NOTICE OF MERGER AND APPRAISAL RIGHTS

AVAILABLE TO HOLDERS OF SHARES OF

SERIES D-1 CUMULATIVE CONVERTIBLE PREFERRED STOCK

OF

COLLAGENEX PHARMACEUTICALS, INC.

IN CONNECTION WITH

THE MERGER OF

GALDERMA ACQUISITION INC.,

A WHOLLY OWNED SUBSIDIARY OF

GALDERMA LABORATORIES, INC.,

WITH AND INTO

COLLAGENEX PHARMACEUTICALS, INC.

To the Former Holders of Shares of Series D-1 Cumulative Convertible Preferred Stock of CollaGenex Pharmaceuticals, Inc.:

NOTICE IS HEREBY GIVEN pursuant to Section 262(d)(2) of the General Corporation Law of the State of Delaware (the "*DGCL*") that, effective on April 10, 2008 (the "*Effective Time*"), Galderma Acquisition Inc., a Delaware corporation ("*Purchaser*") that was a wholly-owned subsidiary of Galderma Laboratories, Inc., a Delaware corporation ("*Parent*"), was merged (the "*Merger*") with and into CollaGenex Pharmaceuticals, Inc., a Delaware corporation (the "*Company*"), with the Company continuing as the surviving corporation. The Merger was effected by Purchaser pursuant to Section 253 of the Delaware General Corporation Law (the "*DGCL*") by filing a Certificate of Ownership and Merger with the Secretary of State of the State of Delaware. Immediately prior to the Effective Time, Purchaser owned (a) greater than 90% of the outstanding shares of common stock (the "*Common Stock*"), par value $0.01 per share, of the Company (the "*Shares*") and (b) greater than 90% of the outstanding shares of Series D-1 Cumulative Convertible Preferred Stock (the "*Series D-1 Preferred Stock*"), par value $0.01 per share, of the Company (the "*Series D-1 Shares*"). Under the DGCL, no action by the holders of the Common Stock or the Series D-1 Preferred Stock (the "*Stockholders*") other than Purchaser was required for the Merger to become effective. As a result of the Merger, the Company became a direct subsidiary of Parent.

In accordance with the terms of the Agreement and Plan of Merger, dated as of February 25, 2008 (the "*Merger Agreement*"), among Parent, Purchaser and the Company, as a result of the Merger, each of the Series D-1 Shares outstanding immediately prior to the Effective Time (other than Series D-1 Shares held by the Company, Parent, Purchaser or any of their respective subsidiaries and Series D-1 Shares as to which appraisal rights are perfected under Delaware law as described below) was converted into the right to receive an amount in cash, without interest, equal to the product of the number of Shares into which such Series D-1 Share is convertible pursuant to and in accordance with Section A.5 of the Certificate of Designation, Preferences and Rights of the Series D-1 Cumulative Convertible Preferred Stock, dated as of December 19, 2005, multipled by $16.60 (the "*Merger Consideration*"), upon surrender of the certificate representing such Series D-1 Share (or an effective affidavit of loss in lieu thereof) to American Stock Transfer & Trust Company, as paying agent in connection with the Merger (the "*Paying Agent/Depositary*"), as set forth in the letter of transmittal enclosed herewith (the "*Letter of Transmittal*") and the accompanying instructions, or, if such Series D-1 Share or was non-certificated and represented by book-entry (a "*Book-Entry Share*"), upon delivery of such Book-Entry Share to the Paying Agent.

Surrender of Certificates or Book-Entry Shares

The Paying Agent will accept the surrender of certificates formerly representing Series D-1 Shares (or effective affidavits of loss in lieu thereof) or Book-Entry Shares in exchange for the Merger Consideration therefor.

TO RECEIVE THE MERGER CONSIDERATION FOR ANY SERIES D-1 SHARES, A FORMER STOCKHOLDER (OR A DULY AUTHORIZED REPRESENTATIVE) MUST SURRENDER SUCH SERIES D-1 SHARES TO THE PAYING AGENT, AS FOLLOWS:

