

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

**FORM 8-K**

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

**Date of Report (Date of earliest event reported): June 11, 2024**

**Deciphera Pharmaceuticals, Inc.**

(Exact name of registrant as specified in its charter)

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

**001-38219**  
(Commission  
File Number)

**30-1003521**  
(I.R.S. Employer  
Identification No.)

**200 Smith Street, Waltham, Massachusetts 02451**  
(Address of principal executive offices, including zip code)

**(781) 209-6400**  
(Registrant's telephone number, including area code)

**Not Applicable**  
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*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))

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

Title of each class	Trading symbol(s)	Name of each exchange on which registered
Common Stock, \$0.01 par value per share	DCPH	Nasdaq Global Select Market

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

Emerging growth company

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

## INTRODUCTORY NOTE

As previously reported in the Current Report on Form 8-K filed with the U.S. Securities and Exchange Commission (the “SEC”) on April 29, 2024 by Deciphera Pharmaceuticals, Inc., a Delaware corporation (the “Company” or “Deciphera”), Deciphera entered into an Agreement and Plan of Merger, dated April 29, 2024 (the “Merger Agreement”), with Ono Pharmaceutical Co., Ltd., a Japanese company (*kabushiki kaisha*) (“Parent” or “Ono”), and Topaz Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Parent (“Merger Sub”).

Pursuant to the Merger Agreement, and upon the terms and subject to the conditions therein, Merger Sub commenced a tender offer (the “Offer”) on May 13, 2024 to acquire all of the issued and outstanding shares of common stock, par value \$0.01 per share, of the Company (“Company Common Stock”), at a price per share of \$25.60, net to the seller in cash, without interest and subject to any withholding of taxes required by applicable law.

The Offer and related withdrawal rights expired at one minute after 11:59 p.m., New York City time, on June 10, 2024 (such time, the “Expiration Time”). Computershare Trust Company, N.A., in its capacity as the depositary for the Offer, has advised that, as of the Expiration Time, 76,413,423 shares of Company Common Stock were validly tendered and not validly withdrawn pursuant to the Offer, representing approximately 88.3% of the total number of shares of Company Common Stock outstanding at the Expiration Time. As each of the conditions of the Offer was satisfied, on June 11, 2024, Merger Sub accepted for payment all shares of Company Common Stock that were validly tendered and not validly withdrawn pursuant to the Offer.

Following consummation of the Offer, the remaining conditions to the merger of Merger Sub with and into Deciphera (the “Merger”) set forth in the Merger Agreement were satisfied, and on June 11, 2024, Ono completed its acquisition of Deciphera by consummating the Merger without a meeting of stockholders of Deciphera in accordance with Section 251(h) of the General Corporation Law of the State of Delaware (“DGCL”), with Deciphera continuing as the surviving corporation (the “Surviving Corporation”). At the effective time of the Merger (the “Effective Time”), each outstanding share of Company Common Stock (other than shares of Company Common Stock (a) held in the treasury of the Company, (b) that at the commencement of the Offer were owned by Parent or Merger Sub or any of their direct or indirect subsidiaries, (c) irrevocably accepted for payment in the Offer, and (d) with respect to which the holders thereof have properly exercised and perfected demands for appraisal of such shares in accordance with Section 262 of the DGCL) were automatically canceled and converted into the right to receive \$25.60 in cash, without interest and subject to any withholding of taxes required by applicable law (the “Merger Consideration”). As a result of the Merger, Deciphera became a wholly owned subsidiary of Ono.

In addition, immediately prior to the Effective Time, by virtue of the Merger and without any action on the part of any holder thereof, (i) each stock option of the Company (a “Company Option”), whether vested or unvested, that was outstanding and unexercised immediately prior to the Effective Time and had a per share exercise price that was less than the Merger Consideration fully vested, was cancelled and was automatically converted into the right to receive for each share of Company Common Stock underlying such Company Option, without interest and subject to deduction for any required withholding under applicable tax law, an amount in cash from Parent or the Surviving Corporation equal to the excess of the Merger Consideration over the per share exercise price of such Company Option, (ii) each restricted stock unit of the Company that was subject to time-based vesting conditions that was outstanding immediately prior to the Effective Time, whether vested or unvested, fully vested, was cancelled and was automatically converted into the right to receive, without interest and subject to deduction for any required withholding under applicable tax law, an amount in cash from Parent or the Surviving Corporation equal to (A) the number of shares of Company Common Stock underlying such restricted stock unit of the Company, multiplied by (B) the Merger Consideration, and (iii) each restricted stock unit of the Company whose vesting was conditioned in full or in part based on achievement of performance goals or metrics that was outstanding immediately prior to the Effective Time, whether vested or unvested, fully vested, was cancelled and was automatically converted into the right to receive, without interest and subject to deduction for any required withholding under applicable tax law, an amount in cash from Parent or the Surviving Corporation equal to (A) the number of shares of Company Common Stock underlying such restricted stock unit of the Company, multiplied by (B) the Merger Consideration. In accordance with its terms, as of the time of acceptance of shares of Company Common Stock by Merger Sub in the Offer, each warrant to purchase Company Common Stock that was outstanding and unexercised as of immediately

