prior Developments are excluded from this Agreement. I understand that it is only necessary to list the title of such Prior Developments and the purpose thereof, but not details of the Prior Development itself. IF THERE ARE ANY SUCH DEVELOPMENTS TO BE EXCLUDED, THE UNDERSIGNED SHOULD INITIAL HERE; OTHERWISE IT WILL BE DEEMED THAT THERE ARE NO SUCH EXCLUSIONS.

4. Nondisclosure of Confidential Information: I shall not at any time, whether during or after the termination of my employment, reveal to any person or entity any Confidential Information except to employees of the Company who need to know such Confidential Information for the purposes of their employment, or as otherwise authorized by the Company in writing. The term "Confidential Information" shall include any information concerning the organization, business or finances of the Company or of any third party which the Company is under an obligation to keep confidential that is maintained by the Company as confidential. Such Confidential Information shall include, but is not limited to, trade secrets or confidential information respecting methods, know-how, techniques, systems, processes, specifications, blueprints, formulae, devices, models, software programs, works of authorship, customer lists, partner lists, customer information, financial information, pricing or commission information, business plans, projects, plans and proposals. I shall keep confidential all matters entrusted to me and shall not use or attempt to use any Confidential Information except as may be required in the ordinary course of performing my duties as an employee of the Company, nor shall I use any Confidential Information in any manner which may injure or cause loss or may be calculated to injure or cause loss to the Company, whether directly or indirectly.

5. Nonsolicitation of Customers, Partners and Employees: I agree that the Company has invested substantial time, effort and expense in compiling its confidential and trade secret information and in assembling its present personnel. In order to protect the confidentiality of the Company's sensitive information, I agree that, during my employment and for one (1) year thereafter, I shall not do the following:

a. approach, contact or otherwise communicate in any way with any customer or partner of the Company with the use or assistance of Confidential Information of the Company that I obtained during my employment for the purpose of engaging in or assisting in soliciting business from that customer or partner;



b. solicit, approach, counsel or attempt to induce any person who is then in the employ of the Company to leave the employ of the Company; or

c. aid, assist or counsel any other person, firm or corporation to do any of the above.

6. Return of Property: I shall keep on Company's premises (except when required elsewhere in connection with the conduct of Company's business) and shall deliver to Company upon termination of my employment all writings related to the business of Company, and all documents, equipment, materials and other personal property belonging to Company. I further agree not to make or retain any copy, duplication, facsimile, reproduction or replication of any of the foregoing except as necessary to perform my duties as an employee of the Company.

7. No Violation Of Prior Trade Secret Or Non-Competition Agreements: I represent that the performance of all the terms of this Agreement as an employee of this Company will not conflict with, and will not breach, any other development assignment agreement, confidentiality agreement, employment agreement or non-competition agreement to which I am or have been a party. To the extent that I have confidential information or materials of any former employer of mine, I acknowledge that the Company has directed me to not disclose such confidential information or materials to the Company or any of its employees, and that the Company prohibits me from using said confidential information or materials in any work that I may perform for the Company, and I will not bring with me to the Company, and will not use or disclose any confidential, proprietary information, or trade secrets acquired by me prior to my employment with the Company. I will not disclose to the Company or any of its employees, or induce the Company or any of its employees to use, any confidential or proprietary information or material belonging to any previous employers or others, nor will I bring to the Company or use in connection with my work for the Company copies of any software, computer files, or any other copyrighted or trademarked materials except those owned by or licensed to the Company. I am not a party to any other agreement that will interfere with my full compliance with this Agreement. I further agree not to enter into any agreement, whether written or oral, in conflict with the provisions of this Agreement.

8. Choice of Law: This Agreement shall be construed and governed by the laws of the state in which I am primarily assigned to perform my job for, or engagement with, the Company and shall in all respects be interpreted, enforced and governed under the internal and domestic laws of such state.

9. No Waiver: The waiver of any breach of this Agreement shall not constitute a waiver of subsequent similar or dissimilar breaches of this Agreement, or a waiver of any of the obligations contained herein.



10. Assignment: The Company shall have the right to assign this Agreement to its successors and assigns, and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by said successors and assigns.

11. Right to Notify: I recognize the right of Company to notify any third party of the existence of this Agreement and/or its provisions and/or my agreeing to it.

12. Severability: Should a provision or part of a provision of this Agreement be found as a matter of law to be invalid, such finding shall not have the effect of invalidating the remainder of this Agreement and the provision or part thereof as to which such finding of invalidity is made shall be interpreted so as to be ineffective only to the extent of such invalidity without invalidating the remainder of such provision or part thereof or any of the other provisions of this Agreement.

13. Breach: I agree that any breach of this Agreement by me will cause irreparable damage to the Company and that in the event of such breach the Company shall have, in addition to any and all remedies of law, the right to an injunction, specific performance or other equitable relief to prevent the violation of my obligations hereunder. The Company may apply for such injunctive relief in any court of competent jurisdiction without the necessity of posting any bond or other security.

EMPLOYEE:

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Dated: \_\_\_\_\_

NEKTAR THERAPEUTICS:

By: \_\_\_\_\_

Title: Vice President, Human Resources

Dated: \_\_\_\_\_



APPENDIX A

**Section 2870 of California Labor Code: Application of provision providing that employee shall assign or offer to assign rights in invention to employer.**

a. Any provision and employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities or trade secret information except for those inventions that either:

- 1 Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or
- 2 Result from any work performed by the employee for the employer.

b. To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.



**APPENDIX B**

**PRIOR INVENTIONS**