

**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): February 28, 2023

ANI PHARMACEUTICALS, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-31812
(Commission File Number)

58-2301143
(I.R.S. Employer Identification No.)

210 Main Street West
Baudette, Minnesota
(Address of principal executive offices)

56623
(Zip Code)

Registrant's telephone number, including area code: **(218) 634-3500**

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

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	ANIP	Nasdaq Stock Market

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 (see General Instruction A.2. below):

- 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))

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

On February 28, 2023, the Board of Directors (the “Board”) of ANI Pharmaceuticals, Inc. (the “Company”) approved the Second Amended and Restated Bylaws of the Company (the “Bylaws”), which became effective immediately. The Board adopted certain clarifying amendments and other updates, portions of which relate to the new Securities and Exchange Commission rules regarding universal proxy cards and certain recent amendments to the Delaware General Corporation Law (“DGCL”). These amendments, among other items, made the following changes:

- Article II, Section 4 of the Bylaws has been amended to provide procedural mechanics for waivers of notice for special meetings of stockholders;
 - Article II, Section 5 of the Bylaws has been amended to update the quorum requirement at meetings, other than those called by the Board, to at least a majority of the voting power of the capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy (instead of at least one-third of the voting power for meetings called by the Board);
 - Article II, Section 5 of the Bylaws has also been amended to specify that notice of an adjourned meeting need not be given if the date, time, and place of such adjourned meeting is displayed during the meeting on the electronic network used for the virtual meeting;
 - Article II, Section 9 of the Bylaws has been amended to delete the requirement to make a stockholder list available for examination at stockholder meetings, consistent with recent amendments to the DGCL;
 - Article II, Section 12(b) of the Bylaws has been amended to enhance certain procedural mechanics and disclosure requirements in connection with stockholder submissions of proposals regarding certain business to be conducted at annual meetings of stockholders, including required disclosures and representations by proposing stockholders and their associates, including, among other items, disclosure relating to ownership of Company securities, information relating to such stockholder or its associates that would be required to be disclosed in a proxy statement or other filing required to be made in connection with the solicitation of proxies by such person with respect to the proposed business, and arrangements between proposing stockholders and their associates;
 - Article II, Section 13(b) of the Bylaws has been amended to enhance certain procedural mechanics and disclosure requirements in connection with stockholder nominations of directors, including by (i) requiring additional background information, disclosures, and representations from director nominees and those associated with them, including, but not limited to, information regarding the beneficial ownership of capital stock of the Company by such person or its affiliates and regarding the person’s qualifications and background; (ii) requiring similar information from nominating stockholders and those associated with them; and (iii) specifying procedural requirements with which nominating stockholders using the universal proxy rule must comply;
 - Article III, Section 9 of the Bylaws has been amended to clarify the limits to which committees may exercise the powers, duties, and authorities of the full Board, namely, that committees cannot amend the Certificate of Incorporation of the Company; adopt an agreement of merger or consolidation; recommend to the stockholders the sale, lease or exchange of all or substantially all of the Company’s property and assets; recommend to the stockholders a dissolution of the Company or a revocation of a dissolution; or amend the Bylaws and that no committee of the Board may declare a dividend or to authorize the issuance of stock unless the resolution creating such committee expressly so provides;
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- Article VIII of the Bylaws has been amended to replace the prior indemnification provisions with a comprehensive indemnification and advancement regime and to further conform the Bylaw indemnification provisions with those included in the Company's Certificate of Incorporation. These amendments, among other items, (i) limit indemnification in the case of proceedings brought by the officer or director against the Company, only if authorized by the Board, (ii) provide indemnification rights with specificity and (iii) provide for the mandatory advance of expenses subject to certain limitations, such as making advancement conditional upon consent of the Board under certain circumstances; and
- Article IX of the Bylaws has been amended to add a forum selection clause which (i) requires all litigation concerning the internal affairs of the Company to proceed in the State of Delaware and (ii) requires all cases brought to enforce a duty or liability created by the Securities Act of 1933, or any successor thereto (the "Securities Act") or the Securities Exchange Act of 1934 to be litigated in federal court.

The foregoing description of the Bylaws does not purport to be complete and is qualified entirely by reference to the full text of the Bylaws, which is attached as Exhibit 3.1 hereto and is incorporated by reference herein.

Item 9.01 Exhibits

(d) Exhibits

<u>Exhibit</u> <u>No.</u>	<u>Description</u>
3.1 104	Second Amended and Restated Bylaws of ANI Pharmaceuticals, Inc. Cover Page Interactive Data File (embedded with the Inline XBRL document)

SIGNATURES

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.

Dated: March 6, 2023

ANI PHARMACEUTICALS, INC.

By: /s/ Stephen P. Carey

Name: Stephen P. Carey

Title: Senior Vice President Finance and Chief Financial Officer

**SECOND AMENDED AND RESTATED BYLAWS
OF
ANI PHARMACEUTICALS, INC.**

**ARTICLE I.
OFFICES**

Section 1. Registered Office. The registered office of ANI Pharmaceuticals, Inc., a corporation organized under the laws of the State of Delaware (the "Corporation") shall be in the City of Wilmington, County of New Castle, State of Delaware.

Section 2. Other Offices. The Corporation may also have offices at such other places both within and without the State of Delaware as the board of directors of the Corporation ("Board of Directors") may from time to time determine.

**ARTICLE II.
MEETINGS OF STOCKHOLDERS**

Section 1. Place of Meetings. Meetings of the stockholders for the election of directors or for any other purpose shall be held at such time and place, either within or without the State of Delaware as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting or in a duly executed waiver of notice thereof. The Board of Directors may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication satisfying the applicable provisions of the Delaware General Corporation Law (or its successor statute as in effect from time to time).

Section 2. Annual Meetings. The annual meetings of stockholders shall be held on such date and at such time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting, at which meetings the stockholders shall elect directors, and transact such other business as may timely and properly be brought before the meeting.

Section 3. Special Meetings. Unless otherwise prescribed by applicable law or by the Certificate of Incorporation, special meetings of stockholders, for any purpose or purposes, may be called by either (a) the Chairman, if there be one, (b) the President or Chief Executive Officer, or (c) the Board of Directors. Such request shall state the purpose or purposes of the proposed meeting. At a special meeting no business shall be transacted and no corporate action shall be taken other than that stated in the notice of the meeting. If and to the extent that any special meeting of stockholders may be called by any other person or persons specified in any provision of the Certificate of Incorporation, then such special meeting may also be called by the person or persons, in the manner, at the times and for the purposes so specified. The Board of Directors may postpone, reschedule, or cancel any special meeting of stockholders called pursuant to this Section 3 of Article II.

Section 4. Notice.

- (a) Unless waived as provided in Section 4(b), except as otherwise required by the Certificate of Incorporation or applicable law, written notice of each annual or special meeting of the stockholders, stating the place, date, time, the means of remote communication, if any, and, in the case of special meetings, the purpose or purposes, of such meeting, shall be given to each stockholder entitled to vote at such meeting not less than ten (10), nor more than sixty (60), days before the date of the meeting.
 - (b) A written waiver of any such notice signed by the person entitled thereto, or a waiver by electronic transmission by the person entitled to any such notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends the 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. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.
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Section 5. Quorum and Adjournment. Except as otherwise provided by applicable law or by the Certificate of Incorporation, the holders representing at least one-third (1/3) of the capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum for the transaction of business at such meeting; provided, that at any meeting called other than by the Board of Directors, the holders representing at least a majority of the voting power of the capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum for the transaction of business at such meeting. If, however, such quorum is not present or represented at any meeting of the stockholders, the Chairman or the holders of a majority in voting power of the shares entitled to vote thereat, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time until a quorum is present or represented. Unless otherwise required by applicable law, the Certificate of Incorporation or these Bylaws, no notice of an adjourned meeting need be given if the date, time, and place, if any, thereof, and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken or displayed during the time scheduled for the meeting on the electronic network used for the virtual meeting. 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. 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 shall be given to each stockholder entitled to vote at the meeting. The stockholders present at a duly called meeting at which a quorum was originally present may continue to transact business until adjourned, notwithstanding the withdrawal of enough stockholders to leave less than a quorum present.

Section 6. Voting. Except as provided by applicable law, the Certificate of Incorporation or these Bylaws (including without limitation Article III, Section 1 with respect to the election of directors), any question brought before any meeting of stockholders shall be decided by the vote of the holders of a majority of the stock represented and entitled to vote thereon. Each stockholder represented at a meeting of stockholders shall be entitled to cast one (1) vote for each share of the capital stock entitled to vote held by such stockholder, except as provided in the Certificate of Incorporation or a resolution of the Board of Directors fixing rights and preferences of a class or series established by the Board of Directors. Such votes may be cast in person or by proxy but no proxy shall be voted on or after three (3) years from its date, unless such proxy provides for a longer period. The Board of Directors, in its discretion, or the officer of the Corporation presiding at a meeting of stockholders, in his or her discretion, may require that any votes cast at such meeting shall be cast by written ballot.

Section 7. Record Date of Stockholders. The Board of Directors is authorized to fix in advance a date not exceeding sixty (60) days nor less than ten (10) days preceding the date of any meeting of stockholders, or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of capital stock shall go into effect, or a date in connection with obtaining the consent of stockholders for any purposes, as a record date for the determination of the stockholders entitled to notice of, and to vote at, any such meeting, and any adjournment thereof, or entitled to receive payment of any such dividend, or to any such allotment of rights, or to exercise the rights in respect of any such change, conversion or exchange of capital stock, or to give such consent, and, in such case, such stockholders and only such stockholders as shall be stockholders of record on the date so fixed shall be entitled to such notice of, and to vote at, such meeting, and any adjournment thereof, or to receive payment of such dividend, or to receive such allotment of rights, or to exercise such rights, or to give such consent, as the case may be, notwithstanding any transfer of any stock on the books of the Corporation, after such record date fixed as aforesaid.

Section 8. Consent of Stockholders in Lieu of Meeting. Unless otherwise provided in the Certificate of Incorporation, any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation, may be taken without a meeting, without prior notice and without a vote, if a consent in writing (including by electronic transmission), setting forth the action so taken, shall be 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. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

Section 9. Voting List. The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held.

Section 10. Stock Ledger. The stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by Section 10 of this Article II or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

Section 11. Conduct of Meetings. The Chairman, or, if there be no Chairman or in his or her absence, the Vice Chairman or any other officer designated by the Board of Directors or the Chairman, shall preside at all annual or special meetings of stockholders. To the maximum extent permitted by applicable law, such presiding person shall have the power to determine the order of business and shall have the authority in his or her discretion to regulate all aspects of the conduct of any such meeting, including but not limited to, convening the meeting and adjourning the meeting (whether or not a quorum is present), imposing restrictions on persons other than stockholders of record of the Corporation (or their duly appointed proxies) who may attend such meeting, establishing procedures for the dismissal of business not timely and properly presented, maintaining order at the meeting and safety of those present, restricting entry to the meeting after the time fixed for commencement thereof and limiting the circumstances in which any person may make a statement or ask questions at any meeting of stockholders.

Section 12. Business to be Conducted.

(a) At any annual meeting of stockholders, only such business shall be conducted, and only such proposals shall be acted on, as are properly brought before the meeting. In order for business to be properly brought before the meeting, the business must be either (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (ii) otherwise properly brought before the meeting by or at the direction of the Board of Directors, or (iii) otherwise properly brought before the meeting by any stockholder of record of the Corporation who (1) was a stockholder of record at the time of the giving of the notice provided for in this Section 12 of Article II and at the time of the annual meeting, (2) is entitled to vote at such meeting and (3) has complied with the procedures set forth in this Section 12 of Article II. Except for proposals properly made pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and included in the Corporation's notice of meeting, the foregoing clause (iii) shall be the exclusive means for a stockholder to propose business to be considered by the stockholders at an annual meeting of stockholders. In addition to any other applicable requirements, for business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is not held within thirty (30) days before or after such anniversary date, to be timely, notice by the stockholder must be received not later than the close of business on the tenth (10th) day following the date on which the first public announcement of the date of the annual meeting was made. In no event shall the adjournment or postponement of an annual meeting or the public announcement of any adjournment or postponement commence a new time period for the giving of a stockholder's notice as described above.

(b) To be in proper written form, a stockholder's notice to the Secretary must set forth as to each matter such stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the annual meeting; (ii) the text of any resolution or amendment proposed to be adopted at the meeting, including the complete text of any resolutions proposed for consideration at the annual meeting and, if such business includes a proposal to amend the Certificate of Incorporation or these Bylaws, the text of the proposed amendment; (iii) the reasons for conducting such business at the annual meeting; (iv) all other information relating to such business that would be required to be disclosed in a proxy statement or other filing required to be made by such person in connection with the solicitation of proxies in support of such proposed business; and (v) as to the stockholder giving the notice and any Stockholder Associated Person (as defined below):

(1) the name and address of such person, (including, if applicable, the name and address that appear on the Corporation's stock ledger);

(2) (A) the class or series and number of shares of capital stock of the Corporation which are owned beneficially (within the meaning of Rule 13d-3 under the Exchange Act) or of record by such person (specifying the type of ownership), (B) the name of each nominee holder of shares of all stock of the Corporation owned beneficially but not of record by such stockholder or any Stockholder Associated Person, the number of such shares of stock of the Corporation held by each such nominee holder, and any pledge with respect to any of such stock, (C) whether and the extent to which any derivative instrument, swap, option, warrant, short interest, hedge or profit interest or other transaction or series of transactions has been entered into by or on behalf of such stockholder or any Stockholder Associated Person, with respect to stock of the Corporation, and (D) whether and the extent to which any other transaction, agreement, arrangement or understanding (including any short position or any borrowing or lending of shares of stock of the Corporation) has been made by or on behalf of such stockholder or any Stockholder Associated Person, the effect or intent of any of the foregoing being to mitigate loss to, or to manage risk or benefit of stock price changes for, such stockholder or any Stockholder Associated Person, or to increase or decrease the voting power or pecuniary or economic interest of such stockholder or any Stockholder Associated Person, with respect to stock of the Corporation;

(4) to the extent known by the stockholder giving the notice, the name and address of any other stockholder supporting the proposal of other business on the date of such stockholder's notice;

(5) a description of all arrangements or understandings between or among such stockholder or any Stockholder Associated Person and any other person or persons or entity (including their names) in connection with (A) the proposal of such business by such stockholder and any material interest in such business, and (B) any understanding (whether written or oral) that such stockholder or any Stockholder Associated Person may have reached with a stockholder of the Corporation (including the name of such stockholder) with respect to how such stockholder will vote such stockholder's shares in the Corporation at any meeting of stockholders or take other action in support of any other business, or other actions to be taken, by such stockholder or any Stockholder Associated Person;

(6) a representation that the stockholder giving the notice intends to appear in person or by proxy at the annual meeting to bring such business before the meeting and an acknowledgment that, if such stockholder (or a qualified representative of such stockholder) does not appear to present such business at such meeting, the Corporation need not present such business for a vote at such meeting, notwithstanding that proxies in respect of such vote may have been received by the Corporation;

(7) a representation from such stockholder as to whether such stockholder or any Stockholder Associated Person intends or is part of a group that intends (A) to deliver a proxy statement and/or form of proxy to a number of holders of the Corporation's voting shares reasonably believed by such stockholder to be sufficient to approve or adopt the business to be proposed, (B) to engage in a solicitation (within the meaning of Exchange Act Rule 14a-1(l)) with respect to business, and if so, the name of each participant (as defined in Item 4 of Schedule 14A under the Exchange Act) in such solicitation; and

(8) any other information relating to such stockholder or any Stockholder Associated Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with the solicitation of proxies by such person with respect to the proposed business to be brought by such person before the annual meeting pursuant to Section 14 of the Exchange Act, and the rules and regulations promulgated thereunder, and any other information relating to such stockholder or any Stockholder Associated Person that would be required to be set forth in a Schedule 13D filed pursuant to Rule 13d-1(a) of the Exchange (regardless of whether such person or entity is actually required to file a Schedule 13D). Any ownership information shall be supplemented by the stockholder giving the notice not later than ten (10) days after the record date for the meeting as of the record date.

(c) Notwithstanding anything in these bylaws to the contrary, no business shall be conducted at the annual meeting except in accordance with the procedures set forth in this Section 12 of Article II; provided, however, that nothing in this Section 12 of Article II shall be deemed to preclude discussion by any stockholder of any business properly brought before the annual meeting.

(d) The Chairman of the annual meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting in accordance with the provisions of this Section 12 of Article II, and if the Chairman should so determine, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

(e) For purposes of Sections 12 and 13 of Article II of these Bylaws, (i) "public announcement" shall mean disclosure (1) in a press release released by the Corporation, provided such press release is released by the Corporation following its customary procedures, is reported by the Dow Jones News Service, Associated Press or comparable national news service, or is generally available on internet news sites, or (2) in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder and (ii) "Stockholder Associated Person" of any stockholder shall mean (A) any person controlling, directly or indirectly, or acting in concert with, such stockholder or any beneficial owner described in the immediately following clause (B), (B) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder and on whose behalf the proposal or nomination, as the case may be, is being made, or (C) any person controlling, controlled by or under common control with such person referred to in the preceding clauses (A) and (B).

(f) At any special meeting of the stockholders, only such business shall be conducted as shall have been brought before the meeting by or at the direction of the Board of Directors.

(g) Notwithstanding the foregoing provisions of this Section 12 of Article II, (i) stockholder nominations of persons for election to the Board of Directors shall be governed by Section 13 of Article II of these Bylaws; (ii) a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 12 of Article II; provided, however, that any reference in this Section 12 of Article II to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the requirements applicable to proposals of business to be considered pursuant to Section 12(a)(iii) of Article II and nothing in this Section 12 of Article II shall 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.

Section 13. Stockholder Nomination of Directors.

(a) Any stockholder who intends to make a nomination of one or more persons for election to the Board of Directors of the Corporation must comply with this Section 13 of Article II. Nominations of persons for election to the Board of Directors to be made at any annual meeting of stockholders or any special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting must be made (i) by or at the direction of the Board of Directors or (ii) provided that the Board of Directors has determined that directors shall be elected at such meeting, as indicated in the notice, by any stockholder of the Corporation who (1) is a stockholder of record at the time of giving the notice provided for in this Section 13 of Article II and at the time of the meeting, (2) is entitled to vote for the election of directors at the meeting and (3) complies with the procedures set forth in this Section 13 of Article II as to such nominations. Except for proposals made pursuant to Rule 14a-8 under the Exchange Act, and included in the Corporation's notice of meeting, the foregoing clause (ii) shall be the exclusive means for a stockholder to make nominations of persons for election to the Board of Directors at an annual meeting of stockholders or a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting. Any such nominations (other than those made by or at the direction of the Board of Directors) must be made pursuant to timely notice in writing to the Secretary of the Corporation. To be timely, a stockholder's notice to the Secretary in the case of a special meeting of stockholders called for the purpose of electing directors, must be delivered to or mailed and received at the principal executive offices of the Corporation not less than the close of business on the tenth (10th) day following the date on which the first public announcement of the date of the special meeting was made, and, in the case of any annual meeting, must be delivered to or mailed and received at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary of the date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is not held within thirty (30) days before or after such anniversary date, to be timely, notice by the stockholder must be received not later than the close of business on the tenth (10th) day following the date on which the first public announcement of the date of the annual meeting was made. In no event shall the adjournment or postponement of an annual or special meeting or the public announcement of any adjournment or postponement commence a new time period for the giving of a stockholder's notice as described above.

(b) To be in proper written form, a stockholder's notice to the Secretary shall set forth:

(1) As to each person whom the stockholder proposes to nominate for election or reelection as a director and as to the stockholder giving the notice and any Stockholder Associated Person (as defined in Section 12 of Article II):

(i) the name, age, business address, residence address and record address of such person;

(ii) the principal occupation or employment of such person;

(iii) (A) the class or series and number of shares of capital stock of the Corporation which are owned, directly or indirectly, beneficially or of record by such person and any affiliates or associates of such person (specifying the type of ownership), (B) the name of each nominee holder of shares of all stock of the Corporation owned beneficially but not of record by such person or any affiliates or associates of such person, the number of such shares of stock of the Corporation held by each such nominee holder and any pledge with respect to any of such shares of stock, (C) whether and the extent to which any derivative instrument, swap, option, warrant, short interest, hedge or profit interest or other transaction has been entered into by or on behalf of such person, or any affiliates or associates of such person, with respect to stock of the Corporation and (D) whether and the extent to which any other transaction, agreement, arrangement or understanding (including any short position or any borrowing or lending of shares of stock of the Corporation) has been made by or on behalf of such person, or any affiliates or associates of such person, the effect or intent of any of the foregoing being to mitigate the loss to, or to manage the risk or benefit of stock price changes for, such person, or any affiliates or associates of such person, or to increase or decrease the voting power or pecuniary or economic interest of such person, or any affiliates or associates of such person, with respect to stock of the Corporation;

(iv) a written questionnaire with respect to the background and qualification of such person, completed and executed by such person in the form required by the Corporation;

(v) any information concerning such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act, and the rules and regulations promulgated thereunder;

(vi) a written representation and agreement completed by such person in the form required by the Corporation providing that such person: (A) is not and will not become a party to any agreement, arrangement or understanding with, and any commitment or assurance to, any person or entity as to how a person, if elected as a director, will act or vote on any issue or question that has not been disclosed to the Corporation or that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law; (B) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director or a director nominee that has not been disclosed to the Corporation; (C) will, if elected as a director, comply with all applicable rules of any securities exchanges upon which the Corporation's securities are listed, the Certificate, these Bylaws, all applicable publicly disclosed corporate governance, ethics, conflict of interest, confidentiality, stock ownership and trading policies and all other guidelines and policies of the Corporation generally applicable to directors, and all applicable fiduciary duties under state law; (D) intends to serve a full term as a director, if elected; (E) will provide facts, statements and other information in all communications with the Corporation and its stockholders that are or will be true and correct and that do not and will not omit to state any fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; and (F) will tender his or her resignation as a director if the Board determines that such person failed to comply with the provisions of this Section 13(b) of Article II in all material respects, provides such person notice of any such determination and, if such non-compliance may be cured, such person fails to cure such non-compliance within ten business days after delivery of such notice to such person;

(vii) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of, any other agreement, arrangement or understanding (including any derivative or short positions, profit interests, options or borrowed or loaned shares) has been made, the effect or intent of which is to mitigate loss to or manage risk or benefit of share price changes for, or to increase or decrease the voting power of, such person with respect to any share of stock of the Corporation:

(viii) to the extent known by the stockholder giving the notice, the name and address of any other stockholder supporting the nominee for election or reelection as a director on the date of such stockholder's notice:

(ix) a description of any business or personal interests that could place such person in a potential conflict of interest with the Corporation or any of its subsidiaries;

(x) a description of all arrangements or understandings between or among such persons pursuant to which the nomination(s) are to be made by the stockholder;

(ix) any other information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the election of directors pursuant to Section 14 of the Exchange Act, and the rules and regulations promulgated thereunder (including such person's written consent to being named in the Corporation's proxy statement and form of proxy as a nominee and to serve as a director if elected); and

(xi) a representation that such stockholder intends to appear in person or by proxy at the meeting to nominate the persons named in its notice. Any ownership information shall be supplemented by the stockholder giving the notice not later than ten (10) days after the record date for the meeting as of the record date. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee. Such notice shall also include a signed consent to serve as a director of the Corporation, if elected, of each such nominee; and

(2) As to the stockholder giving the notice, and any Stockholder Associated Person, if any, on whose behalf the nomination is being made:

(i) the name and address of such person, (including, if applicable, the name and address that appear on the Corporation's stock ledger);

(ii) (A) the class or series and number of shares of capital stock of the Corporation which are owned beneficially (within the meaning of Rule 13d-3 under the Exchange Act) or of record by such person (specifying the type of ownership), (B) the name of each nominee holder of shares of all stock of the Corporation owned beneficially but not of record by such stockholder or any Stockholder Associated Person, the number of such shares of stock of the Corporation held by each such nominee holder, and any pledge with respect to any of such stock, (C) whether and the extent to which any derivative instrument, swap, option, warrant, short interest, hedge or profit interest or other transaction or series of transactions has been entered into by or on behalf of such stockholder or any Stockholder Associated Person, with respect to stock of the Corporation, and (D) whether and the extent to which any other transaction, agreement, arrangement or understanding (including any short position or any borrowing or lending of shares of stock of the Corporation) has been made by or on behalf of such stockholder or any Stockholder Associated Person, the effect or intent of any of the foregoing being to mitigate loss to, or to manage risk or benefit of stock price changes for, such stockholder or any Stockholder Associated Person, or to increase or decrease the voting power or pecuniary or economic interest of such stockholder or any Stockholder Associated Person, with respect to stock of the Corporation;

(iii) a complete and accurate description of all agreements, arrangements, or understandings (whether written or oral) between or among such stockholder or any Stockholder Associated Person, and any proposed nominee or any other person or persons or entity (naming each such person or entity) pursuant to which (1) the nomination(s) are being made by such stockholder, and any material interest of such stockholder or any Stockholder Associated Person, in such nomination, including any anticipated benefit therefrom to such stockholder or any Stockholder Associated Person, and (2) any understanding that such stockholder or any Stockholder Associated Person may have reached with a stockholder of the Corporation (including the name of such stockholder) with respect to how such stockholder will vote such stockholder's shares in the Corporation in support of any nomination;

(iv) a complete and accurate description of any direct or indirect interest of such stockholder or any Stockholder Associated Person in any contract or arrangement with the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation (including any employment agreement or consulting agreement);

(v) a representation that (1) no such stockholder or any Stockholder Associated Person has breached any contract or other agreement, arrangement or understanding with the Corporation except as disclosed to the Corporation pursuant hereto and (2) that such stockholder or any Stockholder Associated Person has complied, and will comply, with all applicable requirements of state law and Exchange Act with respect to the matters set forth in this Section 13(b) of Article II;

(vi) a complete and accurate description of any pending or, to such stockholder's knowledge, threatened legal proceeding in which such stockholder or any Stockholder Associated Person is a party or participant involving the Corporation or, to such stockholder's knowledge, any current or former officer, director, affiliate or associate of the Corporation;

(vii) a representation that the stockholder giving notice intends to appear in person or by proxy at the annual meeting of stockholders or special meeting of stockholders to nominate the persons named in such stockholder's notice and an acknowledgment that, if such stockholder (or a qualified representative of such stockholder) does not appear to nominate the persons named in the stockholder's notice at such meeting, such nomination shall be disregarded and no vote shall be taken with respect to such nomination, notwithstanding that proxies in respect of such vote may have been received by the Corporation;

(viii) a representation from such stockholder as to whether such stockholder or any Stockholder Associated Person intends or is part of a group that intends (1) to deliver a proxy statement and/or form of proxy to a number of holders of the Corporation's voting shares reasonably believed by such stockholder to be sufficient to elect the person named in the stockholder's notice, (2) to solicit proxies in support of the election of any nominee named in the stockholder's notice in accordance with Rule 14a-19 under the Exchange Act, or (3) to engage in a solicitation (within the meaning of Exchange Act Rule 14a-1(l)) with respect to the nomination, and if so, the name of each participant (as defined in Item 4 of Schedule 14A under the Exchange Act) in such solicitation; and

(ix) any other information relating to such stockholder or any Stockholder Associated Person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with the solicitation of proxies for the election of directors pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder.

(c) No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 13 of Article II. Except as otherwise provided by law, the Certificate of Incorporation, or these Bylaws, if the Chairman of the meeting determines that a nomination was not made in accordance with the foregoing procedures, the Chairman shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded and declared to be out of order, notwithstanding that proxies with respect to such vote may have been received by the Corporation. Notwithstanding the foregoing provisions of this Section 13 of Article II, unless otherwise required by law, if the stockholder (or a qualified representative of such stockholder) proposing any nomination does not appear at the meeting of stockholders to present such nomination, such nomination shall be disregarded, and no vote shall be taken with respect to such proposed nomination, notwithstanding that proxies with respect to such vote may have been received by the Corporation.

(d) If any person provides notice pursuant to Rule 14a-19(b) under the Exchange Act in connection with a stockholder's notice provided under this Section 13 of Article II and such person subsequently either (x) notifies the Corporation that such person no longer intends to solicit proxies in support of the election of such proposed nominee in accordance with Rule 14a-19(b) under the Exchange Act or (y) fails to comply with the requirements of Rule 14a-19(a)(2) or Rule 14a-19(a)(3) under the Exchange Act and (ii) no other person that has provided notice pursuant to Rule 14a-19(b) under the Exchange Act with respect to such proposed nominee (x) intends to solicit proxies in support of the election of such proposed nominee in accordance with Rule 14a-19(b) under the Exchange Act and (y) has complied with the requirements of Rule 14a-19(a)(2) and Rule 14a-19(a)(3) under the Exchange Act, then the nomination of such proposed nominee shall be disregarded and no vote on the election of such proposed nominee shall occur (notwithstanding that proxies in respect of such vote may have been received by the Corporation). Upon request by the Corporation, if any person provides notice pursuant to Rule 14a-19(b) under the Exchange Act in connection with a stockholder's notice provided under this Section 13 of Article II, such stockholder shall deliver to the Secretary, no later than five (5) business days prior to the applicable meeting date, reasonable evidence that the requirements of Rule 14a-19(a)(3) under the Exchange Act have been satisfied.

(e) Notwithstanding anything in this Section 13 of Article II to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least one hundred (100) days prior to the anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 13 of Article II shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

(f) Notwithstanding the foregoing provisions of this Section 13 of Article II, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 13 of Article II; provided, however, that any reference in this Section 13 of Article II to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the requirements applicable to proposals of business to be considered pursuant to Section 13(b) of Article II and nothing in this Section 13 of Article II shall 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.

ARTICLE III. DIRECTORS

Section 1. Number and Term of Office. The number of directors which shall constitute the whole board shall be at least one, or such other number as may be determined by the Board of Directors or by the stockholders at an annual or special meeting. Except as otherwise permitted by statute, the directors shall be elected at each annual meeting of the Corporation's stockholders (or at any special meeting of the stockholders called for that purpose) if the number of votes cast by the holders of shares represented and voting "for" such nominee's election exceeds the number of votes cast "against" such nominee's election; *provided*, however, that if the number of director nominees exceeds the number of directors to be elected, each nominee shall be elected by a plurality of the shares represented and voting. In the event that a nominee fails to receive an affirmative majority of the votes cast in an election where the number of nominees is less than or equal to the number of directors to be elected, the Board of Directors may require such nominee to tender his or her resignation, decrease the number of directors, fill the vacancy, or take any other appropriate action it deems to be in the best interest of the Corporation. Each director shall be elected to serve until the next annual meeting of the stockholders and thereafter until a successor is duly elected and qualified, unless a prior vacancy occurs by reason of death, resignation, or removal from office. Directors shall be natural persons, but need not be stockholders.

Section 2. Removal and Resignation of Directors. Any director may be removed from the Board of Directors, with or without cause, by the holders of a majority of the shares of capital stock entitled to vote, either by written consent or consents or at any special meeting of the stockholders called for that purpose, and the office of such director shall forthwith become vacant. Any director may resign at any time upon written notice to the President or Secretary. Such resignation shall take effect at the time specified therein, and if no time be specified, at the time of its receipt by the President or Secretary. The acceptance of a resignation shall not be necessary to make it effective, unless so specified therein.

Section 3. Vacancies. If the office of any director becomes vacant by reason of death, resignation, retirement, disqualification, removal from office, increase in the number of directors or otherwise, a majority of the remaining directors, although less than a quorum, at a meeting called for that purpose, or a sole remaining director, may choose a successor, for the unexpired term in respect of which such vacancy occurred or until a successor is duly elected and qualified, or until such director's earlier resignation or removal. If there are no directors in office, then an election of directors may be held in the manner provided by applicable law.

Section 4. Duties and Powers. The business of the Corporation shall be managed by or under the direction of the Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws directed or required to be exercised or done by the stockholders.

Section 5. Meetings. The Board of Directors of the Corporation may hold meetings, both regular and special, either within or without the State of Delaware. Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by the Board of Directors. Special meetings of the Board of Directors may be called (a) by the Chairman, if there be one, or the President and Chief Executive Officer on twenty-four (24) hours' notice or (b) any director on ten (10) days' notice, to each director, either personally, or by mail, telephone, facsimile, e-mail or telegram. Every such notice shall state the date, time and place of the meeting. Notice of a meeting called by a person other than the Chairman or the President and Chief Executive Officer shall state the purpose of the meeting.

Section 6. Quorum. Except as may be otherwise specifically provided by applicable law, the Certificate of Incorporation or these Bylaws, at all meetings of the Board of Directors, a majority of the entire Board of Directors shall constitute 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 is an act of the Board of Directors. If a quorum is not present at any meeting of the Board of Directors, the directors present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

Section 7. Actions of Board. Unless otherwise provided 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 the members of the Board of Directors or committee, as the case may be, consent thereto in writing (including by electronic transmission), and the writing or writings (including any electronic transmissions) are filed with the minutes of proceedings of the Board of Directors or committee.

Section 8. Participation by Electronic Communications. Unless otherwise provided by the Certificate of Incorporation or these Bylaws, members of the Board of Directors of the Corporation, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 8 of Article III shall constitute presence in person at such meeting.

Section 9. Committees. The Board of Directors may, by resolution passed by a majority of the Board of Directors, designate one (1) or more committees, each committee to consist of one (1) or more of the directors of the Corporation. The Board of Directors may designate one (1) or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of any such committee. In the absence or disqualification of a member of a committee, and in the absence of a designation by the Board of Directors of an alternate member to replace the absent or disqualified member, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any absent or disqualified member. Any committee, to the extent permitted by applicable law and provided in the resolution of the Board of Directors or these Bylaws establishing such committee, shall have and may exercise all the lawfully delegable powers, duties and authority of the Board of Directors in the management of the business and affairs of the Corporation, other than the power or authority in reference to amending the Certificate of Incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution, or amending the Bylaws of the Corporation. No committee shall have the power or authority to declare a dividend or to authorize the issuance of stock unless the resolution creating such committee expressly so provides. Each committee shall keep regular minutes and report to the Board of Directors when required.

Each member of a committee of the Board of Directors shall serve a term on the committee coexistent with such member's term on the Board of Directors. The Board of Directors, may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of such member's death, resignation or removal. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee.

Meetings and actions of committees shall be governed by, and held and taken in accordance with the provisions of:

- (a) Section 5 of Article III (Meetings);
 - (b) Section 6 of Article III (Quorum);
 - (c) Section 7 of Article III (Actions of Board); and
 - (d) Section 8 of Article III (Participation by Electronic Communication)
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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. Notwithstanding the foregoing:

(a) the time of regular meetings of committees may be determined either by resolution of the Board or by resolution of the committee;

(b) special meetings of committees may also be called by resolution of the Board; and

(c) notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The Board may adopt rules for the government of any committee, if any committee is not consistent with the provisions of these bylaws.

Section 10. Compensation. The directors shall have authority to fix the compensation of directors for services to the Corporation in any capacity and no such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 11. Conduct of Meetings. The Chairman, or, if there be no Chairman or in his or her absence, the Vice Chairman or any other officer designated by the Board of Directors, shall preside at all meetings of the Board of Directors. The Secretary shall act as secretary of all meetings of the Board of Directors, and in his or her absence any person appointed by the Chairman of the Board shall act as secretary.

Section 12. Chairman of the Board. The Board of Directors shall, from time to time, elect one of the directors to serve as Chairman of the Board of Directors (the "Chairman"). The Chairman shall be considered an officer of the Corporation and shall have such duties as the Board of Directors shall determine.

Section 13. Vice Chairman of the Board. The Board of Directors shall, from time to time, elect one of the directors to serve as Vice Chairman of the Board of Directors (the "Vice Chairman"). The Vice Chairman shall be considered an officer of the Corporation and shall have such duties as the Board of Directors shall determine.

ARTICLE IV. OFFICERS

Section 1. General. The officers of the Corporation shall be elected by the Board of Directors and shall be a President and Chief Executive Officer, a Secretary and a Chief Financial Officer. The Board of Directors, in its discretion, may also choose a Chairman (who must be a director) and one (1) or more Vice Presidents, Assistant Secretaries, Assistant Financial Officers and other officers. Any number of offices may be held by the same person, unless otherwise prohibited by applicable law, the Certificate of Incorporation or these Bylaws. The officers of the Corporation need not be stockholders of the Corporation nor, except in the case of the Chairman, need such officers be directors of the Corporation.

Section 2. Election. The Board of Directors at its first meeting held after each annual meeting of stockholders shall elect the officers of the Corporation, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors. All officers of the Corporation shall hold office until their successors are chosen and qualified, or until their earlier death, resignation or removal.

Section 3. Removal and Resignation. Any officer of the Corporation may be removed from office, with or without cause, by a vote of a majority of the Board of Directors, or by any committee or superior officers upon whom such power of removal may have been conferred by the Board of Directors. Any officer of the Corporation may resign at any time upon written notice to the President or Secretary. Such resignation shall take effect at the time specified therein, and if no time be specified, at the time of its receipt by the President or Secretary. The acceptance of a resignation shall not be necessary to make it effective, unless so specified therein. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors.

Section 4. Compensation. The compensation of the officers of the Corporation shall be fixed by the Board of Directors, or any committee upon whom power in that regard may be conferred by the Board of Directors.

Section 5. Voting Securities Owned by the Corporation. Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the President and Chief Executive Officer, the Chief Financial Officer or any Vice President and any such officer may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The Board of Directors may, by resolution, from time to time confer like powers upon any other person or persons.

Section 6. President and Chief Executive Officer. The President and Chief Executive Officer shall be the chief executive officer of the Corporation, shall have general active management of the business of the Corporation, shall see that all orders and resolutions of the Board of Directors are carried into effect and shall have and exercise all such powers and discharge such duties as usually pertain to the office of President, except to the extent otherwise provided by resolution of the Board of Directors. In the absence or disability of the Chairman, or there be none, the President and Chief Executive Officer shall preside at all meetings of the stockholders and Board of Directors. Except as otherwise prescribed by these Bylaws or the Board of Directors, the President and Chief Executive Officer shall prescribe the duties of other officers.

Section 7. Vice Presidents. The Vice President or the Vice Presidents if there is more than one (1) (in the order designated by the Board of Directors) shall, at the request of the President and Chief Executive Officer or in his or her absence or in the event of his or her inability or refusal to act (and if there be no Chairman), perform the duties of the President and Chief Executive Officer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President and Chief Executive Officer. Each Vice President shall perform such other duties and have such other powers as the Board of Directors from time to time may prescribe.

Section 8. Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of stockholders and record all the proceedings thereat in a book or books to be kept for that purpose; the Secretary shall also perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or President and Chief Executive Officer, under whose supervision he or she shall be.

Section 9. Chief Financial Officer. The Chief Financial Officer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Chief Financial Officer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and Chief Executive Officer and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all his or her transactions as Chief Financial Officer and of the financial condition of the Corporation. If required by the Board of Directors, the Chief Financial Officer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his or her office and for the restoration to the Corporation, in case of his or her death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his or her possession or under his or her control belonging to the Corporation.

Section 10. Assistant Secretaries. Except as may be otherwise provided in these Bylaws, Assistant Secretaries, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President and Chief Executive Officer, any Vice President, if there be one, or the Secretary, and in the absence of the Secretary or in the event of his or her disability or refusal to act, shall perform the duties of the Secretary, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary.

Section 11. Assistant Financial Officers. Assistant Financial Officers, if there be any; shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President and Chief Executive Officer, any Vice President, if there be one, or the Chief Financial Officer, and in the absence of the Chief Financial Officer or in the event of his or her disability or refusal to act, shall perform the duties of the Chief Financial Officer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chief Financial Officer. If required by the Board of Directors, an Assistant Financial Officers shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his or her office and for the restoration to the Corporation, in case of his or her death, resignation, retirement or removal from his or her office, of all books, papers, vouchers, money and other property of whatever kind in his or her possession or under his or her control belonging to the Corporation.

Section 12. Other Officers. Such other officers as the Board of Directors may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors. The Board of Directors may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

ARTICLE V. STOCK

Section 1. Form of Certificates. Every holder of stock in the Corporation shall be entitled to have a certificate signed, in the name of the Corporation by (a) the Chairman, the President and Chief Executive Officer or a Vice President and (b) the Chief Financial Officer or an Assistant Financial Officer, or the Secretary or an Assistant Secretary of the Corporation, certifying the number of shares in the Corporation owned by such holder.

Section 2. Signatures. Where a certificate is countersigned by (a) a transfer agent other than the Corporation or its employee, or (b) a registrar other than the Corporation or its employee, any other signature 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 shall have 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, she or it were such officer, transfer agent or registrar at the date of issue.

Section 3. Lost Certificates. The Board of Directors may direct a new certificate to be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or his, her or its legal representative, to advertise the same in such manner as the Board of Directors shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 4. Transfers. Stock of the Corporation shall be transferable in the manner prescribed by applicable law and in these Bylaws. Transfers of stock shall be made on the books of the Corporation only by the person named in the certificate or by his, her or its attorney lawfully constituted in writing and upon the surrender of the certificate therefor, which shall be cancelled before a new certificate shall be issued.

Section 5. Beneficial Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by applicable law.

ARTICLE VI. NOTICES

Section 1. Waivers of Notice. Any director, member of a committee or stockholder may at any time, whether before or after the time of the event for which notice is given, waive any notice required to be given by applicable law, the Certificate of Incorporation or these Bylaws, by a writing (including by any electronic transmission) signed by such person or persons entitled to said notice. If any director, member of a committee or stockholder shall be present at any meeting, his or her presence shall constitute a waiver of such notice, except when such 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.

Section 2. Notices. Whenever written notice is required by applicable law, the Certificate of Incorporation or these Bylaws, to be given to any director, member of a committee or stockholder, such notice shall be deemed to have been given when (a) delivered personally to the recipient, (b) sent to the recipient by reputable overnight courier service (charges prepaid), (c) mailed to the recipient by certified or registered mail (return receipt requested and postage prepaid), or (d) transmitted by facsimile or e-mail (with request for immediate confirmation of receipt in a manner customary for communications of such type) to such director, member of a committee or stockholder, at his or her address or facsimile number as it appears on the records of the Corporation.

ARTICLE VII. GENERAL PROVISIONS

Section 1. Dividends. Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, and may be paid in cash, in property, or in shares of the capital stock. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any proper purpose, and the Board of Directors may modify or abolish any such reserve.

Section 2. Disbursements. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 3. Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 4. Corporate Seal. The Corporation may, but need not, have a corporate seal. In the event the Corporation has a seal, the seal need not be affixed for any contract, resolution or other document executed by or on behalf of the Corporation to be valid and duly authorized.

ARTICLE VIII. INDEMNIFICATION

Section 1. Indemnification Of Directors And Officers In Third Party Proceedings. Subject to the other provisions of this Article VIII, the Corporation shall indemnify, to the fullest extent permitted by the Delaware general Corporation Law ("DGCL"), as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding") (other than an action by or in the right of the Corporation) by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

Section 2. Indemnification Of Directors And Officers In Third Party Proceedings. Subject to the other provisions of this Article VIII, the Corporation shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed Proceeding by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 3. Indemnification Of Persons Other than Directors And Officers. Subject to the other provisions of this Article VIII, the Corporation shall have power to indemnify its employees and agents, or any other persons, to the extent not prohibited by the DGCL or other applicable law.

Section 4. Advance Payment Of Expenses. Expenses (including attorneys' fees) actually and reasonably incurred by a present or former officer or director of the Corporation in defending any Proceeding shall be paid by the Corporation in advance of the final disposition of such Proceeding upon receipt of a written request therefor (together with documentation reasonably evidencing such expenses) and an undertaking by or on behalf of the person to repay such amounts if it shall ultimately be determined that the person is not entitled to be indemnified under this Article VIII or the DGCL. Such expenses (including attorneys' fees) actually and reasonably incurred by former directors and officers or other employees and agents of the Corporation or by persons serving at the request of the Corporation as directors, officers, employees or agents of another Corporation, partnership, joint venture, trust or other enterprise may be so paid upon such terms and conditions, if any, as the Corporation deems appropriate.

Section 5. Limitations On Indemnification And Advance Payment Of Expenses. (A) To the extent not prohibited by the DGCL or applicable law, the Corporation shall not indemnify any person in connection with any action by such person against the Corporation unless the Corporation shall have consented to such action. (B) The Corporation shall not be obligated to advance payment of expenses to any person pursuant to this Article VIII in connection with any Proceeding (or any part of any Proceeding): (i) for which payment has actually been made to or on behalf of such person under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid; (ii) by such person, including any Proceeding (or any part of any Proceeding) by such person against the Corporation or its directors, officers, employees, agents or other indemnitees, unless the board of directors authorized the Proceeding (or the relevant part of the Proceeding); or (iii) brought directly and not derivatively by the Corporation against such person unless authorized by the board of directors.

Section 6. Non-Exclusivity. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the certificate of incorporation or any statute, bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office. The Corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advancement of expenses, to the fullest extent not prohibited by the DGCL or other applicable law.

Section 7. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of the DGCL.

Section 8. Severability. If any provision or provisions of this Article VIII shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (1) the validity, legality and enforceability of the remaining provisions of this Article VIII (including, without limitation, each portion of any paragraph or clause containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (2) to the fullest extent possible, the provisions of this Article VIII (including, without limitation, each such portion of any paragraph or clause containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

ARTICLE IX

To the fullest extent permitted by applicable law:

(A) Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another State court in Delaware or the federal district court for the District of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by, or otherwise wrongdoing by, any director, stockholder, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action arising pursuant to any provision of the DGCL or the certificate of incorporation or these bylaws (as either may be amended from time to time), (iv) any action to interpret, apply, enforce or determine the validity of the certificate of incorporation or these bylaws (as either may be amended from time to time), or (v) any action asserting a claim governed by the internal affairs doctrine, except for, as to each of (i) through (v) above, any claim as to which such court determines that there is an indispensable party not subject to the jurisdiction of such court (and the indispensable party does not consent to the personal jurisdiction of such court within ten (10) days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than such court, or for which such court does not have subject matter jurisdiction. For the avoidance of doubt, this Article IX, Part (A) shall not apply to any action brought to enforce a duty or liability created by the Securities Act of 1933, or any successor thereto (the "Securities Act") or the Securities Exchange Act of 1934.

(B) Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act.

ARTICLE X. AMENDMENTS

The Board of Directors shall have the power to make, rescind, alter, amend and repeal these Bylaws, provided, however, that the stockholders shall have power to rescind, alter, amend or repeal any bylaws made by the Board of Directors, and to enact bylaws which if so expressed shall not be rescinded, altered, amended or repealed by the Board of Directors.

Amended and Adopted: February 28, 2023