prior to the acceptance of shares of Company Common Stock by Merger Sub in the Offer automatically ceased to represent a warrant exercisable for shares of Company Common Stock, and thereafter, the holder has the right to receive, upon exercise of such warrant, the same amount of cash as it would have received if such holder had tendered in the Offer the shares of Company Common Stock then underlying such warrant.

The foregoing description of the Merger Agreement is not complete and is qualified in its entirety by reference to the Merger Agreement, a copy of which is filed as Exhibit 2.1 to this Current Report on Form 8-K, and is incorporated herein by reference.

**Item 1.02 Termination of a Material Definitive Agreement.**

Effective as of June 11, 2024 and in connection with the completion of the Merger, the Company terminated its 2015 Equity Incentive Plan, 2017 Stock Option and Incentive Plan, 2022 Inducement Plan, and 2017 Employee Stock Purchase Plan.

**Item 2.01 Completion of Acquisition or Disposition of Assets.**

The disclosures under the Introductory Note and Item 3.01 are incorporated herein by reference.

The aggregate consideration paid by Merger Sub in the Offer and the Merger to acquire shares of Company Common Stock was approximately \$2.4 billion. Ono provided Merger Sub with the necessary funds to fund the Offer and the Merger from its cash on hand and funds obtained from certain debt financing. Information regarding such debt financing has been previously disclosed in Section 9—“Source and Amount of Funds” of the Offer to Purchase filed as Exhibit (a)(1)(i) to the Tender Offer Statement on Schedule TO filed by Ono and Merger Sub with the SEC on May 13, 2024, as subsequently amended, which section is incorporated herein by reference.

**Item 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.**

The disclosures under the Introductory Note are incorporated herein by reference.

On June 11, 2024, Deciphera (i) notified The Nasdaq Global Select Market (“Nasdaq”) of the consummation of the Merger and (ii) requested that Nasdaq (A) suspend trading of the shares of Company Common Stock effective before the opening of trading on June 11, 2024 and (B) file with the SEC a Form 25 Notification of Removal from Listing and/or Registration to delist and deregister the shares of Company Common Stock under Section 12(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). As a result, the shares of Company Common Stock will no longer be listed on Nasdaq. Deciphera intends to file with the SEC a certification on Form 15 under the Exchange Act, requesting the suspension of Deciphera’s reporting obligations under Sections 13 and 15(d) of the Exchange Act.

**Item 3.03 Material Modification to Rights of Security Holders.**

The disclosures under the Introductory Note, Item 1.02, Item 2.01, Item 3.01, Item 5.01 and Item 5.03 are incorporated herein by reference.

**Item 5.01 Changes in Control of Registrant.**

The disclosures under the Introductory Note, Item 1.02, Item 2.01, Item 3.01, Item 5.02 and Item 5.03 are incorporated herein by reference.

As a result of the consummation of the Offer, there was a change in control of Deciphera, and Ono, as the parent of Merger Sub, acquired control of Deciphera. At the Effective Time, Deciphera became a wholly owned subsidiary of Ono.

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

As of the Effective Time, Ron Squarer, Patricia L. Allen, Edward J. Benz, Jr., Frank S. Friedman, James A. Bristol, Susan L. Kelley, John R. Martin and Dennis L. Walsh resigned as directors of Deciphera and members of any committee of Deciphera's board of directors. Toichi Takino and Masayuki Tanigawa became members of Deciphera's board of directors in connection with the consummation of the Merger.

Information regarding the new directors has been previously disclosed in Schedule I of the Offer to Purchase filed as Exhibit (a)(1)(i) to the Tender Offer Statement on Schedule TO filed by Ono and Merger Sub with the SEC on May 13, 2024, as subsequently amended, which schedule is incorporated herein by reference.

