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

**FORM S-8
REGISTRATION STATEMENT**
*UNDER
THE SECURITIES ACT OF 1933*

BAKKT HOLDINGS, INC.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

98-1550750
(I.R.S. Employer
Identification No.)

**10000 Avalon Boulevard, Suite 1000
Alpharetta, Georgia 30009**
(Address of Principal Executive Offices, including zip code)

Bakkt Holdings, Inc. 2021 Omnibus Incentive Plan
(Full title of the plan)

Andrew Main
Chief Executive Officer
**10000 Avalon Boulevard, Suite 1000
Alpharetta, Georgia 30009
(678) 534-5849**
(Name, address and telephone number, including area code, of agent for service)

Copies to:

**J. Matthew Lyons
Austin D. March**
Wilson Sonsini Goodrich & Rosati, P.C.
900 S. Capital of Texas Highway
Las Cimas IV, 5th Floor
Austin, TX 78746
(512) 338-5400

Marc D'Annunzio
General Counsel
10000 Avalon Boulevard, Suite 1000
Alpharetta, Georgia 30009
(678) 534-5849

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer
Non-accelerated filer

Accelerated filer
Smaller reporting company
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

Explanatory Note

Bakkt Holdings, Inc. (the “Registrant” or the “Company”) is filing this Registration Statement with the Securities and Exchange Commission (the “SEC”) to register 938,625 shares of Class A Common Stock to be issued under Bakkt Holdings, Inc.’s 2021 Omnibus Incentive Plan (the “Plan”). These 938,625 shares represent an increase in the number of shares of Class A Common Stock reserved for issuance under the Plan, which increase was approved by the stockholders on May 31, 2024. As a result of the foregoing, the total number of shares of common stock registered for offer and sale under the Plan is now 3,034,921.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Registrant incorporates by reference the following documents that the Registrant has previously filed with the SEC:

- (a) The Registrant’s Annual Report on [Form 10-K](#) for the fiscal year ended December 31, 2023, filed with the SEC on March 25, 2024 (the “Annual Report”);
- (b) The portions of the Registrant’s Definitive Proxy Statement on [Schedule 14A](#) (other than information furnished rather than filed) that are incorporated by reference into the Annual Report, filed with the SEC on April 19, 2024;
- (c) The Registrant’s Quarterly Report on [Form 10-Q](#) for the quarter ended March 31, 2024, filed with the Commission on May 15, 2024;
- (d) The Registrant’s Current Reports on Form 8-K filed with the Commission on [February 29, 2024](#), [March 4, 2024](#), [March 14, 2024](#), [March 19, 2024](#), [April 25, 2024](#), [April 29, 2024](#), [May 3, 2024](#), [June 6, 2024](#) and [June 7, 2024](#) and Current Report on Form 8-K/A filed with the Commission on [February 14, 2024](#); and
- (e) The description of the Registrant’s common stock contained in the Registrant’s Registration Statement on [Form 8-A](#) (File No. 001-39544) filed with the SEC on October 15, 2021, pursuant to Section 12(b) of the Exchange Act, including any amendment or report filed for the purpose of updating such description, including [Exhibit 4.8](#) of the Annual Report.

All documents filed by the Registrant with the SEC pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents; *provided, however*, that documents or information deemed to have been furnished and not filed in accordance with the rules of the SEC (including, without limitation, information furnished under Item 2.02 or Item 7.01 of Current Reports on Form 8-K and the exhibits related to such items furnished under Item 9.01) shall not be deemed incorporated by reference into this Registration Statement.

Any statement contained in this Registration Statement, or in a document incorporated or deemed to be incorporated by reference herein, shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which also is incorporated or deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

To the extent that any information contained in any Current Report on Form 8-K, or any exhibit thereto, is or was furnished to, rather than filed with, the SEC, such information or exhibit is specifically not incorporated by reference.

Item 6. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporate Law (“DGCL”) authorizes a corporation’s board of directors to grant, and authorizes a court to award, indemnity to officers, directors and other corporate agents.

The Company’s Certificate of Incorporation contains provisions that limit the liability of the Company’s directors for monetary damages to the fullest extent permitted by the DGCL. Consequently, the Company’s directors will not be personally liable to the Company or its stockholders for monetary damages for any breach of fiduciary duties as directors, except liability for the following:

- any breach of their duty of loyalty to the Company or its stockholders;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the DGCL; or
- any transaction from which they derived an improper personal benefit.

Any amendment, repeal or elimination of these provisions will not eliminate or reduce the effect of these provisions in respect of any act, omission or claim that occurred or arose prior to that amendment, repeal or elimination. If the DGCL is amended to provide for further limitations on the personal liability of directors of corporations, then the personal liability of the Company’s directors will be further limited to the greatest extent permitted by the DGCL.

In addition, the Company’s bylaws (“By-Laws”) provide that the Company will indemnify its directors and officers, and may indemnify its employees, agents and any other persons, to the fullest extent permitted by the DGCL. The Company’s By-Laws also provide that the Company must advance expenses incurred by or on behalf of a director or officer in advance of the final disposition of any action or proceeding, subject to limited exceptions.

Further, the Company has entered into or will enter into indemnification agreements with each of its directors and executive officers that may be broader than the specific indemnification provisions contained in the DGCL. These indemnification agreements require the Company, among other things, to indemnify its directors and executive officers against liabilities that may arise by reason of their status or service. These indemnification agreements also require the Company to advance all expenses reasonably and actually incurred by the directors and executive officers in investigating or defending any such action, suit or proceeding. The Company believes that these agreements are necessary to attract and retain qualified individuals to serve as directors and executive officers.

The limitation of liability and indemnification provisions included in the Company’s Certificate of Incorporation, By-Laws and the indemnification agreements that the Company has entered into or will enter into with its directors and executive officers may discourage stockholders from bringing a lawsuit against the Company’s directors and executive officers for breach of their fiduciary duties. They may also reduce the likelihood of derivative litigation against the Company’s directors and executive officers, even though an action, if successful, might benefit the Company and its stockholders. Further, a stockholder’s investment may be adversely affected to the extent that the Company pays the costs of settlement and damage awards against directors and executive officers as required by these indemnification provisions.

The Company has obtained insurance policies under which, subject to the limitations of the policies, coverage is provided to the Company’s directors and executive officers against loss arising from claims made by reason of breach of fiduciary duty or other wrongful acts as a director or executive officer, including claims relating to public securities matters, and to the Company with respect to payments that may be made by the Company to these directors and executive officers pursuant to the Company’s indemnification obligations or otherwise as a matter of law.

Certain of the Company's non-employee directors may, through their relationships with their employers, be insured and/or indemnified against certain liabilities incurred in their capacity as members of the board of directors.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers, or persons controlling the Company pursuant to the foregoing provisions, the Company has been informed that, in the opinion of the Commission, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Item 8. Exhibits.

