

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

FORM 8-K

CURRENT REPORT

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

May 13, 2016

(Date of earliest event reported)



Qorvo, Inc.

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**001-36801**  
(Commission File  
Number)

**46-5288992**  
(I.R.S. Employer  
Identification No.)

**7628 Thorndike Road, Greensboro, North Carolina 27409-9421**

**and**

**2300 N.E. Brookwood Parkway, Hillsboro, Oregon 97124**

(Address of principal executive offices)

(Zip Code)

**(336) 664-1233 and (503) 615-9000**

(Registrant's telephone number, including area code)

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

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

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

Fiscal Year 2017 Performance-Based Restricted Stock Award Targets and Performance Criteria

On May 13, 2016, the Compensation Committee (the “Committee”) of the Board of Directors (the “Board”) of Qorvo, Inc. (the “Company”), approved awards of performance-based restricted stock units (“Awards”) in accordance with the Qorvo, Inc. 2012 Stock Incentive Plan, as amended (the “2012 Plan”), to certain executives, including each of the Company’s current named executive officers other than Steven J. Buhaly due to his planned retirement this year as previously announced. The purpose of these Awards is to link a portion of each named executive officer’s equity compensation both to the performance of the Company’s common stock in comparison to the semiconductor industry as a whole and to achievement of key Company initiatives that the Committee believes have a strong potential to impact longer-term stockholder value creation. The fair market value for each share of restricted stock underlying each Award was established by the Committee in accordance with the 2012 Plan at \$45.18 per share, which was the closing price of the Company’s common stock as reported on the NASDAQ Global Select Market on May 12, 2016. Each Award, in addition to being subject to customary terms and conditions as set forth in the 2012 Plan and respective Award agreement, is subject to specified conditions and represents a contingent right to receive an amount of the Company’s common stock at a future date. Each named executive officer (other than Mr. Buhaly) received an Award based upon total stockholder return (“TSR”) of the Company in comparison to the TSR of a benchmark index (“TSR-based RSUs”) and an Award based upon the Company’s achievement of Company performance objectives (“Objectives-based RSUs”).

The Awards will be earned, if at all, by each named executive officer based upon the following:

- 1) 50% will be TSR-based RSUs that will be earned based upon the TSR of the Company, in comparison to the TSR of a benchmark index (“Relative TSR”), over a three-year period; and
- 2) 50% will be Objectives-based RSUs that will be earned based upon the Company’s achievement of six performance objectives (two of which contain three related sub-objectives) (the “Performance Objectives”) established by the Committee that must be satisfied during the Company’s current fiscal year ending April 1, 2017 (the “Stock Award Performance Period”).

The TSR-based RSUs will be earned and vest over one-year, two-year and three-year performance periods (each a “TSR Performance Period”), beginning with a one-year period for fiscal year 2017. The number of TSR-based RSUs earned will be determined based on the Company’s TSR performance measured against the TSR of the S&P SPDR semiconductor ETF index during a TSR Performance Period. If certain threshold TSR levels specified in the relevant Award agreement are met in a TSR Performance Period, the named executive officer will be granted an Award for a number of shares equal to the target number of common shares multiplied by the applicable percentage assigned to such TSR performance level. Depending on the Company’s Relative TSR performance over the three TSR Performance Periods, the named executive officer may earn up to 200% of the target number of TSR-based RSUs. Total stockholder return is measured by taking the average share price during the final 90 days of the relevant TSR Performance Period divided by the average share price during the 90 days ending on the day prior to the start of the relevant TSR Performance Period. Share prices will be adjusted to reflect the reinvestment of dividends, if any.

For the Objectives-based RSUs, each of the Performance Objectives is separately weighted and expressed as a percentage of a target number of common shares. If a Performance Objective is met, the named executive officer will be granted an Award for a number of shares equal to the target multiplied by the applicable percentage earned and assigned to such Performance Objective. The named executive officer may earn up to 165% of the target number of Objectives-based RSUs if all Performance Objectives are met. The fiscal 2017 objectives relate to achievement of certain financial metrics, securing a specific design win with a key customer, the integration of key IT business processes and systems, the accomplishment of specific manufacturing-related improvements, and developing product capabilities identified as strategic to our business. The shares of restricted stock earned by a named executive officer at the end of the Stock Award Performance Period, if any, will vest over a three-year period, with 50% vesting following completion of the Stock Award Performance Period and the remaining 50% vesting in equal annual installments over each of the following two years. No shares are issued unless, and then only to the extent that, an Award is both earned and vested.

Subject to satisfaction of the applicable performance criteria, each of the Company's current named executive officers (other than Mr. Buhalý) will be eligible to receive shares of restricted common stock of the Company at the conclusion of the applicable TSR Performance Periods and Stock Award Performance Period up to the maximum number of shares set forth below:

<u>Name</u>	<u>Target TSR-Based Award</u>	<u>Maximum TSR-Based Award</u>	<u>Target Objectives-Based Award</u>	<u>Maximum Objectives-Based Award (if all Performance Objectives Achieved)</u>
Robert A. Bruggeworth President and Chief Executive Officer	29,220	58,440	29,220	48,213
Steven E. Creviston Corporate Vice President and President of Mobile Products	11,950	23,900	11,950	19,718
James L. Klein Corporate Vice President and President of Infrastructure and Defense Products	9,300	18,600	9,300	15,345

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

On May 13, 2016, the Board adopted Amended and Restated Bylaws of the Company (the "Bylaws"), effective immediately upon adoption, to provide for "proxy access" by eligible stockholders and to make other clarifying changes, as described below.

The Bylaws include a new Section 2.5, which provides that in connection with an annual meeting of stockholders at which directors are to be elected (following the Company's 2016 Annual Meeting of Stockholders), a stockholder, or a group of up to 20 stockholders, that has owned at least 3% of the Company's outstanding voting shares continuously for at least three years can nominate and include in the

Company's proxy materials up to the greater of two directors or 20% of the number of directors then in office, provided that the stockholder(s) and the stockholder nominee(s) satisfy the requirements specified in the Bylaws. The Bylaws also include a number of ministerial, clarifying and conforming changes to Sections 2.2, 2.3, 2.4, and 2.6, as well as corresponding updates to internal cross-references of section numbers.

The foregoing description of the Bylaws is qualified in all respects by reference to the text of the Bylaws, a copy of which is filed as Exhibit 3.1 to this Current Report on Form 8-K and incorporated herein by reference.

**Item 8.01. Other Events.**

On May 13, 2016, the Governance and Nominating Committee (the "G&NC") of the Board recommended to the Board that it take affirmative steps to seek to enhance the Board's membership diversity beyond current levels in connection with the nomination process for the Company's 2017 Annual Meeting of Stockholders (the "2017 Annual Meeting"). Based on this recommendation, on May 13, 2016, the Board adopted a resolution directing the G&NC to take meaningful steps, including the engagement of a professional search firm, to seek to identify one or more potential qualified female nominees for inclusion on the slate of nominees that are proposed for election at the 2017 Annual Meeting.

**Item 9.01. Financial Statements and Exhibits.**

**(d) Exhibits**

<u>Exhibit No.</u>	<u>Description</u>
3.1	Amended and Restated Bylaws of Qorvo, Inc., effective as of May 13, 2016

**SIGNATURE**

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

**Qorvo, Inc.**

By: /s/ Steven J. Buhaly

Steven J. Buhaly

Chief Financial Officer

Date: May 19, 2016

## EXHIBIT INDEX

Exhibit No.

Description

3.1

Amended and Restated Bylaws of Qorvo, Inc., effective as of May 13, 2016

**AMENDED AND RESTATED**

**BYLAWS**

**OF**

**QORVO, INC.**

a Delaware corporation

Adopted May 13, 2016

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**AMENDED AND RESTATED  
BYLAWS  
OF  
QORVO, INC.  
(a Delaware corporation)**

**ARTICLE I.  
CORPORATE OFFICES**

**1.1 REGISTERED OFFICE**

The registered office of the corporation shall be fixed in the certificate of incorporation of the corporation.

**1.2 OTHER OFFICES**

The corporation may at any time have offices at any place or places within or outside the State of Delaware as the board of directors may determine or as the business or affairs of the corporation may require.

**ARTICLE II.  
MEETINGS OF STOCKHOLDERS**

**2.1 PLACE OF MEETINGS**

Meetings of stockholders shall be held at any place within or outside the State of Delaware designated by the board of directors. In lieu of holding a stockholders' meeting at a designated place, the board of directors, in its sole discretion, may determine that any stockholders' meeting may be held solely by means of remote communication. In the absence of any such designation, stockholders' meetings shall be held at the principal executive office of the corporation.

**2.2 ANNUAL MEETING**

(a) The annual meeting of stockholders shall be held each year on a date and at a time designated by the board of directors. At the meeting, directors shall be elected, and any other business properly brought before the meeting may be transacted. The board of directors may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the board of directors.