(A) IF SUCH SERIES D-1 SHARES WERE REPRESENTED BY A CERTIFICATE OR CERTIFICATES IMMEDIATELY PRIOR TO THE EFFECTIVE TIME OF THE MERGER, BY DELIVERING TO THE PAYING AGENT (I) THE CERTIFICATE OR CERTIFICATES THAT REPRESENTED SUCH SERIES D-1 SHARES IMMEDIATELY PRIOR TO THE EFFECTIVE TIME OF THE MERGER (OR AN EFFECTIVE AFFIDAVIT OF LOSS IN LIEU THEREOF) AND (II) THE LETTER OF TRANSMITTAL, DULY COMPLETED AND VALIDLY EXECUTED, AS SET FORTH IN THE LETTER OF TRANSMITTAL AND ACCOMPANYING INSTRUCTIONS; OR

(B) IF SUCH SERIES D-1 SHARES ARE BOOK-ENTRY SHARES, BY DELIVERING SUCH BOOK-ENTRY SHARES TO THE PAYING AGENT.

Each former Stockholder who does not intend to seek an appraisal of all of such former Stockholder's Series D-1 Shares is urged to execute or, if such former Stockholder was not the record holder of such Series D-1 Shares, to arrange for the former record holder of such Series D-1 Shares (or such former record holder's duly authorized representative) to execute and deliver a duly completed and validly executed Letter of Transmittal to the Paying Agent at one of the addresses set forth in the Letter of Transmittal. **Former Stockholders should note that surrender of a certificate or certificates for their Series D-1 Shares or delivery of their Book-Entry Shares to the Paying Agent may constitute a waiver of appraisal rights under the DGCL.**

Each former Stockholder should note that the method of delivery of the Letter of Transmittal, certificates and all other required documents is at the election and risk of such former Stockholder. **If certificates are sent to the Paying Agent by mail, it is recommended that such certificates be sent by registered mail, properly insured, with return receipt requested.**

Appraisal Rights

Notwithstanding the Merger, Series D-1 Shares held by former Stockholders who (a) held such Series D-1 Shares on April 10, 2008, (b) do not execute and return (or cause to be executed and returned) a Letter of Transmittal with respect to such Series D-1 Shares or otherwise surrender such Series D-1 Shares in exchange for the Merger Consideration therefor, (c) perfect their rights to appraisal of such Series D-1 Shares in accordance with Section 262 of the DGCL ("*Section 262*") and (d) do not thereafter withdraw their demands for appraisal of such Series D-1 Shares or otherwise lose or waive their appraisal rights, in each case in accordance with the DGCL, shall represent the right to receive from the Company payment of the "fair value" of their Series D-1 Shares as determined by the Delaware Court of Chancery in an appraisal proceeding.

Section 262 provides a procedure by which persons who were Stockholders at the Effective Time may seek an appraisal of their Series D-1 Shares in lieu of accepting the Merger Consideration therefor. A demand for appraisal must be made in writing by or for the stockholder of record wishing to demand appraisal and must reasonably inform the Company of the identity of the former Stockholder making the demand for appraisal and that such former Stockholder intends thereby to demand appraisal of such former Stockholder's Series D-1 Shares. To be effective, such a demand must be delivered in accordance with the requirements of Section 262 within 20 days after the date of mailing by the Company of this Notice of Merger and Appraisal Rights. In any such appraisal proceeding, the Delaware Court of Chancery would determine the fair value of the Series D-1 Shares, exclusive of any element of value arising from the accomplishment or expectation of the Merger. Former Stockholders should recognize that such appraisal could result in a determination of a value higher or lower than or equivalent to the Merger Consideration. Following such an appraisal proceeding, the Delaware Court of Chancery would direct the Company (as the surviving corporation in the Merger), pursuant to Section 262, to make payment of such fair value of the Series D-1 Shares, together with interest, if any, to the former Stockholders entitled thereto who properly demanded appraisal.

Appraisal Procedure

This Notice of Merger and Appraisal Rights affords the former Stockholders the notice required by Section 262(d)(2) of the DGCL. The right to appraisal will be lost unless it is perfected by full and precise satisfaction of the requirements of Section 262, the text of which is set forth in full in the Appendix hereto. **Mere failure to execute and return a Letter of Transmittal to the Paying Agent, or to deliver Book-Entry Shares to the Paying Agent, as the case may be, does NOT satisfy the requirements of Section 262. Rather, a separate written demand for appraisal must be properly executed and delivered to the Company as described below:**

A former Stockholder who wishes to demand appraisal of such former Stockholder's Series D-1 Shares must make a written demand for appraisal **on or prior to May 7, 2008** (*i.e.*, within 20 calendar days after the date of mailing of this Notice of Merger and Appraisal Rights). A demand for appraisal should be addressed to the Company at the following address:

CollaGenex Pharmaceuticals, Inc.
41 University Drive,
Newton, PA 18940
Attn: Corporate Secretary

As provided under Section 262, failure of a former Stockholder to make a written demand for appraisal (or failure of a former beneficial owner of Series D-1 Shares to cause the former record holder of such Series D-1 Shares to demand an appraisal of such Series D-1 Shares) within such time limit will result in the loss of such former Stockholder's appraisal rights. The written demand for appraisal must be executed by or for the stockholder of record, fully and correctly, as such former Stockholder's name appears on the certificate or certificates that formerly represented such former Stockholder's Series D-1 Shares or in the book entry that formerly represented such former Stockholder's Series D-1 Shares, as the case may be. If the Series D-1 Shares were owned of record in a fiduciary or representative capacity, such as by a trustee, executor, administrator, guardian, attorney-in-fact or officer of a corporation, execution of the demand must be made in such capacity, and if the Series D-1 Shares were owned of record by more than one person, such as in a joint tenancy or tenancy in common, the demand must be executed by or for all former joint owners. An authorized agent, including one of two or more joint owners, may execute the demand for appraisal for a former stockholder of record; provided, however, that the agent must identify the former record owner(s) and expressly disclose the fact that, in executing the demand, the agent is acting as agent for the former record owner(s).

A former beneficial owner of Series D-1 Shares held in "street name" who desires appraisal should take such actions as may be necessary to ensure that a timely and proper demand for appraisal is made by the former record holder of such Series D-1 Shares. Securities held through brokerage firms, banks and other financial institutions are frequently deposited with and held of record in the name of a nominee of a central security deposit, such as The Depository Trust Company (DTC), Cede & Co., Philadep and others. Any former beneficial holder desiring appraisal who held Series D-1 Shares through a brokerage firm, bank or other financial institution is responsible for ensuring that the demand for appraisal is made by the former record holder of such Series D-1 Shares. The former beneficial holder of such Series D-1 Shares should instruct such firm, bank or institution that the demand for appraisal may be made by the former record holder of such Series D-1 Shares, which may be the nominee of a central security depository if the Series D-1 Shares have been so deposited. As required by Section 262, a demand for appraisal must reasonably inform the Company of the identity of the former holder(s) of record (which may be a nominee as described above) and of such former holder's intention thereby to demand appraisal of such Series D-1 Shares.

Within 120 calendar days after the Effective Time, the Company or any former Stockholder entitled to appraisal rights under Section 262 who has complied with the provisions thereof may file a petition in the Delaware Court of Chancery demanding a determination of the value of the Series D-1 Shares of all such former Stockholders. The Company is under no obligation, and has no present intention, to file such a petition. Accordingly, any former Stockholder who wishes to perfect such Stockholder's appraisal rights will be required to initiate all necessary action within the time prescribed in Section 262. Notwithstanding that a demand for appraisal must be executed by or for a stockholder of record, a former beneficial owner of Series D-1 Shares held either in a voting trust or by a nominee on behalf of such beneficial owner may, in such beneficial owner's own name, file a petition for appraisal with respect to Series D-1 Shares formerly beneficially owned by such person and as to which appraisal rights have properly been perfected.

Within 120 calendar days after the Effective Time, any former Stockholder (including any former beneficial owner of Series D-1 Shares) who has complied with the requirements for exercise of appraisal rights will be entitled, upon written request, to receive from the Company a statement setting forth the aggregate number of Series D-1 Shares with respect to which demands for appraisal have been received and the aggregate number of holders of such Series D-1 Shares. Such statement must be mailed (a) within 10 calendar days after a written request therefor has been received by the Company or (b) by May 17, 2008 (*i.e.*, 10 calendar days after expiration of the period for delivery of demands for appraisal), whichever is later.

If a petition for an appraisal is timely filed with the Delaware Court of Chancery and a copy thereof is served upon the Company, the Company will then be obligated within 20 calendar days to provide the Delaware Register in Chancery with a duly verified list containing the names and addresses of all former Stockholders who have demanded an appraisal of their Series D-1 Shares and with whom agreements as to the value of their Series D-1 Shares have not been reached by the Company. After notice to such former Stockholders by the Register in Chancery, as required by Section 262, the Court of Chancery is empowered to conduct a hearing on such petition to determine those former Stockholders who have complied with Section 262 and who have become entitled to appraisal rights. The Court of Chancery may require the former Stockholders who have demanded an appraisal for their Series D-1 Shares to submit their stock certificates to the Register in Chancery for notation thereon of the pendency of the appraisal proceeding and, if any such former Stockholder fails to comply with such direction, the Court of Chancery may dismiss the proceedings as to such former Stockholder.