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
4.1*	<u>Certificate of Incorporation of the Registrant, as amended, as currently in effect.</u>
4.2	<u>By-Laws of the Registrant, as currently in effect (incorporated by reference to Exhibit 3.2 to the Registrant's Form 8-K filed with the SEC on October 21, 2021).</u>
4.3	<u>Specimen Class A Common Stock Certificate of the Registrant (incorporated by reference to Exhibit 4.1 to the Registrant's Form 8-K filed with the SEC on October 21, 2021).</u>
4.4	<u>Bakkt Holdings, Inc. 2021 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.9 to the Registrant's Form 8-K filed with the SEC on October 21, 2021).</u>
4.5	<u>Amendment No. 1 to Bakkt Holdings, Inc. 2021 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.11 to the Registrant's Form 10-K filed with the SEC on March 25, 2024).</u>
4.6*	<u>Amendment No. 2 to Bakkt Holdings, Inc. 2021 Omnibus Incentive Plan.</u>
4.7	<u>Form of Director Restricted Stock Unit Agreement under the Bakkt Holdings, Inc. 2021 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.11 to the Registrant's Form 10-K filed with the SEC on March 31, 2022).</u>
4.8	<u>Form of Executive Officer Restricted Stock Unit Agreement under the Bakkt Holdings, Inc. 2021 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.2 to the Registrant's Form 10-Q filed with the SEC on May 11, 2023).</u>
4.9	<u>Form of Performance Unit Agreement under the Bakkt Holdings, Inc. 2021 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.1 to the Registrant's Form 10-Q filed with the SEC on May 11, 2023).</u>
4.10	<u>Form of Restricted Stock Unit Award Agreement (incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on September 12, 2022).</u>
4.11	<u>Form of Performance-Based Restricted Stock Unit Award Agreement (incorporated by reference to Exhibit 10.2 to the Registrant's Form 8-K filed with the SEC on September 12, 2022).</u>
5.1*	<u>Opinion of Wilson Sonsini Goodrich and Rosati, P.C.</u>
23.1*	<u>Consent of Ernst & Young LLP, independent registered public accounting firm.</u>
23.4*	<u>Consent of Wilson Sonsini Goodrich and Rosati, P.C. (included in Exhibit 5.1).</u>
24.1*	<u>Power of Attorney (included on signature page).</u>
107*	<u>Filing Fee Table</u>

* Filed herewith.

SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Alpharetta, State of Georgia, on the 8th day of July, 2024.

BAKKT HOLDINGS, INC.

By: /s/ Andrew Main
Andrew Main
President and Chief Executive Officer

POWER OF ATTORNEY AND SIGNATURES

KNOW ALL BY THESE PRESENT, that each individual whose signature appears below hereby constitutes and appoints each of Andrew Main, Marc D'Annunzio and Karen Alexander, and each or any one of them, as such person's true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for such person in such person's name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement on Form S-8, and to file the same, with all exhibits thereto, and all documents in connection therewith, with the SEC granting unto each said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as such person might or could do in person, hereby ratifying and confirming all that any said attorney-in-fact and agent, or any substitute or substitutes of any of them, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated below.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Andrew Main</u> Andrew Main	President, Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	July 8, 2024
<u>/s/ Karen Alexander</u> Karen Alexander	Chief Financial Officer <i>(Principal Financial Officer and Principal Accounting Officer)</i>	July 8, 2024
<u>/s/ David C. Clifton</u> David C. Clifton	Director	July 8, 2024
<u>/s/ Sean Collins</u> Sean Collins	Director	July 8, 2024
<u>/s/ De'Ana Dow</u> De'Ana Dow	Director	July 8, 2024
<u>/s/ Michelle Goldberg</u> Michelle Goldberg	Director	July 8, 2024
<u>Richard Lumb</u>	Director	
<u>/s/ Jill Simeone</u> Jill Simeone	Director	July 8, 2024
<u>/s/ Gordon Watson</u> Gordon Watson	Director	July 8, 2024

**CERTIFICATE OF INCORPORATION
OF
BAKKT HOLDINGS, INC.**

The undersigned, for the purposes of incorporating and organizing a corporation under the General Corporation Law of the State of Delaware, does execute this Certificate of Incorporation and does hereby certify as follows:

ARTICLE I

Section 1.1 Name. The name of the Corporation is Bakkt Holdings, Inc. (the "Corporation").

ARTICLE II

Section 2.1 Address. The address of the registered office of the Corporation in the State of Delaware is 251 Little Falls Drive, City of Wilmington, County of New Castle, Delaware 19808; and the name of the Corporation's registered agent at such address is Corporation Service Company.

ARTICLE III

Section 3.1 Purpose. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may now or hereafter be organized under the General Corporation Law of the State of Delaware (the "DGCL"). The Corporation is being incorporated in connection with the domestication of VPC Impact Acquisition Holdings, a Cayman Islands exempted company limited by shares ("VIH Cayman"), as a Delaware corporation, and this Certificate of Incorporation is being filed simultaneously with the Certificate of Corporate Domestication of VIH Cayman (the "Certificate of Domestication").

ARTICLE IV

Section 4.1 Capitalization. The total number of shares of all classes of capital stock that the Corporation is authorized to issue is 1,001,000,000 shares, consisting of (i) 1,000,000 shares of preferred stock, par value \$0.0001 per share ("Preferred Stock"), and (ii) 1,000,000,000 shares of common stock, par value \$0.0001 per share (the "Common Stock"), which consists of (A) 750,000,000 shares of Class A common stock ("Class A Common Stock") and (B) 250,000,000 shares of Class V common stock ("Class V Common Stock"). The number of authorized shares of any of the Common Stock, Class A Common Stock, Class V Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority in voting power of the stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto), and no vote of the holders of any of the Common Stock, Class A Common Stock, Class V Common Stock or Preferred Stock voting separately as a class shall be required therefor, unless a vote of any such holder is required pursuant to this Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock). Upon the filing of the Certificate of Domestication and this Certificate of Incorporation, which is occurring on the closing date of the transactions contemplated by that certain Merger Agreement, dated as of January 11, 2021, by and among VIH Cayman, Pylon Merger Company LLC, a Delaware limited liability company, and Bakkt Holdings, LLC, a Delaware limited liability company ("Bakkt LLC") (as may be amended, restated or modified, the "Merger Agreement"), each share of capital stock of VIH Cayman issued and outstanding immediately prior to the Closing (as defined in the Merger Agreement) will be converted into one issued and outstanding, fully paid and nonassessable share of Class A Common Stock, without any action required on the part of the Corporation or the holders thereof.

Section 4.2 Preferred Stock.

(A) The Board of Directors of the Corporation (the “Board”) is hereby expressly authorized, subject to any limitations prescribed by the DGCL, by resolution or resolutions, at any time and from time to time, to provide, out of the unissued shares of Preferred Stock, for one or more series of Preferred Stock and, with respect to each such series, to fix the number of shares constituting such series and the designation of such series, the voting powers, full or limited, or no voting powers, of the shares of such series, and the powers, preferences and relative, participating, optional or other special rights, if any, and any qualifications, limitations or restrictions thereof, of the shares of such series and to cause to be filed with the Secretary of State of the State of Delaware a certificate of designation with respect thereto. The powers, preferences and relative, participating, optional and other special rights of each series of Preferred Stock, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding.

(B) Except as otherwise required by law, holders of a series of Preferred Stock, as such, shall be entitled only to such voting rights, if any, as shall expressly be granted thereto by this Certificate of Incorporation (including any certificate of designations relating to such series).

Section 4.3 Common Stock.

(A) Voting Rights.