(b) Nominations of persons for election to the board of directors and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders (i) pursuant to the corporation's notice of meeting; (ii) by or at the direction of the board of directors; (iii) by any stockholder of the corporation who (A) was a stockholder of record at the time of giving of notice provided for in this bylaw and at the time of the annual meeting, (B) is entitled to vote at the meeting and (C) complies with the notice procedures set forth in Section 2.2(c) of these bylaws as to such business or nomination; or (iv) with respect to the nominations of persons for election to the board of directors pursuant to Section 2.5 of these bylaws, by an Eligible

Stockholder (as defined in Section 2.5(b) of these bylaws) who complies with the requirements of Section 2.5 of these bylaws; clauses (iii) and (iv) shall be the exclusive means for a stockholder to make nominations or submit other business (other than matters properly brought under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and included in the corporation's notice of meeting) before an annual meeting of stockholders.

(c) Without qualification, for any nominations (other than nominations made pursuant to Section 2.5) or any other business to be properly brought before an annual meeting by a stockholder pursuant to Section 2.2(b)(iii) of these bylaws, the stockholder must have given timely notice thereof in writing to the Secretary and such other business must otherwise be a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the corporation not earlier than the close of business on the 120th day and not later than the close of business on the 90th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date (or if no annual meeting was held in the previous year), notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to the date of such annual meeting and not later than the later of the 90th day prior to the date of such annual meeting or, if the first public announcement of the date of such annual meeting is less than 100 days prior to the date of such annual meeting, the 10th day following the day on which public announcement of the date of such meeting is first made by the corporation. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. To be in proper form, a stockholder's notice to the Secretary, given pursuant to this Section 2.2(c) or Section 2.3(b) of these bylaws, must: (i) set forth, as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (A) the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner, if any, (B) (1) the class or series and number of shares of the corporation that are, directly or indirectly, owned beneficially and of record by such stockholder and such beneficial owner, (2) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the corporation or with a value derived in whole or in part from the value of any class or series of shares of the corporation, whether or not such instrument or right is subject to settlement in the underlying class or series of capital stock of the corporation or otherwise (a "Derivative Instrument") directly or indirectly owned beneficially by such stockholder, and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the corporation, (3) any proxy, contract, arrangement, understanding, or relationship pursuant to which such stockholder has a right to vote any shares of any security of the corporation, (4) any short interest in any security of the corporation (for purposes of this Section 2.2, a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (5) any rights to dividends on the shares of the corporation owned beneficially by such stockholder that are separated or separable from the underlying shares of the corporation, (6) any proportionate interest in shares of the corporation or Derivative Instruments held, directly or indirectly, by a general or

limited partnership in which such stockholder is a general partner or, directly or indirectly, beneficially owns an interest in a general partner and (7) any performance-related fees (other than an asset-based fee) that such stockholder is entitled to based on any increase or decrease in the value of shares of the corporation or Derivative Instruments, if any, as of the date of such notice, including without limitation any such interests held by members of such stockholder's immediate family sharing the same household, provided that such stockholder and beneficial owner, if any, shall supplement the information described in this Section 2.2(c)(i)(B) not later than 10 days after the record date for notice of the meeting to disclose such ownership as of such record date), and (C) any other information relating to such stockholder and beneficial owner, if any, that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder; (ii) if the notice relates to any business other than a nomination of a director or directors that the stockholder proposes to bring before the meeting, set forth (A) a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend the bylaws, the text of the proposed amendment), the reasons for conducting such business at the meeting and any material interest of such stockholder and beneficial owner, if any, in such business and (B) a description of all agreements, arrangements and understandings between such stockholder and beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder; (iii) set forth, as to each person, if any, whom the stockholder proposes to nominate for election or reelection to the board of directors (A) all information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected) and (B) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such stockholder and beneficial owner, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 promulgated under Regulation S-K under the Exchange Act if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; and (iv) with respect to each nominee for election or reelection to the board of directors, include a completed and signed questionnaire, representation and agreement required by Section 2.4(b) of these bylaws. The corporation may require any proposed nominee to furnish such other information as may reasonably be required by the corporation to determine the eligibility of such proposed nominee to serve as an independent director of the corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee.

(d) Notwithstanding anything in the second sentence of Section 2.2(c) of these bylaws to the contrary, in the event that the number of directors to be elected to the board of directors is increased and there is no public announcement by the corporation naming all of the nominees for director or specifying the size of the increased board of directors at least 100 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by Section 2.2(c) of these bylaws shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the corporation.

### **2.3 SPECIAL MEETING**

(a) A special meeting of stockholders may be called at any time by the board of directors. The board of directors may postpone, reschedule or cancel any special meeting of stockholders previously scheduled by the board of directors.

(b) Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the corporation's notice of meeting. Nominations of persons for election to the board of directors (other than pursuant to Section 2.5 of these bylaws) may be made at a special meeting of stockholders at which directors are to be elected pursuant to the corporation's notice of meeting (i) by or at the direction of the board of directors or (ii) provided that the board of directors has determined that directors shall be elected at such meeting, by any stockholder of the corporation who (A) is a stockholder of record at the time of giving of notice provided for in these bylaws and at the time of the special meeting, (B) is entitled to vote at the meeting, and (C) complies with the notice procedures set forth in Section 2.2(c) of these bylaws as to such nomination. In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the board of directors, any such stockholder may nominate (other than pursuant to Section 2.5 of these bylaws) a person or persons (as the case may be) for election to such position(s) as specified in the corporation's notice of meeting, if the stockholder's notice required by Section 2.2(c) of these bylaws with respect to any such nomination (including the completed and signed questionnaire, representation and agreement required by Section 2.4(b) of these bylaws) shall be delivered to the Secretary at the principal executive offices of the corporation not earlier than the close of business on the 120th day prior to the date of such special meeting and not later than the close of business on the later of the 90th day prior to the date of such special meeting or, if the first public announcement of the date of such special meeting is less than 100 days prior to the date of such special meeting, the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the board of directors to be elected at such meeting. In no event shall any adjournment or postponement of a special meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

### **2.4 GENERAL PROVISIONS REGARDING STOCKHOLDER NOMINATIONS AND PROPOSALS; ELIGIBILITY OF NOMINEES**

(a) Subject to Section 3.4 of these bylaws, only such persons who are nominated in accordance with the procedures set forth in Sections 2.2 through Section 2.5 of these bylaws shall

be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in these bylaws. Except as otherwise provided by law, the certificate of incorporation or these bylaws, the Chairman of the meeting shall have the power and duty to determine whether a nomination (other than a nomination made pursuant to Section 2.5 of these bylaws) or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in these bylaws and, if any proposed nomination or business is not in compliance with this bylaw, to declare that such defective proposal or nomination shall be disregarded. Notwithstanding the foregoing provisions of Sections 2.2 and 2.3, unless otherwise required by law, if a stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the corporation to present a nomination (other than a nomination made pursuant to Section 2.5 of these bylaws) or proposed business made by such stockholder pursuant to Section 2.2 or 2.3, such proposal or nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the corporation. To be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as a proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(b) To be eligible to be a nominee for election or reelection as a director of the corporation (other than pursuant to Section 2.5 of these bylaws), a person must deliver (in accordance with the time periods prescribed for delivery of notice under Section 2.2(c) of these bylaws) to the Secretary at the principal executive offices of the corporation a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such person (i) is not and will not become a party to (A) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the corporation, will act or vote on any issue or question (a "Voting Commitment") except as has been disclosed to the corporation or (B) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the corporation, with such person's fiduciary duties under applicable law, (ii) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, and (iii) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the corporation.

(c) Notwithstanding the foregoing provisions of Sections 2.2 and 2.3, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in those Sections; provided, however,

that any references in those Sections to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the requirements applicable to nominations or proposals as to any other business to be considered pursuant to Section 2.2(b)-(c) or Section 2.3(b) of these bylaws. Nothing in these bylaws shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (ii) of the holders of any series of Preferred Stock if and to the extent provided for under law, the certificate of incorporation or these bylaws.

(d) For purposes of these bylaws, "public announcement" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

## **2.5 PROXY ACCESS FOR DIRECTOR NOMINATIONS**

(a) Subject to the terms and conditions of these bylaws, in connection with an annual meeting of stockholders at which directors are to be elected (following the 2016 annual meeting), the corporation will include in its proxy statement and on its form of proxy the name of a nominee for election to the board of directors submitted pursuant to this Section 2.5 (a "Stockholder Nominee"), and will include in its proxy statement the "Required Information" (as defined below in Section 2.5(d) of these bylaws), if: (i) the Stockholder Nominee satisfies the eligibility requirements in this Section 2.5; (ii) the Stockholder Nominee is identified in a timely notice (the "Stockholder Notice") that satisfies this Section 2.5 and is delivered by a stockholder that qualifies as, or is acting on behalf of, an Eligible Stockholder (as defined below in Section 2.5(b) of these bylaws); (iii) the Eligible Stockholder expressly elects at the time of the delivery of the Stockholder Notice to have the Stockholder Nominee included in the corporation's proxy materials; and (iv) the additional requirements of these bylaws are met.

