

**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**

March 27, 2019

(Date of Report (date of earliest event reported))

IRIDEX CORPORATION

(Exact name of registrant as specified in its charter)

Delaware	0-27598	77-0210467
(State or other jurisdiction of incorporation or organization)	(Commission File Number)	(I.R.S. Employer Identification Number)

**1212 Terra Bella Avenue
Mountain View, California 94043**

(Address of principal executive offices, including zip code)

(650) 940-4700

(Registrant's telephone number, including area
code)

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (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 March 27, 2019, the Board of Directors of Iridex Corporation (the “Company”) amended and restated the Company’s bylaws (as so amended and restated, the “Bylaws”). Among other things, the amendments to the Bylaws:

- provide that the chairman of any stockholder meeting has the power to adjourn the meeting;
- clarify the requirements for stockholders to nominate directors or bring other business before an annual or special meeting of stockholders, including adjusting the dates on which director nominations or proposals of other business must be received by the Company in order to be in compliance with the Bylaws;
- clarify certain of the requirements related to stockholders acting by written consent; and
- make certain other language and conforming changes and other technical edits and updates.

The amendments to the Bylaws did alter the advance notice period for director nominations or proposals of business at the Company’s 2019 Annual Meeting of Stockholders.

The foregoing description of the amendments to the Bylaws is qualified in its entirety by reference to the full text of the Bylaws, a copy of which is attached hereto as Exhibit 3.1 and incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
3.1	<u>Amended and Restated Bylaws of Iridex Corporation, dated March 27, 2019.</u>

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.

IRIDEX CORPORATION

By: /s/ William M. Moore
William M. Moore
President and Chief Executive Officer

Date: April 1, 2019

**AMENDED AND RESTATED BYLAWS
OF
IRIDEX CORPORATION**

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I STOCKHOLDERS	
1.1 ANNUAL MEETINGS	1
1.2 SPECIAL MEETINGS	1
1.3 NOTICE OF MEETINGS	1
1.4 ADVANCE NOTICE OF STOCKHOLDER NOMINEES AND STOCKHOLDER BUSINESS	2
1.5 ADJOURNMENTS	6
1.6 QUORUM	7
1.7 ORGANIZATION	7
1.8 VOTING; PROXIES	7
1.9 FIXING DATE FOR DETERMINATION OF STOCKHOLDERS OF RECORD	8
1.10 LIST OF STOCKHOLDERS ENTITLED TO VOTE	9
1.11 ACTION BY CONSENT OF STOCKHOLDERS	10
ARTICLE II BOARD OF DIRECTORS	13
2.1 NUMBER; QUALIFICATIONS	13
2.2 ELECTION; RESIGNATION; REMOVAL; VACANCIES	13
2.3 REGULAR MEETINGS	13
2.4 SPECIAL MEETINGS	14
2.5 TELEPHONIC MEETINGS PERMITTED	14
2.6 QUORUM; VOTE REQUIRED FOR ACTION	14
2.7 ORGANIZATION	15
2.8 BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING	15
ARTICLE III COMMITTEES	15
3.1 COMMITTEES	15
3.2 COMMITTEE RULES	16
ARTICLE IV OFFICERS	16
4.1 EXECUTIVE OFFICERS; ELECTION; QUALIFICATIONS; TERM OF OFFICE; RESIGNATION; REMOVAL; VACANCIES	16
4.2 POWERS AND DUTIES OF EXECUTIVE OFFICERS	16
ARTICLE V STOCK	17
5.1 STOCK CERTIFICATES	17
5.2 LOST, STOLEN OR DESTROYED STOCK CERTIFICATES; ISSUANCE OF NEW CERTIFICATES	17
5.3 TRANSFERS	17
5.4 REGISTERED STOCKHOLDERS	18
ARTICLE VI INDEMNIFICATION	18
6.1 THIRD PARTY ACTIONS	18
6.2 ACTIONS BY OR IN THE RIGHT OF THE CORPORATION	18

TABLE OF CONTENTS
(Continued)

	<u>Page</u>	
6.3	SUCCESSFUL DEFENSE	19
6.4	DETERMINATION OF CONDUCT	19
6.5	PAYMENT OF EXPENSES IN ADVANCE	19
6.6	LIMITATION ON INDEMNIFICATION	19
6.7	DETERMINATION; CLAIM	20
6.8	INDEMNITY NOT EXCLUSIVE	20
6.9	INSURANCE	21
6.10	THE CORPORATION	21
6.11	EMPLOYEE BENEFIT PLANS	21
6.12	INDEMNITY FUND	21
6.13	INDEMNIFICATION OF OTHER PERSONS	22
6.14	SAVINGS CLAUSE	22
6.15	CONTINUATION OF INDEMNIFICATION AND ADVANCEMENT OF EXPENSES	22
ARTICLE VII MISCELLANEOUS		22
7.1	FISCAL YEAR	22
7.2	SEAL	22
7.3	WAIVER OF NOTICE OF MEETINGS OF STOCKHOLDERS, DIRECTORS AND COMMITTEES	23
7.4	NOTICE BY ELECTRONIC TRANSMISSION	23
7.5	NOTICE TO STOCKHOLDERS SHARING AN ADDRESS	24
7.6	INTERESTED DIRECTORS; QUORUM	24
7.7	AMENDMENT OF BYLAWS	24

**BYLAWS
OF
IRIDEX CORPORATION**

ARTICLE I

STOCKHOLDERS

1.1 ANNUAL MEETINGS

An annual meeting of stockholders shall be held for the election of directors at such date, time and place (if any), within or without the state of Delaware, as may be designated by resolution of the Board of Directors from time to time and stated in the corporation's notice of annual meeting. 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 as authorized by Section 211(a)(2) of the Delaware General Corporation Law (the "DGCL"). In the absence of any such designation or determination, stockholders' meetings shall be held at the corporation's principal executive office. At the annual meeting, directors shall be elected and any other proper business brought in accordance with Section 1.4 of these bylaws may be transacted. The Board of Directors may cancel, postpone or reschedule any previously scheduled annual meeting at any time, before or after the notice for such meeting has been sent to the stockholders.

1.2 SPECIAL MEETINGS

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

(2) The notice of a special meeting shall include the purpose for which the meeting is called. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting by or at the direction of the Board of Directors, the Chairman of the Board, the chief executive officer or the President (in the absence of a chief executive officer). Nothing contained in this Section 1.2(2) shall be construed as limiting, fixing or affecting the time when a meeting of stockholders called by action of the Board of Directors may be held.

1.3 NOTICE OF MEETINGS

Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given that shall state the place (if any), date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting,

the purpose or purposes for which the meeting is called. Unless otherwise provided by law, the certificate of incorporation or these bylaws, the written notice of any meeting shall be given not less than ten nor more than sixty days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting. If mailed, such notice shall be deemed to be given when deposited in the mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the corporation.

1.4 ADVANCE NOTICE OF STOCKHOLDER NOMINEES AND STOCKHOLDER BUSINESS

(1) *Advance Notice of Stockholder Business.* At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be brought: (A) pursuant to the corporation's proxy materials with respect to such meeting; (B) by or at the direction of the Board of Directors; or (C) by a stockholder of the corporation who (1) is a stockholder of record at the time of the giving of the notice required by this Section 1.4(1), on the record date for the determination of stockholders entitled to notice of the annual meeting and on the record date for the determination of stockholders entitled to vote at the annual meeting and (2) has timely complied in proper written form with the notice procedures set forth in this Section 1.4(1). In addition, for business to be properly brought before an annual meeting by a stockholder, such business must be a proper matter for stockholder action pursuant to these bylaws and applicable law. For the avoidance of doubt, clause (C) above shall be the exclusive means for a stockholder to bring business (other than business included in the corporation's proxy materials pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended, or any successor thereto (the "**1934 Act**")) before an annual meeting of stockholders.

(i) To comply with clause (C) of Section 1.4(1) above, a stockholder's notice must set forth all information required under this Section 1.4(1) and must be timely received by the Secretary. To be timely, a stockholder's notice must be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the ninetieth day or earlier than the close of business on the one hundred twentieth day before the anniversary of the date of the immediately preceding annual meeting; *provided, however*, that in the event that the annual meeting is called for a date that is not within twenty-five days before or after such anniversary date, then, for notice by the stockholder to be timely, it must be so received by the Secretary not later than the close of business on the tenth day following the day on which Public Announcement (as defined below) of the date of such annual meeting is first made. In no event shall any adjournment, rescheduling or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described in this Section 1.4(1)(i). "**Public Announcement**" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act.

(ii) To be in proper written form, a stockholder's notice to the Secretary must set forth as to each matter of business that the stockholder intends to bring before the annual meeting: (1) a brief description of the business intended to be brought before the annual meeting, the text of the proposed business (including the text of any resolutions proposed for consideration) and the reasons for conducting such business at the annual meeting; (2) the name and address, as they appear on the corporation's books, of the stockholder proposing such business and any Stockholder Associated Person (as defined below); (3) the class and number of shares of the corporation that are held of record or are beneficially owned by the stockholder or any Stockholder Associated Person and any derivative positions held or beneficially held by the stockholder or any Stockholder Associated Person; (4) whether and the extent to which any hedging 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 any securities of the corporation, and a description of any other agreement, arrangement or understanding (including any short position or any borrowing or lending of shares), the effect or intent of which is to mitigate loss to, or to manage the risk or benefit from share price changes for, or to increase or decrease the voting power of, such stockholder or any Stockholder Associated Person with respect to any securities of the corporation; (5) any material interest of the stockholder or a Stockholder Associated Person in such business; (6) a completed and duly executed written questionnaire with respect to the background of the stockholder and any Stockholder Associated Person (which questionnaire shall be provided by the Secretary promptly upon written request); (7) 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 solicitations of proxies for the business pursuant to Regulation 14A under the 1934 Act; and (8) a representation and undertaking that such stockholder or any Stockholder Associated Person will deliver a proxy statement and form of proxy to holders of at least the percentage of the corporation's voting shares required under applicable law to carry the proposal (such information provided and statements made as required by clauses (1) through (8), a "**Business Solicitation Statement**"). In addition, to be in proper written form, a Business Solicitation Statement must be supplemented, if necessary, not later than ten days following the record date for the determination of stockholders entitled to notice of the meeting so that the information contained in such Business Solicitation Statement is true and correct as of such record date. For purposes of these bylaws, a "**Stockholder Associated Person**" of any stockholder shall mean (i) any person controlling, directly or indirectly, or acting in concert with, such stockholder; (ii) any beneficial owner of shares of stock of the corporation owned of record or beneficially by such stockholder and on whose behalf the proposal, nomination or request, as the case may be, is being made; or (iii) any person controlling, controlled by or under common control with such person referred to in the preceding clauses (i) and (ii).

(iii) Without exception, no business shall be conducted at any annual meeting except in accordance with the provisions set forth in this Section 1.4(1) and, if applicable, Section 1.4(2). In addition, business proposed to be brought by a stockholder may not be brought before the annual meeting if such stockholder or a Stockholder Associated Person, as applicable, takes action contrary to the representations and undertakings made in the Business Solicitation Statement or if the Business Solicitation Statement contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading. The chairperson of the annual meeting shall, if the facts warrant, determine and declare at the annual meeting that business was not properly brought before the annual meeting and in accordance with the provisions of this Section 1.4(1), and, if the chairperson should so determine, he or she shall so declare at the annual meeting that any such business not properly brought before the annual meeting shall not be conducted.

(2) *Advance Notice of Director Nominations at Annual Meetings.* Notwithstanding anything in these bylaws to the contrary, only persons who are nominated in accordance with the procedures set forth in this Section 1.4(2) shall be eligible for election as directors at an annual meeting of stockholders. Nominations of persons for election to the Board of Directors shall be made at an annual meeting of stockholders only (A) by or at the direction of the Board of Directors; or (B) by a stockholder of the corporation who (1) was a stockholder of record at the time of the giving of the notice required by this Section 1.4(2), on the record date for the determination of stockholders entitled to notice of the annual meeting and on the record date for the determination of stockholders entitled to vote at the annual meeting and (2) has complied with the notice procedures set forth in this Section 1.4(2).

(i) To comply with clause (B) of Section 1.4(2) above, a nomination to be made by a stockholder must set forth all information required under this Section 1.4(2) and must be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the ninetieth day or earlier than the close of business on the one hundred twentieth day before the anniversary of the date of the immediately preceding annual meeting; *provided, however*, that in the event that the annual meeting is called for a date that is not within twenty-five days before or after such anniversary date, then, for notice by the stockholder to be timely, it must be so received by the Secretary not later than the close of business on the tenth day following the day on which Public Announcement of the date of such annual meeting is first made; *provided further, however*, that in the event that the number of directors to be elected to the Board of Directors is increased and there is no Public Announcement specifying the size of the increased board made by the corporation at least ten days before the last day that a stockholder may deliver a notice of nomination pursuant to the foregoing provisions, a stockholder's notice required by this Section 1.4(2) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth day following the day on which such Public Announcement is first made by the corporation. In no event shall any adjournment, rescheduling or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described in this Section 1.4(2)(i).

(ii) To be in proper written form, such stockholder's notice to the Secretary must set forth:

(1) as to each person (a "**nominee**") whom the stockholder proposes to nominate for election as a director: (A) the name, age, business address and residence address of the nominee; (B) the principal occupation or employment of the nominee; (C) the class and number of shares of the corporation that are held of record or are beneficially owned by the nominee and any derivative positions held or beneficially held by the nominee; (D) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of the nominee with respect to any securities of the corporation, and a description of any other agreement, arrangement or understanding (including any short position or any borrowing or lending of shares), the effect or intent of which is to mitigate loss to, or to manage the risk or benefit of share price changes for, or to increase or decrease the voting power of the nominee; (E) a description of all arrangements or understandings between or among the stockholder, any nominee or any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder, including a

description of any compensatory, payment or other financial agreement, arrangement or understanding involving the nominee and of any compensation or other payment received by or on behalf of the nominee, in each case in connection with candidacy or service as a director of the corporation; (F) a representation and undertaking from the nominee that he or she intends to serve a full term on the Board of Directors if elected; (G) a completed and duly executed written questionnaire with respect to the background and qualification of the nominee (which questionnaire shall be provided by the Secretary promptly upon written request); and (H) any other information relating to the nominee that would be required to be disclosed about such nominee if proxies were being solicited for the election of the nominee as a director, or that is otherwise required, in each case pursuant to Regulation 14A under the 1934 Act (including, without limitation, the nominee's written consent to being named as a nominee and to serving as a director if elected); and

(2) as to such stockholder giving notice, (A) the information required to be provided pursuant to clauses (2) through (7) of Section 1.4(1)(ii) above (except that the references to "business" in such clauses shall instead refer to nominations of directors for purposes of this paragraph) and (B) a representation and undertaking that such stockholder or Stockholder Associated Person will deliver a proxy statement and form of proxy to holders of a number of the corporation's voting shares reasonably believed by such stockholder or Stockholder Associated Person to be necessary to elect such nominee(s) (such information provided and statements made as required by clauses (A) and (B) above, a "**Nominee Solicitation Statement**"). In addition, to be in proper written form, a Nominee Solicitation Statement must be supplemented, if necessary, not later than ten days following the record date for the determination of stockholders entitled to notice of the meeting so that the information contained in such Nominee Solicitation Statement is true and correct as of such record date.

(iii) At the request of the Board of Directors, any person nominated by a stockholder for election as a director must furnish to the Secretary (1) that information required to be set forth in the Nominee Solicitation Statement in respect of such person as of such record date and (2) such other information as may reasonably be required by the corporation to determine the eligibility of such proposed nominee to serve as an independent director of the corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee. In the absence of the furnishing of such information if requested, such stockholder's nomination shall not be considered in proper form pursuant to this Section 1.4(2).

(iv) Without exception, no person shall be eligible for election as a director of the corporation at an annual meeting of stockholders unless nominated in accordance with the provisions set forth in this Section 1.4(2). In addition, a nominee shall not be eligible for election if the nominee or a stockholder or Stockholder Associated Person, as applicable, takes action contrary to the representations and undertakings made in the Nominee Solicitation Statement applicable to such nominee or in any other notice to the corporation or if the Nominee Solicitation Statement applicable to such nominee or any other relevant notice contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading. The chairperson of the annual meeting shall, if the facts warrant, determine and declare at the annual meeting that a nomination was not made in accordance with the provisions prescribed by these bylaws, and if the chairperson should so determine, he or she shall so declare at the annual meeting, and the defective nomination shall be disregarded.

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

(i) For a special meeting of stockholders at which directors are to be elected pursuant to Section 1.2, nominations of persons for election to the Board of Directors shall be made only (1) by or at the direction of the Board of Directors or (2) by any stockholder of the corporation who (A) is a stockholder of record at the time of the giving of the notice required by this Section 1.4(3), on the record date for the determination of stockholders entitled to notice of the special meeting and on the record date for the determination of stockholders entitled to vote at the special meeting and (B) delivers a timely written notice of the nomination to the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth day following the day on which Public Announcement is first made of the date of the special meeting. In no event shall any adjournment, rescheduling or postponement of a special meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice. A person shall not be eligible for election as a director at a special meeting unless the person is nominated (i) by or at the direction of the Board of Directors or (ii) by a stockholder in accordance with the notice procedures set forth in this Section 1.4(3). In addition, a nominee shall not be eligible for election if the nominee or a stockholder or Stockholder Associated Person, as applicable, takes action contrary to the representations and undertakings made in the Nominee Solicitation Statement applicable to such nominee or in any other notice to the corporation or if the Nominee Solicitation Statement applicable to such nominee or any other relevant notice contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading.

(ii) The chairperson of the special meeting shall, if the facts warrant, determine and declare at the meeting that a nomination or business was not made in accordance with the procedures prescribed by these bylaws, and if the chairperson should so determine, he or she shall so declare at the meeting, and the defective nomination or business shall be disregarded.

(4) *Rule 14a-8.* Nothing in this Section 1.4 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 1934 Act (or any successor provision of law).

1.5 ADJOURNMENTS

Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place (if any), and notice need not be given of any such adjourned meeting if the time, place (if any) thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty days, or if after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting as of the record date fixed for notice of such adjourned meeting.

1.6 QUORUM

Except as otherwise provided by law, the certificate of incorporation or these bylaws, at each meeting of stockholders the presence in person or by proxy of the holders of shares of stock having a majority of the votes which could be cast by the holders of all outstanding shares of stock entitled to vote at the meeting shall be necessary and sufficient to constitute a quorum. Where a separate vote by a class or series or classes or series is required, a majority of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter, except as otherwise provided by law, the certificate of incorporation or these bylaws. In the absence of a quorum, then either (i) the chairperson of the meeting or (ii) the stockholders so present and entitled to vote at the meeting may, by majority vote, adjourn the meeting from time to time in the manner provided in Section 1.5 of these bylaws until a quorum shall attend. Shares of its own stock belonging to the corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

1.7 ORGANIZATION

The chairperson of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of business and discussion as seem to the chairperson in order. The chairperson of any meeting of stockholders shall have the power to adjourn the meeting to another place (if any), date or time, whether or not a quorum is present. The chairperson of any meeting of stockholders shall be designated by the Board of Directors; in the absence of such designation, the Chairman of the Board, if any, or the chief executive officer (in the absence of the Chairman of the Board), or the President (in the absence of the Chairman of the Board and the chief executive officer), or in their absence any other executive officer of the corporation, shall serve as chairperson of the stockholder meeting. The Secretary shall act as secretary of the meeting, but in his absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

1.8 VOTING; PROXIES

Except as otherwise provided by the certificate of incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by him which has voting power upon the matter in question. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for him by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A written proxy may be in the form of a telegram, cablegram or other means of electronic transmission which sets forth or is submitted with information from which it can be determined that the telegram, cablegram or other means of electronic transmission was authorized by the person. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL. A stockholder may revoke any proxy that is not

irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or another duly executed proxy bearing a later date with the Secretary. Voting at meetings of stockholders need not be by written ballot unless so determined by the holders of shares of stock having a majority of the votes which could be cast by the holders of all outstanding shares of stock entitled to vote thereon which are present in person or by proxy at such meeting. At all meetings of stockholders for the election of directors a plurality of the votes cast shall be sufficient to elect. All other elections and questions shall, unless otherwise provided by law, the certificate of incorporation, these bylaws or the rules of any applicable stock exchange, be decided by the affirmative vote of a majority of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter. Where a separate vote by a class or series or classes or series is required, in all matters other than the election of directors, the affirmative vote of the majority of the shares of such class or series or classes or series present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of such class or series or classes or series, except as otherwise provided by law, the certificate of incorporation, these bylaws or the rules of any applicable stock exchange.

1.9 FIXING DATE FOR DETERMINATION OF STOCKHOLDERS OF RECORD

(1) In order that the corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date shall not be more than sixty nor less than ten days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination.

If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the provisions of Section 213 of the DGCL and this Section 1.9 at the adjourned meeting.

(2) In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any stockholder of record seeking to have the stockholders authorize or take corporate action by

written consent shall, by written notice to the Secretary and in conformity with the requirements of these bylaws, including Section 1.11, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within ten days after the date on which such a request is received, adopt a resolution fixing the record date. If no record date has been fixed by the Board of Directors within such ten-day period, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation in the manner permitted by Section 228 of the DGCL. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(3) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

1.10 LIST OF STOCKHOLDERS ENTITLED TO VOTE

The corporation shall prepare, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, *provided, however*, if the record date for determining the stockholders entitled to vote is less than ten days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least ten days prior to the meeting, (i) on a reasonably accessible electronic network (so long as the information required to gain access to such list is provided with the notice of the meeting), or (ii) during ordinary business hours, at the corporation's principal place of business. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then such list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

1.11 ACTION BY CONSENT OF STOCKHOLDERS

(1) The stockholders of the corporation may take action by written consent in lieu of a meeting of stockholders if, in accordance with and subject to the conditions and restrictions set forth in the certificate of incorporation or these bylaws (as amended from time to time), (i) record holders of at least 25% of the voting power of the outstanding capital stock of the corporation (the “**Soliciting Stockholders**”) have submitted one or more written requests to the Secretary asking that the Board of Directors fix a record date to determine the stockholders entitled to deliver written consents for the action or actions proposed to be taken; (ii) such written requests include all of the information contemplated by Section 1.11(3) with respect to such action or actions and with respect to such Soliciting Stockholder(s) and the beneficial owners (if any) on whose behalf such written requests are made; (iii) the Board of Directors fixes such a record date or has failed to do so within ten days after the Secretary certifies to the Board of Directors that he or she has received written requests from the requisite holders of capital stock; and (iv) written consents setting forth the action or actions to be taken are 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 and are delivered to the corporation in the manner required by Section 228 of the DGCL. The Board of Directors may fix a record date to determine the stockholders entitled to deliver written requests, whether or not the corporation has already received one or more written requests pursuant to this Section 1.11(1). A written request pursuant to this Section 1.11(1) may be revoked prior to the receipt of written requests from the holders of 25% of the voting power of the outstanding capital stock of the corporation.

(2) Subject to the rights of the holders of the shares of any series of Preferred Stock or any other class of stock or series thereof having a preference over the Common Stock as dividend or upon liquidation, any action required or permitted to be taken by the stockholders of the corporation must be effected at a duly called annual or special meeting of stockholders of the corporation and may not be effected by any consent in writing by such stockholders, except (i) in accordance with the first sentence of Section 1.11(1) or (ii) pursuant to a resolution adopted by the Board of Directors authorizing one or more actions to be taken by written consent. Any written consent to take action in lieu of a meeting of stockholders may be revoked prior to the effectiveness of the stockholder action or actions set forth in such written consent. References in these bylaws to a written consent shall be deemed to include a telegram, cablegram or other electronic transmission consenting to an action to be taken if such transmission complies with Section 228(d) of the DGCL.

(3) Each written request asking that the Board of Directors fix a record date to determine the stockholders entitled to deliver written consents shall include the following: (a) the signature of the Soliciting Stockholder signing such written request and the date that such written request was signed; (b) the action or actions proposed to be taken by written consent, the text of the proposed action (including the text of any resolutions proposed for consideration), if applicable, and the reasons for seeking stockholder approval of such actions; and (c) the following information:

(i) the name and address, as they appear on the corporation’s books, of such Soliciting Stockholder and any Stockholder Associated Person;

(ii) the class and number of shares of the corporation that are held of record or are owned beneficially by such Soliciting Stockholder or any Stockholder Associated Person and any derivative positions held or beneficially held by such Soliciting Stockholder or any Stockholder Associated Person;

(iii) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of such Soliciting Stockholder or any Stockholder Associated Person with respect to any securities of the corporation, and a description of any other agreement, arrangement or understanding (including any short position or any borrowing or lending of shares), the effect or intent of which is to mitigate loss to, or to manage the risk or benefit from share price changes for, or to increase or decrease the voting power of, such Soliciting Stockholder or any Stockholder Associated Person with respect to any securities of the corporation ;

(iv) any material interest of such Soliciting Stockholder or any Stockholder Associated Person in any of the actions to be taken by written consent;

(v) a completed and duly executed written questionnaire with respect to the background of such Soliciting Stockholder or any Stockholder Associated Person (which questionnaire shall be provided by the Secretary promptly upon written request);

(vi) any other information relating to such Soliciting 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 solicitations of proxies for the action proposed by to taken by written consent pursuant to Regulation 14A under the 1934 Act;

(vii) to enable them to be considered consistent with requirements applicable to all nominees, if directors are to be elected by written consent, with respect to each person proposed by a stockholder to be elected by written consent, all such information, materials, statements, consents and representations (including all fully completed questionnaires and other forms) required to be submitted with respect to nominees for director election at an annual meeting of stockholders as specified in Section 1.4; and

(viii) a representation and undertaking that such Soliciting Stockholder or any Stockholder Associated Person will use reasonable efforts to deliver a proxy statement and form of proxy to all stockholders entitled to deliver a written consent.

Each such written request must be supplemented, if necessary, not later than ten days following the record date for determining the stockholders entitled to act by written consent so that the information contained in such written request is true and correct as of such record date.

(4) The Secretary shall not accept, and shall consider ineffective, a written request pursuant to Section 1.11(1) asking that the Board of Directors fix a record date (i) that does not comply with the provisions of these bylaws; (ii) that relates to an item of business that is not a proper subject for stockholder action under applicable law; (iii) if such written request is delivered between the time beginning on the 31st day after the earliest date of signature on a written request that has been delivered to the Secretary relating to an identical or substantially similar item (hereinafter for purposes of this Section 1.11, a “**Similar Item**”) and ending on the

one-year anniversary of such earliest date; (iv) if a Similar Item will be submitted for stockholder approval at any stockholder meeting to be held on or before the 120th day after the Secretary receives such written request; or (v) if a Similar Item has been presented at the most recent annual meeting or at any special meeting held within one year prior to the receipt by the Secretary of such written request.

(5) In the event of the delivery, in the manner provided by Section 228 of the DGCL, to the corporation of the requisite written consent or consents to take corporate action after giving effect to any related revocation or revocations, the corporation shall engage an independent inspector or inspectors of elections for the purpose of promptly performing a ministerial review of the validity of the consents and revocations. For the purpose of permitting the inspector or inspectors to perform such review, no action by written consent without a meeting shall be effective until such date as the independent inspector or inspectors certify to the corporation that the consents delivered to the corporation in accordance with applicable law represent at least the minimum number of votes that would be necessary to take the corporate action. To the fullest extent permitted by Delaware law, the action by written consent will take effect as of the date and time of the certification of the written consents and will not relate back to the date that the written consents were delivered to the corporation. In conducting the review required by this Section 1.11(5), the independent inspector or inspectors may, at the expense of the corporation, retain legal counsel and any other necessary or appropriate professional advisors and such other personnel as they may deem necessary or appropriate to assist them and shall be fully protected in relying in good faith upon the opinion of such counsel or advisors. Nothing contained in this Section 1.11(5) shall in any way be construed to suggest or imply that the Board of Directors or any stockholder shall not be entitled to contest the validity of any consent or revocation thereof, whether before or after such certification by the independent inspector or inspectors, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation). If after such review the independent inspector or inspectors shall determine that the written consent or consents are valid and that the action specified therein has been validly authorized, that fact shall forthwith be certified on the records of the corporation kept for the purpose of recording the proceedings of meetings of stockholders, and the written consent or consents shall be filed in such records.

(6) Prompt notice of the taking of corporate action without a meeting by less than unanimous written consent shall be given to those stockholders entitled thereto in accordance with Section 228(e) of the DGCL and other applicable law.

(7) Any person executing a consent may provide, whether through instruction to an agent or otherwise, that such a consent will be effective at a future time (including a time determined upon the happening of an event), no later than sixty days after such instruction is given or provision is made, if evidence of such instruction or provision is provided to the corporation. Unless otherwise provided, any consent shall be revocable prior to its becoming effective.

(8) The Board of Directors shall determine in good faith whether the requirements set forth in the certificate of incorporation or these bylaws have been satisfied. If the Board of Directors shall determine that any written request asking the Board of Directors to fix a record date to take action by written consent was not properly made in accordance with applicable law, the certificate of incorporation or these bylaws, or if the Board of Directors shall determine that the stockholder or stockholders seeking to take such action do not otherwise comply with applicable law, the certificate of incorporation or these bylaws, then the Board of Directors shall not be required to fix a record date and any such purported action by written consent shall be null and void to the fullest extent permitted by applicable law. In addition to the requirements of the certificate of incorporation or these bylaws with respect to stockholders seeking to take an action by written consent, any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall comply with all requirements of applicable law, including all requirements of the 1934 Act, with respect to such action.

ARTICLE II

BOARD OF DIRECTORS

2.1 NUMBER; QUALIFICATIONS

The Board of Directors shall consist of one or more members, the number thereof to be determined from time to time by resolution of the Board of Directors. Directors need not be stockholders.

2.2 ELECTION; RESIGNATION; REMOVAL; VACANCIES

The Board of Directors shall initially consist of the persons named as directors in the certificate of incorporation, and each director so elected shall hold office until the first annual meeting of stockholders or until his successor is elected and qualified. At the first annual meeting of stockholders and at each annual meeting thereafter, the stockholders shall elect directors each of whom shall hold office for a term of one year and until his or her successor is elected and qualified or until such director's earlier death, resignation or removal. Any director may resign at any time upon notice given in writing or by electronic transmission to the corporation. Any newly created directorship or any vacancy occurring in the Board of Directors for any cause may be filled only by a majority of the remaining members of the Board of Directors, although such majority is less than a quorum, and not by stockholders, and each director so elected shall hold office until the expiration of the term of office of the director whom he or she has replaced and until his or her successor is elected and qualified. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

2.3 REGULAR MEETINGS

Regular meetings of the Board of Directors may be held at such places within or without the State of Delaware and at such times as the Board of Directors may from time to time determine, and if so determined notices thereof need not be given.

2.4 SPECIAL MEETINGS

Special meetings of the Board of Directors may be held at any time or place within or without the State of Delaware whenever called by the Chairman of the Board, the chief executive officer, the President, or at least three members of the Board of Directors.

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

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

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

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

2.5 TELEPHONIC MEETINGS PERMITTED

Members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this bylaw shall constitute presence in person at such meeting.

2.6 QUORUM; VOTE REQUIRED FOR ACTION

At all meetings of the Board of Directors a majority of the total authorized number of directors shall constitute a quorum for the transaction of business. If a quorum is not present at any meeting of the Board 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. Except in cases in which the certificate of incorporation or these bylaws otherwise provide, the affirmative vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

2.7 ORGANIZATION

Meetings of the Board of Directors shall be presided over by the Chairman of the Board, if any, or in his absence by the Vice Chairman of the Board, if any, or in his absence by the President, or in their absence by a chairman chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

2.8 BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of Directors or such committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or such committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. Any person (whether or not then a director) may provide, whether through instruction to an agent or otherwise, that a consent to action will be effective at a future time (including a time determined upon the happening of an event), no later than sixty days after such instruction is given or such provision is made and such consent shall be deemed to have been given for purposes of this Section 2.8 at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective.

ARTICLE III

COMMITTEES

3.1 COMMITTEES

The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, designate one or more committees, each committee to consist of one or more of the directors of the corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by Section 141(c)(2) of the DGCL and to the extent provided in the resolution of the Board of Directors, or in these bylaws, shall 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 which may require it. No such committee shall have the power or authority to (i) approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopt, amend or repeal any bylaw of the corporation.

3.2 COMMITTEE RULES

Unless the Board of Directors otherwise provides, and subject to applicable law, each committee designated by the Board of Directors may make, alter and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article III of these bylaws.

ARTICLE IV

OFFICERS

4.1 EXECUTIVE OFFICERS; ELECTION; QUALIFICATIONS; TERM OF OFFICE; RESIGNATION; REMOVAL; VACANCIES

The Board of Directors shall elect a President and Secretary, and it may, if it so determines, choose a Chairman of the Board and a Vice Chairman of the Board from among its members. The Board of Directors may also choose one or more Vice Presidents, one or more Assistant Secretaries, a Treasurer, one or more Assistant Treasurers and any such other officers as the Board of Directors deems appropriate. Each such officer shall hold office until the first meeting of the Board of Directors after the annual meeting of stockholders next succeeding his election, and until his successor is elected and qualified or until his earlier resignation or removal. Any officer may resign at any time upon written notice to the corporation. The Board of Directors may remove any officer with or without cause at any time, but such removal shall be without prejudice to the contractual rights of such officer, if any, with the corporation. Any number of offices may be held by the same person. Any vacancy occurring in any office of the corporation by death, resignation, removal or otherwise may be filled for the unexpired portion of the term by the Board of Directors at any regular or special meeting.

4.2 POWERS AND DUTIES OF EXECUTIVE OFFICERS

The officers of the corporation shall have such powers and duties in the management of the corporation as may be prescribed by the Board of Directors and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board of Directors. The Board of Directors may require any officer, agent or employee to give security for the faithful performance of his duties. The Chairman of the Board, the Vice Chairman of the Board, the chief executive officer, the President, any Vice President, the Treasurer or any Assistant Treasurer, the Secretary or any Assistant Secretary, or any other person authorized by the Board of Directors or the chief executive officer, the President or a Vice President, is authorized to vote, represent, and exercise on behalf of this corporation all rights incident to any and all securities of any other entity or entities standing in the name of this corporation, including the right to act by written consent. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

ARTICLE V

STOCK

5.1 STOCK CERTIFICATES

The shares of the corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the corporation's stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Every holder of stock of the corporation represented by certificates shall be entitled to have a certificate signed by, or in the name of, the corporation by any two officers of the corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be by 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 such person were such officer, transfer agent or registrar at the date of issue. The corporation shall not have power to issue a certificate in bearer form.

5.2 LOST, STOLEN OR DESTROYED STOCK CERTIFICATES; ISSUANCE OF NEW CERTIFICATES

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 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.

5.3 TRANSFERS

Stock of the corporation shall be transferable in the manner prescribed by law and in these bylaws. Transfers of stock shall be made on the books of the corporation only by the record holder of such stock or by his or her attorney lawfully constituted in writing and, if such stock is certificated, upon the surrender of the certificate therefor, properly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, which such certificate shall be canceled before a new certificate shall be issued. The corporation shall 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 DGCL.

5.4 REGISTERED STOCKHOLDERS

The corporation:

(i) shall be entitled to treat the person registered on its books as the owner of any share or shares as the person exclusively entitled to receive dividends, vote, receive notifications and otherwise exercise all the rights and powers of an owner of such share or shares; and

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

ARTICLE VI

INDEMNIFICATION

6.1 THIRD PARTY ACTIONS

The corporation shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director or officer of the corporation or that such director or officer 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 (collectively, an “**Agent**”) against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement (if such settlement is approved in advance by the corporation, which approval shall not be unreasonably withheld) actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he 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 his conduct was unlawful. The termination of any action, suit or 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 he reasonably believed to be in or not opposed to the best interest of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

6.2 ACTIONS BY OR IN THE RIGHT OF THE CORPORATION

The corporation shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was an Agent (as defined in Section 6.1) against expenses (including attorneys’ fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and 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 Delaware 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 Delaware Court of Chancery or such other court shall deem proper.

6.3 SUCCESSFUL DEFENSE

To the extent that an Agent of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 6.1 and 6.2, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

6.4 DETERMINATION OF CONDUCT

Any indemnification under Sections 6.1 and 6.2 (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that the indemnification of the Agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Sections 6.1 and 6.2. Such determination shall be made (1) by the Board of Directors or an executive committee by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) or if such quorum is not obtainable or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the stockholders.

6.5 PAYMENT OF EXPENSES IN ADVANCE

Expenses (including attorneys' fees) actually and reasonably incurred by an Agent in defending a civil or criminal action, suit or proceeding shall be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the corporation as authorized in this Article VI. The right to advancement of expenses shall not apply to any claim for which indemnity is excluded pursuant to these bylaws, but shall apply to any proceeding referenced in Section 6.6(2) or 6.6(3) prior to a determination that the person is not entitled to be indemnified by the corporation.

6.6 LIMITATION ON INDEMNIFICATION

Subject to the requirements in Section 6.3 and the DGCL, the corporation shall not be obligated to indemnify any person pursuant to this Article VI in connection with a civil or criminal action, suit or proceeding (or any part thereof):

(1) 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;

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

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

(4) initiated by such person, including a civil or criminal action, suit or proceeding (or any part thereof) initiated by such person against the corporation or its directors, officers, employees, agents or other indemnitees, unless (a) the Board of Directors authorized the action, suit or proceeding (or the relevant part thereof) prior to its initiation, (b) the corporation provides the indemnification, in its sole discretion, pursuant to the powers vested in the corporation under applicable law, (c) otherwise required to be made under Section 6.7 or (d) otherwise required by applicable law; or

(5) if prohibited by applicable law.

6.7 DETERMINATION; CLAIM

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

6.8 INDEMNITY NOT EXCLUSIVE

The indemnification and advancement of expenses provided or granted pursuant to this Article VI 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 his 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.

6.9 INSURANCE

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

6.10 THE CORPORATION

For purposes of this Article VI, references to “the corporation” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under and subject to the provisions of this Article VI (including, without limitation the provisions of Section 6.4) with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

6.11 EMPLOYEE BENEFIT PLANS

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

6.12 INDEMNITY FUND

Upon resolution passed by the Board of Directors, the corporation may establish a trust or other designated account, grant a security interest or use other means (including, without limitation, a letter of credit), to ensure the payment of certain of its obligations arising under this Article VI and/or agreements which may be entered into between the corporation and its officers and directors from time to time.

6.13 INDEMNIFICATION OF OTHER PERSONS

The provisions of this Article VI shall not be deemed to preclude the indemnification of any person who is not an Agent (as defined in Section 6.1), but whom the corporation has the power or obligation to indemnify under the provisions of the DGCL or otherwise. The corporation may, in its sole discretion, indemnify an employee, trustee or other agent as permitted by the DGCL. The corporation shall indemnify an employee, trustee or other agent where required by law.

6.14 SAVINGS CLAUSE

If this Article or any portion thereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each Agent against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit, proceeding or investigation, whether civil, criminal or administrative, and whether internal or external, including a grand jury proceeding and an action or suit brought by or in the right of the corporation, to the full extent permitted by any applicable portion of this Article that shall not have been invalidated, or by any other applicable law.

6.15 CONTINUATION OF INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VI shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

ARTICLE VII

MISCELLANEOUS

7.1 FISCAL YEAR

The fiscal year of the corporation shall be determined by resolution of the Board of Directors.

7.2 SEAL

The corporate seal shall have the name of the corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board of Directors.

7.3 WAIVER OF NOTICE OF MEETINGS OF STOCKHOLDERS, DIRECTORS AND COMMITTEES

Any written waiver of notice, 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, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the certificate of incorporation or these bylaws.

7.4 NOTICE BY ELECTRONIC TRANSMISSION

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

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

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

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

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

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

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

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

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

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

An “**electronic transmission**” means any form of communication, not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases (including one or more distributed electronic networks or databases), that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

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

7.5 NOTICE TO STOCKHOLDERS SHARING AN ADDRESS

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

7.6 INTERESTED DIRECTORS; QUORUM

No contract or transaction between the corporation and one or more of its directors or officers, or between the corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because his or their votes are counted for such purpose, if: (1) the material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (2) the material facts as to his relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (3) the contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified, by the Board of Directors, a committee thereof, or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

7.7 AMENDMENT OF BYLAWS

These bylaws may be altered or repealed, and new bylaws made, by the Board of Directors, but the stockholders may make additional bylaws and may alter or repeal any bylaws whether adopted by them or otherwise.