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

Pursuant to the terms of the Merger Agreement, as of the Effective Time, Deciphera's certificate of incorporation, as in effect immediately prior to the Effective Time, was amended and restated in its entirety (the "Second Amended and Restated Certificate of Incorporation"). In addition, pursuant to the terms of the Merger Agreement, at the Effective Time, Deciphera's by-laws, as in effect immediately prior to the Effective Time, were amended and restated in their entirety (the "Second Amended and Restated By-Laws").

Copies of the Second Amended and Restated Certificate of Incorporation and the Second Amended and Restated By-Laws are filed as Exhibits 3.1 and 3.2, respectively, to this Current Report on Form 8-K, and are incorporated herein by reference.

**Item 8.01 Other Events.**

The Company previously disclosed that it intended to hold its 2024 Annual Meeting of Stockholders (the "2024 Annual Meeting") on June 20, 2024. In consideration of the closing of the Merger, the board of directors of the Company has determined to cancel the 2024 Annual Meeting.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
2.1	<a href="#"><u>Agreement and Plan of Merger, dated April 29, 2024, by and among Deciphera Pharmaceuticals, Inc., Ono Pharmaceutical Co., Ltd., and Topaz Merger Sub, Inc. (incorporated by reference to Exhibit 2.1 to Deciphera's Current Report on Form 8-K filed with the SEC on April 29, 2024).</u>*</a>
3.1	<a href="#"><u>Amended and Restated Certificate of Incorporation, dated June 11, 2024.</u></a>
3.2	<a href="#"><u>Second Amended and Restated By-Laws, dated June 11, 2024.</u></a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

\* Schedules to the Agreement and Plan of Merger have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The registrant will furnish copies of any such schedules to the U.S. Securities and Exchange Commission upon request.

**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.

**DECIPHERA PHARMACEUTICALS, INC.**

Date: June 11, 2024

By: /s/ Steven L. Hoerter  
Name: Steven L. Hoerter  
Title: President and Chief Executive Officer

**AMENDED AND RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**DECIPHERA PHARMACEUTICALS, INC.**

**June 11, 2024**

FIRST: The name of the corporation is Deciphera Pharmaceuticals, Inc. (the “**Corporation**”).

SECOND: The address of the Corporation’s registered office in the State of Delaware is The Corporation Trust Company, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended (“**Delaware Law**”).

FOURTH: The total number of shares of stock which the Corporation shall have authority to issue is 1,000. All such shares shall be common stock, par value \$0.01 per share, and shall be of one class.

FIFTH: In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors of the Corporation is expressly authorized to make, alter and repeal the bylaws of the Corporation, subject to the power of the stockholders of the Corporation to alter or repeal any bylaw of the Corporation whether adopted by them or otherwise.

SIXTH: Election of directors need not be by written ballot unless and except to the extent that the bylaws of the Corporation so provide.

SEVENTH: The Corporation expressly elects not to be governed by Section 203 of Delaware Law.

EIGHTH: A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of his or her fiduciary duty as a director, except for liability (a) for any breach of the director’s duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of Delaware Law or (d) for any transaction from which the director derived an improper personal benefit. If Delaware Law is amended after the effective date of this certificate of incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by Delaware Law, as so amended.

---

Any amendment, repeal, modification or elimination of this Article EIGHTH by either of (i) the stockholders of the Corporation or (ii) an amendment to Delaware Law shall not adversely affect any right or protection of a director of the Corporation existing at the time of such amendment, repeal, modification or elimination with respect to any acts or omissions occurring before such amendment, repeal, modification or elimination of a person serving as a director at the time of such amendment, repeal, modification or elimination.

NINTH: The Corporation reserves the right to amend this certificate of incorporation in any manner permitted by Delaware Law and all rights and powers conferred herein on stockholders, directors and officers, if any, are subject to this reserved power.

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

**June 11, 2024**

\* \* \* \* \*

**ARTICLE 1**  
**OFFICES**

Section 1.1 *Registered Office*. The registered office of Deciphera Pharmaceuticals, Inc. (as such name may be changed in accordance with applicable law, the “**Corporation**”) in the State of Delaware, and the name of the Corporation’s registered agent at such address, shall be as set forth in the certificate of incorporation of the Corporation (as the same may be amended or amended and restated from time to time, the “**Certificate of Incorporation**”).

