
**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): August 14, 2018

CSW INDUSTRIALS, INC.
(Exact Name Of Registrant As Specified In Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-37454
(Commission
File Number)

47-2266942
(IRS Employer
Identification No.)

**5420 Lyndon B. Johnson Freeway, Suite 500
Dallas, Texas 75240**
(Address of Principal Executive Offices) (Zip Code)

Registrant's telephone number, including area code: (214) 884-3777

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 3.03 Material Modification to Rights of Security Holders.

The information provided in Item 5.03 of this Current Report on Form 8-K regarding amendments to the Certificate of Incorporation and Bylaws of CSW Industrials, Inc. (the "Company") is incorporated by reference into this Item 3.03.

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

As discussed under Item 5.07 of this Current Report on Form 8-K, on August 14, 2018, the Company's stockholders approved amendments to the Company's Certificate of Incorporation to remove supermajority vote requirements and replace such requirements with a voting standard requiring a majority of outstanding shares.

In connection with the amendments to the Company's Certificate of Incorporation, on August 14, 2018, the Company's Board of Directors approved the amendment of the Company's Bylaws, effective August 14, 2018. Section 6.3 of the Bylaws was amended to reduce the two-thirds voting requirement for stockholders to amend the Bylaws to a majority of outstanding shares.

The foregoing description of the amendments to the Company's Certificate of Incorporation and Bylaws is qualified in its entirety by reference to the full text of, and should be read in conjunction with, the Certificate of Incorporation and Bylaws, copies of which are filed with this Current Report on Form 8-K as Exhibits 3.1 and 3.2 and which are incorporated herein by reference.

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

On August 14, 2018, the Company held its 2018 Annual Meeting of Stockholders (the "Meeting"). The number of shares present at the Meeting was 14,514,626, representing 92.3% of the 15,731,337 shares issued and outstanding that were entitled to vote on June 28, 2018, the record date for the Meeting.

Four items of business were submitted to stockholders at the Meeting. The voting results for each proposal are set forth below. Percentages shown are calculated in accordance with the methodology for counting votes for each proposal as described in the proxy statement related to the Meeting.

1. **Election of Directors.** The director nominees listed below were duly elected at the Meeting for a one-year term expiring in 2019 pursuant to the following votes:

<u>Nominee</u>	<u>Votes For</u>	<u>Votes Withheld</u>	<u>Broker Non-Votes</u>
Joseph Armes	12,082,536 (95.1%)	624,304 (4.9%)	1,807,786
Robert Swartz	12,094,002 (95.2%)	612,838 (4.8%)	1,807,786

2. **Advisory Vote on Executive Compensation.** The proposal for approval, on an advisory basis, of the compensation of the Company's named executive officers was approved pursuant to the following votes:

Votes FOR:	11,236,558 (90.0%)
Votes AGAINST:	1,251,827 (10.0%)
Votes ABSTAINED:	218,455
Broker Non-Votes:	1,807,786

3. **Charter Amendments to Remove Supermajority Voting Requirements.** The proposal to amend the Company's Certificate of Incorporation to remove supermajority voting requirements was approved pursuant to the following votes:

Votes FOR:	12,450,869 (79.1%)
Votes AGAINST:	230,145 (1.8%)
Votes ABSTAINED:	25,826 (0.2%)
Broker Non-Votes:	1,807,786 (11.5%)

4. **Ratification of Independent Registered Public Accounting Firm.** Grant Thornton LLP was ratified to serve as the Company's independent registered public accounting firm for fiscal 2019 pursuant to the following votes:

Votes FOR:	14,398,874 (99.8%)
Votes AGAINST:	27,795 (0.2%)
Votes ABSTAINED:	87,957
Broker Non-Votes:	0

No other matters were voted on at the Meeting.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits.

<u>Exhibit Number</u>	<u>Description</u>
3.1	<u>Third Amended and Restated Certificate of Incorporation of CSW Industrials, Inc.</u>
3.2	<u>CSW Industrials, Inc. Amended and Restated Bylaws, adopted and effective August 14, 2018.</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.

Dated: August 15, 2018

By: /s/ Luke E. Alverson

Name: Luke E. Alverson

Title: Senior Vice President, General Counsel & Secretary

**THIRD AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
CSW INDUSTRIALS, INC.**

CSW Industrials, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the “DGCL”), hereby certifies that:

1. The name of the corporation is CSW Industrials, Inc.

2. The corporation was originally incorporated under the name “CSWC NewCo Corp.” The Certificate of Incorporation of the corporation was originally filed with the Secretary of State of the State of Delaware (the “Delaware Secretary of State”) on November 6, 2014; was amended by the Amendment to the Certificate of Incorporation filed with the Delaware Secretary of State on June 1, 2015; was restated by the Amended and Restated Certificate of Incorporation filed with the Delaware Secretary of State on September 9, 2015; and was restated by the Second Amended and Restated Certificate of Incorporation filed with the Delaware Secretary of State on August 16, 2017.

3. This Third Amended and Restated Certificate of Incorporation has been duly adopted by the directors and stockholders of the corporation in accordance with Sections 242 and 245 of the DGCL and shall become effective upon filing with the Secretary of State of the State of Delaware (the “Effective Time”).

4. Pursuant to Sections 242 and 245 of the DGCL, effective as of the Effective Time, this Third Amended and Restated Certificate of Incorporation amends and restates the provisions of the Second Amended and Restated Certificate of Incorporation of the corporation, as set forth below:

ARTICLE I NAME

The name of the corporation is CSW Industrials, Inc. (the “Company”).

ARTICLE II OFFICES

Section 1. Registered Office. The address of the Company’s registered office in the State of Delaware is located at Corporation Service Company, 251 Little Falls Drive, in the City of Wilmington, County of New Castle, State of Delaware, 19808. The name of the Company’s registered agent at such address is Corporation Service Company.