After determining the former Stockholders entitled to an appraisal, the Court of Chancery will appraise the "fair value" of their Series D-1 Shares, exclusive of any element of value arising from the accomplishment or expectation of the Merger, together with interest, if any, to be paid upon the amount determined to be the fair value. Unless the Court of Chancery in its discretion determines otherwise for good cause shown, interest on the amount determined to be the fair value shall accrue from the Effective Time through the date of the payment of the judgment, shall be compounded quarterly, and shall accrue at 5% over the Federal Reserve discount rate (including any surcharges) as established from time to time during the period between the Effective Time and the date of payment of the judgment.

Former Stockholders considering the exercise of appraisal rights should be aware that the fair value of their Series D-1 Shares as determined under Section 262 could be more than, the same as, or less than the value of the consideration they would receive pursuant to the Merger if they did not seek appraisal of their Series D-1 Shares. The Delaware Supreme Court has stated that "proof of value by any techniques or methods which are generally considered acceptable in the financial community and otherwise admissible in court" should be considered in the appraisal proceedings.

The costs of the appraisal proceeding may be determined by the Court of Chancery and taxed upon the parties as the Court deems equitable in the circumstances. The Court may also order that all or a portion of the expenses incurred by any former Stockholder in connection with an appraisal, including, without limitation, reasonable attorneys' fees and the fees and expenses of experts utilized in the appraisal proceeding, be charged pro rata against the value of all the Series D-1 Shares entitled to be appraised.

From and after the Effective Time, no former Stockholder, whether or not such former Stockholder has duly demanded an appraisal in compliance with Section 262, is entitled to vote any Series D-1 Shares for any purpose or is entitled to the payment of dividends or other distributions on any Series D-1 Shares (except dividends or other distributions, if any, payable to former Stockholders of record as of a record date prior to the Effective Time).

If any former Stockholder who demands appraisal of such former Stockholder's Series D-1 Shares under Section 262 fails to perfect, or effectively withdraws or loses, such former Stockholder's right to appraisal, as provided in the DGCL, the Series D-1 Shares of such former Stockholder will be converted into the right to receive the Merger Consideration therefor, without interest. Such former Stockholders must follow the procedures set forth in the Letter of Transmittal and accompanying instructions.

At any time within 60 calendar days after the Effective Time, any former Stockholder who has demanded appraisal and who has not commenced an appraisal proceeding or joined that proceeding as a named party has the right to withdraw the demand and accept the consideration offered in the Merger. After that period, a former Stockholder may withdraw a demand for appraisal only with the written consent of the Company. No appraisal proceeding in the Court of Chancery will be dismissed as to any former Stockholder, however, without the approval of the Court of Chancery, which may be conditioned on such terms as the Court deems just.

The foregoing brief summary does not purport to be a complete description of the applicable provisions of Section 262, and is qualified in its entirety by reference to Section 262, the text of which is attached hereto in full as Appendix.

Additional Information

Pursuant to the Merger Agreement, prior to the Effective Time, Purchaser completed a tender offer (the "*Offer*") for all outstanding Shares, at a price of $16.60 per share, net to the sellers in cash (the "*Offer Price*"), without interest.

Pursuant to the Preferred Stock Purchase and Voting Agreement, dated as of February 25, 2005, among Parent, Purchaser and holders of 95% of the Series D-1 Preferred Stock (collectively, the "*Company Preferred Stockholders*"), immediately following the time Purchaser purchased Shares validly tendered into the Offer and prior to the Effective Time, Purchaser acquired all of such Company Preferred Stockholders' Series D-1 Shares.

The initial period of the Offer expired at 12:00 midnight, New York City time, at the end of April 4, 2008. According to the Paying Agent, as of 12:00 midnight, New York City time, at the end of April 4, 2008, a total of approximately 19,715,344 Shares were validly tendered into the Offer and an additional 1,328,948 Shares were tendered by notice of guaranteed delivery. These Shares represented an aggregate of approximately 97.04 % of the outstanding Shares.