(1) Except as otherwise provided in this Certificate of Incorporation or as required by law, each holder of Class A Common Stock, as such, shall be entitled to one vote for each share of Class A Common Stock held of record by such holder on all matters on which stockholders generally or holders of Class A Common Stock as a separate class are entitled to vote, including the election or removal of directors (whether voting separately as a class or together with one or more classes of the Corporation’s capital stock).

(2) Except as otherwise provided in this Certificate of Incorporation or as required by law, each holder of Class V Common Stock, as such, shall be entitled to one vote for each share of Class V Common Stock held of record by such holder on all matters on which stockholders generally or holders of Class V Common Stock as a separate class are entitled to vote, including the election or removal of directors (whether voting separately as a class or together with one or more classes of the Corporation’s capital stock).

(3) Except as otherwise provided in this Certificate of Incorporation or required by applicable law and without limiting the rights of any party to the Stockholders Agreement, dated as of October 15, 2021, by and among the Corporation and the other parties thereto (as amended from time to time, the “Stockholders Agreement”), the holders of Common Stock having the right to vote in respect of such Common Stock shall vote together as a single class (or, if the holders of one or more series of Preferred Stock are entitled to vote together with the holders of Common Stock, as a single class with the holders of such other series of Preferred Stock) on all matters submitted to a vote of the stockholders having voting rights generally.

(B) Dividends.

(i) *Class A Common Stock*. Subject to applicable law and the rights, if any, of the holders of any outstanding shares of Preferred Stock or any class or series of stock having a preference over or the right to participate with the Class A Common Stock with respect to the payment of dividends, dividends may be declared and paid on the Class A Common Stock out of the assets of the Corporation that are by law available therefor at such times and in such amounts as the Board in its discretion shall determine.

(ii) *Class V Common Stock*. Dividends shall not be declared or paid on the Class V Common Stock.

(C) Liquidation, Dissolution or Winding Up. Subject to applicable law, and of the preferential and other amounts, if any, to which the holders of Preferred Stock or any class or series of stock having a preference over the Class A Common Stock as to distributions upon dissolution or liquidation or winding up of the affairs of the Corporation shall be entitled, in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation, the holders of all outstanding shares of Class A Common Stock shall be entitled to receive the remaining assets of the Corporation available for distribution ratably in proportion to the number of shares held by each such stockholder. The holders of shares of Class V Common Stock, as such, shall not be entitled to receive any assets of the Corporation in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

(D) Restrictions of Class V Common Stock. In the event that any outstanding share of Class V Common Stock shall cease to be held directly or indirectly by a holder of a unit of Bakkt LLC (the "LLC Units") as set forth in the books and records of Bakkt LLC, such share shall automatically and without further action on the part of the Corporation or any holder of Class V Common Stock be transferred to the Corporation for no consideration, and any purported transfer of Class V Common Stock which does not include the simultaneous transfer of a corresponding number of such holder's LLC Units to such transferee or is otherwise not in accordance with the Third Amended and Restated LLC Agreement of Bakkt LLC (as amended from time to time, the "LLC Agreement"), the Exchange Agreement, dated as of October 15, 2021, by and among the Corporation and the other parties thereto (as amended from time to time, the "Exchange Agreement") and the Stockholders Agreement (collectively, the "Restrictions") shall be null and void and such transferee shall not obtain any rights in and to such shares of Class V Common Stock (the "Restricted Shares"), nor shall such transfer be recognized by the Corporation's transfer agent (the "Transfer Agent"). The Corporation shall not issue additional shares of Class V Common Stock after the effectiveness of this Certificate of Incorporation other than in connection with the valid issuance or transfer of LLC Units in accordance with the LLC Agreement. Upon a determination by the Board that a person has attempted or may attempt to transfer or to acquire Restricted Shares in violation of the Restrictions, the Corporation shall refuse to give effect to such transfer or acquisition on the books and records of the Corporation. In furtherance of the foregoing, the Corporation shall cause the Transfer Agent to refuse to record the proposed transferee as the record owner of the Restricted Shares and shall institute proceedings necessary to enjoin or rescind any such transfer or acquisition. The Board may, to the extent permitted by law, from time to time establish, modify, amend or rescind, by by-law or otherwise, regulations and procedures that are consistent with the provisions of this Section 4.3(D) for determining whether any transfer or acquisition of shares of Class V Common Stock would violate the Restrictions and for the orderly application, administration and implementation of the provisions of this Section 4.3(D). Any such procedures and regulations shall be kept on file with the Secretary of the Corporation and with the Transfer Agent and shall be made available for inspection by any prospective transferee and, upon written request, shall be mailed to holders of shares of Class V Common Stock. For the avoidance of doubt, nothing herein restricts the ability of the holders of LLC Units from surrendering shares of Class V Common Stock to the Corporation or Bakkt LLC pursuant to the terms of the Exchange Agreement and in accordance with the Restrictions.

(E) Reservation of Stock; Transfer Restrictions. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock an amount equal to at least the number of then-outstanding LLC Units subject to exchange pursuant to the Exchange Agreement. No shares of Class V Common Stock may be issued except to a holder of LLC Units (other than the Corporation or any subsidiary of the Corporation that is a holder of LLC Units), such that after such issuance of Class V Common Stock such holder holds an identical number of LLC Units and shares of Class V Common Stock in accordance with the Exchange Agreement. The Corporation shall take all actions necessary so that, for so long as the Class V Common Stock is outstanding, the number of shares of Class V Common Stock outstanding (plus any shares of Class V Common Stock which have been transferred to the Corporation pursuant to Section 4.3(D), if the corresponding LLC Units have not also been removed from issuance) shall equal the number of LLC Units outstanding pursuant to the Exchange Agreement.

(F) Restrictive Legend. All certificates or book entries representing shares of Class V Common Stock, as the case may be, shall include a legend in a form determined by the Board referencing the transfer restrictions set forth herein, and in the LLC Agreement, the Exchange Agreement and the Stockholders Agreement.

(G) Retirement and Cancellation of Class V Common Stock. To the extent that any holder of Class V Common Stock exercises its right pursuant to the Exchange Agreement to exchange some or all of such holder's LLC Units for Class A Common Stock in accordance with the Exchange Agreement, then, concurrently with such exchange under the Exchange Agreement, a number of shares of Class V Common Stock registered in the name of such holder equal to the number of LLC Units that are exchanged by such holder in such transaction (subject to equitable adjustment for any event described in Section 4.3(H) below, as applicable) shall upon transfer to the Corporation in accordance with the Exchange Agreement be retired and cancelled for no consideration and such shares shall not be reissued by the Corporation.

(H) Adjustments. If the Corporation at any time combines or subdivides (by any stock split, stock dividend, recapitalization, reorganization, merger, amendment of this Certificate of Incorporation, scheme, arrangement or otherwise) the number of shares of Class A Common Stock into a greater or lesser number of shares, the shares of Class V Common Stock outstanding immediately prior to such combination or subdivision shall be proportionately similarly combined or subdivided such that the ratio of shares of outstanding Class V Common Stock to shares of outstanding Class A Common Stock immediately prior to such combination or subdivision shall be maintained immediately after such combination or subdivision. Any adjustment described in this Section 4.3(H) shall become effective at the close of business on the date the combination or subdivision becomes effective. In no event shall the shares of Class V Common Stock be combined or subdivided (including by way of any stock split, stock dividend, recapitalization, reorganization, merger, amendment of this Certificate of Incorporation, scheme, arrangement or otherwise) unless the outstanding shares of Class A Common Stock shall be proportionately similarly combined or subdivided.