Section 2. Other Offices. The Company shall also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors (the “Board”), and may also have offices at such other places, both within and without the State of Delaware, as the Board may from time to time determine or the business of the corporation may require.

ARTICLE III CORPORATE PURPOSE

The purpose of the Company is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

ARTICLE IV SHARES OF STOCK

Section 1. Authorized Capital Stock. The Company is authorized to issue two classes of capital stock, designated Common Stock and Preferred Stock. The total number of shares of capital stock that the Company is authorized to issue is 60,000,000 shares, consisting of 50,000,000 shares of Common Stock, par value \$0.01 per share, and 10,000,000 shares of Preferred Stock, par value \$0.01 per share.

Section 2. Preferred Stock. The Preferred Stock may be issued in one or more series. The Board is hereby authorized to issue the shares of Preferred Stock in such series and to fix from time to time before issuance the number of shares to be included in any such series and the designation, relative powers, preferences, rights and qualifications, limitations or restrictions of such series. The authority of the Board with respect to each such series will include, without limiting the generality of the foregoing, the determination of any or all of the following:

- (a) the number of shares of any series and the designation to distinguish the shares of such series from the shares of all other series;
- (b) the voting powers, if any, and whether such voting powers are full or limited in such series;
- (c) the redemption provisions, if any, applicable to such series, including the redemption price or prices to be paid;
- (d) whether dividends, if any, will be cumulative or noncumulative, the dividend rate of such series, and the dates, conditions and preferences of dividends on such series;
- (e) the rights of such series upon the voluntary or involuntary dissolution of, or upon any distribution of the assets of, the Company;
- (f) the provisions, if any, pursuant to which the shares of such series are convertible into, or exchangeable for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the Company, at such price or prices or at such rate or rates of exchange and with such adjustments applicable thereto;
- (g) the right, if any, to subscribe for or to purchase any securities of the Company;
- (h) the provisions, if any, of a sinking fund applicable to such series; and
- (i) any other designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof;

all as may be determined from time to time by the Board and stated or expressed in the resolution or resolutions providing for the issuance of such Preferred Stock (collectively, a "Preferred Stock Designation").

Section 3. Common Stock. Subject to the rights of the holders of any series of Preferred Stock, the holders of Common Stock will be entitled to one vote on each matter submitted to a vote at a meeting of stockholders for each share of Common Stock held of record by such holder as of the record date for such meeting.

ARTICLE V BYLAWS

The Board may make, adopt, amend, and repeal the Bylaws of the Company. Any Bylaw made or adopted by the Board under the powers conferred hereby may be amended or repealed by the Board (except as specified in any such Bylaw so made or amended) or by the stockholders in the manner provided in the Bylaws of the Company. The Company may in its Bylaws confer powers upon the Board in addition to the foregoing and in addition to the powers and authorities expressly conferred upon the Board by applicable law. Notwithstanding anything contained in this Third Amended and Restated Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least a majority of the Voting Stock, voting together as a single class, is required to amend or repeal, or to adopt any provision inconsistent with, this Article V. For the purposes of this Third Amended and Restated Certificate of Incorporation, "Voting Stock" means stock of the Company of any class or series entitled to vote generally in the election of directors.

ARTICLE VI ANNUAL AND SPECIAL MEETINGS; NO ACTION BY WRITTEN CONSENT

Section 1. Annual and Special Meeting. Subject to the rights of the holders of any series of Preferred Stock:

(a) any action required or permitted to be taken by the stockholders of the Company must be effected at a duly called annual or special meeting of stockholders of the Company and may not be effected by any consent in writing of such stockholders; and

(b) special meetings of stockholders of the Company may be called only by (i) the Chairman of the Board (the "Chairman"), (ii) the Chief Executive Officer of the Company or (iii) a majority of the total number of directors that the Company would have if there were no vacancies on the Board.

(c) Business at Meetings. At any annual meeting or special meeting of stockholders of the Company, only such business will be conducted or considered as has been brought before such meeting in the manner provided in the Bylaws of the Company.

(d) Amendment. Notwithstanding anything contained in this Third Amended and Restated Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least a majority of the voting power of the outstanding Voting Stock, voting together as a single class, will be required to amend or repeal, or adopt any provision inconsistent with, this Article VI.

ARTICLE VII DIRECTORS

Section 1. Number, Election, and Terms of Directors.

(a) Subject to the rights, if any, of the holders of any series of Preferred Stock to elect additional directors under circumstances specified in a Preferred Stock Designation, the number of the directors of the Company will not be less than three nor more than nine and will be fixed from time to time in the manner provided in the Bylaws of the Company. The directors, other than those who may be elected by the holders of any series of Preferred Stock, will be classified with respect to time for which they severally hold office into three classes, as nearly equal in number as possible, designated as Class I, Class II and Class III, with the term of office of one class expiring each year. Notwithstanding the foregoing, effective as of the annual meeting of stockholders to be held in 2018 and at each annual meeting of stockholders thereafter, except for directors elected under circumstances specified in a Preferred Stock Designation, each director to be elected at any such annual meeting shall be elected to serve until the next annual meeting of stockholders and until his or her successor shall be elected and qualified; provided, however, that any director who prior to the annual meeting of stockholders in 2018 was elected to a term that continues beyond the date of the annual meeting of stockholders in 2018, shall continue to serve as a director for the remainder of his or her elected term or until his or her death, resignation, disqualification or removal (each such director, including any director appointed to fill a vacancy caused by the death, resignation, disqualification, removal or other cause of such director, a "Classified Director"; provided that any such director shall cease to be a Classified Director upon the expiration of the term to which he or she was most recently elected or appointed). As a result, effective as of the annual meeting of stockholders in 2020, the Board will no longer be classified under Section 141(d) of the DGCL and directors shall no longer be divided into classes.

