

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

**FORM 8-K**

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

Date of Report (Date of earliest event reported): **March 9, 2023**

**SILK ROAD MEDICAL, INC.**

(Exact name of registrant as specified in its charter)

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

**001-38847**  
(Commission  
File Number)

**20-8777622**  
(IRS Employer  
Identification No.)

**1213 Innsbruck Drive**  
**Sunnyvale, California**  
(Address of principal executive offices)

**94089**  
(Zip Code)

**(408) 720-9002**  
(Registrant's telephone number, including area code)

**Not Applicable**  
(Former name or former address, if changed since last report.)

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))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
<b>Common Stock, Par Value \$0.001 Per Share</b>	<b>SILK</b>	<b>Nasdaq Stock Market LLC</b>

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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

On March 9, 2023, the Board of Directors of Silk Road Medical, Inc. (the “Company”) appointed Mhairi Jones, age 52, as Chief Accounting Officer and Vice President, Finance, effective immediately.

Prior to this appointment, Ms. Jones served as the Company’s Vice President, Finance and Accounting, a position she had held since February 2018. Prior to joining the Company, Ms. Jones served as Vice President of Finance of Avinger, Inc., a public traded company engaged in the treatment of peripheral arterial disease, from December 2014 to February 2018. Prior to Avinger, she served as Vice President, Finance and Administration of C8 MediSensors, Inc., a privately held noninvasive glucose monitoring company, from April 2011 to July 2013. Prior to that position, Ms. Jones served as Vice President, Finance and Administration of Xoft, Inc., a privately held oncology company that was acquired by iCAD in 2011. Before Xoft, she served as Corporate Controller of Kyphon Inc., which was acquired by Medtronic Inc. in 2007. Prior to Kyphon, she served as Senior Manager in the audit and assurance practice with PricewaterhouseCoopers LLP. Ms. Jones is a licensed Certified Public Accountant in the State of California. She earned her B.S. degree in accounting from Santa Clara University.

Since Ms. Jones serves as the Company’s principal accounting officer, the following additional information is provided with respect to her appointment:

There is no family relationship between Ms. Jones and any of the Company’s directors or executive officers.

There is no transaction since the beginning of the Company’s last fiscal year, or any currently proposed transaction, which the Company was or is to be a participant and in which Ms. Jones or any related person had or will have a direct or indirect material interest that would be required to be disclosed under Item 404(a) of SEC Regulation S-K, other than the employment relationship between Ms. Jones and the Company.

The Company intends to enter into its standard form of indemnification agreement with Ms. Jones, which agreement requires the Company to indemnify its officers to the fullest extent permitted by Delaware law. The foregoing description of the indemnification agreement does not purport to be complete and is subject to and qualified in its entirety by reference to the full text of the indemnification agreement, which is filed as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

As a result of Ms. Jones’s appointment, Lucas W. Buchanan, the Company’s Chief Financial Officer and Chief Operating Officer, will no longer serve as the Company’s principal accounting officer but will remain as the Company’s principal financial officer.

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

Also on March 9, 2023, the Company’s Board of Directors (the “Board”) approved and adopted Amended and Restated Bylaws (the “Amended and Restated Bylaws”) incorporating certain amendments, including amendments in response to the new universal proxy rules promulgated by the Securities and Exchange Commission (the “SEC”) and recent amendments to the Delaware General Corporation Law (the “DGCL”). The Amended and Restated Bylaws will become effective as of March 15, 2023.

The amendments reflected in the Amended and Restated Bylaws, include, among other changes:

Enhancing the procedural mechanics and disclosure requirements relating to business proposals submitted and director nominations made by stockholders for consideration at annual meetings of the stockholders of the Company, including referring specifically to the

---

new SEC universal proxy rule and requiring additional information regarding director nominees;

Providing greater flexibility for adjourning and reconvening a meeting of the Company's stockholders, including if no quorum is obtained;

Revising the notice to stockholders provisions to comply with the DGCL;

Eliminating the former requirement that the Company make available its stockholder list during a meeting of the Company's stockholders;

Expanding the responsibilities of the person presiding over any meeting of the Company's stockholders;

Deleting references related to a classified Board where appropriate;

Making other changes consistent with amendments to the Company's Amended and Restated Certificate of Incorporation, as amended; and

Adding emergency bylaw provisions in case of an emergency, disaster or catastrophe to give the Company greater flexibility in navigating these challenges as now permitted by the DGCL.

The foregoing summary of the Amended and Restated Bylaws is qualified in its entirety by reference to the complete text of the Amended and Restated Bylaws, as approved, adopted, and effective on March 15, 2023, which is filed as Exhibit 3.1 to this Current Report on Form 8-K and incorporated by reference herein.

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

**(d) Exhibits.**

<b>Exhibit No.</b>	<b>Description</b>
3.1	<a href="#">Amended and Restated Bylaws of Silk Road Medical, Inc. Effective as of March 15, 2023 (filed herewith)</a>
10.1	<a href="#">Form of Indemnification Agreement between Silk Road Medical, Inc. and Directors and Officers (incorporated by reference to Exhibit 10.1 to the initial filing of the Registration Statement on Form S-1 of Silk Road Medical, Inc. (File No. 333-233044) filed with the Securities and Exchange Commission on August 6, 2019)</a>
104	Cover Page Interactive Data File (formatted as inline XBRL)

**SIGNATURES**

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

**SILK ROAD MEDICAL, INC.**

Date: March 15, 2023

By: /s/ Kevin M. Klemz  
Name: Kevin M. Klemz  
Title: Executive Vice President, Chief Legal Officer and Secretary

**AMENDED AND RESTATED BYLAWS OF  
SILK ROAD MEDICAL, INC.**

(Effective as of March 15, 2023)

# TABLE OF CONTENTS

	<i>Page</i>
ARTICLE I - CORPORATE OFFICES	<u>1</u>
1.1 REGISTERED OFFICE	<u>1</u>
1.2 OTHER OFFICES	<u>1</u>
ARTICLE II - MEETINGS OF STOCKHOLDERS	<u>1</u>
2.1 PLACE OF MEETINGS	<u>1</u>
2.2 ANNUAL MEETING	<u>1</u>
2.3 SPECIAL MEETING	<u>1</u>
2.4 ADVANCE NOTICE PROCEDURES	<u>2</u>
2.5 NOTICE OF STOCKHOLDERS' MEETINGS	<u>9</u>
2.6 QUORUM	<u>10</u>
2.7 ADJOURNED MEETING; NOTICE	<u>10</u>
2.8 CONDUCT OF BUSINESS	<u>11</u>
2.9 VOTING	<u>11</u>
2.10 STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING	<u>12</u>
2.11 RECORD DATES	<u>12</u>
2.12 PROXIES	<u>12</u>
2.13 LIST OF STOCKHOLDERS ENTITLED TO VOTE	<u>13</u>
2.14 INSPECTORS OF ELECTION	<u>13</u>
ARTICLE III - DIRECTORS	<u>13</u>
3.1 POWERS	<u>13</u>
3.2 NUMBER OF DIRECTORS	<u>13</u>
3.3 ELECTION, QUALIFICATION AND TERM OF OFFICE OF DIRECTORS	<u>14</u>
3.4 RESIGNATION AND VACANCIES	<u>14</u>
3.5 PLACE OF MEETINGS; MEETINGS BY TELEPHONE	<u>14</u>
3.6 REGULAR MEETINGS	<u>14</u>
3.7 SPECIAL MEETINGS; NOTICE	<u>14</u>
3.8 QUORUM; VOTING	<u>15</u>
3.9 BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING	<u>15</u>
3.10 FEES AND COMPENSATION OF DIRECTORS	<u>16</u>
3.11 REMOVAL OF DIRECTORS	<u>16</u>
ARTICLE IV - COMMITTEES	<u>16</u>

4.1	COMMITTEES OF DIRECTORS	<a href="#">16</a>
4.2	COMMITTEE MINUTES	<a href="#">16</a>
4.3	MEETINGS AND ACTION OF COMMITTEES	<a href="#">16</a>
4.4	SUBCOMMITTEES	<a href="#">17</a>
ARTICLE V - OFFICERS		<a href="#">17</a>
5.1	OFFICERS	<a href="#">17</a>
5.2	APPOINTMENT OF OFFICERS	<a href="#">18</a>
5.3	SUBORDINATE OFFICERS	<a href="#">18</a>
5.4	REMOVAL AND RESIGNATION OF OFFICERS	<a href="#">18</a>
5.5	VACANCIES IN OFFICES	<a href="#">18</a>
5.6	REPRESENTATION OF SECURITIES OF OTHER ENTITIES	<a href="#">18</a>
5.7	AUTHORITY AND DUTIES OF OFFICERS	<a href="#">18</a>
ARTICLE VI - STOCK		<a href="#">19</a>
6.1	STOCK CERTIFICATES; PARTLY PAID SHARES	<a href="#">19</a>
6.2	SPECIAL DESIGNATION ON CERTIFICATES	<a href="#">19</a>
6.3	LOST CERTIFICATES	<a href="#">20</a>
6.4	DIVIDENDS	<a href="#">20</a>
6.5	TRANSFER OF STOCK	<a href="#">20</a>
6.6	STOCK TRANSFER AGREEMENTS	<a href="#">20</a>
6.7	REGISTERED STOCKHOLDERS	<a href="#">20</a>
ARTICLE VII - MANNER OF GIVING NOTICE AND WAIVER		<a href="#">21</a>
7.1	NOTICE OF STOCKHOLDERS' MEETINGS	<a href="#">21</a>
7.2	NOTICE TO STOCKHOLDERS SHARING AN ADDRESS	<a href="#">21</a>
7.3	NOTICE TO PERSON WITH WHOM COMMUNICATION IS UNLAWFUL	<a href="#">21</a>
7.4	WAIVER OF NOTICE	<a href="#">21</a>
ARTICLE VIII - INDEMNIFICATION		<a href="#">22</a>
8.1	INDEMNIFICATION OF DIRECTORS AND OFFICERS IN THIRD PARTY PROCEEDINGS	<a href="#">22</a>
8.2	INDEMNIFICATION OF DIRECTORS AND OFFICERS IN ACTIONS BY OR IN THE RIGHT OF THE CORPORATION	<a href="#">22</a>
8.3	SUCCESSFUL DEFENSE	<a href="#">22</a>
8.4	INDEMNIFICATION OF OTHERS	<a href="#">23</a>
8.5	DETERMINATION	<a href="#">23</a>
8.6	ADVANCE PAYMENT OF EXPENSES	<a href="#">23</a>

8.7	LIMITATION ON INDEMNIFICATION	<a href="#">24</a>
8.8	CLAIM	<a href="#">24</a>
8.9	NON-EXCLUSIVITY OF RIGHTS	<a href="#">25</a>
8.10	INSURANCE	<a href="#">25</a>
8.11	SURVIVAL	<a href="#">25</a>
8.12	EFFECT OF REPEAL OR MODIFICATION	<a href="#">25</a>
8.13	CERTAIN DEFINITIONS	<a href="#">25</a>
ARTICLE IX - GENERAL MATTERS		<a href="#">26</a>
9.1	EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS	<a href="#">26</a>
9.2	FISCAL YEAR	<a href="#">26</a>
9.3	SEAL	<a href="#">26</a>
9.4	CONSTRUCTION; DEFINITIONS	<a href="#">26</a>
ARTICLE X - AMENDMENTS		<a href="#">26</a>
ARTICLE XI - EXCLUSIVE FORUM		<a href="#">27</a>
ARTICLE XII - EMERGENCY BYLAWS		<a href="#">27</a>
12.1	EMERGENCY BYLAWS	<a href="#">27</a>
12.2	MEETINGS; NOTICE	<a href="#">27</a>
12.3	QUORUM	<a href="#">27</a>
12.4	LIABILITY	<a href="#">28</a>
12.5	AMENDMENTS	<a href="#">28</a>
12.6	REPEAL OR CHANGE	<a href="#">28</a>
12.7	DEFINITIONS	<a href="#">28</a>
ARTICLE XIII - SEVERABILITY		<a href="#">28</a>

**AMENDED AND RESTATED BYLAWS OF  
SILK ROAD MEDICAL, INC.**

**ARTICLE I - CORPORATE OFFICES**

1.1 REGISTERED OFFICE

The registered office of Silk Road Medical, Inc. (the “**Corporation**”) shall be fixed in the Corporation’s certificate of incorporation, as the same may be amended from time to time (the “**certificate of incorporation**”).

1.2 OTHER OFFICES

The Corporation may at any time establish other offices at any place or places.

**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 of the Corporation (the “**Board**”). The Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the Delaware General Corporation Law (the “**DGCL**”) or any successor legislation. In the absence of any such designation or determination, stockholders’ meetings shall be held at the Corporation’s principal executive office.

2.2 ANNUAL MEETING

The annual meeting of stockholders shall be held on such date, at such time, and at such place (if any) within or outside of the State of Delaware, as the Board shall designate from time to time and state in the Corporation’s notice of the meeting. At the annual meeting, directors shall be elected and any other proper business, brought in accordance with Section 2.4 of these bylaws, may be transacted. The Board may cancel, postpone or reschedule any previously scheduled annual meeting at any time, before or after the notice for such meeting has been sent to the stockholders.

2.3 SPECIAL MEETING

(i) A special meeting of the stockholders, other than as required by statute, may be called at any time by the Board, the chairperson of the Board, the chief executive officer or the president (in the absence of a chief executive officer), but a special meeting of the stockholders may not be called by any other person or persons. The Board may cancel, postpone or reschedule any previously scheduled special meeting at any time, before or after the notice for such meeting has been sent to the stockholders.

(ii) The notice of a special meeting shall include the purpose for which the meeting is called. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting by or at the direction of the Board, chairperson of the Board, chief executive officer or president (in the absence of a chief executive officer). Nothing contained in this Section 2.3(ii) shall be construed as limiting, fixing or affecting the time when a meeting of stockholders called by action of the Board may be held.

(i) *Advance Notice of Stockholder Business at Annual Meetings.* At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be brought: (A) as specified in the Corporation's notice of the annual meeting (or any supplement thereto), (B) by or at the direction of the Board, or any committee thereof that has been formally delegated authority to propose such business, or (C) by a stockholder of the Corporation who (1) is a stockholder of record at the time of the giving of the notice required by this Section 2.4(i), (2) is a stockholder of record on the record date for the determination of stockholders entitled to notice of the annual meeting, (3) is a stockholder of record on the record date for the determination of stockholders entitled to vote at the annual meeting, (4) is a stockholder of record at the time of the annual meeting, and (5) has timely complied in proper written form with the notice procedures set forth in this Section 2.4. In addition, for business to be properly brought before an annual meeting by a stockholder, such business must be a proper matter for stockholder action pursuant to these bylaws and applicable law. For the avoidance of doubt, clause (C) above shall be the exclusive means for a stockholder to bring business (other than business included in the Corporation's proxy materials pursuant to Rule 14a-8 (or any successor provision) ("**Rule 14a-8**") under the Securities Exchange Act of 1934, as amended (such act, and the rules and regulations promulgated thereunder, the "**1934 Act**")) before an annual meeting of stockholders.

(a) To comply with clause (C) of Section 2.4(i) above, a stockholder's notice must set forth all information required under this Section 2.4(i) and must be timely received by the secretary of the Corporation (the "**secretary**"). To be timely, a stockholder's notice must be received by the secretary at the principal executive offices of the Corporation not later than 5:00 p.m., Pacific Time, on the forty-fifth (45th) day nor earlier than 8:00 a.m., Pacific Time, on the seventy-fifth (75th) day before the one-year anniversary of the date on which the Corporation first mailed its proxy materials or a notice of availability of proxy materials (whichever is earlier) for the preceding year's annual meeting; *provided, however*, that in the event that no annual meeting was held in the previous year or if the date of the annual meeting for the current year is changed by more than thirty (30) days from the one-year anniversary of the date of the previous year's annual meeting, then, for notice by the stockholder to be timely, it must be so received by the secretary at the principal executive offices of the Corporation not earlier than 8:00 a.m., Pacific Time, on the one hundred twentieth (120th) day prior to such annual meeting and not later than 5:00 p.m., Pacific Time, on the later of (i) the ninetieth (90th) day prior to such annual meeting, or (ii) the tenth (10th) day following the day on which Public Announcement (as defined below) of the date of such annual meeting is first made. In no event shall any adjournment, rescheduling, postponement or other delay 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 in this Section 2.4(i)(a). "**Public Announcement**" shall mean disclosure in a press release reported by a national news service, in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act or by such other means as is reasonably designed to inform the public or stockholders of the Corporation in general of such information, including, without limitation, posting on the Corporation's investor relations website.

(b) To be in proper written form, a stockholder's notice to the secretary must set forth as to each matter of business the stockholder intends to bring before the annual meeting: (1)(A) a brief description of the business intended to be brought before the annual meeting, (B) the text of the proposed business (including the text of any resolutions proposed for consideration and, in the event that such proposal or business includes a proposal to amend the bylaws of the Corporation, the text of the proposed amendment), (C) the reasons for conducting such business at the annual meeting, and (D) any material interest in such business of such stockholder and the Stockholder Associated Person (as defined below), if

any, on whose behalf the proposal is made, and (2) as to the stockholder giving notice and the Stockholder Associated Person, if any, on whose behalf the proposal of business is made (each a “**party**” as used herein) (A) the name and address, as they appear on the Corporation’s books, of the stockholder proposing such business and any Stockholder Associated Person, (B) the class or series and number of shares of capital stock of the Corporation that are held, directly or indirectly, of record or are beneficially owned by the stockholder or any Stockholder Associated Person and any derivative positions held or beneficially held by the stockholder or any Stockholder Associated Person, (C) any (i) agreement, arrangement or understanding, written or oral (including, without limitation and regardless of the form of settlement, any derivative, long or short position, profit interest, forward, future, swap, option, warrant, convertible security, stock appreciation right or similar right, hedging or other transaction or series of transactions and borrowed or loaned shares and so-called “stock borrowing” agreement or arrangement) that has been entered into by or on behalf of such stockholder or any Stockholder Associated Person with respect to any securities of the Corporation (any of the foregoing, a “**Derivative Instrument**”) including the full notional amount of any securities that, directly or indirectly, underlie any Derivative Instrument, and (ii) other agreement, arrangement or understanding that has been made, the effect or intent of which is to create or mitigate loss to, or to manage the risk or benefit from share price changes for, or to increase or decrease the voting power of, any person or entity with respect to securities of the Corporation, (D) any proxy, contract, arrangement, understanding, or relationship pursuant to which the stockholder or any Stockholder Associated Person has a right to vote, directly or indirectly, any security of the Corporation, (E) any rights to dividends on the Corporation’s securities owned beneficially directly or indirectly by the stockholder or any Stockholder Associated Person that are separated or separable from the underlying security of the Corporation, (F) any proportionate interest in the Corporation’s securities or any Derivative Instruments held, directly or indirectly, by a general or limited partnership in which the stockholder or any Stockholder Associated Person is a general partner or, directly or indirectly, beneficially owns an interest in a general partner of such general or limited partnership, (G) any performance-related fees (other than an asset-based fee) that the stockholder or any Stockholder Associated Person is directly or indirectly entitled to based on any increase or decrease in the value of the Corporation’s securities or any Derivative Instruments, if any, as of the date of such notice, including, without limitation, any such interests held by members of such party’s immediate family sharing the same household, (H) any agreement, arrangement or understanding between the stockholder or any Stockholder Associated Person or others acting in concert with them and any other person or persons (including, in each case, their names) in connection with the proposal of such business by such stockholder and any material interest of each such party in such business, (I) any significant equity interests or any Derivative Instruments in any principal competitor of the Corporation that are held by such stockholder, any Stockholder Associated Person or others acting in concert with them, (J) any direct or indirect interest of the stockholder or any Stockholder Associated Person in any contract with the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation (in each case, including, without limitation, any employment agreement, collective bargaining agreement or consulting agreement), (K) such other information relating to any proposed item of business as the Corporation may reasonably require to determine whether such proposed item of business is a proper matter for stockholder action, (L) any material pending or to such party’s knowledge, threatened, legal proceeding in which the stockholder or any Stockholder Associated Person is a party or participant involving the Corporation or, to such party’s knowledge, any current or former officer, director, affiliate or associate of the Corporation, (M) any material relationship between the stockholder or any Stockholder Associated Person, on the one hand, and the Corporation or any of its officers, directors or affiliates, on the other hand, (N) identification of the names and addresses of other stockholders (including Stockholder Associated Persons) known by the stockholder to support the proposal of such business by such stockholder and, to the extent known, the class and number of all shares of the Corporation’s capital stock owned beneficially or of record by such other stockholder(s) or other beneficial owner(s), (O) all information that would be required to be set forth in a Schedule 13D filed pursuant to Rule 13d-1(a) under the 1934 Act or an amendment pursuant to Rule 13d-2(a) under the 1934 Act if such a statement were required to be filed

under the 1934 Act by such party (regardless of whether such party is actually required to file a Schedule 13D), (P) any other information relating to each such party or others acting in concert with them that, in each case, would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies in support of such proposal of business pursuant to Section 14 of the 1934 Act (whether or not such party intends to deliver a proxy statement or conduct a proxy solicitation); *provided, however*, that the disclosures in the foregoing subclauses (A) through (P) shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a party solely as a result of being the stockholder directed to prepare and submit the notice required by these bylaws on behalf of a Stockholder Associated Person, (Q) a representation that such stockholder is a holder of record of stock of the Corporation as of the date of the submission of the stockholder's notice, is entitled to vote at such meeting and such stockholder (or a qualified representative of such stockholder) intends to appear in person or by proxy at the meeting to propose such business and (R) a representation and undertaking as to whether such party or others acting in concert with them intends, or is part of a group that intends, to (x) deliver a proxy statement or form of proxy to or otherwise solicit proxies from holders of at least the percentage of the voting power of the Corporation's then-outstanding stock required under applicable law to approve or adopt the proposal or (y) otherwise solicit proxies from stockholders in support of such proposal; *provided, however*, that if the business is otherwise subject to Rule 14a-8, the foregoing notice requirements shall be deemed satisfied by a stockholder if the stockholder has notified the Corporation of such stockholder's intention to present such business at an annual meeting of stockholders of the Corporation in compliance with Rule 14a-8, and such business has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting of stockholders (such information provided and statements made as required by clauses (1) and (2), a "**Business Solicitation Statement**"). In addition, to be in proper written form and timely, a stockholder's notice (and any additional information submitted to the Corporation in connection therewith) to the secretary must be updated and supplemented (A) if necessary, so that the information provided or required to be provided in such notice is true and correct as of the record date(s) for determining the stockholders entitled to notice of, and to vote at, the annual meeting and as of the date that is ten (10) business days prior to the annual meeting or any adjournment, rescheduling, postponement or other delay thereof, and (B) to provide any additional information that the Corporation may reasonably request. Such update and supplement or additional information must be received by the secretary at the principal executive offices of the Corporation, in the case of a request for additional information, promptly following a request therefor, which response must be received by the secretary not later than such reasonable time as specified in such request from the Corporation or, in the case of any other update or supplement of any information, not later than five business days after the record date(s) for the annual meeting (in the case of any update and supplement required to be made as of the record date(s)), and not later than eight business days prior to the date of the annual meeting or any adjournment, rescheduling, postponement or other delay thereof (in the case of any update or supplement required to be made as of ten (10) business days prior to the annual meeting or any adjournment, rescheduling, postponement or other delay thereof). The failure to timely provide such update, supplement or additional information shall result in the proposal no longer being eligible for consideration at the annual meeting. For purposes of this Section 2.4, a "**Stockholder Associated Person**" of any stockholder shall mean (i) any person controlling, directly or indirectly, or acting in concert with, such stockholder, (ii) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder and on whose behalf the proposal or nomination, as the case may be, is being made, or (iii) any person controlling, controlled by or under common control with such person referred to in the preceding clauses (i) and (ii). For purposes of this Section 2.4, unless otherwise indicated, the terms "**affiliate**" and "**associate**" shall have the respective meanings ascribed thereto in Rule 405 under the Securities Act of 1933, as amended, and the term "**beneficial owner**" or "**beneficially owned**" shall have the meaning set forth for such terms in Section 13(d) of the 1934 Act.

(c) Without exception, no business shall be conducted at any annual meeting except in accordance with the provisions set forth in this Section 2.4. In addition, business proposed to be brought by a stockholder may not be brought before the annual meeting if such stockholder or a Stockholder Associated Person, as applicable, takes action contrary to the representations made in the Business Solicitation Statement applicable to such business or if the Business Solicitation Statement applicable to such business contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading. The chairperson of the annual meeting shall, if the facts warrant, determine and declare at the annual meeting that business was not properly brought before the annual meeting and in accordance with the provisions of this Section 2.4, and, if the chairperson should so determine, the chairperson shall so declare at the annual meeting that any such business not properly brought before the annual meeting shall not be conducted.

(ii) *Advance Notice of Director Nominations at Annual Meetings.* Notwithstanding anything in these bylaws to the contrary, only persons who are nominated in accordance with the procedures set forth in this Section 2.4 shall be eligible for election or re-election as directors at an annual meeting of stockholders. Nominations of persons for election or re-election to the Board shall be made at an annual meeting of stockholders only (A) by or at the direction of the Board or any committee thereof that has been formally delegated authority to nominate such persons, or (B) by a stockholder of the Corporation who (1) is a stockholder of record at the time of the giving of the notice required by this Section 2.4(ii), (2) is a stockholder of record on the record date for the determination of stockholders entitled to notice of the annual meeting, (3) is a stockholder of record on the record date for the determination of stockholders entitled to vote at the annual meeting, (4) is a stockholder of record at the time of the annual meeting, and (5) has complied with the notice procedures set forth in this Section 2.4. In addition to any other applicable requirements, for a nomination to be made by a stockholder, the stockholder must have given timely notice thereof in proper written form to the secretary at the principal executive offices of the Corporation.

(a) To comply with clause (B) of Section 2.4(ii) above, a nomination to be made by a stockholder must set forth all information required under this Section 2.4(ii) and must be timely received by the secretary at the principal executive offices of the Corporation at the time set forth in, and in accordance with, the final three sentences of Section 2.4(i)(a) above. In no event may a stockholder provide notice with respect to a greater number of director candidates than there are director seats subject to election by stockholders at the annual meeting. If the number of directors to be elected to the Board is increased and there is no Public Announcement naming all of the nominees for director or specifying the size of the increased Board made by the Corporation at least ten (10) days before the last day a stockholder may deliver a notice of nomination pursuant to the foregoing provisions, a stockholder's notice required by this Section 2.4(ii) shall also be considered timely, but only with respect to any nominees for any new positions created by such increase, if it shall be received by the secretary at the principal executive offices of the Corporation not later than 5:00 p.m., Pacific Time, on the tenth (10th) day following the day on which such Public Announcement is first made by the Corporation.

(b) To be in proper written form, such stockholder's notice of director nominations to the secretary must set forth:

(1) as to each person (a "**nominee**") whom the stockholder proposes to nominate for election or re-election as a director: (A) the name, age, business address and residence address of the nominee, (B) the principal occupation or employment of the nominee, (C) the class and number of shares of the Corporation that are held of record or are beneficially owned by the nominee and any Derivative Instruments held or beneficially held by the nominee, including the full notional amount of any securities that, directly or indirectly, underlie any such Derivative Instrument, (D) any other agreement, arrangement or understanding that has been made the effect or intent of which is to create or mitigate loss

to, or to manage the risk or benefit of share price changes for, or to increase or decrease the voting power of the nominee with respect to the Corporation's securities, (E) any direct or indirect compensatory, payment, indemnification or other financial agreement, arrangement or understanding that such nominee has, or has had within the past three years, with any person or entity other than the Corporation (including, without limitation, the amount of any payment or payments received or receivable thereunder), in each case in connection with candidacy or service as a director of the Corporation (such agreement, arrangement or understanding, a "**Third-Party Compensation Arrangement**"), (F) a description of any other material relationships between the stockholder giving the notice and any Stockholder Associated Person, on the one hand, and the nominee and such nominee's respective affiliates and associates, or others acting in concert with them, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such stockholder or Stockholder Associated Person were the "registrant" for the purposes of such rule and such nominee were a director or executive officer of such registrant, , and (G) any other information relating to the nominee that would be required to be disclosed about such nominee if proxies were being solicited for the election or re-election of the nominee as a director, or that is otherwise required, in each case pursuant to Section 14 of the 1934 Act(H) a written statement executed by the nominee acknowledging and representing that the nominee (x) consents to being named as a nominee of the stockholder, (y) consents to serving as a director and intends to serve a full term on the Board if elected, and (z) consents to being named in the Corporation's form of proxy pursuant to Rule 14a-19 under the 1934 Act ("**Rule 14a-19**"), and (I) a statement whether such person would be in compliance if elected as a director of the Corporation and will comply with all applicable corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation; and

(2) as to such stockholder giving notice, (A) the information required to be provided pursuant to clauses (2)(B) through 2(O) of Section 2.4(i)(b) above, and the update and supplement referenced in the second sentence of Section 2.4(i)(b) above (except that the references to "business" in such clauses shall instead refer to nominations of directors for purposes of this paragraph), with such update and supplement being subject to the terms of the second and third sentences of Section 2.4(i)(b), and (B) a representation and undertaking as to whether such stockholder or Stockholder Associated Person or others acting in concert with them intends to, or is part of a group that intends to, (x) deliver a proxy statement or form of proxy to or otherwise solicit proxies from holders of at least the percentage of the voting power of the Corporation's then-outstanding stock required to elect or re-elect such nominee(s) (which representation and undertaking must include a statement as to whether such stockholder or any Stockholder Associated Person intends to solicit the requisite percentage of the voting power of the Corporation's stock under Rule 14a-19), or (y) otherwise solicit proxies from stockholders in support of such nomination (such information provided and statements made as required by Section 2.4(ii)(b)(1) and this Section 2.4(ii)(b)(2), a "**Nominee Solicitation Statement**").

(c) To be eligible to be a nominee for election or re-election as a director of the Corporation at an annual or special meeting of stockholders, any person nominated by a stockholder for election or re-election as a director must furnish to the secretary (in accordance with the notice deadline prescribed in 2.4(ii)(a) above or Section 2.4(iii) below), at the principal executive offices of the Corporation: (1) that information required to be set forth in the stockholder's notice of nomination of such person as a director as of a date subsequent to the date on which the notice of such person's nomination was given, (2) such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as a director of the Corporation or to serve as an independent director or audit committee financial expert of the Corporation under applicable law, securities exchange rule or regulation, or any publicly disclosed corporate governance guidelines or committee charter of the Corporation, (3) a completed written questionnaire (in a form provided by the Corporation at the written request of the nominating stockholder, which form will be provided by the secretary within ten (10) days

of receiving such request) with respect to the background, qualifications, stock ownership and independence of such proposed nominee, (4) a written representation and agreement (in a form provided by the Corporation) that such proposed nominee (A) is not and, if elected as a director during such director's term of office, will not become a party to (i) any agreement, arrangement or understanding with, and has not given and will not give any commitment or assurance to, any person or entity as to how such proposed nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a "**Voting Commitment**") or (ii) any Voting Commitment that could limit or interfere with such proposed nominee's ability to comply, if elected as a director of the Corporation, with such proposed nominee's fiduciary duties under applicable law, (B) 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 or reimbursement for service as a director, and (C) if elected as a director of the Corporation, will comply with the applicable corporate governance, conflict of interest, code of business conduct and ethics, confidentiality and stock ownership and trading policies and guidelines of the Corporation (and, if requested by any proposed nominee, the secretary of the Corporation shall provide to such proposed nominee all such policies and guidelines then in effect), and (5) such other information that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, or the qualifications of such nominee. In the absence of the timely furnishing of such information, such stockholder's nomination shall not be considered in proper form and shall be ineligible for consideration at the annual meeting pursuant to this Section 2.4(ii).

(d) In addition to the information required pursuant to the foregoing provisions of this Section 2.4(ii), any proposed nominee shall also provide to the Corporation such other information as the Corporation may reasonably request. Such information shall be considered timely if provided to the Corporation promptly upon request by the Corporation but in any event within five (5) business days after such request. In addition, the Board may require any proposed nominee to submit to interviews with the Board or any committee thereof, and such proposed nominee shall make such proposed nominee available for any such interviews within ten (10) days following the date of any reasonable request therefor from the Board or any committee thereof. The failure to timely provide such update, supplement, evidence or additional information shall result in such nominee(s) no longer being eligible for consideration at the annual meeting.

(e) Without exception, no person shall be eligible for election or re-election as a director of the Corporation at an annual meeting of stockholders unless nominated in accordance with the provisions set forth in this Section 2.4. In addition, a nominee shall not be eligible for election or re-election if a stockholder or Stockholder Associated Person, as applicable, takes action contrary to the representations made in the Nominee Solicitation Statement applicable to such nominee or in any other notice to the Corporation or if the Nominee Solicitation Statement applicable to such nominee or any other information provided to the Corporation by or on behalf of such nominee contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading. The chairperson of the annual meeting shall, if the facts warrant, determine and declare at the annual meeting that a nomination was not made in accordance with the provisions prescribed by these bylaws, and if the chairperson should so determine, the chairperson shall so declare at the annual meeting, and the defective nomination shall be disregarded.

(f) Notwithstanding the foregoing provisions of this Section 2.4(ii), unless otherwise required by law, (1) no stockholder making such a nomination shall solicit proxies in support of director nominees other than the Corporation's nominees unless such stockholder has complied with Rule 14a-19 in connection with the solicitation of such proxies, including the provision to the Corporation of notices required thereunder in a timely manner unless the information required by Rule 14a-19(b) has been provided in a preliminary or definitive proxy statement previously filed by such person and (2) if any

stockholder making such a nomination (A) provides notice pursuant to Rule 14a-19(b), and (B) subsequently fails to comply with the requirements of Rule 14a-19, including the provision to the Corporation of notices required thereunder in a timely manner, then the Corporation shall disregard any proxies or votes solicited for any proposed nominees on the Corporation's proxy card other than the Corporation's nominees, the director nominee(s) proposed by such stockholder shall be ineligible for election or re-election at the annual meeting, and such nomination(s) shall be disregarded, notwithstanding that proxies in favor thereof may have been received by the Corporation. In addition, any stockholder that provides notice pursuant to Rule 14a-19(b) shall notify the secretary within two (2) business days of any change in such stockholder's intent to solicit proxies from the holders of shares representing at least sixty-seven percent (67%) of the voting power of shares entitled to vote on the election of directors in support of director nominees other than the Corporation's nominees. If any stockholder making such a nomination provides notice pursuant to Rule 14a-19, such stockholder shall deliver to the Corporation, no later than five (5) business days prior to the applicable meeting or any adjournment, rescheduling, postponement or other delay thereof, reasonable evidence that it has met the requirements of Rule 14a-19.

(iii) *Advance Notice of Director Nominations for Special Meetings.*

(a) For a special meeting of stockholders at which directors are to be elected or re-elected pursuant to Section 2.3, nominations of persons for election or re-election to the Board shall be made only (1) by or at the direction of the Board or any committee thereof that has been formally delegated authority to nominate such persons or (2) by any stockholder of the Corporation who (A) is a stockholder of record at the time of the giving of the notice required by this Section 2.4(iii), (B) is a stockholder of record on the record date for the determination of stockholders entitled to notice of the special meeting, (C) is a stockholder of record on the record date for the determination of stockholders entitled to vote at the special meeting, (D) is a stockholder of record at the time of the special meeting and (E) delivers a timely written notice of the nomination to the secretary that includes the information set forth in Sections 2.4(ii)(b), (ii)(c), and (ii)(d) above (with references therein to "annual meeting" deemed to mean "special meeting" for the purposes of this Section 2.4(iii)). To be timely, such notice must be received by the secretary at the principal executive offices of the Corporation not earlier than 8:00 a.m., Pacific Time, on the 120th day prior to the day of the special meeting and not later than 5:00 p.m., Pacific Time, on the later of (i) the ninetieth (90th) day prior to such special meeting or (ii) the tenth (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 to be elected or re-elected at such special meeting. In no event shall any adjournment, rescheduling, postponement or other delay of a special meeting or any announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. A person shall not be eligible for election or re-election as a director at a special meeting unless the person is nominated (i) by or at the direction of the Board or any committee thereof that has been formally delegated authority to nominate any such persons or (ii) by a stockholder in accordance with the notice procedures set forth in this Section 2.4(iii). In addition, a nominee shall not be eligible for election or re-election if a stockholder or Stockholder Associated Person, as applicable, takes action contrary to the representations made in the Nominee Solicitation Statement applicable to such nominee or in any other notice to the Corporation or if the Nominee Solicitation Statement applicable to such nominee or any other information provided to the Corporation by or on behalf of such nominee contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading. Any person nominated in accordance with this Section 2.4(iii) is subject to, and must comply with, the provisions of Section 2.4(ii)(c).

(b) The chairperson of the special meeting shall, if the facts warrant, determine and declare at the meeting that a nomination or business was not made in accordance with the procedures

prescribed by these bylaws, and if the chairperson should so determine, the chairperson shall so declare at the meeting, and the defective nomination or business shall be disregarded.

(iv) *Other Requirements and Procedures.*

(a) In addition to the foregoing provisions of this Section 2.4, a stockholder must also comply with all applicable requirements of state law and of the 1934 Act and the rules and regulations thereunder with respect to the matters set forth in this Section 2.4, including, with respect to business such stockholder intends to bring before the annual meeting that involves a proposal that such stockholder requests to be included in the Corporation's proxy statement, the requirements of Rule 14a-8 (or any successor provision) under the 1934 Act. Nothing in this Section 2.4 shall be deemed to affect any right of the Corporation to omit a proposal from the Corporation's proxy statement pursuant to Rule 14a-8 (or any successor provision) under the 1934 Act.

(b) At the request of the Board, any person nominated by the Board for election or re-election as a director must furnish to the secretary the information that is required to be set forth in a stockholder's notice of nomination pertaining to such nominee.

(c) For the avoidance of doubt, the obligation to update and supplement, or provide additional information or evidence, as set forth in these bylaws shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines pursuant to these bylaws or enable or be deemed to permit a stockholder who has previously submitted notice pursuant to these bylaws to amend or update any nomination or to submit any new nomination. No disclosure pursuant to these bylaws will be required with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is the stockholder submitting a notice pursuant to this Section 2.4 solely because such broker, dealer, commercial bank, trust company or other nominee has been directed to prepare and submit the notice required by these bylaws on behalf of a beneficial owner.

(d) Notwithstanding anything to the contrary in this Section 2.4, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the applicable meeting to present a nomination or other proposed business, such nomination will be disregarded or such proposed business will not be transacted, as the case may be, notwithstanding that proxies in respect of such nomination or business may have been received by the Corporation and counted for purposes of determining a quorum. For purposes of this Section 2.4, 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 proxy at the applicable meeting, and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the applicable meeting.

## 2.5 NOTICE OF STOCKHOLDERS' MEETINGS

Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given in accordance with Section 232 of the DGCL, and such notice shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the 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. Except as otherwise provided in the DGCL, the

certificate of incorporation or these bylaws, the notice of any meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting.

## 2.6 QUORUM

The holders of a majority of the voting power of the capital stock of the Corporation issued and outstanding and entitled to vote, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders, unless otherwise required by law, the certificate of incorporation, these bylaws or the rules of any applicable stock exchange on which the Corporation's securities are listed. Where a separate vote by a class or series or classes or series is required, a majority of the voting power of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter, except as otherwise required by law, the certificate of incorporation, these bylaws or the rules of any applicable stock exchange on which the Corporation's securities are listed.

If, however, such quorum is not present or represented at any meeting of the stockholders, then either (i) the chairperson of the meeting, or (ii) if the chairperson does not act, the stockholders entitled to vote at the meeting, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the original meeting.

## 2.7 ADJOURNED MEETING; NOTICE

Whether or not a quorum is present, any meeting of stockholders, annual or special, may be adjourned from time to time to any other time or place, if any, at which a meeting of stockholders may be held under these bylaws by the chairperson of the meeting or the Board. When a meeting is adjourned to another time or place, if any (including an adjournment taken to address a technical failure to convene or continue a meeting using remote communication), unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are (i) announced at the meeting at which the adjournment is taken, (ii) displayed, during the time scheduled for the meeting, on the same electronic network used to enable stockholders and proxy holders to participate in the meeting by means of remote communication or (iii) set forth in the notice of meeting given in accordance with Section 222(a) of the DGCL. 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 meeting in accordance with these bylaws. If after the adjournment the Board fixes a new record date for stockholders entitled to vote at the adjourned meeting, notice of the place, if any, date and time of the adjourned meeting shall be given to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting. The Board may, at any time prior to the holding of a meeting of stockholders, annual or special, postpone, reschedule or cancel such meeting.

## 2.8 CONDUCT OF BUSINESS

The chairperson of any meeting of stockholders may, without limitation: (i) determine the order of business and the procedure at the meeting, (ii) determine when the polls shall open and close for any given matter to be voted on at the meeting, (iii) establish rules and procedures for maintaining order at the meeting and the safety of those present, (iv) establish limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the chairperson shall determine, (v) establish restrictions on entry or access to the meeting after the time fixed for the commencement thereof, and (vi) establish limitations on the time allotted to questions or comments by participants. The chairperson of any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting (including, without limitation, determinations with respect to the administration and/or interpretation of any of the rules, regulations or procedures of the meeting, whether adopted by the Board or prescribed by the chairperson), shall, if the facts warrant, determine and declare to the meeting that a matter of business was not properly brought before the meeting and, if such presiding person should so determine, such presiding person shall so declare to the meeting, and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board or the chairperson, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the chairperson of any meeting of stockholders shall have the right and power to convene and (for any reason or no reason) to recess, adjourn and/or postpone the meeting to another place, if any, date or time, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of the chairperson, are appropriate for the proper conduct of the meeting. The chairperson of any meeting of stockholders shall be designated by the Board; in the absence of such designation, the chairperson of the Board, if any, or the chief executive officer (in the absence of the chairperson of the Board), or the president (in the absence of the chairperson of the Board and the chief executive officer), or in their absence any other executive officer of the Corporation, shall serve as chairperson of the stockholder meeting.

## 2.9 VOTING

The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.11 of these bylaws, subject to Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the DGCL.

Except as may be otherwise provided in the certificate of incorporation, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder as of the applicable record date that has voting power upon the matter in question.

Except as otherwise provided by law, the certificate of incorporation, these bylaws or the rules of any applicable stock exchange on which the Corporation's securities are listed, in all matters other than the election of directors, the affirmative vote of a majority of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders. Except as otherwise required by law, the certificate of incorporation or these bylaws, directors shall be elected by a plurality of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Where a separate vote by a class or series or classes or series is required, in all matters other than the election of directors, the affirmative vote of the majority of the voting power of the shares of such class or series or classes or series present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of such class

or series or classes or series, except as otherwise provided by law, the certificate of incorporation, these bylaws or the rules of any applicable stock exchange.

#### 2.10 STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Subject to the rights of the holders of the shares of any series of preferred stock or any other class of stock or series thereof that have been expressly granted the right to take action by written consent, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders.

#### 2.11 RECORD DATES

In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board 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 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, 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 day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board may fix a new record date for determination of 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 determination of stockholders entitled to vote in accordance with the provisions of Section 213 of the DGCL and this Section 2.11 at the adjourned meeting.

In order that the Corporation may determine 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 may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

#### 2.12 PROXIES

Each stockholder entitled to vote at a meeting of stockholders, or such stockholder's authorized officer, director, employee or agent, may authorize another person or persons to act for such stockholder by proxy authorized by a document or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL.

The authorization of a person to act as a proxy may be documented, signed and delivered in accordance with Section 116 of the DGCL, provided that such authorization shall set forth, or be delivered with information enabling the Corporation to determine, the identity of the stockholder granting such authorization.

Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for the exclusive use by the Board.

#### 2.13 LIST OF STOCKHOLDERS ENTITLED TO VOTE

The Corporation shall prepare, no later than the tenth (10<sup>th</sup>) day before each 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 meeting date, the list shall reflect the stockholders entitled to vote as of the tenth (10<sup>th</sup>) day before the meeting date, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of ten (10) days ending on the day before the meeting date: (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 Corporation's principal place of business. 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.

#### 2.14 INSPECTORS OF ELECTION

Before any meeting of stockholders, the Corporation shall appoint an inspector or inspectors of election to act at the meeting or its adjournment. The Corporation may designate one (1) or more persons as alternate inspectors to replace any inspector who fails to act. Such inspectors shall take all actions as contemplated under Section 231 of the DGCL or any successor provision thereto.

The inspectors of election shall take and sign an oath to faithfully execute the duties of inspector with strict impartiality and to the best of their ability. If there are multiple inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all. Any report or certificate made by the inspectors of election is *prima facie* evidence of the facts stated therein.

### ARTICLE III - DIRECTORS

#### 3.1 POWERS

The business and affairs of the Corporation shall be managed by or under the direction of the Board, except as may be otherwise provided in the DGCL or the certificate of incorporation.

#### 3.2 NUMBER OF DIRECTORS

The Board shall consist of one or more members, each of whom shall be a natural person. Unless the certificate of incorporation fixes the number of directors, the number of directors shall be determined from time to time by resolution of the Board. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

### 3.3 ELECTION, QUALIFICATION AND TERM OF OFFICE OF DIRECTORS

Except as provided in Section 3.4 of these bylaws, each director, including a director elected to fill a vacancy or newly created directorship, shall hold office until the expiration of the term for which elected and until such director's successor is elected and qualified or until such director's earlier death, resignation or removal. Directors need not be stockholders unless so required by the certificate of incorporation or these bylaws. The certificate of incorporation or these bylaws may prescribe other qualifications for directors.

### 3.4 RESIGNATION AND VACANCIES

Any director may resign at any time upon notice given in writing or by electronic transmission to the chairperson of the Board, the chief executive officer, the president, or the secretary of the Corporation, or, in the case of a committee, to the chair of such committee. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. Unless otherwise specified in the notice of resignation, acceptance of such resignation shall not be necessary to make it effective. A resignation which is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. Unless otherwise provided in the certificate of incorporation or these bylaws, when one or more directors resign from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective.

Subject to the rights of holders of any series of preferred stock with respect to the election of directors, and except as otherwise provided in the DGCL, vacancies occurring on the Board for any reason and newly created directorships resulting from an increase in the authorized number of directors may be filled only by vote of a majority of the remaining members of the Board, although less than a quorum, or by a sole remaining director, at any meeting of the Board. A person so elected by the Board to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been assigned by the Board and until such director's successor shall be duly elected and qualified.

### 3.5 PLACE OF MEETINGS; MEETINGS BY TELEPHONE

The Board may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the Board may participate in a meeting of the Board by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

### 3.6 REGULAR MEETINGS

Regular meetings of the Board may be held without notice at such time and at such place as shall from time to time be determined by the Board.

### 3.7 SPECIAL MEETINGS; NOTICE

Special meetings of the Board for any purpose or purposes may be called at any time by the chairperson of the Board, the chief executive officer, the president, the secretary or a majority of the authorized number of directors, at such times and places as such person or persons shall designate; *provided*

that the person(s) authorized to call a special meeting of the Board may authorize another person or persons to send notice of such meeting.

Notice of the time and place of special meetings shall be:

- (i) delivered personally by hand, by courier or by telephone;
- (ii) sent by United States first-class mail, postage prepaid;
- (iii) sent by facsimile;
- (iv) sent by electronic mail; or
- (v) otherwise given by electronic transmission (as defined in Section 232 of the DGCL),

directed to each director at that director's address, telephone number, facsimile number, electronic mail address or other contact for notice by electronic transmission, as the case may be, as shown on the Corporation's records.

If the notice is (i) delivered personally by hand, by courier or by telephone, (ii) sent by facsimile, (iii) sent by electronic mail or (iv) otherwise given by electronic transmission, it shall be delivered, sent or otherwise directed to each director, as applicable, at least twenty-four (24) hours before the time of the holding of the meeting. If the notice is sent by United States mail, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. Any oral notice of the time and place of the meeting may be communicated to the director in lieu of written notice if such notice is communicated at least twenty-four (24) hours before the time of the holding of the meeting. The notice need not specify the place of the meeting (if the meeting is to be held at the Corporation's principal executive office) nor the purpose of the meeting, unless required by statute.

### 3.8 QUORUM; VOTING

At all meetings of the Board, a majority of the total authorized number of directors shall constitute a quorum for the transaction of business. If a quorum is not present at any meeting of the Board, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

The affirmative vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as may be otherwise specifically provided by statute, the certificate of incorporation or these bylaws.

If the certificate of incorporation provides that one or more directors shall have more or less than one vote per director on any matter, every reference in these bylaws to a majority or other proportion of the directors shall refer to a majority or other proportion of the votes of the directors.

### 3.9 BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Unless otherwise restricted by the certificate of incorporation or these bylaws, (i) any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken

without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission and (ii) a consent may be documented, signed and delivered in any manner permitted by Section 116 of the DGCL. Any person (whether or not then a director) may provide, whether through instruction to an agent or otherwise, that a consent to action will be effective at a future time (including a time determined upon the happening of an event), no later than sixty (60) days after such instruction is given or such provision is made and such consent shall be deemed to have been given for purposes of this Section 3.9 at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective. After an action is taken, the consent or consents relating thereto shall be filed with the minutes of the proceedings of the Board, or the committee thereof, in the same paper or electronic form as the minutes are maintained.

#### 3.10 FEES AND COMPENSATION OF DIRECTORS

Unless otherwise restricted by the certificate of incorporation or these bylaws, the Board shall have the authority to fix the compensation of directors.

#### 3.11 REMOVAL OF DIRECTORS

Subject to the rights of holders of any series of preferred stock with respect to the election of directors, a director may be removed from office in the manner provided in Section 141(k) of the DGCL.

### ARTICLE IV - COMMITTEES

#### 4.1 COMMITTEES OF DIRECTORS

The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board or in these bylaws, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it; 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 DGCL to be submitted to stockholders for approval, or (ii) adopt, amend or repeal any bylaw of the Corporation.

#### 4.2 COMMITTEE MINUTES

Each committee and subcommittee shall keep regular minutes of its meetings.

#### 4.3 MEETINGS AND ACTION OF COMMITTEES

Unless otherwise specified by the Board, meetings and actions of committees and subcommittees shall be governed by, and held and taken in accordance with, the provisions of:

- (i) Section 3.5 (place of meetings and meetings by telephone);
- (ii) Section 3.6 (regular meetings);
- (iii) Section 3.7 (special meetings and notice);
- (iv) Section 3.8 (quorum; voting);
- (v) Section 3.9 (action without a meeting); and
- (vi) Section 7.4 (waiver of notice)

with such changes in the context of those bylaws as are necessary to substitute the committee or subcommittee and its members for the Board and its members. *However:*

(i) the time and place of regular meetings of committees or subcommittees may be determined either by resolution of the Board or by resolution of the committee or subcommittee;

(ii) special meetings of committees or subcommittees may also be called by resolution of the Board or the committee or the subcommittee; and

(iii) notice of special meetings of committees and subcommittees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee or subcommittee. The Board or a committee or subcommittee may adopt other rules for the government of any committee or subcommittee.

Any provision in the certificate of incorporation providing that one or more directors shall have more or less than one vote per director on any matter shall apply to voting in any committee or subcommittee, unless otherwise provided in the certificate of incorporation or these bylaws.

#### 4.4 SUBCOMMITTEES

Unless otherwise provided in the certificate of incorporation, these bylaws or the resolutions of the Board designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

### ARTICLE V - OFFICERS

#### 5.1 OFFICERS

The officers of the Corporation shall be a president and a secretary. The Corporation may also have, at the discretion of the Board, a chairperson of the Board, a vice chairperson of the Board, a chief executive officer, a chief financial officer, treasurer, one or more vice presidents, one or more assistant vice presidents, one or more assistant treasurers, one or more assistant secretaries, and any such other officers as may be appointed in accordance with the provisions of these bylaws. Any number of offices may be held by the same person.

## 5.2 APPOINTMENT OF OFFICERS

The Board shall appoint the officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 5.3 of these bylaws, subject to the rights, if any, of an officer under any contract of employment.

## 5.3 SUBORDINATE OFFICERS

The Board, or any duly authorized committee or subcommittee thereof, may appoint, or empower any officer to appoint, such other officers as the business of the Corporation may require. Each of such officers shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as determined from time to time by the Board or, for the avoidance of doubt, any duly authorized committee or subcommittee thereof or by any officer who has been conferred such power of determination.

## 5.4 REMOVAL AND RESIGNATION OF OFFICERS

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by the Board or, for the avoidance of doubt, any duly authorized committee or subcommittee thereof or by any officer who has been conferred such power of removal.

Any officer may resign at any time by giving notice, in writing or by electronic transmission, to the chairperson of the Board, the chief executive officer, the president, or the secretary of 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. Unless otherwise specified in the notice of resignation, 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 officer is a party.

## 5.5 VACANCIES IN OFFICES

Any vacancy occurring in any office of the Corporation shall be filled by the Board or as provided in Section 5.3.

## 5.6 REPRESENTATION OF SECURITIES OF OTHER ENTITIES

The chairperson of the Board, the chief executive officer, the president, any vice president, the chief financial officer, the treasurer, the secretary or assistant secretary of the Corporation, or any other person authorized by the Board or the chief executive officer, the president or a vice president, is authorized to vote, represent, and exercise on behalf of the Corporation all rights incident to any and all shares or other securities of, or interests in, or issued by, any other entity or entities, and all rights incident to any management authority conferred on the Corporation in accordance with the governing documents of any entity or entities, standing in the name of the Corporation, including the right to act by written consent. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

## 5.7 AUTHORITY AND DUTIES OF OFFICERS

All officers of the Corporation shall respectively have such authority and perform such duties in the management of the business of the Corporation as may be designated from time to time by the Board

or, for the avoidance of doubt, any duly authorized committee or subcommittee thereof or by any officer who has been conferred such power of designation and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board.

## ARTICLE VI - STOCK

### 6.1 STOCK CERTIFICATES; PARTLY PAID SHARES

The shares of the Corporation shall be represented by certificates, provided that the Board 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. Every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of, the Corporation by any two officers of the 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 such person were such officer, transfer agent or registrar at the date of issue. The Corporation shall not have power to issue a certificate in bearer form.

The Corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly-paid shares, or upon the books and records of the Corporation in the case of uncertificated partly-paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully-paid shares, the Corporation shall declare a dividend upon partly-paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

### 6.2 SPECIAL DESIGNATION ON CERTIFICATES

If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock; *provided, however*, that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock, a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the registered owner thereof shall be given a notice, in writing or by electronic transmission, containing the information required to be set forth or stated on certificates pursuant to this Section 6.2 or Sections 151, 156, 202(a), or 218(a) of the DGCL or with respect to this Section 6.2 a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

### 6.3 LOST CERTIFICATES

Except as provided in this Section 6.3, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Corporation and cancelled at the same time. The Corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, 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.

### 6.4 DIVIDENDS

The Board, subject to any restrictions contained in the certificate of incorporation or applicable law, may declare and pay dividends upon the shares of the Corporation's capital stock. Dividends may be paid in cash, in property, or in shares of the Corporation's capital stock, subject to the provisions of the certificate of incorporation. The Board may set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

### 6.5 TRANSFER OF STOCK

Transfers of record of shares of stock of the Corporation shall be made only upon its books by the holders thereof, in person or by an attorney duly authorized, and, subject to Section 6.3 of these bylaws, if such stock is certificated, upon the surrender of a certificate or certificates for a like number of shares, properly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer.

### 6.6 STOCK TRANSFER AGREEMENTS

The Corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes or series of stock of the Corporation to restrict the transfer of shares of stock of the Corporation of any one or more classes or series owned by such stockholders in any manner not prohibited by the DGCL.

### 6.7 REGISTERED STOCKHOLDERS

The Corporation:

(i) shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and notices and to vote as such owner; and

(ii) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

## ARTICLE VII - MANNER OF GIVING NOTICE AND WAIVER

### 7.1 NOTICE OF STOCKHOLDERS' MEETINGS

Notice of any meeting of stockholders shall be given in the manner set forth in the DGCL.

### 7.2 NOTICE TO STOCKHOLDERS SHARING AN ADDRESS

Except as otherwise prohibited under the DGCL, 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 DGCL, 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 sixty (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. This Section 7.2 shall not apply to Sections 164, 296, 311, 312 or 324 of the DGCL.

### 7.3 NOTICE TO PERSON WITH WHOM COMMUNICATION IS UNLAWFUL

Whenever notice is required to be given, under the DGCL, 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 DGCL, 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.

### 7.4 WAIVER OF NOTICE

Whenever notice is required to be given under any provision of the DGCL, 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 the stockholders or the Board, as the case may be, 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 VIII - INDEMNIFICATION

### 8.1 INDEMNIFICATION OF DIRECTORS AND OFFICERS IN THIRD PARTY PROCEEDINGS

Subject to the other provisions of this Article VIII, the Corporation shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a “**Proceeding**”) (other than an action by or in the right of the Corporation) by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation 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 expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person’s conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person’s conduct was unlawful.

### 8.2 INDEMNIFICATION OF DIRECTORS AND OFFICERS IN ACTIONS BY OR IN THE RIGHT OF THE CORPORATION

Subject to the other provisions of this Article VIII, the Corporation shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed Proceeding by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation 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 expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection with the defense or settlement of such Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

### 8.3 SUCCESSFUL DEFENSE

To the extent that a present or former director or officer (for purposes of this Section 8.3 only, as officer is defined in Section 145(c)(1) of the DGCL) of the Corporation has been successful on the merits or otherwise in defense of any Proceeding described in Section 8.1 or Section 8.2, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection therewith. The Corporation may indemnify any other person who is not a present or former director or officer of the Corporation against expenses (including attorneys’ fees) actually and reasonably incurred by such person to the extent such person has

been successful on the merits or otherwise in defense of any Proceeding described in Section 8.1 or Section 8.2, or in defense of any claim, issue or matter therein.

#### 8.4 INDEMNIFICATION OF OTHERS

Subject to the other provisions of this Article VIII, the Corporation shall have power to indemnify and advance expenses to its employees and agents, or any other persons, to the extent not prohibited by the DGCL or other applicable law.

#### 8.5 DETERMINATION

Any indemnification under Section 8.1 or 8.2 (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former director or officer is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 8.1 or 8.2. Such determination shall be made, with respect to a person who is a director or officer of the Corporation at the time of such determination, as permitted by subsections (1) through (4) of Section 145(d) of the DGCL.

#### 8.6 ADVANCE PAYMENT OF EXPENSES

Expenses (including attorneys' fees) actually and reasonably incurred by an officer or director of the Corporation in defending any Proceeding shall be paid by the Corporation in advance of the final disposition of such Proceeding upon receipt of a written request therefor (together with documentation reasonably evidencing such expenses) and an undertaking by or on behalf of the person to repay such amounts if it shall ultimately be determined that the person is not entitled to be indemnified by the Corporation under this Article VIII or the DGCL. Such expenses (including attorneys' fees) actually and reasonably incurred by former directors and officers or other current or former employees and agents of the Corporation or by persons currently or formerly serving at the request of the Corporation as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise may be so paid upon such terms and conditions, if any, as the Corporation deems appropriate. The right to advancement of expenses shall not apply to any Proceeding (or any part of any Proceeding) for which indemnity is excluded pursuant to these bylaws, but shall apply to any Proceeding (or any part of any Proceeding) referenced in Section 8.7(ii) or 8.7(iii) prior to a determination that the person is not entitled to be indemnified by the Corporation.

Notwithstanding the foregoing, unless otherwise determined pursuant to Section 8.8, no advance shall be made by the Corporation to an officer of the Corporation (except by reason of the fact that such officer is or was a director of the Corporation, in which event this paragraph shall not apply) in any Proceeding if a determination is reasonably and promptly made (i) by a majority vote of the directors who are not parties to such Proceeding, even though less than a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, that 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.

## 8.7 LIMITATION ON INDEMNIFICATION

Subject to the requirements in Section 8.3 and the DGCL, the Corporation shall not be obligated to indemnify any person pursuant to this Article VIII in connection with any Proceeding (or any part of any Proceeding):

(i) for which payment has actually been made to or on behalf of such person under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid;

(ii) for an accounting or disgorgement of profits pursuant to Section 16(b) of the 1934 Act, or similar provisions of federal, state or local statutory law or common law, if such person is held liable therefor (including pursuant to any settlement arrangements);

(iii) for any reimbursement of the Corporation by such person of any bonus or other incentive-based or equity-based compensation or of any profits realized by such person from the sale of securities of the Corporation, as required in each case under the 1934 Act (including any such reimbursements that arise from an accounting restatement of the Corporation pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the “**Sarbanes-Oxley Act**”), or the payment to the Corporation of profits arising from the purchase and sale by such person of securities in violation of Section 306 of the Sarbanes-Oxley Act) or by the listing standards of any securities exchange on which the Corporation’s securities are listed, if such person is held liable therefor (including pursuant to any settlement arrangements);

(iv) initiated by such person, including any Proceeding (or any part of any Proceeding) initiated by such person against the Corporation or its directors, officers, employees, agents or other indemnitees, unless (A) the Board authorized the Proceeding (or the relevant part of the Proceeding) prior to its initiation, (B) the Corporation provides the indemnification, in its sole discretion, pursuant to the powers vested in the Corporation under applicable law, (C) otherwise required to be made under Section 8.8 or (D) otherwise required by applicable law; or

(v) if prohibited by applicable law; *provided, however*, that if any provision or provisions of this Article VIII shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (A) the validity, legality and enforceability of the remaining provisions of this Article VIII (including, without limitation, each portion of any paragraph or clause containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (B) to the fullest extent possible, the provisions of this Article VIII (including, without limitation, each such portion of any paragraph or clause containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

## 8.8 CLAIM

If a claim for indemnification or advancement of expenses under this Article VIII is not paid in full within ninety (90) days after receipt by the Corporation of the written request therefor, the claimant shall be entitled to an adjudication by a court of competent jurisdiction of their entitlement to such indemnification or advancement of expenses. The Corporation shall indemnify such person against any and all expenses that are actually and reasonably incurred by such person in connection with any action for indemnification or advancement of expenses from the Corporation under this Article VIII, to the extent such person is successful in such action, and to the extent not prohibited by law. In any such suit, the

Corporation shall, to the fullest extent not prohibited by law, have the burden of proving that the claimant is not entitled to the requested indemnification or advancement of expenses.

#### 8.9 NON-EXCLUSIVITY OF RIGHTS

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the certificate of incorporation or any statute, bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such 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 advancement of expenses, to the fullest extent not prohibited by the DGCL or other applicable law.

#### 8.10 INSURANCE

The Corporation may purchase and maintain insurance, to the fullest extent permitted by the DGCL, 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 such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of the DGCL.

#### 8.11 SURVIVAL

The rights to indemnification and advancement of expenses conferred by this Article VIII shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

#### 8.12 EFFECT OF REPEAL OR MODIFICATION

A right to indemnification or to advancement of expenses arising under a provision of the certificate of incorporation or a bylaw shall not be eliminated or impaired by an amendment to or repeal or elimination of the certificate of incorporation or these bylaws after the occurrence of the act or omission that is the subject of the Proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such action or omission has occurred.

#### 8.13 CERTAIN DEFINITIONS

For purposes of this Article VIII, references to the "**Corporation**" shall include, in addition to the resulting entity, any constituent entity (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent entity, or is or was serving at the request of such constituent entity as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article VIII with respect to the resulting or surviving entity as such person would have with respect to such constituent entity if its separate existence had continued. For purposes of this Article VIII, references to "**other enterprises**" shall include

employee benefit plans; references to “**fines**” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “**serving at the request of the Corporation**” shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “**not opposed to the best interests of the Corporation**” as referred to in this Article VIII.

## ARTICLE IX - GENERAL MATTERS

### 9.1 EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS

Except as otherwise provided by law, the certificate of incorporation or these bylaws, the Board may authorize any officer or officers, or agent or agents, or employee or employees, to enter into any contract or execute any document or instrument in the name of and on behalf of the Corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board or within the agency power of an officer, agent or employee, 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.

### 9.2 FISCAL YEAR

The fiscal year of the Corporation shall be fixed by resolution of the Board and may be changed by the Board.

### 9.3 SEAL

The Corporation may have a corporate seal in such form as may be approved from time to time by the Board.

### 9.4 CONSTRUCTION; DEFINITIONS

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term “**person**” includes both a corporation, partnership, limited liability company, joint venture, trust or other enterprise, and a natural person. Any reference in these bylaws to a section of the DGCL shall be deemed to refer to such section as amended from time to time and any successor provisions thereto.

## ARTICLE X - AMENDMENTS

These bylaws may be adopted, amended or repealed by the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all stockholders entitled to vote. The Board shall also have the power to adopt, amend or repeal bylaws.

A bylaw amendment adopted by stockholders which specifies the votes that shall be necessary for the election of directors shall not be further amended or repealed by the Board.

## ARTICLE XI - EXCLUSIVE FORUM

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, the federal district court for the District 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 or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action arising pursuant to any provision of the DGCL or the certificate of incorporation or these bylaws (as either may be amended from time to time), or (iv) any action asserting a claim governed by the internal affairs doctrine, except for, as to each of (i) through (iv) above, any claim as to which such court determines that there is an indispensable party not subject to the jurisdiction of such court (and the indispensable party does not consent to the personal jurisdiction of such court within ten (10) days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than such court, or for which such court does not have subject matter jurisdiction. Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended, against any person in connection with any offering of the Corporation's securities, including, without limitation and for the avoidance of doubt, any auditor, underwriter, expert, control person or other defendant. Any person or entity purchasing, holding or otherwise acquiring any interest in any security of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XI. This provision shall be enforceable by any party to a complaint covered by the provisions of this Article XI.

## ARTICLE XII - EMERGENCY BYLAWS

### 12.1 EMERGENCY BYLAWS

This Article XII shall be operative during any emergency, disaster or catastrophe, as referred to in Section 110 of the DGCL, or other similar emergency condition, irrespective of whether a quorum of the Board or a standing committee thereof can readily be convened for action (each, an "**Emergency**"), notwithstanding any different or conflicting provision of the preceding Articles of these bylaws or in the certificate of incorporation. To the extent not inconsistent with the provisions of this Article XII, the preceding Articles of these bylaws and the provisions of the certificate of incorporation shall remain in effect during such Emergency, and upon termination of such Emergency, the provisions of this Article XII shall cease to be operative unless and until another Emergency shall occur.

### 12.2 MEETINGS; NOTICE

During any Emergency, a meeting of the Board or any committee thereof may be called by any member of the Board or such committee or the chairperson of the Board, the chief executive officer, the president or the secretary of the Corporation. Notice of the place, date and time of the meeting shall be given by any available means of communication by the person calling the meeting to such of the directors or committee members and Designated Officers (as defined below) as, in the judgment of the person calling the meeting, it may be feasible to reach. Such notice shall be given at such time in advance of the meeting as, in the judgment of the person calling the meeting, circumstances permit.

### 12.3 QUORUM

At any meeting of the Board called in accordance with Section 12.2 of these bylaws, one-third (1/3) of the total number of directors fixed by or in the manner provided in these bylaws shall constitute a quorum

for the transaction of business, and at any meeting of any committee of the Board called in accordance with Section 12.2 of these bylaws, one-third (1/3) of the number of directors serving on such committee shall constitute a quorum for the transaction of business. In the event that a quorum of the Board, or any committee thereof, cannot readily be convened for action, then the Designated Officers in attendance shall serve as directors, or committee members, as the case may be, for the meeting, without any additional quorum requirement and will have full powers to act as directors, or committee members, as the case may be, of the Corporation.

#### 12.4 LIABILITY

No officer, director or employee of the Corporation acting in accordance with the provisions of this Article XII shall be liable except for willful misconduct.

#### 12.5 AMENDMENTS

At any meeting called in accordance with Section 12.2 of these bylaws, the Board, or any committee thereof, as the case may be, may modify, amend or add to the provisions of this Article XII as it deems it to be in the best interest of the Corporation so as to make any provision that may be practical or necessary for the circumstances of the Emergency.

#### 12.6 REPEAL OR CHANGE

The provisions of this Article XII shall be subject to repeal or change by further action of the Board or by action of the stockholders, but no such repeal or change shall modify the provisions of Section 12.4 of these bylaws with regard to action taken prior to the time of such repeal or change.

#### 12.7 DEFINITIONS

For purposes of this Article XII, the term “**Designated Officer**” means an officer identified on a numbered list of officers of the Corporation who shall be deemed to be, in the order in which they appear on the list up until a quorum is obtained, directors of the Corporation, or members of a committee of the Board, as the case may be, for purposes of obtaining a quorum during an Emergency, if a quorum of directors or committee members, as the case may be, cannot otherwise be obtained during such Emergency, which officers have been designated by the Board from time to time but in any event prior to such time or times as an Emergency may have occurred.

### ARTICLE XIII - SEVERABILITY

If any provision or provisions of these bylaws shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (i) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of these bylaws (including each portion of any paragraph of these bylaws containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (ii) to the fullest extent possible, the provisions of these bylaws (including each such portion of any paragraph of these bylaws containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent permitted by law.