In connection with the Offer, Purchaser filed with the U.S. Securities and Exchange Commission (the "*Commission*") a Tender Offer Statement on Schedule TO, containing an Offer to Purchase, dated March 10, 2008 (as amended by Amendment No. 1, dated March 13, 2008, Amendment No. 2, dated March 19, 2008, Amendment No. 3, dated April 8, 2008 and Amendment No. 4, dated April 11, 2008, the "*Offer to Purchase*"), and related materials, which were previously mailed by Purchaser to the Stockholders. In addition, on March 10, 2008, the Company filed with the Commission and mailed to the Stockholders a Solicitation/Recommendation Statement on Schedule 14D-9 (as amended by Amendment No. 1, dated March 13, 2008, Amendment No. 2, dated March 19, 2008, and Amendment No. 3, dated April 8, 2008 and Amendment No. 4, dated April 11, 2008, the "*Schedule 14D-9*") in connection with the Offer.

In making their decisions as to the exercise of appraisal rights, former Stockholders are urged to review the Offer to Purchase, the Schedule 14D-9 and all related materials. Copies of the tender offer materials, including all amendments and supplements thereto, can be obtained by written request directed as follows: CollaGenex Pharmaceuticals, Inc., 41 University Drive, Newton, PA 18940, Attn: Corporate Secretary. The tender offer materials are also available for free on the Commission's website at http://www.sec.gov.

Information Concerning the Company

The Company is subject to the information reporting and other requirements of the Securities Exchange Act of 1934, as amended, and is required to file reports and other information with the Commission relating to the Company's business, financial condition and certain other matters. These reports and other information should be available for inspection at the public reference facilities maintained by the Commission at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. The Company's filings with the Commission are also available to the public from commercial document-retrieval services and on the website maintained by the Commission at http://www.sec.gov.

In making their decisions as to the exercise of appraisal rights, former Stockholders are urged to review such information carefully and in its entirety.

Date: April 17, 2008

COLLAGENEX PHARMACEUTICALS, INC.

Appendix

DELAWARE GENERAL CORPORATION LAW

§ 262. Appraisal rights.

(a) Any stockholder of a corporation of this State who holds shares of stock on the date of the making of a demand pursuant to subsection (d) of this section with respect to such shares, who continuously holds such shares through the effective date of the merger or consolidation, who has otherwise complied with subsection (d) of this section and who has neither voted in favor of the merger or consolidation nor consented thereto in writing pursuant to § 228 of this title shall be entitled to an appraisal by the Court of Chancery of the fair value of the stockholder's shares of stock under the circumstances described in subsections (b) and (c) of this section. As used in this section, the word "stockholder" means a holder of record of stock in a stock corporation and also a member of record of a nonstock corporation; the words "stock" and "share" mean and include what is ordinarily meant by those words and also membership or membership interest of a member of a nonstock corporation; and the words "depository receipt" mean a receipt or other instrument issued by a depository representing an interest in one or more shares, or fractions thereof, solely of stock of a corporation, which stock is deposited with the depository.

(b) Appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consolidation to be effected pursuant to § 251 (other than a merger effected pursuant to § 251(g) of this title), § 252, § 254, § 257, § 258, § 263 or § 264 of this title:

> (1) Provided, however, that no appraisal rights under this section shall be available for the shares of any class or series of stock, which stock, or depository receipts in respect thereof, at the record date fixed to determine the stockholders entitled to receive notice of and to vote at the meeting of stockholders to act upon the agreement of merger or consolidation, were either (i) listed on a national securities exchange or (ii) held of record by more than 2,000 holders; and further provided that no appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the stockholders of the surviving corporation as provided in subsection (f) of § 251 of this title.
>
> (2) Notwithstanding paragraph (1) of this subsection, appraisal rights under this section shall be available for the shares of any class or series of stock of

a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to §§ 251, 252, 254, 257, 258, 263 and 264 of this title to accept for such stock anything except:

1. Shares of stock of the corporation surviving or resulting from such merger or consolidation, or depository receipts in respect thereof;

2. Shares of stock of any other corporation, or depository receipts in respect thereof, which shares of stock (or depository receipts in respect thereof) or depository receipts at the effective date of the merger or consolidation will be either listed on a national securities exchange or held of record by more than 2,000 holders;

3. Cash in lieu of fractional shares or fractional depository receipts described in the foregoing subparagraphs a. and b. of this paragraph; or

4. Any combination of the shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in the foregoing subparagraphs a., b. and c. of this paragraph.