(b) To qualify as an "Eligible Stockholder," a stockholder or a group of stockholders as described in this Section 2.5(b) must: (i) own and have owned (as defined below in Section 2.5(c) of these bylaws), continuously for at least three years as of the date of the Stockholder Notice, a number of shares that represents at least three percent (3%) of the outstanding shares of the corporation that are entitled to vote in the election of directors as of the date of the Stockholder Notice (the "Required Shares"); and (ii) thereafter continue to own the Required Shares through such annual meeting of stockholders. For purposes of satisfying the percentage ownership requirements of this Section 2.5(b), a group of no more than twenty (20) stockholders and/or beneficial owners may aggregate the number of shares of the corporation that each group member has itself individually owned continuously for at least three years as of the date of the Stockholder Notice. No stockholder or beneficial owner, alone or together with any of its affiliates, may individually or as a member of a group qualify as more than one Eligible Stockholder under this Section 2.5, and the same shares may not be attributed to more than one Eligible Stockholder. A group of any two or more funds that are under common management and investment control shall be treated as one stockholder or beneficial owner for purposes of this Section 2.5. Whenever an Eligible Stockholder consists of a group of stockholders and/or beneficial owners, any and all requirements and obligations for an Eligible Stockholder set forth in this Section 2.5 must be satisfied



by and as to each such stockholder or beneficial owner, except that shares may be aggregated as specified in this Section 2.5(b) and except as otherwise provided in this Section 2.5.

(c) For purposes of this Section 2.5:

(i) A stockholder or beneficial owner shall be deemed to “own” only those outstanding shares of the corporation as to which such person possesses both: (A) the full voting and investment power pertaining to the shares; and (B) the full economic interest in (including the opportunity for profit and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (A) and (B) shall not include any shares (1) sold by such person or any of its affiliates in any transaction that has not been settled or closed, (2) borrowed by such person or any of its affiliates for any purposes or purchased by such person or any of its affiliates pursuant to an agreement to resell, or (3) subject to any option, warrant, forward contract, swap, contract of sale, or other derivative or similar agreement entered into by such person or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding shares of the corporation, in any such case which instrument or agreement has, or is intended to have, or if exercised would have, the purpose or effect of (I) reducing in any manner, to any extent or at any time in the future, such person’s or its affiliates’ full right to vote or direct the voting of any such shares and/or (II) hedging, offsetting or altering to any degree any gain or loss arising from the full economic ownership of such shares by such person or its affiliates.

(ii) A stockholder or beneficial owner shall “own” shares held in the name of a nominee or other intermediary so long as such stockholder or beneficial owner: (A) retains the right to instruct how the shares are voted with respect to the election of directors and the right to direct the disposition thereof; and (B) possesses the full economic interest in the shares. The stockholder’s or beneficial owner’s ownership of shares shall be deemed to continue during any period in which such person has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement that is revocable at any time by the stockholder.

(iii) A stockholder’s or beneficial owner’s ownership of shares shall be deemed to continue during any period in which such person has loaned such shares, provided that the person has the power to recall such loaned shares on not more than five (5) business days’ notice. A stockholder or beneficial owner that is deemed to own loaned shares in accordance with the immediately preceding sentence also must, in order for such loaned shares to be deemed owned for purposes of this Section 2.5: (A) recall the loaned shares within five (5) business days of being notified that its Stockholder Nominee will be included in the corporation’s proxy materials for the relevant annual meeting and (B) hold the recalled shares through the relevant annual meeting.

(iv) The terms “owned,” “owning” and other variations of the word “own,” when used with respect to a stockholder or beneficial owner in this Section 2.5, shall have correlative meanings.

(d) For purposes of this Section 2.5, the “Required Information” that the corporation will include in its proxy statement is: (i) the information set forth in the Schedule 14N

provided with the Stockholder Notice concerning each Stockholder Nominee and the Eligible Stockholder that is required to be disclosed in the corporation's proxy statement by the applicable requirements of the Exchange Act and the rules and regulations thereunder; and (ii) if the Eligible Stockholder so elects, a written statement of the Eligible Stockholder (or, in the case of a group, a single written statement of the group), not to exceed 500 words, in support of each Stockholder Nominee, which must be provided at the same time as the Stockholder Notice, for inclusion in the corporation's proxy statement for the annual meeting (the "Statement"). Notwithstanding anything to the contrary contained in this Section 2.5, the corporation may omit from its proxy materials any information or Statement that it, in good faith, believes is untrue in any material respect (or omits a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading) or would violate any applicable law, rule, regulation or listing standard. Nothing in this Section 2.5 shall limit the corporation's ability to solicit against and include in its proxy materials its own statements relating to any Eligible Stockholder or Stockholder Nominee.

(e) The Stockholder Notice shall set forth all information, representations and agreements required under Section 2.2(c) of these bylaws, and in addition, such Stockholder Notice shall include: (i) a copy of the Schedule 14N (or any successor form) that has been or concurrently is filed with the SEC as required by Rule 14a-18 under the Exchange Act (or any successor provision); (ii) the details of any relationship that existed within the past three years and that would have been described pursuant to Item 6(e) of Schedule 14N if the relationship existed on the date of submission of the Schedule 14N; (iii) a statement of the Eligible Stockholder (and in the case of a group, the written agreement of each stockholder or beneficial owner whose shares are aggregated for purposes of constituting an Eligible Stockholder), which statement(s) shall also be included in the Schedule 14N (or any successor form) filed with the SEC, (A) setting forth and certifying to the number of shares of the corporation the Eligible Stockholder owns and has owned (as defined in Section 2.5(c) of these bylaws) continuously for at least three years as of the date of the Stockholder Notice and (B) agreeing to continue to own such shares through the annual meeting; and (iv) the written agreement of the Eligible Stockholder (and in the case of a group, the written agreement of each stockholder or beneficial owner whose shares are aggregated for purposes of constituting an Eligible Stockholder) addressed to the corporation, setting forth the following additional agreements, representations, and warranties: (A) it will provide (1) within five (5) business days of the record date for the annual meeting, the information required under Section 2.2(c) as of the record date, (2) notification in writing verifying the Eligible Stockholder's continuous ownership of the Required Shares as of the record date within five (5) business days of such record date, and (3) immediate notice to the corporation if the Eligible Stockholder ceases to own any of the Required Shares prior to the annual meeting of stockholders; (B) it (1) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control at the corporation, and does not presently have any such intent, (2) has not nominated and will not nominate for election to the board at the annual meeting any person other than its Stockholder Nominee(s) nominated pursuant to this Section 2.5, (3) has not engaged and will not engage in, and has not been and will not be a participant (as defined in Item 4 of Exchange Act Schedule 14A) in, a solicitation within the meaning of Exchange Act Rule 14a-1(l), in support of the election of any individual as a director at the annual meeting other than its Stockholder Nominee(s) or a nominee of the board of directors, and (4) will not distribute to any stockholder any form of proxy for the annual meeting other than the form

distributed by the corporation; (C) it will (1) assume all liability stemming from any legal or regulatory violation arising out of the Eligible Stockholder's communications with the stockholders of the corporation or out of the information that the Eligible Stockholder provided to the corporation, (2) indemnify and hold harmless the corporation and its affiliates and each of its directors, officers and employees individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the corporation or any of its directors, officers or employees arising out of any nomination, solicitation or other activity by the Eligible Stockholder in connection with its efforts to elect the Stockholder Nominee(s) pursuant to this Section 2.5, (3) comply with all laws, rules, regulations and listing standards applicable to its nomination and any solicitation in connection with the annual meeting, (4) file all materials described below in Section 2.5(g)(ii) with the SEC, regardless of whether any such filing is required under Exchange Act Regulation 14A or whether any exemption from filing is available, and (5) at the request of the corporation, promptly, but in any event within five (5) business days after such request, provide to the corporation prior to the date of the annual meeting such additional information as reasonably requested by the corporation; and (D) in the case of a nomination by a group of stockholders that together is an Eligible Stockholder, the designation by all group members of one group member that is authorized to act on behalf of all members of the group with respect to the nomination and matters related thereto, including withdrawal of the nomination.