Section 4.4 Rights and Options. The Corporation has the authority to create and issue rights, warrants and options entitling the holders thereof to acquire from the Corporation any shares of its capital stock of any class or classes, with such rights, warrants and options to be evidenced by or in instrument(s) approved by the Board. The Board is empowered to set the exercise price, duration, times for exercise and other terms and conditions of such rights, warrants or options; *provided, however*, that the consideration to be received for shares of capital stock issuable upon exercise thereof may not be less than the par value thereof.

ARTICLE V

Section 5.1 By-Laws. In furtherance and not in limitation of the powers conferred by the DGCL, the Board is expressly authorized to make, amend, alter, change, add to or repeal the by-laws of the Corporation (as the same may be amended from time to time, the "By-Laws") without the consent or vote of the stockholders in any manner not inconsistent with the laws of the State of Delaware or this Certificate of Incorporation and without limiting the rights of any party pursuant to the Stockholders Agreement; *provided* that any amendment, alteration, change, addition to or repeal of Article V (*Indemnification and Advancement of Expenses*) of the By-Laws shall, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to provide broader indemnification rights to all such parties on a retroactive basis than permitted prior thereto), and shall not in any way diminish or adversely affect any right or protection existing at the time of such repeal or amendment or adoption of such inconsistent provision in respect of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding") (regardless of when such Proceeding is first threatened, commenced or completed) arising out of, or related to, any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

ARTICLE VI

Section 6.1 Board of Directors.

(A) *Board Powers; Number; Election; Term*. Except as otherwise provided in this Certificate of Incorporation or the DGCL, the business and affairs of the Corporation shall be managed by or under the direction of the Board. The total number of directors constituting the whole Board shall be determined from time to time exclusively by resolution adopted by the Board. The directors (other than those directors elected by the holders of any series of Preferred Stock, voting separately as a series or together with one or more other such series, as the case may be) shall be divided into three classes designated Class I, Class II and Class III. Each class shall consist, as nearly as possible, of one-third of the total number of such directors. Class I directors ("Class I Directors") shall initially serve for a term expiring at the first annual meeting of stockholders following the effectiveness of this Certificate of Incorporation, Class II directors ("Class II Directors") shall initially serve for a term expiring at the second annual meeting of stockholders following the effectiveness of this Certificate of Incorporation and Class III directors ("Class III Directors") shall initially serve for a term expiring at the third annual meeting of stockholders following the effectiveness of this Certificate of Incorporation. At each succeeding annual meeting, successors to the class of directors whose term expires at that annual meeting shall be elected for a term expiring at the third succeeding annual meeting of stockholders. If the number of such directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, but in no case shall a decrease in the number of directors remove or shorten the term of any incumbent director. Subject to the rights granted to the holders of any one or more series of Preferred Stock then outstanding and without limiting the rights of any party pursuant to the Stockholders Agreement, the election of directors shall be determined by a plurality of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon. Any such director shall hold office until the annual meeting at which his or her term expires and until his or her successor shall be elected and qualified, or his or her earlier death, resignation, retirement or removal from office. The Board is authorized to assign members of the Board already in office to their respective class at the time such classification becomes effective.

(B) *Newly Created Directorships and Vacancies.* Subject to the rights granted to the holders of any one or more series of Preferred Stock then outstanding or the rights granted pursuant to the Stockholders Agreement, any newly created directorship on the Board that results from an increase in the number of directors or any vacancy occurring in the Board (whether by death, resignation, retirement, removal or other cause) shall be filled by the affirmative vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director (and not by the stockholders of the Corporation). Any director elected to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall be elected and qualified, or until his or her earlier death, resignation, retirement or removal.

(C) *Resignation and Removal.* Any director may resign at any time upon notice to the Corporation given in writing or by any electronic transmission as permitted by the By-Laws. Any or all of the directors (other than the directors elected by the holders of any series of Preferred Stock, voting separately as a series or together with one or more other such series, as the case may be) may be removed only for cause and upon the affirmative vote of the holders of at least 66 2/3% of the total voting power of all the then-outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

(D) *Preferred Stock Directors.* Whenever the holders of any one or more series of Preferred Stock issued by the Corporation shall have the right, voting separately as a series or separately as a class with one or more such other series, to elect directors at an annual or special meeting of stockholders, the election, term of office, removal and other features of such directorships shall be governed by the terms of this Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) applicable thereto. Notwithstanding Section 6.1(A), the number of directors that may be elected by the holders of any such series of Preferred Stock shall be in addition to the number fixed pursuant to Section 6.1(A) hereof, and the total number of directors constituting the whole Board shall be automatically adjusted accordingly.

(E) *No Election by Written Ballot.* Directors of the Corporation need not be elected by written ballot unless the By-Laws shall so provide.

(F) *No Cumulative Voting.* The holders of shares of Common Stock shall not have cumulative voting rights.

ARTICLE VII

Section 7.1 Meetings of Stockholders. Any action required or permitted to be taken by the holders of stock of the Corporation must be effected at a duly called annual or special meeting of such holders in accordance with the By-Laws and may not be effected by any consent by such holders; *provided, however*, that any action required or permitted to be taken by the holders of Class V Common Stock, voting separately as a class, or, to the extent expressly permitted by the certificate of designation relating to one or more series of Preferred Stock, by the holders of such series of Preferred Stock, voting separately as a series or separately as a class with one or more other such series, may be taken without a meeting, without prior notice and without a vote, if a consent or consents, setting forth the action so taken, shall be signed by the holders of outstanding shares of the relevant class or series having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation in the manner forth in Section 228 of the DGCL. Subject to the rights of the holders of any series of Preferred Stock, special meetings of the stockholders of the Corporation for any purpose or purposes may be called only by or at the direction of the Board, the Chairman of the Board or the Chief Executive Officer of the Corporation. An annual meeting of stockholders for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held at such place, if any, on such date, and at such time as shall be fixed exclusively by resolution of the Board or a duly authorized committee thereof.

ARTICLE VIII

Section 8.1 Limited Liability of Directors. No director of the Corporation will have any personal liability to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as the same exists or hereafter may be amended. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended. Neither the amendment nor the repeal of this Article VIII shall eliminate or reduce the effect thereof in respect of any state of facts existing or act or omission occurring, or any cause of action, suit or claim that, but for this Article VIII, would accrue or arise, or otherwise adversely affect any limitation on the personal liability of a director of the Corporation existing prior to such amendment or repeal.

Section 8.2 Indemnification and Advancement of Expenses.

