
**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) June 30, 2021

BENEFITFOCUS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation)

001-36061
(Commission File Number)

46-2346314
(IRS Employer Identification No.)

100 Benefitfocus Way, Charleston, South Carolina 29492
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code (843) 849-7476

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
Common Stock, \$0.001 Par Value	BNFT	Nasdaq Global Market

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

(a) At the 2021 annual meeting of stockholders (the “2021 Annual Meeting”) of Benefitfocus, Inc. (the “Company”), stockholders approved amendments to the Restated Certificate of Incorporation of Benefitfocus, Inc., as amended (the “Charter”) to (i) declassify the Company’s board of directors (the “Board”) and provide for the annual election of directors after the expiration of their respective current terms (the “Charter Declassification Amendment”) and (ii) increase the total number of authorized shares of common stock, par value \$0.001 per share (“Common Stock”), reserved for issuance under the Charter from 50,000,000 to 95,000,000 shares (the “Charter Share Issuance Amendment”).

Pursuant to the terms of the Charter Declassification Amendment, the directors elected prior to the 2021 Annual Meeting will continue to serve the remaining portion of their three-year terms, but directors elected at or after the 2021 Annual Meeting were and will be elected to one-year terms. Accordingly, the entire Board will be elected on an annual basis at the Company’s 2023 annual meeting of stockholders and at each annual meeting of stockholders thereafter.

The Charter Share Issuance Amendment and the Charter Declassification Amendment were previously approved by the Board, subject to approval by the Company’s stockholders, and became effective upon filing a certificate of amendment to the Charter (the “Certificate of Amendment”) with the Delaware Secretary of State on June 30, 2021. The foregoing description of the Certificate of Amendment does not purport to be complete and is qualified in its entirety by the full text of the Certificate of Amendment filed with the Delaware Secretary of State, a copy of which is attached hereto as Exhibit 3.1 and incorporated herein by reference.

On June 30, 2021, the Board approved an amendment and restatement of the Company’s amended and restated bylaws (the “Second Amended and Restated Bylaws”), effective as of such date. The Second Amended and Restated Bylaws make conforming changes with respect to the Charter Declassification Amendment, change the voting standard for the election of directors to a majority voting standard in uncontested elections, and conform and update the advance notice and other procedural requirements for stockholder proposals and nominations of directors. The foregoing description of the Second Amended and Restated Bylaws does not purport to be complete and is qualified in its entirety by the full text of the Second Amended and Restated Bylaws, a copy of which is attached hereto as Exhibit 3.2 and incorporated herein by reference.

Item 5.07 Submission of Matters to a Vote of Security Holders.

The Company held its 2021 Annual Meeting on June 30, 2021. The following proposals were voted upon and the final voting results with respect to each such proposal are set forth below.

At the 2021 Annual Meeting, stockholders approved the Charter Declassification Amendment, as described in Item 5.03 above. The vote for this proposal was 32,431,523 shares for, 117,620 shares against, 10,057 shares abstaining, and 1,694,662 broker non-votes.

At the 2021 Annual Meeting, stockholders also elected one Class II Common Stock director, Coretha M. Rushing, for a one-year term expiring in 2022, or until her successor is duly elected and qualified. The vote for her election was 29,169,198 shares for, 3,390,002 shares withheld, and 1,694,662 broker non-votes.

Additionally, the holders of all of the Company’s 1,777,778 shares of Series A Convertible Preferred Stock (entitled to an aggregate of 5,333,334 votes) elected one Preferred Stock director, Zeynep Young, for a one-year term expiring in 2022, or until her successor is duly elected and qualified, with no shares withheld and no broker non-votes.

Stockholders also approved the Charter Share Issuance Amendment, as described in Item 5.03 above. The vote for this proposal was 30,233,248 shares for, 4,006,530 shares against, 14,084 shares abstaining, and no broker non-votes.

Holders of Common Stock also approved the issuance of shares of Common Stock upon the conversion of shares of the Company's Series A Convertible Preferred Stock. The vote for this proposal was 23,022,270 shares for, 4,138,295 shares against, 65,301 shares abstaining, and 1,694,662 broker non-votes.

Stockholders also voted on a nonbinding resolution approving, on an advisory basis, the Company's 2020 named executive officer compensation as disclosed in the definitive proxy statement for the Company's 2021 Annual Meeting, filed with the SEC on May 17, 2021. The vote on the resolution was approved with 28,481,879 shares for, 4,045,949 shares against, 31,372 shares abstaining, and 1,694,662 broker non-votes.

Lastly, stockholders ratified the selection of Ernst & Young LLP as the Company's independent registered public accounting firm for the year ending December 31, 2021. The vote for such ratification was 34,136,695 shares for, 106,287 shares against, 10,880 shares abstaining, and no broker non-votes.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
3.1	Certificate of Amendment of Restated Certificate of Incorporation of Benefitfocus, Inc, as amended.
3.2	Second Amended and Restated Bylaws of Benefitfocus, Inc.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURE

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

Date: July 1, 2021

BENEFITFOCUS, INC.

/s/ Alpana Wegner

Alpana Wegner

Chief Financial Officer

**CERTIFICATE OF AMENDMENT
OF RESTATED CERTIFICATE OF INCORPORATION
OF BENEFITFOCUS, INC., AS AMENDED**

(Pursuant to Section 242 of the
General Corporation Law of the State of Delaware)

Benefitfocus, Inc. (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify as follows:

1. The Board of Directors of the Corporation duly adopted resolutions by written consent on May 3, 2021, pursuant to Sections 141 and 242 of the General Corporation Law of the State of Delaware, setting forth amendments to the Restated Certificate of Incorporation of the Corporation, as amended (the "Amendments") and declaring said Amendments to be advisable. The stockholders of the Corporation duly approved said proposed Amendments at the Annual Meeting of Stockholders of the Corporation held on June 30, 2021 in accordance with Section 242 of the General Corporation Law of the State of Delaware.

2. The text of ARTICLE IV of the Restated Certificate of Incorporation of the Corporation, as amended is hereby amended and restated to read in its entirety as follows:

IV.

A. The total number of shares that the Corporation has authority to issue is one-hundred million (100,000,000), consisting of (i) ninety-five million (95,000,000) shares of common stock (the "Common Stock"), par value \$0.001 per share, and (ii) five million (5,000,000) shares of preferred stock (the "Preferred Stock"), par value \$0.001 per share.

B. The number of authorized shares of Common Stock, including of any class thereof, may be increased or decreased (but not below the number of shares then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote (voting together as a single class on an as-if-converted to Common Stock basis).

C. The undesignated Preferred Stock may be issued from time to time in one or more series. The Board of Directors of the Corporation is authorized to determine or alter the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions, if any), the redemption price or prices, the liquidation preferences and other designations, powers, preferences and relative, participating, optional or other special rights, if any, and the qualifications, limitations and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock, and to fix the number of shares of any series of Preferred Stock (but not below the number of shares of any such series then outstanding).

D. The rights, preferences, privileges, restrictions and other matters relating to the Common Stock are as follows:

1. **General.** The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock set forth herein.

2. **Voting.** The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings); provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to the Certificate of Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to the Certificate of Incorporation or pursuant to the DGCL. There shall be no cumulative voting. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of the Certificate of Incorporation) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote.

3. The text of ARTICLE VIII of the Restated Certificate of Incorporation of the Corporation, as amended is hereby amended and restated to read in its entirety as follows:

VIII.

Except as otherwise provided in this Certificate of Incorporation or the Delaware General Corporation Law, the business and affairs of the Corporation shall be managed by or at the direction of the board of directors. The number of directors which shall constitute the whole board shall be fixed by the board of directors, subject to any restrictions which may be set forth in this Certificate of Incorporation.

Subject to the special rights, if any, of the holders of one or more outstanding series of Preferred Stock to elect directors:

A. Upon the effectiveness of the filing of this Certificate of Amendment until the election of directors at the 2022 annual meeting of directors (the “2022 Annual Meeting”), the board of directors shall be divided into two classes of directors, Class I and Class II with the directors in Class II having a term that expires at the 2022 Annual Meeting and the directors in Class I having a term that expires at the 2023 annual meeting of stockholders (the “2023 Annual Meeting”). The successors of the directors who, immediately prior to the 2021 annual meeting of stockholders (the “2021 Annual Meeting”), were members of Class II (and whose terms expired at the 2021 Annual Meeting) shall become members of Class II with a term expiring at the 2022 Annual Meeting; the directors who, immediately prior to the 2021 Annual Meeting, were members of Class III and whose terms were scheduled to expire at the 2022 Annual meeting shall become members of Class II and shall continue to have terms expiring at the 2022 Annual Meeting; and the directors who, immediately prior to the 2021 Annual Meeting, were members of Class I and whose terms were scheduled to expire at the 2023 Annual Meeting shall become members of Class I and shall continue to have terms expiring at the 2023 Annual Meeting.

B. Commencing with the election of directors at the 2022 Annual Meeting, there shall be a single class of directors, with all directors of such class having a term that expires at the 2023 Annual Meeting. The successors of the directors who, immediately prior to the 2022 Annual Meeting, were members of Class II (and whose terms expire at the 2022 Annual Meeting) shall be elected at such meeting for a term that expires at the 2023 Annual Meeting, and the directors who, immediately prior to the 2022 Annual Meeting, were members of Class I and whose terms were scheduled to expire at the 2023 Annual Meeting shall continue to have terms expiring at the 2023 Annual Meeting.

C. From and after the election of directors at the 2023 Annual Meeting, the board of directors shall cease to be classified and the directors elected at the 2023 Annual Meeting (and each annual meeting of the stockholders thereafter) shall be elected for a term expiring at the next annual meeting of the stockholders.

D. Each director shall hold office until the next election of the class, if any, for which such director shall have been chosen (or, if the board of directors is not divided into classes, until the next annual meeting of stockholders for the election of directors) and until such director’s successor shall have been duly elected and qualified, or until such director’s earlier death, resignation or removal.

4. This Certificate of Amendment will be effective upon filing.

[Remainder of Page Intentionally Left Blank]

The undersigned hereby acknowledges that the foregoing Certificate of Amendment is the act and deed of the Corporation and that the facts stated herein are true this 30th day of June 2021.

IN WITNESS WHEREOF, Benefitfocus, Inc. has caused this Certificate of Amendment of the Restated Certificate of Incorporation, as amended to be executed by its duly authorized officer on this 30th day of June 2021.

/s/ Matthew Levin

Matthew Levin, President and Chief Executive Officer

**SECOND AMENDED AND RESTATED BYLAWS OF
BENEFITFOCUS, INC.
Adopted by the Board of Directors on June 30, 2021**

I. OFFICES

1.1 Registered Office

The registered office of **BENEFITFOCUS, INC.** (the "Corporation"), in the State of Delaware is 2711 Centerville Road, Suite 400, in the City of Wilmington, Delaware 19808. The name of its registered agent at such address is Corporation Service Company.

1.2 Principal Office

The principal office for the transaction of the business of the Corporation will be at such location, within or without the State of Delaware, as will be designated by the board of directors of the Corporation.

1.3 Other Offices

The Corporation may also have an office or offices at such other place or places, either within or without the State of Delaware, as the board of directors may from time to time determine or as the business of the Corporation may require.

II. MEETINGS OF STOCKHOLDERS

2.1 Place of Meetings

Meetings of stockholders will be held at any place, within or outside the State of Delaware, designated by the board of directors. The board of directors may, in its sole discretion, determine that a meeting will not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211 of the General Corporation Law of Delaware.

If authorized by the board of directors in its sole discretion, and subject to such guidelines and procedures as the board of directors may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication, participate in a meeting of stockholders, be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (i) the Corporation will implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (ii) the Corporation will implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action will be maintained by the Corporation.

2.2 Annual Meeting

The annual meeting of stockholders will be held each year on a date and at a time to be set by the board of directors in accordance with all applicable notice requirements. In the absence of such designation, the annual meeting of stockholders will be held on the third Monday in April each year at 10:00 a.m. However, if such day falls on a legal holiday, then the meeting will be held at the same time and place on the next succeeding full business day. At the meeting, directors will be elected and any other proper business may be transacted.

2.3 Special Meeting

(a) Special meetings of the stockholders may be called, at any time for any purpose or purposes, only by the chairman of the board of directors, a majority of the board of directors or by such person or persons as may be authorized by the certificate of incorporation or these bylaws, or by such person or persons duly designated by the board of directors whose powers and authority, as expressly provided in a resolution of the board of directors, include the power to call such meetings, but such special meetings may not be called by any other person or persons.

(b) In addition to a special meeting called in accordance with subsection 2.3(a) of this Article 2, the Corporation may hold a special meeting of stockholders if the holders of at least 35% of all the votes entitled to be cast on any issue proposed to be considered at such special meeting sign, date and deliver to the secretary of the Corporation one or more written demands for the meeting. Such written demands shall be delivered to the secretary by certified mail, return receipt requested. Such written demands sent to the secretary of the Corporation shall set forth as to each matter the stockholder or stockholders propose to be presented at the special meeting (i) a description of the purpose or purposes for which the meeting is to be held (including the specific proposal(s) to be presented); (ii) the name and record address of the stockholder or stockholders proposing such business; (iii) the class and number of shares of the Corporation that are owned of record by the stockholder or stockholders as of a date within ten days of the delivery of the demand; (iv) the class and number of shares of the Corporation that are held beneficially, but not held of record, by the stockholder or stockholders as of a date within ten days of the delivery of the demand; and (v) any interest of the stockholder or stockholders in such business. Any such special stockholders' meeting shall be held at a location designated by the board of directors. The board of directors may set such rules for any such meeting as it may deem appropriate, including when the meeting will be held (subject to any requirements of the General Corporation Law of Delaware), the agenda for the meeting (which may include any proposals made by the board of directors), who may attend the meeting in addition to stockholders of record and other such matters.

(c) Business transacted at any special meeting shall be confined to the specific purpose or purposes stated in the notice of the meeting.

2.4 Notice of Stockholders' Meetings

(a) Except to the extent otherwise required by law, all notices of meetings of stockholders will be in writing and will be sent or otherwise given in accordance with Section 2.5 of these bylaws 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. The notice will specify the place, if any, date, and hour of the meeting, the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

(b) Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation will also be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent will be revocable by the stockholder by written notice to the Corporation. Any such consent will be deemed revoked if (i) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent, and (ii) such inability becomes known to the secretary or an assistant secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to recognize such revocation will not invalidate any meeting or other action.

(c) Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation will 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 will 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 permitted under this subsection 2.4(c), will be deemed to have consented to receiving such single written notice.

(d) Sections 2.4(b) and (c) do not apply to any notice given to stockholders under Sections 164 (notice of sale of shares of stockholder who failed to pay an installment or call on stock not fully paid), 296 (notice of disputed claims relating to insolvent corporations), 311 (notice of meeting of stockholders to revoke dissolution of corporation), 312 (notice of meeting of stockholders of corporation whose certificate of incorporation has been renewed or revived) and 324 (notice when stock has been attached as required for sale upon execution process) of the General Corporation Law of Delaware.

2.5 Manner of Giving Notice; Affidavit of Notice

(a) Written notice of any meeting of stockholders, if mailed, is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his, her or its address as it appears on the records of the Corporation. An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the Corporation that the notice has been given will, in the absence of fraud, be prima facie evidence of the facts stated therein.

(b) Notice given pursuant to this Section 2.5(b) will be deemed given: (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of such posting and the giving of such separate notice; and (iv) if by any other form of electronic transmission, when directed to the stockholder. An affidavit of the secretary, an assistant secretary or the transfer agent or other agent of the Corporation that the notice has been given by a form of electronic transmission will, in the absence of fraud, be prima facie evidence of the facts stated therein.

2.6 Quorum

The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, will constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the certificate of incorporation. If, however, such quorum is not present or represented at any meeting of the stockholders, then only the chairman of the board of directors or the chairman's delegate will 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 meeting as originally noticed.

2.7 Adjournments; Notice

Any meeting of stockholders may be adjourned to any other time and to any other place at which a meeting of stockholders may be held under these bylaws only by the chairman of the board of directors or the chairman's delegate. When a meeting is adjourned to another time or place, unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time and place thereof, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting will be given to each stockholder of record entitled to vote at the meeting.

2.8 Voting

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

Except as otherwise provided in the certificate of incorporation, each stockholder will be entitled to one vote for each share of capital stock held by such stockholder. Subject to the rights of the holders, if any, of any series of preferred stock of the Corporation to elect directors under specified circumstances, at any meeting of stockholders at which directors are to be elected, each director shall be elected by the vote of the majority of the votes cast with respect to the director at any meeting of stockholders for the election of directors at which a quorum is present, provided that if, as of a date that is the deadline for stockholders to nominate persons for election as directors at such meeting of stockholders, the number of nominees (including those proposed nominees identified in any notices delivered pursuant to Section 3.15 of these bylaws and not withdrawn by such date, determined ineligible or determined by the board of directors (or a committee thereof) to not create a *bona fide* election contest) exceeds the number of directors to be elected at such meeting (a "Contested Election"), the directors shall be elected by the vote of a plurality of the shares represented in person or by proxy at any such meeting and entitled to vote on the election

of directors. If a nominee for director in an election that is not a Contested Election fails to receive a majority of the votes cast and such nominee is an incumbent director, that director shall promptly tender his or her resignation to the board of directors, subject to acceptance by the board of directors. The nominating and governance committee of the board of directors (or such other duly constituted committee of the board of directors authorized to make a recommendation) shall make a recommendation to the board of directors as to whether to accept or reject the tendered resignation, or whether other action should be taken. The board of directors shall act on the tendered resignation, taking into account the nominating and governance committee's recommendation, and publicly disclose its decision regarding the tendered resignation within ninety (90) days from the date of the certification of the election results. The director who tenders his or her resignation shall not participate in the recommendation of the nominating and governance committee or the decision of the board of directors with respect to his or her resignation.

2.9 Waiver of Notice

Whenever notice is required to be given under any provision of the General Corporation Law of Delaware or of the certificate of incorporation or these bylaws, a written waiver thereof, 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 stated therein, will be deemed equivalent to notice. Attendance of a person at a meeting will 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 need be specified in any written waiver or any waiver by electronic transmission of notice unless so required by the certificate of incorporation or these bylaws.

2.10 No Stockholder Action by Written Consent Without a Meeting

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 the stockholders of the Corporation and may not be effected by any consent in writing by such stockholders. At all times prior thereto, unless otherwise provided in the certificate of incorporation, any action required by the General Corporation Law of Delaware to be taken at any annual or special meeting of stockholders of a corporation, or any action that may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice, and without a vote if a consent in writing, setting forth the action so taken, is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder, proxyholder, or other person or persons authorized to act for a stockholder or proxyholder, will be deemed to be written, signed and dated for the purposes of this Section 2.10, provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the Corporation can determine (a) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder, proxyholder, or other authorized person or persons, and (b) the date on which such stockholder, proxyholder or other authorized person or persons transmitted such telegram, cablegram or electronic transmission. The date on which such telegram, cablegram or electronic transmission is transmitted will be deemed to be the date on which such consent was signed. No consent given by telegram, cablegram or other electronic transmission will be deemed to have been delivered until such consent is reproduced in paper form and until such paper form has been delivered to the Corporation by delivery to its registered office in this State, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office must be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by telegram, cablegram or other electronic transmission may be otherwise delivered to the principal place of business of the Corporation or to an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded if, to the extent and in the manner provided by resolution of the board of directors of the Corporation. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction will be a complete reproduction of the entire original writing.

Prompt notice of the taking of the corporate action without a meeting by written consent will be given to those stockholders who have not consented in writing. If the action that is consented to is such as would have required the filing of a certificate under any section of the General Corporation Law of Delaware if such action had been voted on by stockholders at a meeting thereof, then the certificate filed under such section must state, in lieu of any statement required by such section concerning any vote of stockholders, that written notice and written consent have been given as provided in Section 228 of the General Corporation Law of Delaware.

2.11 Record Date for Stockholder Notice; Voting; Giving Consents

In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the board of directors may fix, in advance, a record date that will not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action.

If the board of directors does not so fix a record date:

(a) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders will 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;

(b) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the board of directors is necessary, will be the day on which the first written consent is expressed; and

(c) the record date for determining stockholders for any other purpose will be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders will apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting.

2.12 Proxies

Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him by a written proxy, signed by the stockholder and filed with the secretary of the Corporation, but no such proxy will be voted or acted upon after eleven (11) months from its date, unless the proxy provides for a longer period. A proxy will be deemed signed if the stockholder's name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission or otherwise) by the stockholder or the stockholder's attorney-in-fact. The revocability of a proxy that states on its face that it is irrevocable will be governed by the provisions of Section 212(e) of the General Corporation Law of Delaware.

2.13 List of Stockholders Entitled to Vote

The officer who has charge of the stock ledger of the Corporation will prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, 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 will not be required to include electronic mail addresses or other electronic contact information on such list. Such list will be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting: (a) 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 (b) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list will be produced and kept at the time and place of the meeting during the whole time thereof, and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list will also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list will be provided with the notice of the meeting.

2.14 Stockholder Proposals

(a) Effective upon the Corporation's initial public offering of stock under the Securities Act of 1933, as amended, any stockholder wishing to bring any other business before a meeting of stockholders, except for the nomination of persons for election as directors, which must be made pursuant to Section 3.15 of these bylaws, must provide Timely Notice to the Corporation. To be timely, a stockholder's notice of business proposed to be brought before an annual meeting must be delivered in writing by registered mail, return receipt requested, to the secretary of the Corporation at the principal executive offices of the Corporation at the close of business not less than ninety (90) days nor more than one hundred twenty (120) days prior to the one-year anniversary of the preceding year's annual meeting; provided, however, that if the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the stockholder, to be timely must be so delivered not earlier than the one hundred twentieth (120th) day prior to the date of such annual meeting and not later than the close of business on the ninetieth (90th) day prior to the date of such annual meeting or, if later, at the close of business on the tenth (10th) day following the day on which "public disclosure" of the date of such annual meeting was first made by the Corporation (such notice within such time periods, "Timely Notice"). "Public disclosure" means disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). In no event shall any adjournment, recess, postponement or rescheduling of an annual meeting or the public disclosure thereof commence a new time period (or extend any time period) for the giving of notice as described in this Section 2.14.

(b) To be in proper written form, any such notice of a stockholder giving notice (each, a "Proposing Person") under this Section 2.14 will set forth the following information:

(i) As to each matter the Proposing Person proposes to bring before the meeting: (A) a brief description of the business desired to be brought before the meeting; (B) the reasons for conducting such business at the meeting; (C) if such business includes a proposal to amend the bylaws of the Corporation, the language of the proposed amendment; and (D) all other information relating to such proposed business that would be required to be disclosed in a proxy statement or other filing required to be made by the Proposing Person or any Stockholder Associated Person in connection with the solicitation of proxies in support of such proposed business pursuant to Regulation 14A under the Exchange Act, and any such information that would be required to be disclosed under such regulation if Derivative Instruments (as defined below) were treated as capital stock of the Company; and

(ii) As to each Proposing Person and each Stockholder Associated Person (as defined below): (A) the name and address of such person (as they appear on the Corporation's books, if applicable); (B) the class and number of shares of the Corporation that are directly or indirectly owned beneficially and of record by such person and the dates such shares were acquired; (C) the name of each nominee holder for, and any pledge by such person or any number of, securities of the Corporation owned beneficially but not of record by such person; (D) a complete and accurate description of any material interest in such business of the Proposing Person and any Stockholder Associated Person, individually or in the aggregate, including any anticipated benefit to the stockholder and any Stockholder Associated Person therefrom (the disclosures to be made pursuant to the foregoing clause (A) through (D) are referred to as "Stockholder Information"); (E) any short interest of such person in any security of the Corporation (for purposes of these bylaws, a person shall be deemed to have a short interest in a security if such person, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security); (F) a complete and accurate description of any agreement, arrangement or understanding, whether written or oral, (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, borrowed or loaned shares or similar rights with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of capital stock of the Corporation or with a value derived in whole or in part from the value of any class or series of capital stock of the Corporation (a "Derivative Instrument")), that has been entered into as of the

date of the stockholder's notice, whether or not such instrument or right shall be subject to settlement in underlying shares of capital stock of the Corporation, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner, with respect to shares of capital stock of the Corporation, (G) any proportionate interest in shares of capital stock of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership or similar entity in which such person (1) is a general partner or, directly or indirectly, beneficially owns an interest in a general partner, or (2) is the manager, managing member or, directly or indirectly, beneficially owns an interest in the manager or managing member of a limited liability company or similar entity; (H) a complete and accurate description of all agreements, arrangements or understandings, written or oral, and formal or informal, (1) between or among the Proposing Person and any of the Stockholder Associated Persons or (2) between or among the Proposing Person or any of the Stockholder Associated Persons and any other person or entity (naming each such person or entity) in connection with or related to the foregoing or any other business to be presented and/or transacted at the meeting; (I) a complete and accurate description of any performance-related fees (other than an asset-based fee) to which such person may be entitled as a result of any increase or decrease in the value of shares of the capital stock of the Corporation or any Derivative Instruments; (J) whether and the extent to which any agreement, arrangement or understanding has been made, the effect or intent of which is to increase or decrease the voting power of such person with respect to any shares of the capital stock of the Corporation, without regard to whether such transaction is required to be reported on a Schedule 13D in accordance with the Exchange Act; (K) to the extent known by the Proposing Person, the name and address of any other stockholder supporting the proposal of other business on the date of such stockholder's notice; (L) any other information relating to such person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies for such business or the election of any Proposed Nominee, or is otherwise required, pursuant to Section 14 of the Exchange Act (or pursuant to any law or statute amending, restating or replacing such section), and the rules and regulations promulgated thereunder (the disclosures to be made pursuant to the foregoing clauses (E) through (L) are referred to as "Disclosable Interests"); (M) a representation whether the Proposing Person and any Stockholder Associated Person, if applicable, intend or are part of a group which intends to (1) deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposed business and/or (2) otherwise solicit proxies or votes from stockholders in support of such proposed business; (N) a representation that the Proposing Person is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person (including virtually, in the case of a meeting held solely by means of remote communication) or by proxy at the meeting to bring such proposed business; and (O) an acknowledgment that, if the Proposing Person (or a qualified representative of such stockholder) does not appear to present such proposed business at the meeting, the Corporation need not present such proposed business for a vote at such meeting, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

(c) A Proposing Person shall update and supplement its notice to the Corporation of its intent to propose business at a meeting of stockholders, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.14 shall be true and correct as of the record date for such meeting and as of the date that is ten (10) business days prior to such meeting or (any rescheduling, adjournment or postponement thereof), and such update and supplement shall be received by the secretary of the Corporation at the principal executive offices of the Corporation not later than the close of business five (5) business days after the record date for such meeting (in the case of the update and supplement required to be made as of the record date), and not later than the close of business eight (8) business days prior to the date for such meeting or, if practicable, any rescheduling, adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which such meeting has been rescheduled, adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to such meeting or any rescheduling, adjournment or postponement thereof). For the avoidance of doubt, any information provided pursuant to this Section 2.14(c) shall not be deemed to cure any deficiencies in a notice previously delivered pursuant to this Section 2.14 and shall not extend the time period for the delivery of notice pursuant to this Section 2.14. If a Proposing Person fails to provide such written update within such period, the information as to which such written update relates may be deemed not to have been provided in accordance with this Section 2.14.

(d) If any information submitted pursuant to this Section 2.14 by any Proposing Person proposing business for consideration at a meeting of stockholders shall be inaccurate in any respect, such information shall be deemed not to have been provided in accordance with this Section 2.14. Any such Proposing Person shall notify the secretary of the Corporation in writing at the principal executive offices of the Corporation of any inaccuracy or change in any information submitted pursuant to this Section 2.14 within two (2) business days after becoming aware of such inaccuracy or change. Upon written request of the secretary of the Corporation on behalf of the board of directors (or a duly authorized committee thereof), any such Proposing Person shall provide, within seven (7) business days after delivery of such request (or such other period as may be specified in such request), (i) written verification, reasonably satisfactory to the board of directors, any committee thereof or any authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by such Proposing Person pursuant to this Section 2.14 and (ii) a written affirmation of any information submitted by such Proposing Person pursuant to this Section 2.14 as of an earlier date. If a Proposing Person fails to provide such written verification or affirmation within such period, the information as to which written verification or affirmation was requested may be deemed not to have been provided in accordance with this Section 2.14.

(e) Subject to the Corporation's certificate of incorporation, only such business will be conducted at a meeting of stockholders as will have been brought before the meeting in accordance with the procedures set forth in this Section 2.14. In addition to any other applicable requirements, for business to be properly brought before a meeting by a stockholder, such business must be a proper matter for stockholder action. The chairman of the meeting will have the power and duty to determine whether any business proposed to be brought before the meeting was made in accordance with the procedures set forth in this Section 2.14 and, if any proposed business is not in compliance with this Section 2.14, to declare that such defective proposal be disregarded, and no vote shall be taken with respect to such proposed business notwithstanding that proxies with respect to such vote may have been received by the Corporation. Notwithstanding the foregoing provisions of this Section 2.14, unless otherwise required by law, if the Proposing Person (or a qualified representative of the Proposing Person) proposing business to be conducted at a meeting does not appear at the meeting of stockholders of the Corporation to propose such business, such proposed business shall not be transacted, and no vote shall be taken with respect to such proposed business, notwithstanding that proxies with respect to such vote may have been received by the Corporation. Notwithstanding the provisions of this Section 2.14, unless otherwise required by law or expressly waived in writing by the Corporation, if the Proposing Person (or a qualified representative of the stockholder) does not appear in person (including virtually, in the case of a meeting held solely by means of remote communication) at the stockholder meeting to present such proposed business, such proposed business shall not be presented by the Corporation and shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

(f) Notwithstanding the foregoing provisions of this Section 2.14, the Proposing Person must also comply with all applicable requirements of state law and of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 2.14. Nothing in this Section 2.14 will be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(g) For the purposes of these bylaws, (i) "affiliate" and "associate" each shall have the respective meanings set forth in Rule 12b-2 under the Exchange Act; (ii) "beneficial owner" or "beneficially owned" shall have the meaning set forth for such terms in Section 13(d) of the Exchange Act; (iii) "close of business" shall mean 5:00 p.m. Eastern Time on any calendar day, whether or not the day is a business day; (iv) "present in person" with respect to a stockholder and any meeting of stockholders shall mean that such stockholder or, if such stockholder is not an individual, a qualified representative of such stockholder, appears at such meeting; (v) a "qualified representative" of a stockholder shall mean (A) a duly authorized officer, manager or partner of such stockholder or (B) a person authorized by a writing executed by such stockholder (or a reliable reproduction or electronic transmission of the writing) delivered by such stockholder to the Corporation prior to the making of any nomination or proposal at a meeting of stockholders stating that such person is authorized to act for such stockholder as proxy at the meeting of stockholders, which writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, must be produced at the meeting of stockholders; (vi) "Short Interest" shall mean any agreement, arrangement, understanding, relationship or otherwise, including, without limitation, any repurchase or similar so-called "stock borrowing" agreement or arrangement, involving any Proposing Person or any Stockholder Associated Person of any Proposing Person directly or indirectly, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of any class or series of shares of the Corporation by, manage the risk of share price changes for, or increase or decrease the voting power of, such Proposing Person or any Stockholder

Associated Person of any Proposing Person with respect to any class or series of shares of the Corporation, or which provides, directly or indirectly, the opportunity to profit or share in any profit derived from any decrease in the price or value of any class or series of shares of the Corporation; and (vii) "Stockholder Associated Person" of any Proposing Person means (A) any person directly or indirectly controlling, controlled by or under common control with such Proposing Person, (B) any member of the immediate family of such Proposing Person sharing the same household; (C) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such Proposing Person or Stockholder Associated Person; (D) any person controlling, controlled by or under common control with such Stockholder Associated Person (other than a stockholder that is a depositary); (E) any person who is a member of a "group" (as such term is used in Rule 13d-5 under the Exchange Act (or any successor provision at law)) with or otherwise acting in concert with such Proposing Person or Stockholder Associated Person with respect to the stock of the Corporation; (F) any affiliate or associate of such Proposing Person or any Stockholder Associated Person; (G) any participant (as defined in paragraphs (a)(ii) (vi) of Instruction 3 to Item 4 of Schedule 14A (or any successor instructions)) with such Proposing Person or Stockholder Associated Person with respect to any proposed business or nominations, as applicable, and (H) any Proposed Nominee.

III. DIRECTORS

3.1 Powers

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

3.2 Number of Directors

The number of directors constituting the board of directors will be not more than ten (10) but not less than three (3), and may be fixed or changed, within this minimum and maximum, by resolution adopted by the affirmative vote of a majority of the directors then in office. Upon adoption of these bylaws, the number of directors constituting the board of directors will be fixed at six (6) until such time as the directors change the number of directors pursuant to this Section 3.2.

No reduction of the authorized number of directors will 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 or 3.16 of these bylaws, the directors shall be elected at each annual meeting of stockholders or as otherwise provided in the certificate of incorporation to hold office until the next annual meeting. Directors need not be stockholders unless so required by the certificate of incorporation or these bylaws, wherein other qualifications for directors may be prescribed. Each director, including a director elected to fill a vacancy, will hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal. Each director must be a natural person.

Elections of directors need not be by written ballot.

3.4 Resignation and Vacancies

Any director may resign at any time upon notice given in writing or electronic transmission to the Corporation. Except as otherwise set forth in the certificate of incorporation, when one or more directors so resigns and the resignation is effective at a future date, a majority of the directors then in office, including those who have so resigned, will have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations become effective, and each director so chosen will hold office as provided in this Section 3.4 in the filling of other vacancies.

Unless otherwise provided in the certificate of incorporation or these bylaws:

(a) vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may only be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director or by the stockholders at a meeting of stockholders duly called for that purpose; and

(b) whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the certificate of incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

If at any time, by reason of death or resignation or other cause, the Corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the certificate of incorporation or these bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the General Corporation Law of Delaware.

3.5 Place of Meetings; Meetings by Telephone

The board of directors of the Corporation 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 of directors, or any committee designated by the board of directors, may participate in a meeting of the board of directors, or any committee, 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 constitutes presence in person at the meeting.

3.6 Regular Meetings

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

3.7 Special Meetings; Notice

Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairman of the board, the president, or any two (2) directors.

Notice of the time and place of special meetings will be delivered either personally or by mail, telex, facsimile, telephone or electronic transmission to each director, addressed to each director at such director's address and/or phone number and/or electronic transmission address as it is shown on the records of the Corporation. If the notice is mailed, it will be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. If the notice is delivered personally or by telex, facsimile, telephone or electronic transmission, it must be delivered by telephone or transmitted at least twenty-four (24) hours before the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. The notice need not specify the purpose or the place of the meeting, if the meeting is to be held at the principal executive office of the Corporation. Notice may be delivered by any person entitled to call a special meeting or by an agent of such person.

3.8 Quorum

At all meetings of the board of directors, a majority of the authorized number of directors constitutes a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum will be the act of the board of directors, except as otherwise specifically provided by statute or by the certificate of incorporation.

3.9 Waiver Of Notice

Whenever notice is required to be given under any provision of the General Corporation Law of Delaware or of the certificate of incorporation or these bylaws, a written waiver thereof, 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 stated therein, will be deemed equivalent to notice. Attendance of a person at a meeting will 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 directors, or meeting of a committee of directors, need be specified in any written waiver of notice unless so required by the certificate of incorporation or these bylaws.

3.10 Adjourned Meeting; Notice

If a quorum is not present at any meeting of the board of directors, 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.

3.11 Board Action by Written Consent Without a Meeting

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

3.12 Fees and Compensation of Directors

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

3.13 Removal of Directors

Unless otherwise restricted by statute, by the certificate of incorporation or by these bylaws, prior to the 2023 annual meeting of stockholders (the "2023 Annual Meeting") when the board of directors shall cease to be classified, any director or the entire board of directors may be removed, only for cause, by the holders of a majority of the shares then entitled to vote at an election of directors; provided, that, whenever the holders of any class or classes of stock, or series thereof, are entitled to elect one or more directors by the provisions of the certificate of incorporation, removal for cause of any directors elected by such class or classes of stock, or series thereof, will be by the holders of a majority of the shares of such class or classes of stock, or series of stock, then entitled to vote at an election of directors.

From and after the election of directors at the 2023 Annual Meeting when the board of directors shall cease to be classified, any director or the entire board of directors may be removed at any time, with or without cause, by the affirmative vote of the holders of a majority of the shares then entitled to vote at an election of directors; provided, that, whenever the holders of any class or classes of stock, or series thereof, are entitled to elect one or more directors by the provisions of the certificate of incorporation, removal with or without cause of any directors elected by such class or classes of stock, or series thereof, will be by the holders of a majority of the shares of such class or classes of stock, or series of stock, then entitled to vote at an election of directors. Any director serving on a committee of the board of directors may be removed from such committee at any time by the board of directors.

No reduction of the authorized number of directors will have the effect of removing any director prior to the expiration of such director's term of office.

3.14 Chairman of the Board of Directors

The Corporation may also have, at the discretion of the board of directors, a chairman of the board of directors. The chairman of the board will, if such a person is elected, preside at the meetings of the board of directors and exercise and perform such other powers and duties as may from time to time be assigned to him or her by the board of directors, or as may be prescribed by these bylaws.

3.15 Nominating Procedures

(a) Effective upon the Corporation's initial public offering of stock under the Securities Act of 1933, as amended, nominations for election of directors will be governed by this Section 3.15. Nominations for the election of directors may only be made by the board of directors, by the nominating committee of the board of directors (or, if none, any other committee serving a similar function) or by any stockholder entitled to vote generally in elections of directors where the stockholder complies with the requirements of this Section 3.15. Any stockholder of record entitled to vote generally in elections of directors may nominate one or more persons for election as directors at a meeting of stockholders only if written notice of such stockholder's intent to make such nomination or nominations has provided Timely Notice, either by personal delivery or by United States certified mail, postage prepaid, to the secretary of the Corporation; provided, however, that Timely Notice with respect to an election to be held at a special meeting of stockholders called for the purpose of the election of directors shall mean that written notice of such stockholder's intent to make such nomination or nominations was provided, either by personal delivery or by United States certified mail, postage prepaid, to the secretary of the Corporation, not later than the close of business on the tenth business day following the date on which notice of such meeting is first given to stockholders. In no event shall any adjournment, recess, postponement or rescheduling of an annual meeting or the public disclosure thereof commence a new time period (or extend any time period) for the giving of notice as described in this Section 3.15.

(b) To be in proper form for purposes of this Section 3.15, a stockholder's notice to the secretary shall set forth:

(i) as to each Nominating Person (as defined below), the Stockholder Information (as defined in Section 2.14(b)(ii), except that for purposes of this Section 3.15, the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Sections 2.14(b)(ii)(A) through (D) and the disclosure with respect to the business to be brought before the meeting of stockholders in Section 2.14(b)(ii)(D) shall be made with respect to the election of directors at the meeting);

(ii) as to each Nominating Person, any Disclosable Interests (as defined in Section 2.14(b)(ii), except that for purposes of this Section 3.15, the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Sections 2.14(b)(ii)(E) through (L) and for purposes of the terms defined in Section 2.14(g) and the disclosure with respect to the business to be brought before the meeting of stockholders in Section 2.14(b)(ii) shall be made with respect to the election of directors at the meeting);

(iii) as to each Proposed Nominee: (A) the name, age, business address and residence address of such Proposed Nominee; (B) the principal occupation and employment of such Proposed Nominee; (C) a written questionnaire with respect to the background and qualification of such Proposed Nominee, completed by such Proposed Nominee in the form required by the Corporation (which form such Nominating Person shall request in writing from the secretary prior to submitting notice and which the secretary shall provide to such Nominating Person within ten (10) days after receiving such request); (D) a written representation and agreement completed by such Proposed Nominee in the form required by the Corporation (which form such Nominating Person shall request in writing from the secretary prior to submitting notice and which the secretary shall provide to such Nominating Person within ten (10) days after receiving such request) providing that such Proposed Nominee: (1) is not and will not become a party to any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such Stockholder Nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or 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; (2) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director or nominee that has not been disclosed to the Corporation; (3) will, if elected as a director of the Corporation, comply with all

applicable rules of any securities exchanges upon which the Corporation's securities are listed, the certificate of incorporation, these bylaws and all applicable publicly disclosed corporate governance, ethics, conflict of interest, confidentiality and stock ownership and trading policies and other guidelines and policies of the Corporation generally applicable to directors (which will be provided to such Proposed Nominee within five (5) business days after the secretary receives any written request therefor from such Proposed Nominee), and all applicable fiduciary duties under state law; (4) consents to being named as a nominee in the proxy statement and form of proxy for the meeting and to serving a full term as a director of the Corporation, if elected; (5) will provide facts, statements and other information in all communications with the Corporation and its stockholders that are or will be true and correct in all material respects and that do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; and (6) will, at the reasonable request of the nominating and governance committee of the board of directors, meet with the nominating and governance committee to discuss matters relating to the nomination of such Proposed Nominee to the board of directors, including the information provided by such Proposed Nominee to the Corporation in connection with his or her nomination and such Proposed Nominee's eligibility to serve as a member of the board of directors; (E) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings, written or oral, during the past three (3) years, and any other material relationships, between or among such Proposed Nominee, on the one hand, and such Nominating Person or any Stockholder Associated Person, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 promulgated under Regulation S-K as if such Nominating Person and any Stockholder Associated Person were the "registrant" for purposes of such rule and the Proposed Nominee were a director or executive officer of such registrant; (F) all information with respect to such Proposed Nominee that would be required to be set forth in a stockholder's notice pursuant to this Section 3.15 if such Proposed Nominee were a Nominating Person; (G) all other information relating to such Proposed Nominee or such Proposed Nominee's associates that would be required to be disclosed in a proxy statement or other filing required to be made by the Nominating Person or any Stockholder Associated Person in connection with the solicitation of proxies for election of directors in a Contested Election or otherwise required pursuant to Section 14 of the Exchange Act (including any information that would be required to be included in a proxy statement filed pursuant to Regulation 14A had the nominee been nominated by the board of directors);

(iv) a representation whether the Nominating Person and any Stockholder Associated Person, if applicable, intend or are part of a group which intends to (A) deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to elect the Proposed Nominee and/or (B) otherwise solicit proxies or votes from stockholders in support of such Proposed Nominee;

(v) a representation that the Nominating Person is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person (including virtually, in the case of a meeting held solely by means of remote communication) or by proxy at the meeting to nominate one or more Proposed Nominees; and

(vi) an acknowledgment that, if the Nominating Person (or a qualified representative of such stockholder) does not appear to present such the nomination of such Proposed Nominee(s) at the meeting, the Corporation need not present such Proposed Nominee(s) for a vote at such meeting, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

In addition to the information required above, the Corporation may require any Nominating Person and/or Proposed Nominee to furnish such other information (i) as may be beneficial to determine the eligibility of such Proposed Nominee to serve as an independent director of the Corporation in accordance with the Corporation's corporate governance guidelines and the applicable listing requirements of any securities exchange on which the Corporation's capital stock is listed for trading; (ii) that could be beneficial to a reasonable stockholder's understanding of the independence or lack of independence of such Proposed Nominee; or (iii) that may be beneficial to determine the eligibility of such Proposed Nominee to serve as a director of the Corporation. For purposes of this Section 3.15, the term "Nominating Person" shall mean (i) the stockholder providing the notice of the nomination proposed to be made at the meeting of stockholders, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the nomination proposed to be made at the meeting is made and (iii) any affiliate or associate of such stockholder or beneficial owners.

(c) A Nominating Person shall update and supplement its notice to the Corporation of its intent to nominate individuals for election or reelection as directors, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 3.15 shall be true and correct as of the record date for the meeting of stockholders and as of the date that is ten (10) business days prior to such meeting (or any rescheduling, adjournment or postponement thereof), and such update and supplement shall be delivered to, or mailed and received by, the secretary of the Corporation at the principal executive offices of the Corporation not later than the close of business five (5) business days after the record date for such meeting (in the case of the update and supplement required to be made as of the record date), and not later than the close of business eight (8) business days prior to the date for such meeting or, if practicable, any rescheduling, adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which such meeting has been rescheduled, adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to such meeting or any rescheduling, adjournment or postponement thereof). For the avoidance of doubt, any information provided pursuant to this Section 3.15(c) shall not be deemed to cure any deficiencies in a notice previously delivered pursuant to this Section 3.15 and shall not extend the time period for the delivery of notice pursuant to this Section 3.15. If a Nominating Person fails to provide such written update within such period, the information as to which such written update relates may be deemed not to have been provided in accordance with this Section 3.15.

(d) If any information submitted pursuant to this Section 3.15 by any Nominating Person proposing individuals to nominate for election or reelection as a director at a meeting of stockholders shall be inaccurate in any respect, such information shall be deemed not to have been provided in accordance with this Section 3.15. Any such Nominating Person shall notify the secretary of the Corporation in writing at the principal executive offices of the Corporation of any inaccuracy or change in any information submitted pursuant to this Section 3.15 within two (2) business days after becoming aware of such inaccuracy or change. Upon written request of the secretary of the Corporation on behalf of the board of directors (or a duly authorized committee thereof), any such Nominating Person shall provide, within seven (7) business days after delivery of such request (or such other period as may be specified in such request), (i) written verification, reasonably satisfactory to the board of directors, any committee thereof or any authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by such Nominating Person pursuant to this Section 3.15 and (ii) a written affirmation of any information submitted by such Nominating Person pursuant to this Section 3.15 as of an earlier date. If a Nominating Person fails to provide such written verification or affirmation within such period, the information as to which written verification or affirmation was requested may be deemed not to have been provided in accordance with this Section 3.15.

(e) No person will be eligible to serve as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 3.15. If the chairman of the stockholders' meeting determines that a nomination was not made in accordance with the procedures described by these bylaws, he will so declare to the meeting, and the defective nomination will be disregarded and no vote shall be taken with respect to such nomination notwithstanding that proxies with respect to such vote may have been received by the Corporation. Notwithstanding the foregoing provisions of this Section, a stockholder must also comply with all applicable requirements of state law and of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section 3.15. Notwithstanding the foregoing provisions of this Section 3.15, unless otherwise required by law, if the Nominating Person (or a qualified representative of the Nominating Person) proposing a nominee for director at a meeting does not appear at the meeting of stockholders of the Corporation to present such nomination, such proposed nomination shall be disregarded, and no vote shall be taken with respect to such nomination notwithstanding that proxies with respect to such vote may have been received by the Corporation.

(f) Nothing in Section 3.15 shall be deemed to affect any rights of the holders of any series of preferred stock of the Corporation to elect directors pursuant to any applicable provisions of the certificate of incorporation.

3.16 Classified Board of Directors

Effective upon the Corporation's initial public offering of stock under the Securities Act of 1933, as amended, the board of directors will be divided into three classes, Class I, Class II, and Class III, which will be as nearly equal in number as possible. The term of office of each director in Class I expires at the first annual meeting of stockholders of the corporation following the effectiveness of this section 3.16. The term of office of each director in Class II

expires at the second annual meeting of the stockholders of the corporation following the effectiveness of this section 3.16. The term of office of each director in Class III expires at the third annual meeting of stockholders of the corporation following the effectiveness of this section 3.16. Each director shall serve until the election and qualification of a successor or until such director's earlier resignation, death, or removal from office. Upon the expiration of the term of office for each class of directors, the directors of such class will be elected for a term of three years, to serve until the election and qualification of their successors or until their earlier resignation, death, or removal from office. Notwithstanding the foregoing:

(a) Until the election of directors at the 2022 annual meeting of directors (the "2022 Annual Meeting"), the board of directors shall be divided into two classes of directors, Class I and Class II with the directors in Class II having a term that expires at the 2022 Annual Meeting and the directors in Class I having a term that expires at the 2023 Annual Meeting. The successors of the directors who, immediately prior to the 2021 annual meeting of stockholders (the "2021 Annual Meeting"), were members of Class II (and whose terms expired at the 2021 Annual Meeting) became members of Class II with a term expiring at the 2022 Annual Meeting; the directors who, immediately prior to the 2021 Annual Meeting, were members of Class III and whose terms were scheduled to expire at the 2022 Annual meeting became members of Class II and continued to have terms expiring at the 2022 Annual Meeting; and the directors who, immediately prior to the 2021 Annual Meeting, were members of Class I and whose terms were scheduled to expire at the 2023 Annual Meeting became members of Class I and continued to have terms expiring at the 2023 Annual Meeting.

(b) Commencing with the election of directors at the 2022 Annual Meeting, there shall be a single class of directors, with all directors of such class having a term that expires at the 2023 Annual Meeting. The successors of the directors who, immediately prior to the 2022 Annual Meeting, were members of Class II (and whose terms expire at the 2022 Annual Meeting) shall be elected at such meeting for a term that expires at the 2023 Annual Meeting, and the directors who, immediately prior to the 2022 Annual Meeting, were members of Class I and whose terms were scheduled to expire at the 2023 Annual Meeting shall continue to have terms expiring at the 2023 Annual Meeting.

(c) From and after the election of directors at the 2023 Annual Meeting, the board of directors shall cease to be classified as provided in Section 141(d) of the General Corporation Law of the State of Delaware, and the directors elected at the 2023 Annual Meeting (and each annual meeting of the stockholders thereafter) shall be elected for a term expiring at the next annual meeting of the stockholders.

IV. COMMITTEES

4.1 Committees of Directors

The board of directors may, by resolution passed by a majority of the whole board, designate one or more committees, with each committee to consist of one or more of the directors of the Corporation. Any such committee, to the extent provided in the resolution of the board of directors or in the bylaws of the Corporation, will have and may exercise all the powers and authority of the board of directors 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 will have the power or authority to (i) approve or adopt, or recommend to the stockholders, any action or matter expressly required by the General Corporation Law of Delaware to be submitted to stockholders for approval, or (ii) adopt, amend or repeal any bylaws of the Corporation.

4.2 Committee Minutes

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

4.3 Meetings and Action of Committees

Meetings and actions of committees will be governed by, and be held and taken in accordance with, the provisions of Article III of these bylaws, Section 3.5 (place of meetings and meetings by telephone), Section 3.6 (regular meetings), Section 3.7 (special meetings and notice), Section 3.8 (quorum), Section 3.9 (waiver of notice), Section 3.10 (adjourned meeting and notice), and Section 3.11 (board action by written consent without a meeting), with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the board of directors and its members; provided, however, that the time of regular meetings of committees may also be called by resolution of the board of directors. The board of directors may adopt rules for the governance of any committee not inconsistent with the provisions of these bylaws.

V. OFFICERS

5.1 Officers

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

5.2 Election of Officers

The officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Sections 5.3 of these bylaws, will be chosen by the board of directors, subject to the rights, if any, of an officer under any contract of employment.

5.3 Subordinate Officers

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

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 an affirmative vote of the majority of the board of directors at any regular or special meeting of the board or by any officer upon whom such power of removal may be conferred by the board of directors.

Any officer may resign at any time by giving written notice to the Corporation. Any resignation will take effect at the date of the receipt of that notice or at any later time specified in that notice and, unless otherwise specified in that notice, the acceptance of the resignation will 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 will be filled by the board of directors.

5.6 Chairman of the Board

The chairman of the board will, if present, preside at meetings of the board of directors and exercise and perform such other powers and duties as may from time to time be assigned to him by the board of directors or as may be prescribed by these bylaws. The chairman of the board of directors will be chosen by the board of directors.

5.7 President

Subject to such supervisory powers, if any, as may be given by the board of directors to the chairman of the board or the chief executive officer, if there be such officers, the president will, subject to the control of the board of directors, have general supervision, direction, and control of the business and the officers of the Corporation. In the

absence or nonexistence of the chief executive officer, he or she will preside at all meetings of the stockholders and, in the absence of a chairman of the board and chief executive officer, at all meetings of the board of directors at which he or she is present. He or she will have the general powers and duties of management usually vested in the office of president of a corporation and will have such other powers and duties as may be prescribed by the board of directors or these bylaws. The board of directors may provide in their discretion that the offices of president and chief executive officer may be held by the same person.

5.8 Vice Presidents

In the absence or disability of the chief executive officer and president, the vice presidents, if any, in order of their rank as fixed by the board of directors or, if not ranked, a vice president designated by the board of directors, will perform all the duties of the president and when so acting will have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents will have such other powers and perform such other duties as from time to time may be prescribed for them by the board of directors, these bylaws, the president or the chairman of the board.

5.9 Secretary

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

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

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

5.10 Treasurer

The treasurer will keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and shares. The books of account will at all reasonable times be open to inspection by any director.

The treasurer will deposit all money and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the board of directors. The treasurer will disburse the funds of the Corporation as may be ordered by the board of directors, will render to the president and directors, whenever they request it, an account of all of his or her transactions as treasurer and of the financial condition of the Corporation, and will have such other powers and perform such other duties as may be prescribed by the board of directors or these bylaws.

5.11 Assistant Secretary

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

5.12 Representation of Shares of Other Corporations

The chairman of the board, the chief executive officer, the president, any vice president, the treasurer, the secretary or assistant secretary of the Corporation, or any other person authorized by the board of directors or the chief executive officer, 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 of any other corporation or corporations standing in the name of the Corporation. 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.

5.13 Authority and Duties of Officers

In addition to the foregoing authority and duties, all officers of the Corporation will 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 of directors.

VI. INDEMNITY

6.1 Indemnification of Directors and Officers

The Corporation will, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware (as such law may from time to time be amended, but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights), indemnify each of its directors and officers (each such person sometimes referred to in this Section 6.1 as an "indemnitee") against Expenses (as herein defined), and judgments, fines, penalties, ERISA excise taxes, settlements, loss, liability, and other amounts actually and reasonably incurred in connection with any Proceeding (as herein defined), arising by reason of such person's Official Capacity (as herein defined) or anything done or not done in such person's Official Capacity ("Losses"). For purposes of this Section 6.1, a director or officer of the Corporation includes any person (a) who is or was a director or officer of the Corporation, (b) who is or was serving at the request of the Corporation as a director, officer, manager, member, partner, trustee, or other agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, or (c) who was a director or officer of a corporation that was a predecessor corporation or other entity of the Corporation or of another enterprise at the request of such predecessor corporation or entity. Such indemnification will include the right to receive payment of any Expenses incurred by the indemnitee in connection with any Proceeding in advance of its final disposition, consistent with the provisions of applicable law as then in effect. The right of indemnification provided in this Section 6.1 will not be exclusive of any other rights to which those seeking indemnification may otherwise be entitled, and the provisions of this Section 6.1 will inure to the benefit of the heirs and legal representatives of any person entitled to indemnity under this Section 6.1 and will be applicable to Proceedings commenced or continuing after the adoption of this Section 6.1, whether arising from acts or omissions occurring before or after such adoption. In furtherance, but not in limitation of the foregoing provisions, the following procedures, presumptions and remedies will apply with respect to advancement of Expenses and the right to indemnification under this Section 6.1. Indemnitee will be entitled to indemnification and advancement against all Expenses reasonably incurred for serving as a witness by reason of indemnitee's Official Capacity in any Proceeding with respect to which indemnitee is not a party.

(a) Advancement of Expenses. All reasonable Expenses incurred by or on behalf of the indemnitee in connection with any Proceeding will be advanced to the indemnitee by the Corporation within twenty (20) days after the receipt by the Corporation of a statement or statements from the indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements will reasonably evidence the Expenses incurred by the indemnitee and, if required by law at the time of such advance, will include or be accompanied by an undertaking by or on behalf of the indemnitee to repay the amounts advanced if it should ultimately be determined that the indemnitee is not entitled to be indemnified against such Expenses pursuant to this Section 6.1. Such undertaking need not be secured and shall be accepted by the Corporation without reference to the indemnitee's ability to repay the Expenses.

(b) Procedure for Determination of Entitlement to Indemnification.

(i) To obtain indemnification under this Section 6.1, an indemnitee will submit to the secretary of the Corporation a written request, including such documentation and information as is reasonably available to the indemnitee and reasonably necessary to determine whether and to what extent the indemnitee is entitled to indemnification (the "Supporting Documentation"). The determination of the indemnitee's entitlement to indemnification will be made not later than sixty (60) days after receipt by the Corporation of the written request for indemnification together with the Supporting Documentation. The secretary of the Corporation will, promptly upon receipt of such a request for indemnification, advise the board of directors in writing that the indemnitee has requested indemnification, whereupon the Corporation will provide such indemnification, including without limitation advancement of Expenses, so long as the indemnitee is legally entitled thereto in accordance with applicable law.

(ii) The indemnitee's entitlement to indemnification under this Section 6.1 will be determined in one of the following ways: (A) by a majority vote of the Incumbent Directors who are Disinterested Directors (as hereinafter defined), even though less than a quorum of the board of directors; (B) by a committee of such Incumbent Directors who are Disinterested Directors, even though less than a quorum of the board of directors; (C) by a written opinion of Independent Counsel (as hereinafter defined) if (x) the indemnitee so requests or (y) a quorum of the board of directors consisting of Incumbent Directors who are Disinterested Directors is not obtainable or, even if obtainable, a majority of such Incumbent Directors who are Disinterested Directors so directs; or (D) as provided in paragraph (c) below.

(iii) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to paragraph (b)(ii) above, a majority of the Incumbent Directors who are Disinterested Directors will select the Independent Counsel, but only an Independent Counsel to which the indemnitee does not reasonably object; provided, however, that if a Change of Control will have occurred, the indemnitee will select such Independent Counsel, but only an Independent Counsel to which the board of directors does not reasonably object.

(iv) The only basis upon which a finding that indemnification may not be made is that such indemnification is prohibited by law.

(v) The Corporation will pay all costs associated with its determination of indemnitee's eligibility for indemnification.

(c) Presumptions and Effect of Certain Proceedings. Except as otherwise expressly provided in this Section 6.1, if a Change of Control occurs, the indemnitee will be presumed to be entitled to indemnification under this Section 6.1 upon submission of a request for indemnification together with the Supporting Documentation in accordance with paragraph (b)(i), and thereafter the Corporation will have the burden of proof to overcome that presumption by clear and convincing evidence in reaching a contrary determination. In any event, if the person or persons empowered under paragraph (b)(ii) above to determine entitlement to indemnification will not have been appointed or will not have made a determination within sixty (60) days after receipt by the Corporation of the request therefor together with the Supporting Documentation, the indemnitee will conclusively be deemed to be entitled to indemnification and the indemnitee will be entitled to such indemnification unless the indemnitee misrepresented a material fact, or omitted a material fact necessary to make indemnitee's statement not misleading, in making the request for indemnification or in the Supporting Documentation. The termination of any Proceeding described in this Section 6.1, or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, will not, of itself, adversely affect the right of the indemnitee to indemnification or create a presumption that the indemnitee did not act in good faith and in a manner that the indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation or, with respect to any criminal Proceeding, that the indemnitee had reasonable cause to believe that the indemnitee's conduct was unlawful.

(d) Remedies of Indemnitee.

(i) In the event that a determination is made pursuant to paragraph (b)(ii) that the indemnitee is not entitled to indemnification under this Section 6.1: (A) the indemnitee will be entitled to seek an adjudication of his or her entitlement to such indemnification either, at the indemnitee's sole option, in (x) an appropriate court of the State of Delaware or any other court of competent jurisdiction, or (y) an arbitration to be conducted by a single arbitrator pursuant to the rules of the American Arbitration Association; (B) any such judicial Proceeding or arbitration will be de novo and the indemnitee will not be prejudiced by reason of such adverse determination; and (C) in any such judicial Proceeding or arbitration the Corporation will have the burden of proving by clear and convincing evidence that the indemnitee is not entitled to indemnification under this Section 6.1.

(ii) If a determination is made or is deemed to have been made, pursuant to paragraph (b)(ii) or (iii), that the indemnitee is entitled to indemnification, the Corporation will be obligated to pay the amounts constituting such indemnification within five (5) days after such determination has been made or is deemed to have been made and will be conclusively bound by such determination unless the indemnitee misrepresented a material fact, or omitted a material fact necessary to make indemnitee's statement not misleading, in making the request for indemnification or in the Supporting Documentation. In the event that: (X) advancement of Expenses is not timely made pursuant to paragraph (a); or (Y) payment of indemnification is not made within five (5) days after a determination of entitlement to indemnification has been made or deemed to have been made pursuant to paragraph (b)(ii) or (iii), the indemnitee will be entitled to seek judicial enforcement of the Corporation's obligation to pay to the indemnitee such advancement of Expenses or indemnification. Notwithstanding the foregoing, the Corporation may bring an action, in an appropriate court in the State of Delaware or any other court of competent jurisdiction, contesting the right of the indemnitee to receive indemnification hereunder based upon a claim that the indemnitee has misrepresented a material fact, or omitted a material fact necessary to make indemnitee's statement not misleading, in making indemnitee's request for indemnification or in the Supporting Documentation (a "Disqualifying Event"); provided, however, that in any such action the Corporation will have the burden of proving the occurrence of such Disqualifying Event.

(iii) The Corporation will be precluded from asserting in any judicial Proceedings or arbitration commenced pursuant to this paragraph (d) that the procedures and presumptions of this Section 6.1 are not valid, binding and enforceable and will stipulate in any such court or before any such arbitrator that the Corporation is bound by all the provisions of this Section 6.1.

(iv) In the event that the indemnitee, pursuant to this paragraph (d), seeks a judicial adjudication of or an award in arbitration to enforce his or her rights under, or to recover damages for breach of, this Section 6.1, the indemnitee will be entitled to recover from the Corporation, and will be indemnified by the Corporation against, any Expenses actually and reasonably incurred by the indemnitee if the indemnitee prevails in such judicial adjudication or arbitration. If it will be determined in such judicial adjudication or arbitration that the indemnitee is entitled to receive part but not all of the indemnification or advancement of Expenses sought, the Expenses incurred by the indemnitee in connection with such judicial adjudication will be prorated accordingly.

(e) Definitions. For purposes of this Article 6:

(i) "Change of Control" means a change of control of the Corporation of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A promulgated under the Exchange Act, whether or not the Corporation is then subject to such reporting requirement; provided that, without limitation, such a change of control will be deemed to have occurred if (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Corporation representing 25% or more of the combined voting power of the Corporation's then outstanding securities without the prior approval of at least a majority of the members of the board of directors in office immediately prior to such acquisition; (ii) the Corporation is a party to a merger, consolidation, sale of assets or other reorganization, or a proxy contest, as a consequence of which members of the board of directors in office immediately prior to such transaction or event constitute less than a majority of the board of directors thereafter; or (iii) during any period of two (2) consecutive years, individuals who at the beginning of such period constituted the board of directors (including for this purpose any new director whose election or nomination for election by the Corporation's stockholders was approved by a vote of at least a majority of the directors then still in office who were directors at the beginning of such period) cease for any reason to constitute at least a majority of the board of directors;

(ii) "Disinterested Director" means a director of the Corporation who is not a party to the Proceeding in respect of which indemnification or advancement of Expenses is sought by the indemnitee;

(iii) "Expenses" will include all direct and indirect costs including, but not limited to, attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, advisory fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with investigating, prosecuting, defending (or preparing to investigate, prosecute or defend) a Proceeding, or being or preparing to be a witness in a Proceeding;

(iv) "Incumbent Director" means an individuals who, as of September 15, 2016, are members of the Board and any individual becoming a member of the Board subsequent to that date whose election, nomination for election by the Corporation's stockholders, or appointment, was approved by a vote of at least two-thirds of the then Incumbent Directors (either by a specific vote or by approval of the proxy statement of the Corporation in which such person is named as a nominee for director, without objection to such nomination).

(v) "Independent Counsel" means a law firm or a member of a law firm that neither presently is, nor in the past five (5) years has been, retained to represent: (A) the Corporation or the indemnitee in any matter material to either such party or (B) any other party to the Proceeding giving rise to a claim for indemnification under this Section 6.1. Notwithstanding the foregoing, the term "Independent Counsel" will not include any person who, under the applicable standards of professional conduct then prevailing under such persons relevant jurisdiction of practice, would have a conflict of interest in representing either the Corporation or the indemnitee in an action to determine the indemnitee's rights under this Section 6.1;

(vi) "Official Capacity" means indemnitee's corporate status as an officer and/or director and any other fiduciary capacity in which indemnitee serves the Corporation, its subsidiaries or affiliates, and any other entity which indemnitee serves in such capacity at the request of any of the Corporation's board of directors or any committee of its board of directors, chief executive officer, chairman of the board of directors, or president. "Official Capacity" also refers to all actions which indemnitee takes or does not take while serving in such capacity; and

(vii) "Proceeding" includes any actual or threatened inquiry, investigation, action, suit, arbitration, or any other such actual or threatened action or occurrence, whether civil, criminal, administrative or investigative.

(f) Invalidity; Severability; Interpretation. If any provision or provisions of this Section 6.1 will be held to be invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions of this Section 6.1 (including, without limitation, all portions of any paragraph of this Section 6.1 containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) will not in any way be affected or impaired thereby; and (ii) to the fullest extent possible, the provisions of this Section 6.1 (including, without limitation, all portions of any paragraph of this Section 6.1 containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid; illegal or unenforceable) will be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable. Reference herein to laws, regulations or agencies will be deemed to include all amendments thereof, substitutions therefor and successors thereto.

(g) Contractual Rights; Applicability. The right to be indemnified or to the reimbursement or advancement of Expenses pursuant hereto (i) is a contract right based upon good and valuable consideration, pursuant to which the person entitled thereto may bring suit as if the provisions hereof were set forth in a separate written contract between the Corporation and the director or officer, (ii) is intended to be retroactive and will be available with respect to events occurring prior to the adoption hereof, and (iii) will continue to exist after the rescission or restrictive modification hereof.

6.2 Indemnification of Others

The Corporation will have the power, to the extent and in the manner permitted by the General Corporation Law of Delaware, to indemnify each of its officers, employees and agents (other than directors) against Expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any Proceeding, arising by reason of the fact that such person is or was an agent of the Corporation. For purposes of this Section 6.2, an officer, employee or agent of the Corporation (other than a director) includes any person (a) who is or was an officer, employee or agent of the Corporation, (b) who is or was serving at the request of the Corporation as a director, officer, manager, member, partner, trustee, employee or other agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, or (c) who was an officer, employee or agent of a corporation that was a predecessor corporation or other entity of the Corporation or of another enterprise at the request of such predecessor corporation or entity.

6.3 Insurance

The Corporation shall use reasonable efforts (taking into account the scope and amount of coverage available relative to the cost thereof) to cause to be maintained in effect policies of directors' and officers' liability insurance providing coverage for directors and/or officers of the Corporation that is at least substantially comparable in scope and amount to that provided by the Corporation's policies of directors' and officers' liability insurance in effect as of September 15, 2016. Upon request, the Corporation shall provide each indemnitee with a copy of all directors' and officers' liability insurance applications, binders, policies, declarations, endorsements and other related materials, and shall provide any such requesting indemnitee with a reasonable opportunity to review and comment on the same. Without limiting the generality or effect of the two immediately preceding sentences, the Corporation shall not discontinue or significantly reduce the scope or amount of coverage from one policy period to the next (i) without the prior approval thereof by a majority vote of the Incumbent Directors, even if less than a quorum, or (ii) if at the time that any such discontinuation or significant reduction in the scope or amount of coverage is proposed there are no Incumbent Directors, each person who was entitled to indemnification (which consent shall not be unreasonably withheld, delayed or conditioned). In all policies of directors' and officers' liability insurance obtained by the Corporation, each director and officer shall be named as an insured in such a manner as to provide such persons the same rights and benefits, subject to the same limitations, as are accorded to the Corporation's directors and officers most favorably insured by such policy.

6.4 Primacy of Corporation's Obligations

The Corporation hereby acknowledges that an indemnitee has, or may have, rights to indemnification, advancement of expenses and/or insurance provided by indemnitee's employer or through personal insurance policies obtained by the indemnitee (collectively, the "**Other Indemnitors**"). The Corporation hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to Indemnitee are primary and any obligation of Other Indemnitors, if any, to advance expenses or to provide indemnification to Indemnitee in respect of any Loss is secondary), (ii) that it shall be required to advance the full amount of Expenses incurred by indemnitee and shall be liable for the full amount of all Expenses and Losses to the extent legally permitted and as required by the terms of these bylaws without regard to any rights Indemnitee may have against the Other Indemnitors, if any, and (iii) that it irrevocably waives, relinquishes and releases any Other Indemnitors from any and all claims against such Other Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Corporation further agrees that no advancement or payment by any Other Indemnitors on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Corporation shall affect the foregoing and such Other Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of indemnitee against the Corporation.

Except as provided in the prior paragraph, in the event of payment to an indemnitee under these bylaws, the Corporation shall be subrogated to the extent of such payment to all of the related rights of recovery of such indemnitee against other persons or entities (other than such indemnitee's successors). Any such indemnitee shall execute all papers reasonably required to evidence such rights (all of such indemnitee's Expenses, including attorneys' fees and charges, related thereto to be reimbursed by or advanced by the Corporation).

VII. RECORDS AND REPORTS

7.1 Maintenance and Inspection of Records

The Corporation will, either at its principal executive office or at such place or places as designated by the board of directors, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these bylaws as amended to date, accounting books, and other records.

Any stockholder of record, in person or by attorney or other agent, will, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the Corporation's stock ledger, a list of its stockholders, and its other books and records and to make copies or extracts therefrom. A proper purpose will mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent is the person who seeks the right to inspection, the demand under oath will be accompanied by a power of attorney or such other writing that authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath will be directed to the Corporation at its registered office in Delaware or at its principal place of business.

Any records maintained by the Corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device or method, provided that the records so kept can be converted into clearly legible paper form within a reasonable time. The Corporation will so convert any records so kept upon the request of any person entitled to inspect such records pursuant to any provision of the certificate of incorporation, these bylaws or the General Corporation Law of Delaware. When records are kept in such manner, a clearly legible paper form or by means of the information storage device or method will be admissible in evidence, and accepted for all other purposes, to the same extent as an original paper record of the same information would have been, provided the paper form accurately portrays the record.

7.2 Inspection by Directors

Any director will have the right to examine the Corporation's stock ledger, a list of its stockholders, and its other books and records for a purpose reasonably related to his or her position as a director. The Court of Chancery is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The Court may summarily order the Corporation to permit the director to inspect any and all books and records, the stock ledger, and the stock list and to make copies or extracts therefrom. The burden of proof will be upon the Corporation to establish that the inspection such director seeks is for an improper purpose. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court may deem just and proper.

VIII. GENERAL MATTERS

8.1 Checks

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

8.2 Execution of Corporate Contracts and Instruments

The board of directors, except as otherwise provided in these bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the board of directors or within the agency power of an officer, no officer, agent or employee will 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.

8.3 Stock Certificates; Partly Paid Shares

The shares of the Corporation will be represented by certificates, provided that the board of directors of the Corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock will be uncertificated shares. Any such resolution will not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the board of directors, every holder of stock represented by certificates and upon request every holder of uncertificated shares will be entitled to have a certificate signed by, or in the name of the Corporation by the chairman of the board of directors, or the president or vice president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of 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 he were such officer, transfer agent or registrar at the date of issue. The Corporation will 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, and 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 will be stated. Upon the declaration of any dividend on fully paid shares, the Corporation will 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.

8.4 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 will be set forth in full or summarized on the face or back of the certificate that the Corporation will issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the Corporation will 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, 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.

8.5 Lost Certificates

Except as provided in this Section 8.5, no new certificates for shares will 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 his or her 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.

8.6 Forum for Adjudication of Disputes

Unless the corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by applicable 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 asserting a claim against the Corporation arising pursuant to any provision of the DGCL or the Corporation's Certificate of Incorporation or bylaws or (iv) any action asserting a claim against the Corporation governed by the internal affairs doctrine, in each such case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein. Any person or entity purchasing or otherwise acquiring any interest in the shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Section 8.6.

8.7 Construction; Definitions

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the Delaware General Corporation Law will 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, the masculine includes the feminine, and the term "person" includes both a corporation and a natural person.

8.8 Dividends

The directors of the Corporation, subject to any rights or restrictions contained in the certificate of incorporation, may declare and pay dividends upon the shares of its capital stock pursuant to the General Corporation Law of Delaware. Dividends may be paid in cash, in property, or in shares of the Corporation's capital stock.

The directors of the Corporation 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. Such purposes will include but not be limited to equalizing dividends, repairing or maintaining any property of the Corporation, and meeting contingencies.

8.9 Fiscal Year

The fiscal year of the Corporation will be fixed by resolution of the board of directors and may be changed by the board of directors.

8.10 Seal

The Corporation may adopt a corporate seal which may be altered as desired, and may use the same by causing it or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

8.11 Transfer of Stock

Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it will be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate, and record the transaction in its books.

8.12 Stock Transfer Agreements and Restrictions

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

8.13 Electronic Transmission

For purposes of these bylaws, "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

IX. AMENDMENTS

The original or other bylaws of the Corporation may be adopted, amended or repealed by the stockholders entitled to vote; provided, however, that the Corporation may, in its certificate of incorporation, confer the power to adopt, amend or repeal bylaws upon the directors. The fact that such power has been so conferred upon the directors will not divest the stockholders of the power, nor limit their power to adopt, amend or repeal bylaws.

X. DISSOLUTION

If it should be deemed advisable in the judgment of the board of directors of the Corporation that the Corporation should be dissolved, the board, after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, will cause notice to be mailed to each stockholder entitled to vote thereon of the adoption of the resolution and of a meeting of stockholders to take action upon the resolution.

At the meeting a vote will be taken for and against the proposed dissolution. If a majority of the outstanding stock of the Corporation entitled to vote thereon votes for the proposed dissolution, then a certificate stating, among other things, that the dissolution has been authorized in accordance with the provisions of Section 275 of the General Corporation Law of Delaware and setting forth the names and residences of the directors and officers will be executed, acknowledged, and filed and will become effective in accordance with Section 103 of the General Corporation Law of Delaware. Upon such certificate's becoming effective in accordance with Section 103 of the General Corporation Law of Delaware, the Corporation will be dissolved.

Whenever all the stockholders entitled to vote on a dissolution consent in writing, either in person or by duly authorized attorney, to a dissolution, no meeting of directors or stockholders will be necessary. The consent will be filed and will become effective in accordance with Section 103 of the General Corporation Law of Delaware. Upon such consent's becoming effective in accordance with Section 103 of the General Corporation Law of Delaware, the Corporation will be dissolved. If the consent is signed by an attorney, then the original power of attorney or a photocopy thereof will be attached to and filed with the consent. The consent filed with the Secretary of State will have attached to it the affidavit of the secretary or some other officer of the Corporation stating that the consent has been signed by or on behalf of all the stockholders entitled to vote on a dissolution; in addition, there will be attached to the consent a certification by the secretary or some other officer of the Corporation setting forth the names and residences of the directors and officers of the Corporation.

XI. CUSTODIAN

11.1 Appointment of a Custodian in Certain Cases

The Court of Chancery, upon application of any stockholder, may appoint one or more persons to be custodians and, if the Corporation is insolvent, to be receivers, of and for the Corporation when:

- (a) at any meeting held for the election of directors the stockholders are so divided that they have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors;
- (b) the business of the Corporation is suffering or is threatened with irreparable injury because the directors are so divided respecting the management of the affairs of the Corporation that the required vote for action by the board of directors cannot be obtained and the stockholders are unable to terminate this division; or
- (c) the Corporation has abandoned its business and has failed within a reasonable time to take steps to dissolve, liquidate or distribute its assets.

11.2 Duties of Custodian

The custodian will have all the powers and title of a receiver appointed under Section 291 of the General Corporation Law of Delaware, but the authority of the custodian will be to continue the business of the Corporation and not to liquidate its affairs and distribute its assets, except when the Court of Chancery otherwise orders and except in cases arising under Sections 226(a)(3) or 352(a)(2) of the General Corporation Law of Delaware.