(f) To be timely under this Section 2.5, the Stockholder Notice and Required Information must be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the 120th day and not earlier than the close of business on the 150th day prior to the first anniversary of the date (as stated in the corporation's proxy materials) the definitive proxy statement was first sent to stockholders in connection with the preceding year's annual meeting of stockholders; provided, however, that in the event the annual meeting is more than thirty (30) days before or sixty (60) after the anniversary of the previous year's annual meeting, or if no annual meeting was held in the preceding year, to be timely, the Stockholder Notice must be so delivered not earlier than the close of business on the 150th day prior to such annual meeting and not later than the close of business on the later of the 120th day prior to such annual meeting or the 10th day following the day on which public announcement (as defined in Section 2.4(d) of these bylaws) of the date of such meeting is first made by the corporation. In no event shall an adjournment or recess of an annual meeting, or a postponement of an annual meeting for which notice has been given or with respect to which there has been a public announcement of the date of the meeting, commence a new time period (or extend any time period) for the giving of the Stockholder Notice as described above.

(g) An Eligible Stockholder must: (i) within five (5) business days after the date of the Stockholder Notice, provide to the corporation one or more written statements from the record holder(s) of the Required Shares and from each intermediary through which the Required Shares are or have been held, in each case during the requisite three-year holding period, specifying the number of shares that the Eligible Stockholder owns, and has owned continuously, in compliance with this Section 2.5; (ii) file with the SEC any solicitation or other communication by or on behalf of the Eligible Stockholder relating to the corporation's annual meeting of stockholders, one or more of the corporation's directors or director nominees or any Stockholder Nominee, regardless

of whether any such filing is required under Exchange Act Regulation 14A or whether any exemption from filing is available for such solicitation or other communication under Exchange Act Regulation 14A; and (iii) in the case of any group, within five (5) business days after the date of the Stockholder Notice, provide to the corporation documentation reasonably satisfactory to the corporation demonstrating that the number of stockholders and/or beneficial owners within such group does not exceed twenty (20), including whether a group of funds qualifies as one stockholder or beneficial owner within the meaning of Section 2.5(b) of these bylaws. The information provided pursuant to this Section 2.5(g) shall be deemed part of the Stockholder Notice for purposes of this Section 2.5.

(h) Within the time period for delivery of the Stockholder Notice, a written representation and agreement of each Stockholder Nominee shall be delivered to the Secretary at the principal executive offices of the corporation, which shall be signed by each Stockholder Nominee and shall represent and agree that such Stockholder Nominee: (i) consents to being named in the corporation's proxy statement and form of proxy as a nominee and to serving as a director if elected, together with the information and representations that would be required to be set forth in a stockholder's notice of a nomination pursuant to Section 2.2(c) and provided pursuant to Section 2.4(b) of these bylaws; (ii) is not and will not become a party to any Voting Commitment except as has been disclosed to the corporation; (iii) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a Stockholder Nominee or director, which such agreement, arrangement or understanding has not been disclosed to the corporation; (iv) if elected as a director, will comply with all of the corporation's corporate governance, conflict of interest, confidentiality, and stock ownership and trading policies and guidelines, any other corporation policies and guidelines applicable to directors, and any applicable law, rule or regulation or listing standard; and (v) at the request of the corporation, the Stockholder Nominee must promptly, but in any event within five (5) business days after such request, submit all completed and signed questionnaires required of the corporation's directors and provide to the corporation such other information as it may reasonably request. The corporation may request such additional information as necessary to permit the board of directors to determine if each Stockholder Nominee satisfies the requirements of this Section 2.5.

(i) In the event that any information or communications provided by the Eligible Stockholder or any Stockholder Nominees to the corporation or its stockholders is not, when provided, or thereafter ceases to be, true, correct and complete in all material respects (including by omitting a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading), such Eligible Stockholder or Stockholder Nominee, as the case may be, shall promptly notify the Secretary and provide the information that is required to make such information or communication true, correct, complete and not misleading; it being understood that providing any such notification shall not be deemed to cure any defect or limit the corporation's right to omit a Stockholder Nominee from its proxy materials as provided in this Section 2.5.

(j) Notwithstanding anything to the contrary contained in this Section 2.5, the corporation may omit from its proxy materials any Stockholder Nominee, and such nomination shall be disregarded and no vote on such Stockholder Nominee will occur, notwithstanding that proxies in respect of such vote may have been received by the corporation if: (i) the Eligible Stockholder or Stockholder Nominee breaches any of its respective agreements, representations, or warranties set forth in the Stockholder Notice (or otherwise submitted pursuant to this Section 2.5), any of the information in the Stockholder Notice (or otherwise submitted pursuant to this Section 2.5) was not, when provided, true, correct and complete, or otherwise fails to comply with its obligations pursuant to these bylaws, including but not limited to its obligations under this Section 2.5; (ii) the Stockholder Nominee (A) is not independent under any applicable listing standards, any applicable rules of the SEC, and any publicly disclosed standards used by the board of directors in determining and disclosing the independence of the corporation's directors, (B) does not qualify as independent under the audit committee independence requirements set forth in the rules of the principal U.S. exchange on which shares of the corporation are listed, as a "non-employee director" under Exchange Act Rule 16b-3, or as an "outside director" for the purposes of Section 162(m) of the Internal Revenue Code (or any successor provisions), (C) is a party to any agreement, arrangement or understanding with any person or entity that would compromise the Stockholder Nominee's ability to fulfill its fiduciary duties as an independent director, (D) is or has been, within the past three years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, as amended, (E) is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in a criminal proceeding (excluding traffic violations and other minor offenses) within the past ten (10) years, or (F) is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act of 1933, as amended; (iii) the corporation has received a notice (whether or not subsequently withdrawn) that a stockholder intends to nominate any candidate for election to the board of directors pursuant to Section 2.2(b)(iii) of these bylaws and such stockholder does not expressly elect at the time of providing the notice to have its nominee included in the corporation's proxy materials pursuant to this Section 2.5; (iv) the Eligible Stockholder who has nominated such Stockholder Nominee has engaged in or is currently engaged in, or has been or is a participant (as defined in Item 4 of Exchange Act Schedule 14A) in another person's, solicitation within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the annual meeting other than its Stockholder Nominee(s) or a nominee of the board of directors; or (v) the election of the Stockholder Nominee to the board of directors would cause the corporation to violate the certificate of incorporation of the corporation, these bylaws, or any applicable law, rule, regulation or listing standard.

(k) The maximum number of Stockholder Nominees submitted by all Eligible Stockholders that may be included in the corporation's proxy materials pursuant to this Section 2.5 shall not exceed the greater of: (i) two or (ii) twenty percent (20%) of the number of directors in office as of the last day on which a Stockholder Notice may be delivered pursuant to this Section 2.5, or if such amount is not a whole number, the closest whole number (rounding down) below twenty percent (20%) (such resulting number, the "Permitted Number"); provided that the Permitted Number shall be reduced by (A) any Stockholder Nominee whose name was submitted for inclusion in the corporation's proxy materials pursuant to this Section 2.5 but who the board of directors decides to nominate as a board nominee and (B) any nominees who were previously elected to the

board of directors as Stockholder Nominees at any of the preceding two annual meetings and who are nominated for election at such annual meeting by the board of directors as a board nominee. In the event that one or more vacancies for any reason occurs after the date of the Stockholder Notice but before the annual meeting and the board of directors resolves to reduce the size of the board of directors in connection therewith, the Permitted Number shall be calculated based on the number of directors in office as so reduced. An Eligible Stockholder submitting more than one Stockholder Nominee for inclusion in the corporation's proxy materials pursuant to this Section 2.5 shall rank such Stockholder Nominees based on the order that the Eligible Stockholder desires such Stockholder Nominees to be selected for inclusion in the corporation's proxy statement and include such specified rank in its Stockholder Notice submitted to the corporation. In the event that the number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 2.5 exceeds the Permitted Number, the corporation shall determine which Stockholder Nominees shall be included in the corporation's proxy materials in accordance with the following provisions: the highest ranking Stockholder Nominee of each Eligible Stockholder will be selected for inclusion in the corporation's proxy materials until the Permitted Number is reached, going in order of the amount (largest to smallest) of shares of the corporation each Eligible Stockholder disclosed as owned in its respective Stockholder Notice submitted to the corporation. If the Permitted Number is not reached after each Eligible Stockholder has had one Stockholder Nominee selected, this selection process will continue as many times as necessary, following the same order each time, until the Permitted Number is reached. Following such determination, if any Stockholder Nominee who satisfies the eligibility requirements in this Section 2.5 thereafter is nominated by the Board, thereafter is not included in the corporation's proxy materials or thereafter is not submitted for director election for any reason (including the Eligible Stockholder's or Stockholder Nominee's failure to comply with this Section 2.5), no other nominee or nominees shall be included in the corporation's proxy materials or otherwise submitted for election as a director at the applicable annual meeting in substitution for such Stockholder Nominee.