(A) Right to Indemnification and Advancement of Expenses. To the fullest extent permitted by applicable law, as the same exists or may hereafter be amended, the Corporation shall indemnify and hold harmless each person who is or was made a party or is threatened to be made a party to or is otherwise involved in a Proceeding by reason of the fact that he or she is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, manager, officer, employee or agent of another corporation or of a partnership, limited liability company, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (an "Indemnitee"), whether the basis of such Proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, against all liability and loss suffered and expenses (including, without limitation, attorneys' fees, judgments, fines and amounts paid in settlement) reasonably incurred by such Indemnitee in connection with such Proceeding. The Corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys' fees) incurred by an Indemnitee in defending or otherwise participating in any Proceeding in advance of its final disposition; *provided, however*, that, to the extent required by applicable law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking, by or on behalf of the Indemnitee, to repay all amounts so advanced if it shall ultimately be determined that the Indemnitee is not entitled to be indemnified under this Section 8.2 or otherwise. The rights to indemnification and advancement of expenses conferred by this Section 8.2 shall be contract rights and such rights shall continue as to an Indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators. Notwithstanding the foregoing provisions of this Section 8.2(A), except for Proceedings to enforce rights to indemnification and advancement of expenses, the Corporation shall indemnify and advance expenses to an Indemnitee in connection with a Proceeding (or part thereof) initiated by such Indemnitee only if such Proceeding (or part thereof) was authorized by the Board.

(B) Non-Exclusivity of Rights. The rights to indemnification and advancement of expenses conferred on any Indemnitee by this Section 8.2 shall not be exclusive of any other rights that any Indemnitee may have or hereafter acquire under law, this Certificate of Incorporation, the By-Laws, an agreement, vote of stockholders or disinterested directors, or otherwise.

(C) Amendments. Any repeal or amendment of this Section 8.2 by the stockholders of the Corporation or by changes in law, or the adoption of any other provision of this Certificate of Incorporation inconsistent with this Section 8.2, shall, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to provide broader indemnification rights to all such parties on a retroactive basis than permitted prior thereto), and shall not in any way diminish or adversely affect any right or protection existing at the time of such repeal or amendment or adoption of such inconsistent provision in respect of any Proceeding (regardless of when such Proceeding is first threatened, commenced or completed) arising out of, or related to, any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

(D) Reliance. Persons who after the date of the adoption of this provision become or remain directors or officers of the Corporation or who, while a director or officer of the Corporation, become or remain a director, officer, employee or agent of a subsidiary, shall be conclusively presumed to have relied on the rights to indemnity, advancement of expenses and other rights contained in this Section 8.2 in entering into or continuing such service. The rights to indemnification and to the advancement of expenses conferred in this Section 8.2 shall apply to claims made against an Indemnitee arising out of acts or omissions which occurred or occur both prior and subsequent to the adoption hereof.

(E) Persons other than Indemnitees. This Section 8.2 shall not limit the right of the Corporation, to the extent and in the manner authorized or permitted by law, to indemnify and to advance expenses to persons other than Indemnitees.

ARTICLE IX

Section 9.1 DGCL Section 203 and Business Combinations.

(A) The Corporation hereby expressly elects not to be governed by Section 203 of the DGCL.

(B) Notwithstanding the foregoing, the Corporation shall not engage in any business combination (as defined below), at any point in time at which the Corporation's Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act of 1934, as amended (the "Exchange Act"), with any interested stockholder (as defined below) for a period of three years following the time that such stockholder became an interested stockholder, unless:

(1) prior to such time, the Board approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder, or

(2) upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock (as defined below) of the Corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned by (i) persons who are directors and also officers and (ii) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer, or

(3) at or subsequent to such time, the business combination is approved by the Board and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock of the Corporation which is not owned by the interested stockholder.

(C) For purposes of this Article IX, references to:

(1) “Affiliate” means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person.

(2) “associate”, when used to indicate a relationship with any person, means: (i) any corporation, partnership, unincorporated association or other entity of which such person is a director, officer or partner or is, directly or indirectly, the owner of 20% or more of any class of voting stock; (ii) any trust or other estate in which such person has at least a 20% beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and (iii) any relative or spouse of such person, or any relative of such spouse, who has the same residence as such person.

(3) “business combination”, when used in reference to the Corporation and any interested stockholder of the Corporation, means:

- a. any merger or consolidation of the Corporation or any direct or indirect majority-owned subsidiary of the Corporation (i) with the interested stockholder, or (ii) with any other corporation, partnership, unincorporated association or other entity if the merger or consolidation is caused by the interested stockholder and as a result of such merger or consolidation Section (B) of this Article IX is not applicable to the surviving entity;
- b. any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a stockholder of the Corporation, to or with the interested stockholder, whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation which assets have an aggregate market value equal to 10% or more of either the aggregate market value of all the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the Corporation;
- c. any transaction which results in the issuance or transfer by the Corporation or by any direct or indirect majority-owned subsidiary of the Corporation of any stock of the Corporation or of such subsidiary to the interested stockholder, except: (i) pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which securities were outstanding prior to the time that the interested stockholder became such; (ii) pursuant to a merger under Section 251(g) of the DGCL; (iii) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which security is distributed, pro rata to all holders of a class or series of stock of the Corporation subsequent to the time the interested stockholder became such; (iv) pursuant to an exchange offer by the Corporation to purchase stock made on the same terms to all holders of said stock; or (v) any issuance or transfer of stock by the Corporation; *provided, however*, that in no case under items (iii) through (v) of this subsection (c) shall there be an increase in the interested stockholder’s proportionate share of the stock of any class or series of the Corporation or of the voting stock of the Corporation (except as a result of immaterial changes due to fractional share adjustments);

- d. any transaction involving the Corporation or any direct or indirect majority-owned subsidiary of the Corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, of the Corporation or of any such subsidiary which is owned by the interested stockholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested stockholder; or
- e. any receipt by the interested stockholder of the benefit, directly or indirectly (except proportionately as a stockholder of the Corporation), of any loans, advances, guarantees, pledges, or other financial benefits (other than those expressly permitted in subsections (a) through (d) above) provided by or through the Corporation or any direct or indirect majority-owned subsidiary.

(4) “control,” including the terms “controlling,” “controlled by” and “under common control with,” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person who is the owner of 20% or more of the outstanding voting stock of a corporation, partnership, unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such person holds voting stock, in good faith and not for the purpose of circumventing this Section (C) of Article IX, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of such entity.

(5) “interested stockholder” means any person (other than the Corporation or any direct or indirect majority-owned subsidiary of the Corporation) that (i) is the owner of 15% or more of the outstanding voting stock of the Corporation, or (ii) is an Affiliate or associate of the Corporation and was the owner of 15% or more of the outstanding voting stock of the Corporation at any time within the three-year period immediately prior to the date on which it is sought to be determined whether such person is an interested stockholder; and the Affiliates and associates of such person; but “interested stockholder” shall not include (I) any Stockholder Party, any Stockholder Party Direct Transferee, any Stockholder Party Indirect Transferee or any of their respective Affiliates or associates or successors or any “group,” or any member of any such group, to which such persons are a party under Rule 13d-5 of the Exchange Act, or (II) any person whose ownership of shares in excess of the 15% limitation set forth herein is the result of any action taken solely by the Corporation; *provided, further*, that in the case of clause (II) such person shall be an interested stockholder if thereafter such person acquires additional shares of voting stock of the Corporation, except as a result of further corporate action not caused, directly or indirectly, by such person. For the purpose of determining whether a person is an interested stockholder, the voting stock of the Corporation deemed to be outstanding shall include stock deemed to be owned by the person through application of the definition of “owner” below but shall not include any other unissued stock of the Corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(6) “owner” including the terms “own” and “owned.” when used with respect to any stock, means a person that individually or with or through any of its Affiliates or associates:

- a. beneficially owns such stock, directly or indirectly; or
- b. has (i) the right to acquire such stock (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; *provided, however*; that a person shall not be deemed the owner of stock tendered pursuant to a tender or exchange offer made by such person or any of such person’s Affiliates or associates until such tendered stock is accepted for purchase or exchange; or (ii) the right to vote such stock pursuant to any agreement, arrangement or understanding; *provided, however*; that a person shall not be deemed the owner of any stock because of such person’s right to vote such stock if the agreement, arrangement or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to 10 or more persons; or
- c. has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in item (ii) of subsection (b) above), or disposing of such stock with any other person that beneficially owns, or whose Affiliates or associates beneficially own, directly or indirectly, such stock.