(3) In the event all of the stock of a subsidiary Delaware corporation party to a merger effected under § 253 of this title is not owned by the parent corporation immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Delaware corporation.

(c) Any corporation may provide in its certificate of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all or substantially all of the assets of the corporation. If the certificate of incorporation contains such a provision, the procedures of this section, including those set forth in subsections (d) and (e) of this section, shall apply as nearly as is practicable.

(d) Appraisal rights shall be perfected as follows:

(1) If a proposed merger or consolidation for which appraisal rights are provided under this section is to be submitted for approval at a meeting of stockholders, the corporation, not less than 20 days prior to the meeting, shall notify each of its stockholders who was such on the record date for such meeting with respect to shares for which appraisal rights are available pursuant to subsection (b) or (c) hereof that appraisal rights are available for any or all of the shares of the constituent corporations, and shall include in such notice a copy of this section. Each stockholder electing to demand the appraisal of such stockholder’s shares shall deliver to the corporation, before the taking of the vote

on the merger or consolidation, a written demand for appraisal of such stockholder's shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such stockholder's shares. A proxy or vote against the merger or consolidation shall not constitute such a demand. A stockholder electing to take such action must do so by a separate written demand as herein provided. Within 10 days after the effective date of such merger or consolidation, the surviving or resulting corporation shall notify each stockholder of each constituent corporation who has complied with this subsection and has not voted in favor of or consented to the merger or consolidation of the date that the merger or consolidation has become effective; or

(2) If the merger or consolidation was approved pursuant to § 228 or § 253 of this title, then either a constituent corporation before the effective date of the merger or consolidation or the surviving or resulting corporation within 10 days thereafter, shall notify each of the holders of any class or series of stock of such constituent corporation who are entitled to appraisal rights of the approval of the merger or consolidation and that appraisal rights are available for any or all shares of such class or series of stock of such constituent corporation, and shall include in such notice a copy of this section. Such notice may, and, if given on or after the effective date of the merger or consolidation, shall, also notify such stockholders of the effective date of the merger or consolidation. Any stockholder entitled to appraisal rights may, within 20 days after the date of mailing of such notice, demand in writing from the surviving or resulting corporation the appraisal of such holder's shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such holder's shares. If such notice did not notify stockholders of the effective date of the merger or consolidation, either (i) each such constituent corporation shall send a second notice before the effective date of the merger or consolidation notifying each of the holders of any class or series of stock of such constituent corporation that are entitled to appraisal rights of the effective date of the merger or consolidation or (ii) the surviving or resulting corporation shall send such a second notice to all such holders on or within 10 days after such effective date; provided, however, that if such second notice is sent more than 20 days following the sending of the first notice, such second notice need only be sent to each stockholder who is entitled to appraisal rights and who has demanded appraisal of such holder's shares in accordance with this subsection. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation that is required to give either notice that such notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the stockholders entitled to receive either notice, each constituent corporation may fix, in advance, a record date that shall be not more than 10 days prior to the date the notice is given, provided, that if the notice is given on or after the effective

date of the merger or consolidation, the record date shall be such effective date. If no record date is fixed and the notice is given prior to the effective date, the record date shall be the close of business on the day next preceding the day on which the notice is given.

(e) Within 120 days after the effective date of the merger or consolidation, the surviving or resulting corporation or any stockholder who has complied with subsections (a) and (d) hereof and who is otherwise entitled to appraisal rights, may commence an appraisal proceeding by filing a petition in the Court of Chancery demanding a determination of the value of the stock of all such stockholders. Notwithstanding the foregoing, at any time within 60 days after the effective date of the merger or consolidation, any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party shall have the right to withdraw such stockholder's demand for appraisal and to accept the terms offered upon the merger or consolidation. Within 120 days after the effective date of the merger or consolidation, any stockholder who has complied with the requirements of subsections (a) and (d) hereof, upon written request, shall be entitled to receive from the corporation surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation and with respect to which demands for appraisal have been received and the aggregate number of holders of such shares. Such written statement shall be mailed to the stockholder within 10 days after such stockholder's written request for such a statement is received by the surviving or resulting corporation or within 10 days after expiration of the period for delivery of demands for appraisal under subsection (d) hereof, whichever is later. Notwithstanding subsection (a) of this section, a person who is the beneficial owner of shares of such stock held either in a voting trust or by a nominee on behalf of such person may, in such person's own name, file a petition or request from the corporation the statement described in this subsection.