(l) Any Stockholder Nominee who is included in the corporation's proxy materials for a particular annual meeting of stockholders, but who either (i) withdraws from or becomes ineligible or unavailable for election at the annual meeting for any reason, including for the failure to comply with any provision of these bylaws (provided that in no event shall any such withdrawal, ineligibility or unavailability commence a new time period (or extend any time period) for the giving of a Stockholder Notice) or (ii) does not receive a number of votes cast in favor of his or her election at least equal to twenty-five percent (25%) of the shares present in person or represented by proxy and entitled to vote in the election of directors, will be ineligible to be a Stockholder Nominee pursuant to this Section 2.5 for the next two annual meetings.

(m) The board of directors (and any other person or body authorized by the board of directors) shall have the power and authority to interpret this Section 2.5 and to make any and all determinations necessary or advisable to apply this Section 2.5 to any persons, facts or circumstances, including the power to determine in good faith: (i) whether one or more stockholders or beneficial owners qualifies as an Eligible Stockholder; (ii) whether a Stockholder Notice complies with this Section 2.5 and has otherwise met the requirements of this Section 2.5; (iii) whether a Stockholder Nominee satisfies the qualifications and requirements in this Section 2.5; and (iv) whether any and all requirements of this Section 2.5 have been satisfied. Notwithstanding the

foregoing provisions of this Section 2.5, unless otherwise required by law or otherwise determined by the chairman of the meeting or the board of directors, if the Stockholder Nominee(s) and/or the applicable Eligible Stockholder shall have breached its or their obligations, agreements or representations under this Section 2.5, or if the Eligible Stockholder (or a qualified representative of the stockholder, as defined in Section 2.4(a) of these bylaws) does not appear at the annual meeting of stockholders of the corporation to present its Stockholder Nominee or Stockholder Nominees, such nomination or nominations shall be disregarded, notwithstanding that proxies in respect of the election of the Stockholder Nominee or Stockholder Nominees may have been received by the corporation. This Section 2.5 shall be the exclusive method for stockholders to include nominees for director election in the corporation's proxy materials.

## **2.6 NOTICE OF MEETINGS OF STOCKHOLDERS**

Except as otherwise provided by law, all notices of meetings of stockholders shall be sent or otherwise given to each stockholder entitled to vote at the meeting as of the record date for determining stockholders entitled to notice of the meeting in accordance with Section 2.7 of these bylaws not less than ten (10) nor more than sixty (60) days before the date of the meeting. The notice shall specify the place (if any), date and time of the meeting and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present, in person, and vote at the meeting, the record date for determining stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called. The notice of any meeting at which directors are to be elected shall include the name of any nominee or nominees who, at the time of the notice, the board intends to present for election. Such notice shall also include the name of any Stockholder Nominees that will be included in the corporation's proxy materials pursuant to Section 2.5 of these bylaws.

## **2.7 MANNER OF GIVING NOTICE; AFFIDAVIT OF NOTICE**

Notice of any meeting of stockholders shall be given either personally or by first-class mail, express mail, courier service, or by other means of electronic transmission. If sent by mail, express mail or courier service, such notice will be sent charges prepaid and shall be addressed to the stockholder at the address of that stockholder appearing on the books of the corporation or given by the stockholder to the corporation for the purpose of notice. Notice shall be deemed given as set forth in Article IX.

## **2.8 QUORUM**

The holders of a majority in voting power of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the certificate of incorporation. If, however, such quorum is not present or represented at any meeting of the stockholders, then either (a) the chairman of the meeting or (b) the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting in accordance with Section 2.9 of these bylaws.

When a quorum is present at any meeting, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless (a) the question is one upon which, by express provision of the laws of the State of Delaware or of the certificate of incorporation or these bylaws, a different vote is required, in which case such express provision shall govern and control the decision of the question; or (b) the matter is brought pursuant to the rules of an exchange upon which the securities of the corporation are listed, in which case such rules will determine the required vote.

If a quorum be initially present, the stockholders may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

## **2.9 ADJOURNED MEETING; NOTICE**

Any meeting of the stockholders may be adjourned for such periods as the chairman of the meeting shall direct. When a meeting is adjourned to another time or place (if any), unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time and place, if any, thereof and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business that might have been transacted at the original meeting.

If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the adjourned meeting. If, after the adjournment, a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the board of directors shall fix a new record date for notice of such adjourned meeting in accordance with Section 213(a) of the Delaware General Corporation Law and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at the adjourned meeting as of the record date fixed for notice of such adjourned meeting.

## **2.10 VOTING**

The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.12 of these bylaws, subject to the provisions of Sections 217 and 218 of the Delaware General Corporation Law (relating to voting rights of fiduciaries, pledgors and joint owners, and to voting trusts and other voting agreements).

Except as may be otherwise provided in the certificate of incorporation or these bylaws, each stockholder will be entitled to one vote for each share of capital stock registered in such stockholder's name on the books of the corporation on the record date fixed for determination of stockholders entitled to vote at such meeting.

## **2.11 STOCKHOLDER ACTION BY WRITTEN CONSENT**

Unless otherwise provided by the certificate of incorporation and applicable law, the stockholders of the corporation may not take action by written consent without a meeting, and any such actions must be taken at a duly called annual or special meeting.



## **2.12 RECORD DATE FOR STOCKHOLDER NOTICE; VOTING**

For purposes of determining the stockholders entitled to notice of any meeting of stockholders, the board of directors may fix a record date, which shall not precede the date upon which the resolution fixing such record date is adopted by the board of directors and which shall not be more than sixty (60) days nor less than ten (10) days before the date of any such meeting. If the board of directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the board of directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the board of directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the business day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for determining stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determining stockholders entitled to vote in accordance with the foregoing provisions of this Section 2.12.

The record date for any other purpose shall be as provided in Section 7.1 of these bylaws.

## **2.13 PROXIES**

Every stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after 11 months from its date, unless the proxy provides for a longer period. Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy pursuant to this Section 2.13, the following shall constitute a valid means by which a stockholder may grant such authority: (a) a stockholder may execute a writing authorizing another person or persons to act for such stockholder as proxy (and execution may be accomplished by the stockholder or such stockholder's authorized officer, director, employee or agent signing such writing or causing such person's signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature), and (b) a stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram, or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212(e) of the Delaware General Corporation Law.

## **2.14 ORGANIZATION**

The board of directors shall designate a chairman to preside over all annual meetings or special meetings of stockholders, provided that if the board of directors does not so designate such a presiding officer, then the chairman of the board, if one is elected, shall preside over such meetings. If the board of directors does not so designate such a presiding officer and there is no chairman of the board or the chairman of the board is unable to so preside or is absent, then the chief executive officer shall preside over such meetings, provided further that if there is no chief executive officer or the chief executive officer is unable to so preside or is absent, then the president shall preside over such meetings. The chairman of any meeting of stockholders shall determine the order of business and the procedures at the meeting, including such matters as the regulation of the manner of voting and the conduct of business. The secretary of the corporation, or a person designated by the chairman of the meeting, shall act as secretary of the meeting.

## **2.15 LIST OF STOCKHOLDERS ENTITLED TO VOTE**

The officer who has charge of the stock ledger of the corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (provided, however, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth (10<sup>th</sup>) day before the meeting), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. If the meeting is to be held at a place, then the list shall also be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then such list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

## **2.16 REMOTE COMMUNICATION**

For the purposes of these bylaws, if authorized by the board of directors in its sole discretion, and subject to such guidelines and procedures as the board of directors may adopt, the stockholders and proxyholders may, by means of remote communication:

(a) participate in a meeting of stockholders; and

(b) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication,

provided that (i) the corporation will implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (ii) the corporation will implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, the corporation will maintain a record of such vote or other action.

### **ARTICLE III.** **DIRECTORS**

#### **3.1 POWERS**

Subject to the provisions of the Delaware General Corporation Law and to any limitations in the certificate of incorporation or these bylaws relating to action required to be approved by the stockholders, the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the board of directors.

#### **3.2 NUMBER OF DIRECTORS**

The number of directors may be set by resolution duly adopted by the board of directors, or by an amendment to this bylaw duly adopted by the board of directors or by the stockholders, or by a duly adopted amendment to the certificate of incorporation, at one or more directors.

#### **3.3 ELECTION AND TERM OF OFFICE OF DIRECTORS**

Except as provided in Section 3.4 of these bylaws, directors shall be elected at each annual meeting of stockholders. Each director, including a director elected or appointed to fill a vacancy or newly created directorship, shall hold office until the next annual meeting of stockholders for the election of directors and until his or her successor has been elected and qualified, or until his or her earlier death, resignation or removal.

Except as otherwise provided by the certificate of incorporation or these bylaws, each director shall be elected by the vote of the majority of votes cast with respect to the nominee at any meeting for the election of directors at which a quorum is present, provided that if, as of the tenth (10th) day preceding the date the corporation first mails its notice of meeting for such meeting to the stockholders of the corporation, the number of nominees exceeds the number of directors to be elected (a "Contested Election"), the directors shall be elected by the vote of a plurality of the votes cast. For purposes of this Section 3.3, "a majority of votes cast" means that the number of shares voted "for" a nominee exceeds the votes cast "against" a nominee's election, with "abstentions" and "broker nonvotes" not counted as votes cast either "for" or "against" a nominee's election.

#### **3.4 RESIGNATION AND VACANCIES**

Any director may resign effective on giving written notice or notice by electronic transmission to the chairman of the board, the president, the secretary or the board of directors,

unless the notice specifies a later time for that resignation to become effective or specifies that the resignation shall occur upon the happening of an event or events. If the resignation of a director is effective at a future time or upon the happening of an event or events, the remaining directors, including the director who has submitted such resignation, may elect a successor to take office when the resignation becomes effective.

Unless otherwise provided by the certificate of incorporation, vacancies and newly created directorships in the board of directors may be filled by a majority of the remaining directors, even if less than a quorum, or by a sole remaining director. Each director so elected shall hold office until the next annual meeting of the stockholders and until a successor has been elected and qualified.

### **3.5 REMOVAL OF DIRECTORS**

Except as otherwise provided by the certificate of incorporation or applicable law, any director may be removed, with or without cause, by the holders of a majority in voting power of the outstanding shares then entitled to vote for the election of such director. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

### **3.6 PLACE OF MEETINGS; MEETINGS BY TELEPHONE**

Regular meetings of the board of directors may be held at any place within or outside the State of Delaware that has been designated from time to time by the board. In the absence of such a designation, regular meetings shall be held at the principal executive office of the corporation. Special meetings of the board may be held at any place within or outside the State of Delaware that has been designated in the notice of the meeting or, if not stated in the notice or if there is no notice, at the principal executive office of the corporation.

Any meeting of the board, regular or special, and any meeting of any committee of the board, may be held by conference telephone or similar communication equipment, so long as all directors participating in the meeting can hear one another; and all such participating directors shall be deemed to be present in person at the meeting.

### **3.7 REGULAR MEETINGS**

Regular meetings of the board of directors may be held without notice at such time as shall from time to time be determined by the board of directors. If any regular meeting day shall fall on a legal holiday, then the meeting shall be held at the same time and place on the next succeeding full business day.

### **3.8 SPECIAL MEETINGS; NOTICE**

Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairman of the board, the president, any vice president, the secretary or any two directors.

Notice of the time and place of special meetings shall be delivered personally or by telephone to each director or sent by first-class mail, express mail, courier service, or facsimile, charges prepaid, or by any means of electronic transmission, including electronic mail, addressed to each director at that director's address, telephone number, facsimile number or address for electronic transmission, as the case may be, as it is shown on the records of the corporation. If the notice is mailed, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. If the notice is delivered personally or by telephone, facsimile, or means of electronic transmission, it shall be delivered personally or by telephone or means of electronic transmission at least forty-eight (48) hours before the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. The notice need not specify the purpose or the place of the meeting, if the meeting is to be held at the principal executive office of the corporation or by conference telephone or similar communications equipment. Moreover, a notice of meeting need not state the purpose of such meeting, and, unless indicated in the notice thereof, any and all business may be transacted at a meeting.

### **3.9 QUORUM**

Except as otherwise provided by the certificate of incorporation or applicable law, a majority of the authorized number of directors shall constitute a quorum for the transaction of business, and every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be the act of the board of directors.

### **3.10 ADJOURNMENT**

A majority of the directors present, whether or not constituting a quorum, may adjourn any meeting of the board to another time and place.

### **3.11 NOTICE OF ADJOURNMENT**

Notice of the time and place of holding an adjourned meeting of the board of directors need not be given unless the meeting is adjourned for more than twenty-four (24) hours. If the meeting is adjourned for more than twenty-four (24) hours, then notice of the time and place of the adjourned meeting shall be given before the adjourned meeting takes place, in the manner specified in Section 3.8 of these bylaws, to the directors who were not present at the time of the adjournment.

### **3.12 BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING**

Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof, may be taken without a meeting if all members of the board of directors or committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the board of directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

### **3.13 FEES AND COMPENSATION OF DIRECTORS**

Directors and members of committees may receive such compensation, if any, for their services and such reimbursement of expenses as may be fixed or determined by resolution of the board of directors. This Section 3.13 shall not be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee or otherwise and receiving compensation for those services.

### **3.14 SOLE DIRECTOR PROVIDED BY CERTIFICATE OF INCORPORATION**

In the event only one director is required by these bylaws or the certificate of incorporation, then any reference herein to notices, waivers, consents, meetings or other actions by a majority or quorum of the directors shall be deemed to refer to such notice, waiver, etc., by such sole director, who shall have all the rights and duties and shall be entitled to exercise all of the powers and shall assume all the responsibilities otherwise herein described as given to the board of directors.

## **ARTICLE IV. COMMITTEES**

### **4.1 COMMITTEES OF DIRECTORS**

The board of directors may designate one (1) or more committees, each consisting of one or more directors, to serve at the pleasure of the board. The board may designate one (1) or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. The appointment of members or alternate members of a committee requires the vote of a majority of the authorized number of directors. Any committee, to the extent provided in the resolution of the board, shall have and may exercise all the powers and authority of the board, but no such committee shall have the power or authority to (i) approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the Delaware General Corporation Law to be submitted to stockholders for approval, or (ii) adopt, amend or repeal the bylaws of the corporation. Unless otherwise provided in the certificate of incorporation or the resolutions of the board of directors designating a committee, a committee may create one (1) or more subcommittees, each subcommittee to consist of one (1) or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

### **4.2 MEETINGS AND ACTION OF COMMITTEES**

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the following provisions of Article III of these bylaws: Section 3.6 (place of meetings; meetings by telephone), Section 3.7 (regular meetings), Section 3.8 (special meetings; notice), Section 3.9 (quorum), Section 3.10 (adjournment), Section 3.11 (notice of adjournment) and Section 3.12 (board action by written consent without meeting), with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the board of directors and its members; provided, however, that the time of regular meetings of committees may be determined either by

resolution of the board of directors or by resolution of the committee, and that special meetings of committees may also be called by resolution of the board of directors. The board of directors may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

#### **4.3 COMMITTEE MINUTES**

Each committee shall keep regular minutes of its meetings and report the same to the board of directors when required.

### **ARTICLE V. OFFICERS**

#### **5.1 OFFICERS**

The Corporate Officers of the corporation shall be a chief executive officer, a president, a secretary and a chief financial officer. The corporation may also have, at the discretion of the board of directors, a chairman of the board, a treasurer, one or more vice presidents (however denominated), one or more assistant secretaries, one or more assistant treasurers, and such other officers as may be appointed in accordance with the provisions of Section 5.3 of these bylaws. Any number of offices may be held by the same person.

In addition to the Corporate Officers of the corporation described above, there may also be such Administrative Officers of the corporation as may be designated and appointed from time to time by the president of the corporation in accordance with the provisions of Section 5.12 of these bylaws.

#### **5.2 ELECTION OF OFFICERS**

The Corporate Officers of the corporation, except such officers as may be appointed in accordance with the provisions of Section 5.3 or Section 5.5 of these bylaws, shall be chosen by the board of directors, subject to the rights, if any, of an officer under any contract of employment, and shall hold their respective offices for such terms as the board of directors may from time to time determine.

#### **5.3 SUBORDINATE OFFICERS**

The board of directors may appoint, or may empower the president to appoint, such other Corporate Officers as the business of the corporation may require, each of whom shall hold office for such period, have such power and authority, and perform such duties as are provided in these bylaws or as the board of directors, may from time to time determine.

The president may from time to time designate and appoint Administrative Officers of the corporation in accordance with the provisions of Section 5.12 of these bylaws.

#### **5.4 REMOVAL AND RESIGNATION OF OFFICERS**

Any Corporate Officer may be removed, either with or without cause, by the board of directors at any regular or special meeting of the board or, except in case of a Corporate Officer chosen by the board of directors, by any Corporate Officer upon whom such power of removal may be conferred by the board of directors.

Any Corporate Officer may resign at any time by giving written notice to the corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the corporation under any contract to which the Corporate Officer is a party.

Any Administrative Officer designated and appointed by the president may be removed, either with or without cause, at any time by the president. Any Administrative Officer may resign at any time by giving written notice to the president or to the secretary of the corporation.

#### **5.5 VACANCIES IN OFFICES**

A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these bylaws for regular appointments to that office.

#### **5.6 CHAIRMAN OF THE BOARD**

The chairman of the board, if such an officer be elected, shall, if present, preside at meetings of the board of directors and exercise such other powers and perform such other duties as may from time to time be assigned to him by the board of directors or as may be prescribed by these bylaws. If there is no president, then the chairman of the board shall also be the chief executive officer of the corporation and shall have the powers and duties prescribed in Section 5.7 of these bylaws.

#### **5.7 CHIEF EXECUTIVE OFFICER; PRESIDENT**

Subject to (i) such supervisory powers, if any, as may be given by the board of directors to the chairman of the board, if there be such an officer, and (ii) the contrary determination of the board of directors, the president shall be the chief executive officer of the corporation and shall, subject to the control of the board of directors, have general supervision, direction and control of the business and the officers of the corporation. He or she shall have the general powers and duties of management usually vested in the office of president of a corporation, and shall have such other powers and perform such other duties as may be prescribed by the board of directors or these bylaws.

#### **5.8 VICE PRESIDENTS**

In the absence or disability of the president, and if there is no chairman of the board, the vice presidents, if any, in order of their rank as fixed by the board of directors or, if not ranked, a vice president designated by the board of directors, shall perform all the duties of the president and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to



time may be prescribed for them respectively by the board of directors, these bylaws, the president or the chairman of the board.

#### **5.9 SECRETARY**

The secretary shall keep or cause to be kept, at the principal executive office of the corporation or such other place as the board of directors may direct, a book of minutes of all meetings and actions of the board of directors, committees of directors and stockholders. The minutes shall show the time and place of each meeting, whether regular or special (and, if special, how authorized and the notice given), the names of those present at directors' meetings or committee meetings, the number of shares present or represented at stockholders' meetings and the proceedings thereof.

The secretary shall keep, or cause to be kept, at the principal executive office of the corporation or at the office of the corporation's transfer agent or registrar, as determined by resolution of the board of directors, a stock ledger or a duplicate stock ledger, showing the names of all stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates evidencing such shares and the number and date of cancellation of every certificate surrendered for cancellation.

The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the board of directors required to be given by law or by these bylaws. He or she shall keep the seal of the corporation, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the board of directors or by these bylaws.

#### **5.10 CHIEF FINANCIAL OFFICER**

The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings and shares. The books of account shall at all reasonable times be open to inspection by any director for a purpose reasonably related to his position as a director.

The chief financial officer shall deposit all money and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the board of directors. He or she shall disburse the funds of the corporation as may be ordered by the board of directors, shall render to the president and directors, whenever they request it, an account of all of his or her transactions as chief financial officer and of the financial condition of the corporation, and shall have such other powers and perform such other duties as may be prescribed by the board of directors or these bylaws. The president may direct the treasurer or any assistant treasurer to assume and perform the duties of the chief financial officer in the absence or disability of the chief financial officer, and the treasurer and each assistant treasurer shall perform other duties commonly incident to his or her office and shall also perform such other duties and have such other powers as the board of directors or the president shall designate from time to time.

#### **5.11 ASSISTANT SECRETARY**

The assistant secretary, if any, or, if there is more than one, the assistant secretaries in the order determined by the board of directors (or if there be no such determination, then in the order of their election) shall, in the absence of the secretary or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the secretary and shall perform such other duties and have such other powers as the board of directors may from time to time prescribe.

#### **5.12 ADMINISTRATIVE OFFICERS**

In addition to the Corporate Officers of the corporation as provided in Section 5.1 of these bylaws and such subordinate Corporate Officers as may be appointed in accordance with Section 5.3 of these bylaws, there may also be such Administrative Officers of the corporation as may be designated and appointed from time to time by the president or chief executive officer of the corporation. Administrative Officers shall perform such duties and have such powers as from time to time may be determined by the president, chief executive officer or board of directors in order to assist the Corporate Officers in the furtherance of their duties. In the performance of such duties and the exercise of such powers, however, such Administrative Officers shall have limited authority to act on behalf of the corporation as the board of directors, or president or chief executive officer, as applicable, shall establish, including but not limited to limitations on the dollar amount and on the scope of agreements or commitments that may be made by such Administrative Officers on behalf of the corporation, which limitations may not be exceeded by such individuals or altered without further approval by the board of directors, president or chief executive officer, as applicable.

#### **5.13 AUTHORITY AND DUTIES OF OFFICERS**

In addition to the foregoing powers, authority and duties, all officers of the corporation shall respectively have such authority and powers and perform such duties in the management of the business of the corporation as may be designated from time to time by the board of directors.

### **ARTICLE VI.** **INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES** **AND OTHER AGENTS**

#### **6.1 INDEMNIFICATION OF DIRECTORS AND OFFICERS**

The corporation shall, to the maximum extent and in the manner permitted by the Delaware General Corporation Law as the same now exists or may hereafter be amended, indemnify any person against expenses, liabilities and losses (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) actually and reasonably incurred in connection with any threatened, pending or completed action, suit, or proceeding in which such person was or is a party or is threatened to be made a party by reason of the fact that such person is or was a director or officer of the corporation. For purposes of this Section 6.1, a "director" or "officer" of the corporation shall mean any person (i) who is or was a director or officer of the corporation, (ii) who, while a director or officer of the corporation, is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture,

trust or other enterprise, or (iii) who was a director or officer of a corporation which was a predecessor corporation of the corporation or, while serving as a director or officer of such predecessor corporation, is or was serving at the request of such predecessor corporation as a director or officer of another enterprise. Notwithstanding the foregoing, but subject to Section 6.10, the corporation shall be required to indemnify a director or officer in connection with an action, suit, or proceeding (or part thereof) initiated by such director or officer only if the initiation of such action, suit, or proceeding (or part thereof) by the director or officer was authorized in the specific case by the board of directors of the corporation.

## **6.2 INDEMNIFICATION OF OTHERS**

The corporation shall have the power, to the maximum extent and in the manner permitted by the Delaware General Corporation Law as the same now exists or may hereafter be amended, to indemnify any person (other than directors and officers) against expenses, liabilities and losses (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) actually and reasonably incurred in connection with any threatened, pending or completed action, suit, or proceeding, in which such person was or is a party or is threatened to be made a party by reason of the fact that such person is or was an employee or agent of the corporation. For purposes of this Section 6.2, an "employee" or "agent" of the corporation shall mean any person (other than a director or officer of the corporation) (i) who is or was an employee or agent of the corporation, (ii) who is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or (iii) who was an employee or agent of a corporation which was a predecessor corporation of the corporation or was serving at the request of a predecessor corporation of the corporation as an officer, director, employee or agent of another enterprise.

## **6.3 INSURANCE**

The corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liability under the provisions of the Delaware General Corporation Law.

## **6.4 EXPENSES**

The corporation shall advance to any person eligible for indemnification pursuant to Section 6.1 hereof, and may advance to any person eligible for indemnification pursuant to Section 6.2 hereof, prior to the final disposition of the proceeding, all expenses reasonably incurred by any such person in connection with defending such proceeding, upon receipt of a request therefor and an undertaking by or on behalf of such person to repay such amounts if it should be determined ultimately that such person is not entitled to be indemnified under this Article VI or otherwise. Notwithstanding the foregoing, but subject to Section 6.10, the corporation shall not be required to

advance expenses in connection with any proceeding (or part thereof) initiated by any person unless the proceeding was authorized in advance by the board of directors of the corporation.

Notwithstanding anything to the contrary set forth herein, unless otherwise determined pursuant to Section 6.5, the corporation shall not be obligated to advance or continue to advance expenses to any person (other than any current or former director of the corporation, as to whom this paragraph shall not apply) in any proceeding if a determination is reasonably and promptly made (i) by the board of directors by a majority vote of Disinterested Directors, even though less than a quorum, (ii) if there are no Disinterested Directors or the Disinterested Directors so direct, by Independent Counsel in a written opinion, or (iii) by a majority vote of a committee of Disinterested Directors designated by a majority vote of Disinterested Directors, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

#### **6.5 NON-EXCLUSIVITY OF RIGHTS; OTHER SOURCES**

The rights conferred on any person by this Article VI will not be exclusive of any other right which such person may have or hereafter acquire under any statute, provision of the certificate of incorporation, bylaws, agreement, vote of stockholders or Disinterested Directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the Delaware General Corporation Law.

The corporation's obligation, if any, to indemnify or to advance expenses to any person who is or was serving at its request as a director, officer, employee or agent of another enterprise shall be reduced by any amount such person may collect as indemnification or advancement of expenses from such other enterprise.

#### **6.6 SURVIVAL OF RIGHTS**

The rights conferred on any person by this Article VI will continue as to a person who has ceased to be a director, officer, employee or other agent and will inure to the benefit of the heirs, executors and administrators of such a person.

#### **6.7 AMENDMENTS**

Any repeal or modification of this Article VI will only be prospective and will not affect the rights under this Article VI in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

#### **6.8 SEVERABILITY**

If any provision or provisions of this Article VI will be held to be invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining

provisions of this Article VI (including, without limitation, each portion of any paragraph of this Article VI containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) will not in any way be affected or impaired thereby; and (ii) to the fullest extent possible, the provisions of this Article VI (including, without limitation, each such portion of any paragraph of this Article VI containing any such provision held to be invalid, illegal or unenforceable) will be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

#### **6.9 NOTICE**

Any notice, request or other communication required or permitted to be given to the corporation under this Article VI will be in writing and either delivered in person or sent by confirmed telecopy, electronic mail, overnight mail or courier service, or certified or registered mail, postage or charges prepaid, return copy requested, to the secretary of the corporation and will be effective only upon receipt by the secretary.

#### **6.10 CLAIMS**

If a claim for indemnification required by this Article VI (following the final disposition of such proceeding) is not paid in full within sixty days after the corporation has received a claim therefor by the person entitled thereto, or if a claim for any advancement of expenses required by this Article VI is not paid in full within thirty days after the corporation has received a statement or statements from the person entitled thereto requesting such amounts to be advanced, such person shall thereupon (but not before) be entitled to file suit to recover the unpaid amount of such claim. If successful in whole or in part, such person shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by law.

#### **6.11 DEFINITIONS**

For purposes of this Bylaw:

“Disinterested Director” will mean a director of the corporation who is not and was not a party to the matter in respect of which indemnification or advancement of expenses is sought by the claimant.

“Independent Counsel” will mean a law firm, a member of a law firm, or an independent practitioner, that is experienced in matters of corporation law and will include any person who, under the applicable standards of professional conduct then prevailing, would not have a conflict of interest in representing either the corporation or the claimant in an action to determine the claimant’s rights under this Article VI.

### **ARTICLE VII. GENERAL MATTERS**

#### **7.1 RECORD DATE FOR PURPOSES OTHER THAN NOTICE AND VOTING**

For purposes of determining the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the board of directors may fix, in advance, a record date, which shall not precede the date upon which the resolution fixing the record date is adopted and which shall not be more than sixty (60) days before any such action. In that case, only stockholders of record at the close of business on the date so fixed are entitled to receive the dividend, distribution or allotment of rights, or to exercise such rights, as the case may be, notwithstanding any transfer of any shares on the books of the corporation after the record date so fixed, except as otherwise provided by law.

If the board of directors does not so fix a record date, then the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the board of directors adopts the applicable resolution.

## **7.2 CHECKS; DRAFTS; EVIDENCES OF INDEBTEDNESS**

From time to time, the board of directors shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes or other evidences of indebtedness that are issued in the name of or payable to the corporation, and only the persons so authorized shall sign or endorse those instruments.

## **7.3 CORPORATE CONTRACTS AND INSTRUMENTS: HOW EXECUTED**

The board of directors, except as otherwise provided in these bylaws, may authorize and empower any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the corporation; such power and authority may be general or confined to specific instances. Unless so authorized or ratified by the board of directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

## **7.4 STOCK CERTIFICATES; TRANSFER; PARTLY PAID SHARES**

The shares of the corporation shall be represented by certificates, provided that the board of directors of the corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Notwithstanding the adoption of such a resolution by the board of directors, every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of the corporation by, the chairman or vice-chairman of the board of directors, or the president or vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of such corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

Certificates for shares shall be of such form and device as the board of directors may designate and shall state the name of the record holder of the shares represented thereby; its number; date of issuance; the number of shares for which it is issued; a summary statement or reference to the powers, designations, preferences or other special rights of such stock and the qualifications, limitations or restrictions of such preferences and/or rights, if any; a statement or summary of liens, if any; a conspicuous notice of restrictions upon transfer or registration of transfer, if any; a statement as to any applicable voting trust agreement; if the shares be assessable, or, if assessments are collectible by personal action, a plain statement of such facts.

In the case of certificated shares of stock, upon surrender to the secretary or transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books. In the case of uncertificated shares of stock, upon delivery to the secretary or transfer agent of the corporation of proper transfer instructions from the registered holder of the shares or by such person's attorney lawfully constituted in writing and upon compliance with appropriate procedures for transferring shares in uncertificated form, it shall be the duty of the corporation to record the transaction upon its books.

#### **7.5 LOST CERTIFICATES**

The corporation may issue a new certificate of stock or uncertificated shares in place of any certificate theretofore issued by it that is alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

#### **7.6 TRANSFER AGENTS AND REGISTRARS**

The board of directors may appoint one or more transfer agents or transfer clerks, and one or more registrars, at such times and places as the requirements of the corporation may necessitate.

#### **7.7 CONSTRUCTION; DEFINITIONS**

Unless the context requires otherwise, the general provisions, rules of construction and definitions in the Delaware General Corporation Law shall govern the construction of these bylaws. Without limiting the generality of this provision, as used in these bylaws, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both an entity and a natural person.

### **ARTICLE VIII.** **MANNER OF GIVING NOTICE AND WAIVER**

#### **8.1 NOTICE OF STOCKHOLDERS' MEETINGS**

Notice of any meeting of stockholders, if mailed, is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the corporation's records. An affidavit of the secretary or an assistant secretary of the corporation or of the transfer agent or other agent of the corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

## **8.2 NOTICE BY ELECTRONIC TRANSMISSION**

Without limiting the manner by which notice otherwise may be given effectively to stockholders pursuant to the Delaware General Corporation Law, the certificate of incorporation or these bylaws, any notice to stockholders given by the corporation under any provision of the Delaware General Corporation Law, the certificate of incorporation or these bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any such consent shall be deemed revoked if:

(i) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent; and

(ii) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice.

However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

Any notice given pursuant to the preceding paragraph shall be deemed given:

(i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;

(ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice;

(iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and

(iv) if by any other form of electronic transmission, when directed to the stockholder.

An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

An "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed



by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Notice by a form of electronic transmission shall not apply to Sections 164, 296, 311, 312 or 324 of the Delaware General Corporation Law.

### **8.3 NOTICE TO STOCKHOLDERS SHARING AN ADDRESS**

Except as otherwise prohibited under the Delaware General Corporation Law, without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the corporation under the provisions of the Delaware General Corporation Law, the certificate of incorporation or these bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any stockholder who fails to object in writing to the corporation, within 60 days of having been given written notice by the corporation of its intention to send the single notice, shall be deemed to have consented to receiving such single written notice.

### **8.4 EXCEPTIONS TO REQUIREMENT OF NOTICE**

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

(b) Whenever notice is required to be given under the Delaware General Corporation Law or the certificate of incorporation or these bylaws to any stockholder to whom (i) notice of two (2) consecutive annual meetings, and all notices of meetings or of the taking of action by written consent without a meeting to such person during the period between such two (2) consecutive annual meetings, or (ii) all, and at least two (2), payments (if sent by first-class mail) of dividends or interest on securities during a 12-month period, have been mailed addressed to such person at such person's address as shown on the records of the corporation and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall be taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the corporation a written notice setting forth such person's then current address, the requirement that notice be given to such person shall be reinstated. In the event that the action taken by the corporation is such as to require the filing of a certificate under any of the other sections of this title, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to this subsection. The exception in this Section 8.4(b)(i) to the requirement that notice be given shall not

be applicable to any notice returned as undeliverable if the notice was given by electronic transmission.

### **8.5 WAIVER OF NOTICE**

Whenever notice is required to be given under any provision of the Delaware General Corporation Law, the certificate of incorporation or these bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of stockholders, directors or members of a committee of directors need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the certificate of incorporation or these bylaws.

### **ARTICLE IX.** **AMENDMENTS**

The original or other bylaws of the corporation may be adopted, amended or repealed by the affirmative vote of the holders of a majority in voting power of the stock issued and outstanding and entitled to vote at meetings of stockholders as of the record date; provided, however, that the corporation may, in its certificate of incorporation, confer the power to adopt, amend or repeal bylaws upon the directors. The fact that such power has been so conferred upon the directors shall not divest the stockholders of the power, nor limit their power to adopt, amend or repeal bylaws.

Whenever an amendment or new bylaw is adopted, it shall be copied in the book of bylaws with the original bylaws, in the appropriate place. If any bylaw is repealed, the fact of repeal with the date of the meeting at which the repeal was enacted or the filing of the operative written consent(s) shall be stated in said book.

### **ARTICLE X.** **FORUM FOR ADJUDICATION OF DISPUTES**

Unless the corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer, other employee or stockholder of the corporation to the corporation or its stockholders, (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, the certificate of incorporation or these bylaws, or as to which the Delaware General Corporation Law confers jurisdiction on the Court of Chancery of the State of Delaware, or (iv) any action asserting a claim governed by the internal affairs doctrine.