(7) “person” means any individual, corporation, partnership, unincorporated association or other entity.

(8) “stock” means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest.

(9) “Stockholder Parties” means the Stockholders (as defined in the Stockholders Agreement). The term “Stockholder Party” shall have a correlative meaning to “Stockholder Parties.”

(10) “Stockholder Party Direct Transferee” means any person that acquires (other than in a registered public offering) directly from any Stockholder Party or any of its successors or any “group,” or any member of any such group, of which such persons are a party under Rule 13d-5 of the Exchange Act beneficial ownership of 15% or more of the then-outstanding voting stock of the Corporation.

(11) “Stockholder Party Indirect Transferee” means any person that acquires (other than in a registered public offering) directly from any Stockholder Party Direct Transferee or any other Stockholder Party Indirect Transferee beneficial ownership of 15% or more of the then-outstanding voting stock of the Corporation.

(12) “voting stock” means stock of any class or series entitled to vote generally in the election of directors and, with respect to any entity that is not a corporation, any equity interest entitled to vote generally in the election of the governing body of such entity. Every reference to a percentage of voting stock shall refer to such percentages of the votes of such voting stock.

ARTICLE X

Section 10.1 Competition and Corporate Opportunities.

(A) In recognition and anticipation that (i) certain directors, principals, officers, employees, equityholders and/or other representatives of VPC Impact Acquisition Holdings Sponsor, LLC ("Sponsor") and its Affiliates and Affiliated Entities (each, as defined below) may serve as directors, officers or agents of the Corporation, (ii) the Sponsor and its Affiliates and Affiliated Entities, including (I) any portfolio company in which they or any of their respective Affiliates or Affiliated Entities have made a debt or equity investment (and vice versa) or (II) any of their respective limited partners, non-managing members or other similar direct or indirect investors, may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other businesses that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, (iii) certain directors, principals, officers, employees, equityholders and/or other representatives of Intercontinental Exchange Holdings, Inc. ("Holdings") and its Affiliates and Affiliated Entities may serve as directors, officers or agents of the Corporation, (iv) Holdings and its Affiliates and Affiliated Entities, including (I) any portfolio company in which they or any of their respective Affiliates or Affiliated Entities have made a debt or equity investment (and vice versa) or (II) any of their respective limited partners, non-managing members or other similar direct or indirect investors, may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other businesses that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, and (v) members of the Board who are not employees of the Corporation ("Non-Employee Directors") and their respective Affiliates and Affiliated Entities including (I) any company in which they or any of their respective Affiliates or Affiliated Entities have made a debt or equity investment (and vice versa) or (II) any of their respective direct or indirect investors, may now engage and may continue to engage in (a) the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or (b) other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, the provisions of this Article X are set forth to regulate and define the conduct of certain affairs of the Corporation with respect to certain classes or categories of business opportunities as they may involve the Sponsor, Holdings, any of the Non-Employee Directors or their respective Affiliates or Affiliated Entities and the powers, rights, duties and liabilities of the Corporation and its directors, officers and stockholders in connection therewith.

(B) None of (i) Sponsor, (ii) Holdings or (iii) any Non-Employee Director or his, her or its respective Affiliates or Affiliated Entities (the Persons (as defined below) above being referred to, collectively, as "Identified Persons" and, individually, as an "Identified Person") shall, to the fullest extent permitted by law, have any duty to refrain from directly or indirectly (1) engaging in and possessing interests in other business ventures of every type and description, including those engaged in the same or similar business activities or lines of business in which the Corporation or any of its Affiliates now engages or proposes to engage or (2) otherwise competing with the Corporation or any of its Affiliates, on its own account, or in partnership with, or as an employee, officer, director or shareholder of any other Person and, to the fullest extent permitted by law, no Identified Person shall be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty solely by reason of the fact that such Identified Person engages in any such activities. To the fullest extent permitted from time to time by the laws of the State of Delaware, the Corporation hereby renounces any interest or

expectancy in, or right to be offered an opportunity to participate in, any business opportunity which may be a corporate opportunity for an Identified Person and the Corporation or any of its Affiliates, except as provided in Section 10.1(C) of this Article X. Subject to said Section 10.1(C) of this Article X, in the event that any Identified Person acquires knowledge of a potential transaction or other business opportunity which may be a corporate opportunity for itself, herself or himself and the Corporation or any of its Affiliates, such Identified Person shall, to the fullest extent permitted by law, have no duty (fiduciary, contractual or otherwise) to communicate, present or offer such transaction or other business opportunity or matter to the Corporation or any of its Affiliates or stockholders and, to the fullest extent permitted by law, shall not be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any duty (fiduciary, contractual or otherwise) as a stockholder, director or officer of the Corporation solely by reason of the fact that such Identified Person pursues or acquires such corporate opportunity for itself, herself or himself, or offers or directs such corporate opportunity to another Person or does not present such opportunity to the Corporation or any of its Affiliates or stockholders.

(C) The Corporation does not renounce its interest in any corporate opportunity offered to any Non-Employee Director if such opportunity is expressly offered to such person solely in his or her capacity as a director of the Corporation, and the provisions of Section 10.1(B) of this Article X shall not apply to any such corporate opportunity.

(D) In addition to and notwithstanding the foregoing provisions of this Article X, a corporate opportunity shall not be deemed to be a potential corporate opportunity for the Corporation if it is a business opportunity that (i) the Corporation is neither financially or legally able, nor contractually permitted to undertake, (ii) from its nature, is not in the line of the Corporation's business or is of no practical advantage to the Corporation or (iii) is one in which the Corporation has no interest or reasonable expectancy.

(E) For purposes of this Article X, (i) "Affiliate" shall mean (A) in respect of the Sponsor, any Person that, directly or indirectly, is controlled by the Sponsor (as applicable), controls the Sponsor (as applicable) or is under common control with the Sponsor (as applicable) and shall include any principal, member, director, manager, investment manager, investor, partner, stockholder, officer, employee, predecessor, successor, agent or other representative of any of the foregoing (other than the Corporation and any entity that is controlled by the Corporation), including, without limitation, funds, accounts and/or other investment vehicles managed by Victory Park Capital Advisors, LLC, (B) in respect of Holdings, any Person that, directly or indirectly, is controlled by Holdings (as applicable), controls Holdings (as applicable) or is under common control with Holdings (as applicable) and shall include any principal, member, director, investor, partner, stockholder, officer, employee, predecessor, successor, agent or other representative of any of the foregoing (other than the Corporation and any entity that is controlled by the Corporation), (C) in respect of a Non-Employee Director, any Person that, directly or indirectly, is controlled by such Non-Employee Director (other than the Corporation and any entity that is controlled by the Corporation) and (D) in respect of the Corporation, any Person that, directly or indirectly, is controlled by the Corporation; (ii) "Affiliated Entity" shall mean (A) any Person of which a Non-Employee Director serves as an officer, director, employee, agent or other representative (other than the Corporation and any entity that is controlled by the Corporation), (B) any direct or indirect partner, stockholder, member, manager or other representative of such Person or (C) any Affiliate of any of the foregoing; and (iii) "Person" shall mean any individual, corporation, general or limited partnership, limited liability company, joint venture, trust, association or any other entity.

(F) To the fullest extent permitted by law, any Person purchasing or otherwise acquiring any interest in any shares of capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article X.

(G) Neither the alteration, amendment, addition to or repeal of this Article X, nor the adoption of any provision of this Certificate of Incorporation (including any Preferred Stock designation) inconsistent with this Article X, shall eliminate or reduce the effect of this Article X upon Sponsor, Holdings or any of their respective Affiliates or Affiliated Entities in respect of any business opportunity or any other matter occurring, or any cause of action, suit or claim that would accrue or arise, prior to, upon or following such alteration, amendment, addition, repeal or adoption. This Article X shall not limit any protections or defenses available to, or indemnification or advancement rights of, any director or officer of the Corporation under this Certificate of Incorporation, the By-Laws or applicable law.

ARTICLE XI

Section 11.1 Severability. If any provision or provisions of this Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Certificate of Incorporation (including, without limitation, each portion of any paragraph of this Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby.

ARTICLE XII

Section 12.1 Forum. Unless the Corporation consents in writing to the selection of an alternative forum, (i) any derivative action or proceeding brought or purportedly brought on behalf of the Corporation, (ii) any action or proceeding asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, employee, stockholder or agent of the Corporation to the Corporation or the Corporation's stockholders, or any claim for aiding and abetting such alleged breach, (iii) any action or proceeding asserting a claim (a) arising pursuant to, or seeking to enforce any right, obligation or remedy under, any provision of the DGCL, the Certificate of Incorporation or the By-Laws (in each case, as they may be amended from time to time) or (b) as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware, (iv) any action or proceeding to interpret, apply, enforce or determine the validity of the Certificate of Incorporation or the By-Laws (in each case, as they may be amended from time to time) or any provision thereof, (v) any action or proceeding asserting a claim against the Corporation or any current or former director, officer, employee, stockholder or agent of the Corporation governed by the internal affairs doctrine of the law of the State of Delaware, or (vi) any action or proceeding asserting an "internal corporate claim" as defined in Section 115 of the DGCL shall, to the fullest extent permitted by law and subject to the court's having personal jurisdiction over the indispensable parties named as defendants, be solely and exclusively brought in the Court of Chancery of the State of Delaware or, if and only if such court does not have subject matter jurisdiction thereof, any other court located in the State of Delaware with subject matter jurisdiction. Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall, to the fullest extent permitted by law, be the sole and exclusive forum for the resolution of any complaint asserting a cause of action or proceeding arising under the Securities Act of 1933, as amended. To the fullest extent permitted by law, any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XII. Failure to enforce the foregoing provisions would cause the Corporation irreparable harm and the Corporation shall be entitled to equitable relief, including injunctive relief and specific performance.

ARTICLE XIII

Section 13.1 Amendments. Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the following provisions in this Certificate of Incorporation may be amended, altered, repealed or rescinded, in whole or in part, or any provision inconsistent therewith or herewith may be adopted, only by the affirmative vote of the holders of at least 66 2/3% of the total voting power of all the then outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class: Article V, Article VI, Article VII, Article VIII, Article IX, Article X, Article XII and this Article XIII. Except as expressly provided in the foregoing sentence and the remainder of this Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock), this Certificate of Incorporation may be amended by the affirmative vote of the holders of a majority of the total voting power of all the then-outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

ARTICLE XIV

Section 14.1 Facts Ascertainable. When the terms of this Certificate of Incorporation refers to a specific agreement or other document to determine the meaning or operation of a provision hereof, the Secretary of the Corporation shall maintain a copy of such agreement or document at the principal executive offices of the Corporation and a copy thereof shall be provided free of charge to any stockholder of the Corporation who makes a request therefor.

ARTICLE XV

Section 15.1 Sole Incorporator and Directors. The name and mailing address of the sole incorporator is as follows:

Gordon Watson	5900 Windward Parkway, Suite 450 Alpharetta, GA 30005
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The powers of the incorporator are to terminate upon the filing of this Certificate of Incorporation with the Secretary of State of the State of Delaware. The names and mailing addresses of the persons who are to serve as the directors of the Corporation until the first annual meeting of stockholders of the Corporation, until their successors are duly elected and qualified, or until their earlier death, resignation, retirement, or removal from office, are as follows:

Gavin Michael	5900 Windward Parkway, Suite 450 Alpharetta, GA 30005
Michelle Goldberg	5900 Windward Parkway, Suite 450 Alpharetta, GA 30005
David C. Clifton	5900 Windward Parkway, Suite 450 Alpharetta, GA 30005
Kristyn Cook	5900 Windward Parkway, Suite 450 Alpharetta, GA 30005
Gordon Watson	5900 Windward Parkway, Suite 450 Alpharetta, GA 30005
Sean Collins	5900 Windward Parkway, Suite 450 Alpharetta, GA 30005

Richard Lumb

5900 Windward Parkway, Suite 450
Alpharetta, GA 30005

Andrew A. Main

5900 Windward Parkway, Suite 450
Alpharetta, GA 30005

* * *

IN WITNESS WHEREOF, the Sole Incorporator has caused this Certificate of Incorporation to be signed on October 15, 2021.

By: /s/ Gordon Watson
Name: Gordon Watson
Sole Incorporator

[Signature Page to Certificate of Incorporation]

**CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF INCORPORATION
OF
BAKKT HOLDINGS, INC.**

Bakkt Holdings, Inc., a corporation organized and existing under the laws of the State of Delaware (the “**Corporation**”), certifies that:

1. The name of the Corporation is Bakkt Holdings, Inc. The Corporation’s original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on October 15, 2021.

2. The Corporation’s Certificate of Incorporation is hereby amended as follows:

a. The first sentence of Article IV, Section 4.1 of the Corporation’s Certificate of Incorporation is hereby amended and restated in its entirety as follows:

“The total number of shares of all classes of capital stock that the Corporation is authorized to issue is 41,000,000 shares, consisting of (i) 1,000,000 shares of preferred stock, par value \$0.0001 per share (“Preferred Stock”), and (ii) 40,000,000 shares of common stock, par value \$0.0001 per share (the “Common Stock”), which consists of (A) 30,000,000 shares of Class A common stock (“Class A Common Stock”) and (B) 10,000,000 shares of Class V common stock (“Class V Common Stock”).”

b. Article IV, Section 4.1 of the Corporation’s Certificate of Incorporation is hereby amended to add the following paragraph at the end of Article IV, Section 4.1:

“Upon the effectiveness of the filing of the Certificate of Amendment to the Certificate of Incorporation adding this paragraph (the “Effective Time”), each twenty-five (25) shares of (i) Class A Common Stock issued immediately prior to the Effective Time shall automatically be combined into one (1) validly issued, fully paid and non-assessable share of Class A Common Stock, and (ii) Class V Common Stock issued immediately prior to the Effective Time shall automatically be combined into one (1) validly issued, fully paid and non-assessable share of Class V Common Stock, in each case without any further action by the Corporation or any holder thereof, subject to the treatment of fractional share interests as described below (the “Reverse Stock Split”). No fractional shares of Class A Common Stock or Class V Common Stock shall be issued in connection with the Reverse Stock Split. Each certificate that immediately prior to the Effective Time represented shares of Class A Common Stock or Class V Common Stock, as applicable (the “Old Certificates”), shall, until surrendered to the Corporation in exchange for a certificate representing such new number of shares of Class A Common Stock or Class V Common Stock, respectively, automatically represent that number of shares of Class A Common Stock or Class V Common Stock, as applicable, into which the shares of Class A Common Stock or Class V Common Stock, as applicable, represented by the Old Certificate shall have been combined, subject to the elimination of fractional share interests as described above.”

3. This Certificate of Amendment was duly adopted in accordance with Section 242 of the General Corporation Law of the State of Delaware.

4. This Certificate of Amendment shall become effective on April 29, 2024 at 12:01 a.m. Eastern Time.

[Signature Page Follows]

IN WITNESS WHEREOF, this Certificate of Amendment is duly executed by the undersigned officer of the Corporation on April 26, 2024.

By: /s/ ANDREW MAIN

Name: Andrew Main

Title: President and Chief Executive Officer

**AMENDMENT NO. 2
TO
BAKKT HOLDINGS, INC.
2021 OMNIBUS INCENTIVE PLAN**

This Amendment No. 2 dated May 31, 2024 (this "Amendment") amends the 2021 Omnibus Incentive Plan, as amended (the "Plan"), of Bakkt Holdings, Inc. (the "Company"). Except as otherwise explicitly set forth herein, all provisions of the Plan shall remain in full force and effect. Capitalized terms used in the Amendment without definition shall have meanings set forth in the Plan.

WHEREAS, the Company desires to amend the Plan as hereinafter provided in order to increase the number of shares of Common Stock issuable under the Plan from 2,096,296 to 3,034,921; and

WHEREAS, the Board of Directors approved the substance of this Amendment as of April 15, 2024, and accordingly, the Company desires to amend the Plan as hereinafter provided.

NOW, THEREFORE, the Plan is hereby amended as follows:

1. Increase in Number of Shares Subject to the Plan. Section 1.3.1 of the Plan is amended to read in its entirety as follows:

Subject to the other provisions of this Section 1.3, the total number of Shares that may be granted under the Plan will be 3,034,921 (the "**Share Limit**"). Such Shares may, in the discretion of the Committee, be either authorized but unissued Shares or Shares previously issued and reacquired by the Company. In the case of a grant of a stock-settled stock appreciation right, the number of Shares available for grant under the Plan will be reduced by the full number of Shares granted under such stock appreciation right. Shares subject to awards that are assumed, converted or substituted under the Plan as a result of the Company's acquisition of another company (including by way of merger, combination or similar transaction) ("**Acquisition Awards**") will not count against the number of Shares that may be granted under the Plan or be subject to the minimum vesting provisions in Section 2.4. Available shares under a stockholder approved plan of an acquired company (as appropriately adjusted to reflect the transaction) may be used for Awards under the Plan (subject to New York Stock Exchange rules) and do not reduce the maximum number of shares available for grant under the Plan, subject to applicable stock exchange requirements. All Shares that can be delivered under the Plan (as adjusted pursuant to Section 1.3.3) may be delivered through Incentive Stock Options.

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2. Effective Date. The amendments to the Plan pursuant to Section 1 of this Amendment shall be effective upon receipt of approval of such amendments by the Company's stockholders, and shall be subject to and contingent upon receipt of such approval.



Wilson Sonsini Goodrich & Rosati
Professional Corporation

900 South Capital of Texas Highway
Las Cimas IV, Fifth Floor
Austin, Texas 78746-5546

O: 512.338.5400

F: 512.338.5499

July 8, 2024

Bakkt Holdings, Inc.
10000 Avalon Boulevard
Suite 1000
Alpharetta, Georgia 30009

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

This opinion is furnished to you in connection with the Registration Statement on Form S-8 (the "Registration Statement"), filed by Bakkt Holdings, Inc., a Delaware corporation (the "Company"), with the Securities and Exchange Commission (the "Commission") in connection with the registration under the Securities Act of 1933, as amended (the "Securities Act"), of 938,625 shares (the "Shares") of the Company's Class A common stock, par value \$0.0001 per share, reserved for future issuance under the Bakkt Holdings, Inc. 2021 Omnibus Employee Incentive Plan, as amended (the "2021 Plan").

We are of the opinion that the Shares, when issued pursuant to the terms of the 2021 Plan and pursuant to the agreements that accompany the 2021 Plan and in accordance with the Registration Statement, will have been duly authorized and validly issued, fully paid and nonassessable.

We consent to the use of this opinion as an exhibit to the Registration Statement and further consent to the use of our name wherever appearing in the Registration Statement and any amendments thereto. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ Wilson Sonsini Goodrich & Rosati, P.C.

WILSON SONSINI GOODRICH & ROSATI,
Professional Corporation

AUSTIN	BEIJING	BOULDER	BOSTON	BRUSSELS	HONG KONG	LONDON	LOS ANGELES	NEW
SALT LAKE CITY	SAN DIEGO	SAN FRANCISCO	YORK	PALO ALTO	SEATTLE	SHANGHAI	WASHINGTON, DC	WILMINGTON, DE

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the 2021 Omnibus Incentive Plan of Bakkt Holdings, Inc. of our report dated March 25, 2024, with respect to the consolidated financial statements of Bakkt Holdings, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2023, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Atlanta, Georgia
July 8, 2024

Calculation of Filing Fee Table

Form S-8
(Form Type)Bakkt Holdings, Inc.
(Exact name of registrant as specified in its charter)

Table 1—Newly Registered Securities

Security Type	Security Class Title	Fee Calculation Rule	Amount Registered(1)	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Equity	Class A Common stock, par value \$0.0001 per share	Rule 457(c) and Rule 457(h)	938,625	\$17.49(2)	\$16,411,858.13	\$147.60 per \$1,000,000	\$ 2,422.39
Total Offering Amounts					\$16,411,858.13		2,422.39
Total Fee Offsets							—
Net Fee Due							\$ 2,422.39

- (1) This Registration Statement covers shares of Class A common stock, \$0.0001 par value per share, of Bakkt Holdings, Inc., or the Registrant, authorized for issuance pursuant to the Registrant's 2021 Omnibus Incentive Plan, as amended (the "Plan"). Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement also covers any additional shares that may become issuable under the Plan by reason of any substitutions or adjustments to shares to account for any change in corporate capitalization, such as a merger, consolidation, reorganization, recapitalization, separation, partial or complete liquidation, stock dividend, stock split, reverse stock split, split up, spin-off or other distribution of stock or property of the Registrant, combination or exchange of shares, dividend in kind or other like change in capital structure.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rules 457(c) and (h) under the Securities Act, based on the average of the high (\$18.17) and low (\$16.80) prices of the Registrant's Class A common stock as reporting on the New York Stock Exchange, which was \$17.49 on July 5, 2024.