(b) In an uncontested election of directors at a meeting of stockholders, each director will be elected by an affirmative vote of the majority of the votes cast with respect to the director at such meeting of the stockholders. In a contested election of directors at a meeting of the stockholders, each director will be elected by a plurality vote of the votes cast at such meeting of the stockholders. For purposes hereof, (i) a "majority of the votes cast" with respect to a director means the number of votes for the director exceeds the number of votes withheld from the director and (ii) an election of directors will be considered "contested" if, as of the record date for the applicable meeting of the stockholders, there are more nominees for election than positions on the Board to be filled by election at such meeting of the stockholders. All other elections of directors will be considered "uncontested."

(c) Election of directors of the Company need not be by written ballot unless requested by the Chairman or by the holders of a majority of the Voting Stock present in person or represented by proxy at a meeting of the stockholders at which directors are to be elected. If authorized by the Board, such requirement of written ballot shall be satisfied by a ballot submitted by electronic transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder or proxy holder.

Section 2. Nomination of Director Candidates. Advance notice of stockholder nominations for the election of directors must be given in the manner provided in the Bylaws of the Company.

Section 3. Newly Created Directorships and Vacancies. Subject to the rights, if any, of the holders of any series of Preferred Stock to elect additional directors under circumstances specified in a Preferred Stock Designation, newly created directorships resulting from any increase in the authorized number of directors and any vacancies on the Board resulting from death, resignation, disqualification, removal or other cause may be filled only by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board, or by a sole remaining director. Each director elected to fill a vacancy shall hold office for the unexpired term in respect of which such vacancy occurred. Each director elected or appointed to fill any newly created directorship following the annual meeting of stockholders in 2017 shall hold office for a term expiring at the next annual meeting of stockholders. No decrease in the authorized number of directors constituting the Board will shorten the term of any incumbent director.

Section 4. Removal. Subject to the rights, if any, of the holders of any series of Preferred Stock specified in a Preferred Stock Designation, any Classified Director may be removed from office only for cause by the affirmative vote of the holders of at least a majority of the voting power of the outstanding Voting Stock, voting together as a single class, at any annual meeting or special meeting of the stockholders, the notice of which identifies any Classified Director proposed to be removed and states that the removal of such Classified Director is among the purposes of the meeting. Any director that is not a Classified Director may be removed with or without cause by the affirmative vote of at least a majority of the voting power of the outstanding Voting Stock, voting together as a single class.

Section 5. Amendment. Notwithstanding anything contained in this Third Amended and Restated Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least a majority of the voting power of the outstanding Voting Stock, voting together as a single class, is required to amend or repeal, or adopt any provision inconsistent with, this Article VII.

ARTICLE VIII LIABILITY

To the full extent permitted by the DGCL or any other applicable law currently or hereafter in effect, no director of the Company will be personally liable to the Company or its stockholders for or with respect to any acts or omissions in the performance of his or her duties as a director of the Company. Any repeal or modification of this Article VIII will not adversely affect any right or protection of a director of the Company existing prior to such repeal or modification.

ARTICLE IX INDEMNIFICATION

Section 1. Right to Indemnification. Each person who was or is a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding") by reason of the fact that the person is or was a director or an officer of the

Company, or is or was at any such time serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (an "Indemnitee"), whether the basis of such Proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Company to the fullest extent permitted or required by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than such law permitted the Company to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such Indemnitee in connection therewith; provided, however, that, except as provided in Section 3 of this Article IX with respect to Proceedings to enforce rights to indemnification, the Company shall indemnify any such Indemnitee in connection with a Proceeding (or part thereof) initiated by such Indemnitee only if such Proceeding (or part thereof) was authorized by the Board.

Section 2. Right to Advancement of Expenses. The right to indemnification conferred in Section 1 of this Article IX shall include the right to be paid by the Company the expenses (including, without limitation, attorneys' fees and expenses) incurred in defending any such Proceeding in advance of its final disposition (an "Advancement of Expenses"); provided, however, that, if the DGCL so requires, an Advancement of Expenses incurred by an Indemnitee in such person's capacity as a director or officer (and not in any other capacity in which service was or is rendered by such Indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Company of an undertaking (an "Undertaking"), by or on behalf of such Indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (a "Final Adjudication") that such Indemnitee is not entitled to be indemnified for such expenses under this Section 2 or otherwise.

Section 3. Right of Indemnitee to Bring Suit. If a claim under Section 1 or 2 of this Article IX is not paid in full by the Company within 60 calendar days after a written claim has been received by the Company, except in the case of a claim for an Advancement of Expenses, in which case the applicable period shall be 20 calendar days after receipt of a written claim and, if required, an Undertaking, the Indemnitee may at any time thereafter bring suit against the Company to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Company to recover an Advancement of Expenses pursuant to the terms of an Undertaking, the Indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In any suit brought by the Indemnitee to enforce a right to indemnification or an Advancement of Expenses hereunder, it shall be a defense that the Indemnitee has not met any applicable standard for indemnification set forth in the DGCL or is not entitled to the requested Advancement of Expenses. In any suit brought by the Company to recover an Advancement of Expenses pursuant to the terms of an Undertaking, the Company shall be entitled to recover such expenses upon a Final Adjudication that the Indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Company (including its Board, independent legal counsel or stockholders) to have made a determination prior to the commencement of such suit that indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the applicable standard of conduct

set forth in the DGCL, nor an actual determination by the Company (including its Board, independent legal counsel or stockholders) that the Indemnitee has not met such applicable standard of conduct, shall create a presumption that the Indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the Indemnitee, be a defense to such suit. In any suit brought by the Indemnitee to enforce a right to indemnification or to an Advancement of Expenses hereunder, or brought by the Company to recover an Advancement of Expenses pursuant to the terms of an Undertaking, the burden of proving that the Indemnitee is not entitled to be indemnified, or to such Advancement of Expenses, under this Article IX or otherwise shall be on the Company.

Section 4. Non-Exclusivity, Continuation and Modification of Rights.

(a) The rights to indemnification and to the Advancement of Expenses conferred in this Article IX shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, the Company's Third Amended and Restated Certificate of Incorporation, Bylaws, any agreement, vote of stockholders or disinterested directors or otherwise.

(b) The rights to indemnification and to the Advancement of Expenses conferred in this Article IX shall be contract rights and such rights shall continue as to an Indemnitee who has ceased to be director or an officer of the Company, or to serve at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, and shall inure to the benefit of the Indemnitee's heirs, executors and administrators.

(c) Any amendment or modification of this Article IX that in any way diminishes or adversely affects any rights of the Indemnitees hereunder shall be prospective only and shall not affect any such rights in respect of any claim arising from or related to services provided prior to the date of such amendment or modification.

Section 5. Insurance. The Company may maintain insurance, at its expense, to protect itself and any person who is or was a director, officer, employee or agent of the Company, or is or was serving at the request of the Company 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 Company would have the power to indemnify such person against such liability under the DGCL.

Section 6. Indemnification of Employees and Agents of the Company. The Company may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the Advancement of Expenses to any employee or agent of the Company to the fullest extent of the provisions of this Article IX with respect to the indemnification and Advancement of Expenses of directors and officers of the Company.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, CSW Industrials, Inc. has caused this Third Amended and Restated Certificate of Incorporation to be executed by its duly authorized officer on, August 14, 2018.

CSW INDUSTRIALS, INC.

By: /s/ Luke E. Alverson
Name: Luke E. Alverson
Title: Senior Vice President, General Counsel & Secretary

[Signature Page to Certificate]

CSW INDUSTRIALS, INC.

AMENDED AND RESTATED BYLAWS

Adopted and Effective on August 14, 2018

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AMENDED AND RESTATED BYLAWS

OF

CSW INDUSTRIALS, INC.

a Delaware Corporation

PREAMBLE

These Bylaws of CSW Industrials, Inc., a Delaware corporation (the “Company”), are subject to, and governed by, the General Corporation Law of the State of Delaware (the “DGCL”) and the Certificate of Incorporation of the Company (as the same may be amended and/or restated from time to time, the “Certificate”). In the event of a conflict between the provisions of these Bylaws and the provisions of the DGCL or the Certificate, the provisions of the DGCL or the Certificate, as the case may be, will control.

ARTICLE I STOCKHOLDERS MEETINGS

Section 1.1 Time and Place of Meetings. All meetings of stockholders will be held at such time and place, within or without the State of Delaware, as may be designated by the Board of Directors (the “Board”) of the Company, from time to time or, in the absence of a designation by the Board, the Chairman of the Board, the Chief Executive Officer or the Secretary, and stated in the notice of the meeting. Notwithstanding the foregoing, the Board may, in its sole discretion, determine that a meeting of stockholders will not be held at any place, but may instead be held by means of remote communications, subject to such guidelines and procedures as the Board may adopt from time to time. The Board may postpone and reschedule any previously scheduled annual or special meeting of stockholders.

Section 1.2 Annual Meetings. At each annual meeting of stockholders, the stockholders will elect, the directors to succeed those directors whose terms expire at such meeting in accordance with the provisions of the Certificate and will transact such other business as may properly be brought before the meeting in accordance with Sections 1.8, 1.9, 1.10 and 1.11.

Section 1.3 Special Meetings. A special meeting of stockholders may be called only by (a) the Chairman of the Board, (b) the Chief Executive Officer of the Company, or (c) a majority of the total number of directors that the Company would have if there were no vacancies on the Board (the “Whole Board”), in each case to transact only such business as is properly brought before the meeting in accordance with Section 1.8 and specified in the notice of the meeting. Special meetings of holders of any outstanding Preferred Stock, if any, may be called in the manner and for the purposes provided in the applicable Preferred Stock Designation.

Section 1.4 Notice of Meetings. Written notice of every meeting of stockholders, stating the place, if any, date and time thereof, 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, and, in the case of a special meeting, the purpose or purposes for which the meeting is

called, will be given, in a form permitted by Section 3.1 or by the DGCL, not less than 10 nor more than 60 calendar days before the date of the meeting to each stockholder of record entitled to vote at such meeting, except as otherwise provided by law. When a meeting is adjourned to another place, date, or time, notice need not be given of the adjourned meeting if the place, if any, date and time 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; *provided, however*, that if the adjournment is for more than 30 calendar days, or if after the adjournment a new record date is fixed for the adjourned meeting, written notice of the place, if any, date and time 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 must be given in conformity with this Section 1.4. At any adjourned meeting, any business may be transacted which properly could have been transacted at the original meeting.

Section 1.5 Inspectors. The Board will, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The Board may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the presiding officer of the meeting will appoint one or more inspectors to act at the meeting.

Section 1.6 Quorum. Except as otherwise provided by law or in a Preferred Stock Designation, the holders of a majority of the stock issued and outstanding and entitled to vote at the meeting, present in person or represented by proxy, will constitute a quorum at a meeting of stockholders for the transaction of business at the meeting. If, however, a quorum is not present or represented at any meeting of stockholders, the stockholders entitled to vote at the meeting, present in person or represented by proxy, will have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented.

Section 1.7 Voting; Proxies; No Stockholder Action by Written Consent. Except as otherwise provided by law, by the Certificate, or in a Preferred Stock Designation, each stockholder will be entitled at every meeting of the stockholders to one vote for each share of stock having voting power standing in the name of such stockholder on the books of the Company on the record date for the meeting and such votes may be cast either in person or by proxy. Every proxy must be authorized in a manner permitted by Section 212 of the DGCL (or any successor provision). When a quorum is present at any meeting of stockholders, the affirmative vote of the majority of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter and that are voted for or against the matter will be the act of the stockholders, except as otherwise provided in these Bylaws, the Certificate (including with respect to the election of directors), a Preferred Stock Designation, or by law, rule or regulation applicable to the Company or its securities or the rules or regulations of any stock exchange applicable to the Company. Any action required or permitted to be taken by the stockholders of the Company must be effected at a duly called annual or special meeting of stockholders of the Company and may not be effected by any consent in writing of such stockholders.

Section 1.8 Order of Business. The Chairman or an officer of the Company designated from time to time by a majority of the Whole Board will call meetings of stockholders to order and will act as the presiding officer of the meeting. Unless otherwise determined by the Board prior to the meeting, the presiding officer of the meeting of stockholders will also determine the order of business and have the authority in his or her sole discretion to determine the rules of procedure and regulate the conduct of any such meeting, including, without limitation, by imposing restrictions on the persons (other than stockholders of the Company or their duly appointed proxy holders) that may attend any such stockholders' meeting, by ascertaining whether any stockholder or his or her proxy holder may be excluded from any meeting of stockholders based upon any determination by the presiding officer, in his or her sole discretion, that any such person has disrupted or is likely to disrupt the proceedings of the meeting, by determining the circumstances in which any person may make a statement or ask questions at any meeting of stockholders, by ruling on all procedural questions that may arise during or in connection with the meeting, and by determining whether any nomination or business proposed to be brought before the meeting has been properly brought before the meeting.

Section 1.9 Notice of Stockholder Proposals.

(a) Business to Be Conducted at Annual Meeting. At an annual meeting of stockholders, only such business may be conducted as has been properly brought before the meeting. To be properly brought before an annual meeting, business (other than the nomination of a person for election as a director, which is governed by Section 1.10, and to the extent applicable, Section 1.11) must be (i) brought before the meeting by or at the direction of the Board or (ii) otherwise properly brought before the meeting by a stockholder who (A) has complied with all applicable requirements of this Section 1.9 and Section 1.11 in relation to such business, (B) was a stockholder of record of the Company at the time of giving the notice required by Section 1.11(a) and is a stockholder of record of the Company at the time of the annual meeting, and (C) is entitled to vote at the annual meeting. For the avoidance of doubt, the foregoing clause (ii) will be the exclusive means for a stockholder to submit business before an annual meeting of stockholders (other than proposals properly made in accordance with Rule 14a-8 under the Securities Exchange Act of 1934 (such act, and the rules and regulations promulgated thereunder, the "Exchange Act") and included in the notice of meeting given by or at the direction of the Board).

(b) Required Form for Stockholder Proposals. To be in proper written form, a stockholder's notice to the Secretary must set forth:

(i) Information Regarding the Proposing Person. As to each Proposing Person (as such term is defined in Section 1.11(d)(ii)):

(A) the name and address of such Proposing Person, as they appear on the Company's stock transfer book;

(B) the class, series and number of shares of the Company beneficially owned of record by such Proposing Person (including any shares of any class or series of the Company as to which such Proposing Person has a right to acquire beneficial ownership, whether such right is exercisable immediately or only after the passage of time);

(C) a representation (1) that the stockholder giving the notice is a holder of record of stock of the Company entitled to vote at the annual meeting and intends to appear in person or by proxy at the annual meeting to bring such business before the annual meeting and (2) as to whether any Proposing Person intends to deliver a proxy statement and form of proxy to holders of at least the percentage of shares of the Company entitled to vote and required to approve the proposal and, if so, identifying such Proposing Person;

(D) a description of any (1) option, warrant, convertible security, stock appreciation right or similar right (including any derivative securities, as defined under Rule 16a-1 under the Exchange Act), whether or not presently exercisable, with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of securities of the Company or with a value derived in whole or in part from the value of any class or series of securities of the Company, whether or not such instrument or right is subject to settlement in whole or in part in the underlying class or series of securities of the Company or otherwise, directly or indirectly held of record or owned beneficially by such Proposing Person and (2) each other direct or indirect opportunity of such Proposing Person to profit or share in any profit derived from, or to manage the risk or benefit from, any increase or decrease in the value of the Company's securities, in each case regardless of whether (x) such interest conveys any voting rights in such security to such Proposing Person, (y) such interest is required to be, or is capable of being, settled through delivery of such security, or (z) such Proposing Person may have entered into other transactions that hedge the economic effect of any such interest (any such interest referred to in this clause (D), being a "Derivative Interest");

(E) any proxy, contract, arrangement, understanding or relationship pursuant to which the Proposing Person has a right to vote any shares of the Company or which has the effect of increasing or decreasing the voting power of such Proposing Person;

(F) any rights directly or indirectly held of record or beneficially by the Proposing Person to dividends on the shares of the Company that are separated or separable from the underlying shares of the Company;

(G) any performance-related fees (other than an asset-based fee) to which the Proposing Person may be entitled as a result of any increase or decrease in the value of shares of the Company or Derivative Interests; and

(H) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required pursuant to Section 14(a) of the Exchange Act to be made in connection with a general solicitation of proxies or consents by such Proposing Person in support of the business proposed to be brought before the meeting.

(ii) Information Regarding the Proposal. As to each item of business that the stockholder giving the notice proposes to bring before the annual meeting:

(A) a description in reasonable detail of the business desired to be brought before the annual meeting and the reasons why such stockholder or any other Proposing Person believes that the taking of the action or actions proposed to be taken would be in the best interests of the Company and its stockholders;

(B) a description in reasonable detail of any material interest of any Proposing Person in such business and a description in reasonable detail of all agreements, arrangements and understandings among the Proposing Persons or between any Proposing Person and any other person or entity in connection with the proposal; and

(C) the text of the proposal or business (including the text of any resolutions proposed for consideration).

(c) No Right to Have Proposal Included. A stockholder is not entitled to have its proposal included in the Company's proxy statement and form of proxy solely as a result of such stockholder's compliance with the foregoing provisions of this Section 1.9.

(d) Requirement to Attend Annual Meeting. If a stockholder does not appear at the annual meeting to present its proposal, such proposed business will not be transacted (notwithstanding that proxies in respect of such vote may have been received by the Company).

Section 1.10 Notice of Director Nominations.

(a) Nomination of Directors. Subject to the rights, if any, of any series of Preferred Stock to nominate or elect directors under circumstances specified in a Preferred Stock Designation, only persons who are nominated in accordance with the procedures set forth in this Section 1.10 will be eligible to serve as directors. Nominations of persons for election as directors of the Company may be made only at an annual meeting of stockholders (i) by or at the direction of the Board or (ii) by a stockholder who (A) has complied with all applicable requirements of this Section 1.10 and Section 1.11 in relation to such nomination, (B) was a stockholder of record of the Company at the time of giving the notice required by Section 1.11(a) and is a stockholder of record of the Company at the time of the annual meeting, and (C) is entitled to vote at the annual meeting.

(b) Required Form for Stockholder Proposals. To be in proper written form, a stockholder's notice to the Secretary must set forth:

(i) Information Regarding the Proposing Person. As to each Nominating Person (as such term is defined in Section 1.11(d) (iii)), the information set forth in Section 1.9(b)(i) (except that for purposes of this Section 1.10, the term "Nominating Person" will be substituted for the term "Proposing Person" in all places it appears in Section 1.9(b)(i) and any reference to "business" or "proposal" therein will be deemed to be a reference to the "nomination" contemplated by this Section 1.10).

(ii) Information Regarding the Nominee. As to each person whom the stockholder giving notice proposes to nominate for election as a director:

(A) all information with respect to such proposed nominee that would be required to be set forth in a stockholder's notice pursuant to Section 1.9(b)(i) if such proposed nominee were a Nominating Person;

(B) all information relating to such proposed nominee that would be required to be disclosed in a proxy statement or other filing required pursuant to Section 14(a) under the Exchange Act to be made in connection with a general solicitation of proxies for an election of directors in a contested election (including such proposed nominee's written consent to be named in the proxy statement as a nominee and to serve as a director if elected);

(C) all information that would be required to be disclosed pursuant to Items 403 and 404 under Regulation SK if the stockholder giving the notice or any other Nominating Person were the "registrant" for purposes of such rule and the proposed nominee were a director or executive officer of such registrant;

(D) a written questionnaire with respect to the identity, background and qualification of the proposed nominee and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire will be provided by the Secretary upon written request); and

(E) a written representation and agreement (in the form provided by the Secretary upon written request) that the proposed nominee (1) is not and will not become a party to (x) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how the proposed nominee, if elected as a

director of the Company, will act or vote on any issue or question (a “Voting Commitment”) that has not been disclosed to the Company or (y) any Voting Commitment that could limit or interfere with the proposed nominee’s ability to comply, if elected as a director of the Company, with the proposed nominee’s fiduciary duties under applicable law, (2) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Company with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein and (3) if elected as a director of the Company, would be in compliance, and will comply, with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and other policies and guidelines of the Company in effect from time to time.

The Company may require any proposed nominee to furnish such other information as may be reasonably required by the Company to determine the qualifications and eligibility of such proposed nominee to serve as a director.

(c) No Right to Have Proposal Included. A stockholder is not entitled to have its nominees included in the Company’s proxy statement solely as a result of such stockholder’s compliance with the foregoing provisions of this Section 1.10.

(d) Requirement to Attend Annual Meeting. If a stockholder does not appear at the annual meeting to present its nomination, such nomination will be disregarded (notwithstanding that proxies in respect of such vote may have been received by the Company).

Section 1.11 Additional Provisions Relating to the Notice of Stockholder Business and Director Nominations.

(a) Timely Notice. To be timely, a stockholder’s notice required by Section 1.9(a) or Section 1.10(a) must be delivered to or mailed and received by the Secretary at the principal executive offices of the Company not less than 90 nor more than 120 calendar days prior to the first anniversary of the date on which the Company held the preceding year’s annual meeting of stockholders; *provided, however*, that if the date of the annual meeting is advanced more than 30 calendar days prior to or delayed by more than 30 calendar days after the anniversary of the preceding year’s annual meeting, to be timely, a stockholder’s notice must be so delivered not later than the close of business on the later of the 90th calendar day prior to the annual meeting and the 10th calendar day following the day on which public disclosure of the date of the meeting is first made. In no event will the public disclosure of an adjournment of an annual meeting commence a new time period for the giving of a stockholder’s notice as described above.

(b) Updating Information in Notice. A stockholder providing notice of business proposed to be brought before an annual meeting pursuant to Section 1.9 or notice of any nomination to be made at an annual meeting pursuant to Section 1.10 shall further update and supplement such notice, if necessary, so that the information provided or required to be

provided in such notice pursuant to Section 1.9 or Section 1.10, as applicable, is true and correct at all times up to and including the date of the meeting and any adjournment or postponement thereof. Such update and supplement will be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Company as promptly as possible.

(c) Determinations of Form, Etc. The presiding officer of any annual meeting will, if the facts warrant, determine that a proposal was not made in accordance with the procedures prescribed by Section 1.9 and this Section 1.11 or that a nomination was not made in accordance with the procedures prescribed by Section 1.10 and this Section 1.11, and if he or she should so determine, he or she will so declare to the meeting and the defective proposal or nomination, as applicable, will be disregarded.

(d) Certain Definitions.

(i) For purposes of Section 1.9, Section 1.10 and this Section 1.11, "public disclosure" means disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document filed by the Company with the Securities and Exchange Commission pursuant to the Exchange Act or furnished by the Company to stockholders.

(ii) For purposes of Section 1.9 and this Section 1.11, "Proposing Person" means (A) the stockholder providing the notice of business proposed to be brought before an annual meeting, (B) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the annual meeting is made, and (C) any Affiliate or Associate (each within the meaning of Rule 12b-2 under the Exchange Act) of such stockholder or beneficial owner.

(iii) For purposes of Section 1.10 and this Section 1.11, "Nominating Person" means (A) the stockholder providing the notice of the nomination proposed to be made at an annual meeting, (B) the beneficial owner or beneficial owners, if different, on whose behalf the notice of nomination proposed to be made at the annual meeting is made, and (C) any Affiliate or Associate (each within the meaning of Rule 12b-2 under the Exchange Act) of such stockholder or beneficial owner.

Section 1.12 Record Dates.

(a) Voting Record Dates. In order that the Company may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which will not be more than 60 nor less than 10 calendar days before the date of the meeting. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders will be at the close of business on the calendar day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the calendar 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 the stockholders will apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

(b) Payment Record Dates. In order that the Company may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date will not be more than 60 calendar days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose will be at the close of business on the calendar day on which the Board adopts the resolution relating thereto.

(c) Identity of Registered Holder. The Company will be entitled to treat the person in whose name any share of its stock is registered as the owner thereof for all purposes, and will not be bound to recognize any equitable or other claim to, or interest in, such share on the part of any other person, whether or not the Company has notice thereof, except as expressly provided by applicable law.

Section 1.13 Adjournments. A meeting of stockholders may be adjourned from time to time by the presiding officer of the meeting or the holders of a majority of the stock present in person or represented by proxy at such meeting.

ARTICLE II DIRECTORS

Section 2.1 Function. The business and affairs of the Company will be managed under the direction of the Board.

Section 2.2 Number, Election and Terms. Subject to the rights, if any, of any series of Preferred Stock to elect additional directors under circumstances specified in a Preferred Stock Designation, the number of directors of the Company will not be less than three nor more than nine and the authorized number of directors may only be changed by resolutions of the Board. The directors will be elected in accordance with the provisions of the Certificate.

Section 2.3 Vacancies and Newly Created Directorships. Subject to the rights, if any, of the holders of any series of Preferred Stock to elect additional directors under circumstances specified in a Preferred Stock Designation, newly created directorships resulting from any increase in the authorized number of directors and any vacancies on the Board resulting from death, resignation, disqualification, removal or other cause shall be filled in accordance with the provisions of the Certificate. No decrease in the authorized number of directors constituting the Board will shorten the term of any incumbent director.

Section 2.4 Removal. Subject to the rights, if any, of the holders of any series of Preferred Stock specified in a Preferred Stock Designation, a director may be removed from office by the stockholders only in the manner provided in the Certificate.

Section 2.5 Resignation. Any director may resign at any time upon notice given in writing or by electronic transmission to the Chairman. Any resignation is effective when the resignation is delivered to the Chairman unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events.

Section 2.6 Regular Meetings. Regular meetings of the Board may be held immediately after the annual meeting of the stockholders and at such other time and place either within or without the State of Delaware as may from time to time be determined by the Board. Notice of regular meetings of the Board need not be given.

Section 2.7 Special Meetings. Special meetings of the Board may be called by the Chairman, the lead director, if applicable, or the Chief Executive Officer on one day's notice to each director by whom such notice is not waived, given in a form permitted by Section 3.1 or by the DGCL, and will be called by the Chairman or the Chief Executive Officer, in like manner and on like notice, on the written request of a majority of the Whole Board. Special meetings of the Board may be held at such time and place either within or without the State of Delaware as is determined by the Board or specified in the notice of any such meeting.

Section 2.8 Quorum; Majority Vote. At all meetings of the Board, a majority of the Whole Board will constitute a quorum for the transaction of business. Except for action to be taken by committees of the Board as provided in Section 2.10, and except for actions required by these Bylaws or the Certificate to be taken by a majority of the Whole Board, the act of a majority of the directors present at any meeting at which there is a quorum will be the act of the Board. If a quorum is not present at any meeting of the Board, the directors present at the meeting may adjourn the meeting from time to time to another place, time, or date, without notice other than announcement at the meeting, until a quorum is present.

Section 2.9 Participation in Meetings by Remote Communications. Members of the Board or any committee designated by the Board may participate in a meeting of the Board or any such committee, as the case may be, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting will constitute presence in person at the meeting.

Section 2.10 Committees. The Board may designate one or more committees, each committee to consist of one or more of the directors. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board or in these Bylaws, will have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Company; but no such committee will have the power or authority in reference to the following matters: (a) approving or adopting, or recommending 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 (b) making, adopting, amending or repealing any provision of these Bylaws.

Section 2.11 Compensation. The Board may establish the compensation of directors, including, without limitation, compensation for membership on the Board and on committees of the Board and for other services provided to the Company or at the request of the Board.

Section 2.12 Rules. The Board may adopt rules and regulations for the conduct of meetings and the oversight of the management of the affairs of the Company.

Section 2.13 Chairman of the Board. The Whole Board may at its discretion elect a Chairman from among the directors. The Chairman will not be considered an officer of the Company. The Chairman may be removed from that capacity by a majority vote of the Whole Board. If the Board has a Chairman, the Chairman will preside at meetings of the Board and of the stockholders of the Company and exercise and perform the other powers and duties as may from time to time be assigned to him by the Board or as may be prescribed by these Bylaws. In the absence of the Chairman, such other director of the Company designated by a majority of the Board shall act as chairman of any such meeting. The Board or the Chairman may appoint a Vice Chairman of the Board to exercise and perform such other powers and duties as may from time to time be assigned to him by the Board, or by the Chairman.

ARTICLE III NOTICES

Section 3.1 Generally.

(a) Form of Notices. Except as otherwise provided by law, these Bylaws, or the Certificate, whenever by law or under the provisions of the Certificate or these Bylaws notice is required to be given to any director or stockholder, it will not be construed to require personal notice, but the notice may be given in writing, by mail or courier service or, to the extent permitted by the DGCL, by electronic transmission, addressed to such director or stockholder.

(b) Notices to Stockholders. Any notice sent to stockholders by mail or courier service shall be sent to the address of such stockholder as it appears on the records of the Company, with postage thereon prepaid, and such notice will be deemed to be given at the time when the same is deposited in the United States mail or with the courier service. Notices sent by electronic transmission shall be deemed effective as set forth in Section 232 of the DGCL. For purposes of this Section 3.1, "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

(c) Notices to Directors. Notices to directors may be given by mail or courier service, telephone, electronic transmission or as otherwise permitted by these Bylaws.

Section 3.2 Waivers. Whenever any notice is required to be given by law or under the provisions of the Certificate or these Bylaws, a waiver thereof in writing, signed by the person entitled to such notice, or a waiver by electronic transmission by the person entitled to such notice, whether before or after the time of the event for which notice is to be given, will be deemed equivalent to such notice. Attendance of a person at a meeting will constitute a waiver of notice of the 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.

ARTICLE IV OFFICERS

Section 4.1 Generally. The officers of the Company will be elected annually by the Board and will consist of a Chief Executive Officer, a President, a Secretary and a Treasurer, all of whom shall be elected at the annual meeting of the Board. The Board may also choose any or all of the following: one or more Vice Presidents (who may be given particular designations with respect to authority, function, or seniority), one or more Assistant Secretaries, one or more Assistant Treasurers and such other officers as the Board may from time to time determine. Notwithstanding the foregoing, the Board may authorize the Chief Executive Officer to appoint any person to any office other than the President, Secretary or Treasurer. Any number of offices may be held by the same person. Any of the offices may be left vacant from time to time as the Board may determine. In the case of the absence or disability of any officer of the Company or for any other reason deemed sufficient by a majority of the Board, the Board may delegate the absent or disabled officer's powers or duties to any other officer or to any director.

Section 4.2 Compensation. The compensation of all directors who are also officers and agents of the Company and the executive officers of the Company will be fixed by the Board or by a committee of the Board. The Board may fix, or delegate the power to fix, the compensation of other officers and agents of the Company to an officer of the Company.

Section 4.3 Succession. The officers of the Company will hold office until their successors are elected and qualified or until such officer's earlier death, resignation or removal. Any officer may be removed at any time by the affirmative vote of a majority of the Whole Board. Any vacancy occurring in any office of the Company may be filled by the Whole Board.

Section 4.4 Authority and Duties. Each of the officers of the Company will have such authority and will perform such duties as are customarily incident to their respective offices or as may be specified from time to time by the Board.

ARTICLE V STOCK

Section 5.1 Uncertificated Shares. Except as otherwise provided in a resolution approved by the Board, all shares of capital stock of the Company issued after the date hereof shall be uncertificated. In the event the Board elects to provide in a resolution that certificates shall be issued to represent any shares of capital stock of the Company, such certificates shall be numbered and shall be signed by, or in the name of the Company by, the Chairman, the Chief Executive Officer or the Chief Financial Officer and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary. Any or all of the signatures on a certificate may be a facsimile signature. 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 Company with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

Section 5.2 Transfer. Transfers of shares shall be made upon the books of the Company (a) only by the holder of record thereof, or by a duly authorized agent, transferee or legal representative, and (b) in the case of certificated shares, upon the surrender to the Company of the certificate or certificates for the shares. No transfer shall be made that is inconsistent with the provisions of applicable law.

Section 5.3 Classes of Stock. The powers, designations, preferences and relative, participating, optional, or other special rights of each class or series of stock represented by certificates, if any, and the qualifications, limitations or restrictions of such preferences and/or rights will be set forth in full or summarized on the face or back of the certificates representing such class or series of stock or, in lieu thereof, on the face or back of such certificates will be a statement that the Company will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional, or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

Section 5.4 Lost, Stolen or Destroyed Certificates. The Secretary may direct a new certificate or certificates or uncertificated shares to be issued in place of any certificate or certificates theretofore issued by the Company alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact, satisfactory to the Secretary, by the person claiming the certificate of stock to be lost, stolen or destroyed. As a condition precedent to the issuance of a new certificate or certificates, the Secretary may require the owners of such lost, stolen or destroyed certificate or certificates to give the Company a bond in such sum and with such surety or sureties as the Secretary may direct as indemnity against any claims that may be made against the Company with respect to the certificate alleged to have been lost, stolen or destroyed or the issuance of the new certificate or uncertificated shares.

ARTICLE VI GENERAL

Section 6.1 Fiscal Year. The fiscal year of the Company will end on March 31 or such other date as may be fixed from time to time by the Board.

Section 6.2 Reliance Upon Books, Reports and Records. Each director, each member of a committee designated by the Board, and each officer of the Company will, in the performance of his or her duties, be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports, or statements presented to the Company by any of the Company's officers or employees, or committees of the Board, or by any other person or entity as to matters the director, committee member, or officer believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company.

Section 6.3 Amendments. Except as otherwise provided by law or by the Certificate or these Bylaws, these Bylaws or any of them may be amended in any respect or repealed at any time only by vote of the holders of at least a majority of the Voting Stock, voting together as a single class.

Section 6.4 Forum for Adjudication of Disputes. Unless the Company consents in writing to the selection of an alternative forum, the sole and exclusive forum for (a) any

derivative action or proceeding brought on behalf of the Company, (b) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Company to the Company or the Company's stockholders, (c) an action asserting a claim arising pursuant to any provision of the DGCL, or (d) any action asserting a claim governed by the internal affairs doctrine shall be a state or federal court located within the State of Delaware, in all cases subject to the court's having personal jurisdiction over the indispensable parties named as defendants.

Section 6.5 Certain Defined Terms. Capitalized terms used herein and not otherwise defined have the meanings given to them in the Certificate.