(f) Upon the filing of any such petition by a stockholder, service of a copy thereof shall be made upon the surviving or resulting corporation, which shall within 20 days after such service file in the office of the Register in Chancery in which the petition was filed a duly verified list containing the names and addresses of all stockholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the surviving or resulting corporation. If the petition shall be filed by the surviving or resulting corporation, the petition shall be accompanied by such a duly verified list. The Register in Chancery, if so ordered by the Court, shall give notice of the time and place fixed for the hearing of such petition by registered or certified mail to the surviving or resulting corporation and to the stockholders shown on the list at the addresses therein stated. Such notice shall also be given by 1 or more publications at least 1 week before the day of the hearing, in a newspaper of general circulation published in the City of Wilmington, Delaware or such publication as the Court deems advisable. The forms of the notices by mail and by publication shall be approved by the Court, and the costs thereof shall be borne by the surviving or resulting corporation.

(g) At the hearing on such petition, the Court shall determine the stockholders who have complied with this section and who have become entitled to appraisal rights. The Court may require the stockholders who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings; and if any stockholder fails to comply with such direction, the Court may dismiss the proceedings as to such stockholder.

(h) After the Court determines the stockholders entitled to an appraisal, the appraisal proceeding shall be conducted in accordance with the rules of the Court of Chancery, including any rules specifically governing appraisal proceedings. Through such proceeding the Court shall determine the fair value of the shares exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the Court shall take into account all relevant factors. Unless the Court in its discretion determines otherwise for good cause shown, interest from the effective date of the merger through the date of payment of the judgment shall be compounded quarterly and shall accrue at 5% over the Federal Reserve discount rate (including any surcharge) as established from time to time during the period between the effective date of the merger and the date of payment of the judgment. Upon application by the surviving or resulting corporation or by any stockholder entitled to participate in the appraisal proceeding, the Court may, in its discretion, proceed to trial upon the appraisal prior to the final determination of the stockholders entitled to an appraisal. Any stockholder whose name appears on the list filed by the surviving or resulting corporation pursuant to subsection (f) of this section and who has submitted such stockholder's certificates of stock to the Register in Chancery, if such is required, may participate fully in all proceedings until it is finally determined that such stockholder is not entitled to appraisal rights under this section.

(i) The Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the stockholders entitled thereto. Payment shall be so made to each such stockholder, in the case of holders of uncertificated stock forthwith, and the case of holders of shares represented by certificates upon the surrender to the corporation of the certificates representing such stock. The Court’s decree may be enforced as other decrees in the Court of Chancery may be enforced, whether such surviving or resulting corporation be a corporation of this State or of any state.

(j) The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances. Upon application of a stockholder, the Court may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney's fees and the fees and expenses of experts, to be charged pro rata against the value of all the shares entitled to an appraisal.

(k) From and after the effective date of the merger or consolidation, no stockholder who has demanded appraisal rights as provided in subsection (d) of this section shall be entitled to vote such stock for any purpose or to receive payment of dividends or other distributions on the stock (except dividends or other distributions payable to stockholders of record at a date which is prior to the effective date of the merger or consolidation); provided, however, that if no petition for an appraisal shall be filed within the time provided in subsection (e) of this section, or if such stockholder shall deliver to the surviving or resulting corporation a written withdrawal of such stockholder's demand for an appraisal and an acceptance of the merger or consolidation, either within 60 days after the effective date of the merger or consolidation as provided in subsection (e) of this section or thereafter with the written approval of the corporation, then the right of such stockholder to an appraisal shall cease. Notwithstanding the foregoing, no appraisal proceeding in the Court of Chancery shall be dismissed as to any stockholder without the approval of the Court, and such approval may be conditioned upon such terms as the Court deems just; provided, however that this provision shall not affect the right of any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party to withdraw such stockholder's demand for appraisal and to accept the terms offered upon the merger or consolidation within 60 days after the effective date of the merger or consolidation, as set forth in subsection (e) of this section.

(l) The shares of the surviving or resulting corporation to which the shares of such objecting stockholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation