

Division of Corporations

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Florida Department of State

Division of Corporations

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FLORIDA PROFIT CORPORATION OR P.A.

MDS-SPC, Inc.

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**ARTICLES OF INCORPORATION
OF
MDS-SPC, INC., A FLORIDA CORPORATION**

The Articles of Incorporation of MDS-SPC, INC., a Florida corporation (the "Corporation") is stated as follows:

ARTICLE I.

The name of this Corporation is MDS-SPC, INC., a Florida corporation.

ARTICLE II.

The address of the registered office of the Corporation in the State of Florida is 35 NE 40th Street, Miami, Florida 33137, and the name of its registered agent is Michael D. Arama whose address is 35 NE 40th Street, Miami, Florida 33137. The principal office and mailing address of the corporation is 35 NE 40th Street, Miami, Florida 33137.

ARTICLE III.

The sole purpose of the Corporation is: (a) to act as a manager for merchant account portfolios; and (b) to engage in any lawful act or activity under the General Corporation Law of the State of Florida which are incidental to the foregoing or necessary and appropriate to accomplish the purposes specified in clause (a) above, except as limited by Articles Eighth and Ninth.

ARTICLE IV.

The amount of the total authorized capital stock of this Corporation is One Hundred Dollars (\$100.00) divided into 100 shares of One Dollar (\$1.00) each of Common Stock.

ARTICLE V.

(a) The number of Directors constituting the Board of Directors of the Corporation shall be such as from time to time shall be fixed by, or in the manner provided in, the By-laws of the Corporation; provided, however, no Director shall be a Trustee in bankruptcy for the Corporation or any Affiliate (as hereinafter defined). Further, so long as any indebtedness remains outstanding by Merchant Data Systems, Inc. to Wilshire Partners, LLC (the "Lender"), the number of directors shall be four (4); and further provided, that at all times, at least one (1) member (the "Independent Director") of the Board of Directors shall be an individual who is an Independent Director. "Independent Director" shall mean a person who (i) except in the capacity as a director of the Corporation, is not an officer, director, advisor, agent, employee, member or stockholder of the Corporation, or any Affiliate or a former employee, officer, advisor, agent, shareholder, member or director of the Corporation or any Affiliate; (ii) is not a spouse, child, grandchild or sibling of any of (i) above; (iii) is not (and is not affiliated with an entity that is) a significant advisor or consultant to the Corporation; (iv) is not affiliated with a company of which the Corporation is a significant customer or supplier; and (v) has not yet received, is not entitled to receive and was not a partner, member, officer or an employee of an entity that received, or is entitled to receive, in any year within

the five years preceding or in any years during such person's incumbency as a director, fees or other income from the Corporation or any affiliate of those entities in excess of 1% of the gross income, for any applicable year of such person, firm or business.

For purposes of this definition, "significant," with respect to any such relationship between two persons or entities shall mean any transaction, series of transactions or relationship involving more than the lesser of a) \$60,000 per calendar year or b) 1/2 of 1% of either person's or entity's annual income. In the event of the death, incapacity, resignation or removal of an Independent Director, the Board of Directors of the Corporation shall promptly appoint a replacement Independent Director and no action requiring the consent of an Independent Director shall be taken until a replacement Independent Director has been appointed. A person shall not be disqualified from serving as an Independent Director solely because such person acts as an Independent Director for any Affiliate, which has obtained financing from the Lender or any of its Affiliates, if such person is in the business of being, or is an employee of an entity that provides, an Independent Director.

"Affiliate" shall mean any person or entity other than the Corporation (i) which owns beneficially, directly or indirectly, more than 50% of the outstanding shares of Common Stock of the Corporation or which is otherwise in control of the Corporation, (ii) of which more than 50% of the outstanding voting securities are owned beneficially, directly or indirectly, by any entity described in clause (i) above, or (iii) which is controlled by an entity described in clause (i) above; provided that for purposes of this definition, the terms "control" and "controlled by" shall have the meanings assigned to them in Rule 405 under the Securities Act of 1933, as amended.

(b) Without limiting the other provisions of these Articles of Incorporation or any consents heretofore or hereafter given, it is recognized that the initial stockholder of the Corporation has specifically consented to the provisions of this Article Fifth, which consent the initial stockholder believes to be in the best interest of the initial stockholder and the Corporation. No Independent Director serving hereunder shall, with regard to any action to be taken under or in connection with Articles Sixth, Seventh, Eighth or Ninth, owe a fiduciary duty or other obligation to the initial stockholder or to any successor stockholders (except as may specifically be required by the statutory law of any applicable jurisdiction), and every stockholder, including each successor stockholder, shall consent to the foregoing by virtue of such stockholder's purchase of shares of capital stock of the Corporation, with no further act or deed of any stockholder being required to evidence such consent. Instead, such Independent Directors' fiduciary duties and other obligations with regard to such action under or in connection with Articles Sixth, Seventh, Eighth or Ninth shall be owed to the Corporation. In addition, so long as any indebtedness under that certain Loan Agreement by and between Merchant Data Systems, Inc. and Lender remains outstanding, no Independent Director serving in the capacity set forth in this Article Fifth may be removed unless his successor has been elected.

(c) The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors of the Corporation.

(d) The Board of Directors of the Corporation shall have concurrent power with the stockholders of the Corporation to make, alter, amend, change, add to or repeal the Bylaws of the Corporation.

(e) No director of the Corporation shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for any transaction from which the director derived an improper personal benefit. Any repeal or modification of this Article Fifth shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

(f) In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors of the Corporation are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the Florida General Corporation Act, Articles of Incorporation, and any Bylaws adopted by the stockholders of the Corporation; provided, however, that no Bylaws hereafter adopted by the stockholders shall invalidate any prior act of the directors of the Corporation which would have been valid if such Bylaws had not been adopted.

ARTICLE VI.

In furtherance and not in limitation of the powers conferred by statute, so long as any indebtedness remains outstanding by Merchant Data Systems, Inc. to Lender, the Board of Directors shall not make, alter or repeal the Bylaws of the Corporation without the prior unanimous written consent or a vote of all of the Board of Directors, including the Independent Directors. In addition, so long as any indebtedness remains outstanding by Merchant Data Systems, Inc. to Lender, any action under or in respect of the Bylaws of the Corporation that bears upon whether the separate corporate identity of the Corporation and its Affiliates will be respected, and the assets of the Corporation not consolidated with those of any Affiliate under applicable federal or state bankruptcy or insolvency laws, shall require the prior written consent of the Independent Directors.

ARTICLE VII.

(a) So long as any indebtedness remains outstanding by Merchant Data Systems, Inc. to the Lender, the Corporation shall not, without the affirmative vote of 100 percent of the Board of Directors, including the vote of the Independent Director, institute proceedings to be adjudicated bankrupt or insolvent; or consent to the institution of bankruptcy or insolvency proceedings against it; or file a petition seeking, or consent to, reorganization or relief under any applicable federal or state law relating to bankruptcy; or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Corporation or a substantial part of its property; or make any assignment for the benefit of creditors; or admit in writing its inability to pay its debts generally as they become due; or take any action in furtherance of any such action.

(b) So long as any indebtedness remains outstanding by Merchant Data Systems, Inc. to the Lender, the Corporation shall at all times observe the applicable legal requirements for the recognition of the Corporation as a legal entity separate from any Affiliates (as defined below), including, without limitation, as follows:

- 1.) The Corporation shall maintain its principal executive office and telephone and facsimile numbers separate from that of any Affiliate and shall conspicuously identify such office and numbers as its own. Additionally, the Corporation shall use its own separate stationary, invoices and checks which reflects its separate address, telephone number and facsimile number, as appropriate.
- 2.) The Corporation shall maintain its corporate records and books and accounts separate from those of any Affiliate or any other entity. The Corporation shall prepare unaudited annual financial statements, and the Corporation's financial statements shall substantially comply with generally accepted accounting principles.
- 3.) The Corporation shall maintain its own separate bank accounts, payroll and correct, complete and separate books of account.
- 4.) The Corporation shall hold itself out to the public (including any Affiliate's creditors) under the Corporation's own name and as a separate and distinct corporate entity and not as a department, division or otherwise of any Affiliate.
- 5.) All customary formalities regarding the corporate existence of the Corporation, including holding meetings of or obtaining the consent of its Board of Directors, as appropriate, and its stockholders and maintaining current and accurate minute books separate from those of any Affiliate, shall be observed.
- 6.) The Corporation shall act solely in its own corporate name and through its own duly authorized officers and agents. No Affiliate shall be appointed or act as agent of the Corporation.
- 7.) Investments shall be made in the name of the Corporation directly by the Corporation or on its behalf by brokers engaged and paid by the Corporation or its agents.
- 8.) Except as required by Lender, the Corporation shall not guarantee or assume or hold itself out or permit itself to be held out as having guaranteed or assumed any liabilities or obligations of any Affiliate, nor shall it make any loan to any Affiliate.
- 9.) The Corporation is and will be solvent and shall pay its own liabilities, indebtedness and obligations of any kind, including all administrative expenses, from its own separate assets.
- 10.) Assets of the Corporation shall be separately identified, maintained and segregated. The Corporation's assets shall at all times be held by or on behalf of the Corporation and if held on behalf of the Corporation by another entity, shall at all times be kept identifiable (in accordance with customary usage) as assets owned by the Corporation. This restriction requires, among other things, that corporate funds shall not be commingled with those of any Affiliate and it shall maintain all accounts in its own name and with its own tax identification number, separate from those of any Affiliate.

11.) The Corporation shall not take any action if, as a result of such action, the corporation would be required to register as an investment company under the Investment Company Act of 1940, as amended.

12.) The Corporation shall at all times be adequately capitalized to engage in the transactions contemplated at its formation.

13.) All data and records (including computer records) used by the Corporation or any Affiliate in the collection and administration of any loan shall reflect the Corporation's ownership interest therein.

14.) None of the Corporation's funds shall be invested in securities issued by any Affiliate.

15.) The corporation shall have no indebtedness or incur any liability other than (a) debts and liabilities for trade payables and accrued expenses incurred in the ordinary course of business of acting as manager of merchant portfolios.

ARTICLE VIII

The Corporation shall not engage in any business or activity other than as permitted in Article Third. Additionally, the Corporation shall not, so long as any monies are owed by Merchant Data Systems, Inc. to the Lender, (a) liquidate or dissolve the Corporation in whole or in part, (b) consolidate, merge or enter into any form of consolidation with or into any other entity, nor convey, transfer or lease its assets substantially as an entirety to any person or entity nor permit any entity to consolidate, merge or enter into any form of consolidation with or into the Corporation, nor convey, transfer or lease its assets substantially as an entirety to any person or entity and (c) except with the consent of Lender, amend or modify these Articles of Incorporation.

ARTICLE IX.

The Corporation reserves the right to amend, alter, change or repeal any provision contained in the Articles of Incorporation by the unanimous vote of the holders of all the Corporation's outstanding Common Stock and the unanimous vote of all of the Corporation's Directors, including the Independent Directors.

These Articles of Incorporation were duly adopted by a vote of the shareholders in accordance with the Florida General Corporation Act of the State of Florida.

The undersigned, for the purpose of filing and recording these Articles of Incorporation under the laws of the State of Florida, do certify that the facts herein stated are true, and I have accordingly hereunto set my hand this 8th day of May 2001.

The name and post office address of the Incorporator executing these Articles of Incorporator and first Director of the Corporation is:

Name

Michael D. Arama

Address

35 NE 40th Street, Miami, Florida 33137

The first Director shall hold office until the first annual meeting of the Stockholders of the Corporation.

THE UNDERSIGNED Incorporator, for the purpose of forming a Corporation to do business within the State of Florida, does make and file these Articles of Incorporation, hereby declaring and certifying that the facts stated are true.

Michael D. Arama

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

: SS

BEFORE ME, the undersigned authority, appeared Michael D. Arama, who is personally known to me or who has produced _____ as identification, and acknowledged that he executed said Articles of Incorporation, and who did take an oath.

WITNESS my hand and seal in the State and County aforesaid, this 8 day of May 2001.

Dagna V. Garcia
NOTARY PUBLIC, State of Florida

Print Name: DAGNA V. GARCIA



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TALLAHASSEE, FLORIDA

The undersigned hereby accepts the foregoing designation as initial Registered Agent and agrees to comply with the provisions of law applicable to said designation.

Michael D. Arama
Michael D. Arama, Registered Agent