Section 1.2 *Other Offices*. The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors of the Corporation (the “**Board of Directors**”) may from time to time determine or the business of the Corporation may require.

**ARTICLE 2**  
**MEETINGS OF STOCKHOLDERS**

Section 2.1 *Time and Place of Meetings*. All meetings of stockholders shall be held at such place, if any, either within or without the State of Delaware, on such date and at such time as may be determined from time to time by the Board of Directors (or the Chairman in the absence of a designation by the Board of Directors).

Section 2.2 *Annual Meetings*. Unless directors are elected by written consent in lieu of an annual meeting as permitted by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended (“**Delaware Law**”), an annual meeting of stockholders shall be held for the election of directors and to transact such other business as may properly be brought before the meeting at such date and time as may be designated by the Board from time to time. Stockholders may, unless the certificate of incorporation otherwise provides, act by written consent to elect directors; *provided, however*, that if such consent is less than unanimous, such action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action.

Section 2.3 *Special Meetings*. Special meetings of stockholders may be called by the Board of Directors or the Chairman of the Board and shall be called by the Secretary at the request in writing of holders of record of a majority of the outstanding capital stock of the Corporation entitled to vote. Such request shall state the purpose or purposes of the proposed meeting.



Section 2.4 *Notice of Meetings and Adjourned Meetings; Waivers of Notice.* (a) Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given which 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 Delaware Law, such notice shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting, as of the record date for determining the stockholders entitled to notice of the meeting. Unless these bylaws otherwise require, when a meeting is adjourned to another time or place (whether or not a quorum is present), notice need not be given of the adjourned meeting if the time, place, if any, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person or by proxy and vote at such meeting are (i) announced at the meeting at which the adjournment is taken, (ii) displayed during the time scheduled for the meeting, on the same electronic network used to enable stockholders and proxy holders to participate in the meeting by means of remote communication or (iii) set forth in the notice of meeting given in accordance with this Section 2.4(a). 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 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix a new record date for notice of such adjourned meeting in accordance with Section 7.1, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

(b) Whenever notice is required to be given under any provision of Delaware Law, the Certificate of Incorporation or these bylaws, written waiver of any such notice signed by the person entitled thereto, 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 the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 2.5 *Quorum.* Unless otherwise provided under the Certificate of Incorporation or these bylaws and subject to Delaware Law, the presence, in person or by proxy, of the holders of a majority of the outstanding capital stock of the Corporation entitled to vote at a meeting of stockholders shall constitute a quorum for the transaction of business. If, however, such quorum shall not be present or represented at any meeting of the stockholders, a majority in voting power of the stockholders present in person or represented by proxy may adjourn the meeting, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted which might have been transacted at the meeting as originally notified.

Section 2.6 *Voting*. (a) Unless otherwise provided in the Certificate of Incorporation and subject to Delaware Law, each stockholder shall be entitled to one vote for each outstanding share of capital stock of the Corporation held by such stockholder. Except as otherwise provided by applicable law, the Certificate of Incorporation or these bylaws, in all matters other than the election of directors, the affirmative vote of the majority of the shares of capital stock of the Corporation present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders. Shares of the Corporation's capital stock shall neither be entitled to vote nor be counted for quorum purposes if such shares belong to (i) the Corporation, (ii) 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 or (iii) any other entity, if a majority of the voting power of such other entity is held, directly or indirectly, by the Corporation or if such other entity is otherwise controlled, directly or indirectly, by the Corporation.

(b) Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to a corporate action without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three (3) years from its date, unless said proxy provides for a longer period.

Section 2.7 *Action by Consent In Lieu of a Meeting*. (a) Unless otherwise provided in the Certificate of Incorporation and subject to the proviso in Section 2.2, any action required to be taken at any annual or special meeting of stockholders, or any action which may be taken at any annual or special meeting of stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents, setting forth the action so taken, shall be signed by the holders of outstanding capital 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 shall be delivered to the Corporation by delivery in accordance with Delaware Law. If action by consent has been taken by stockholders by less than unanimous consent, prompt notice of the taking of the action by consent shall, to the extent required by Delaware Law, be given to those stockholders as of the record date for the action by consent who have not consented and who would have been entitled to notice of the meeting if the action had been taken at a meeting and the record date for the notice of the meeting were the record date for the action by consent.

(b) A consent must be set forth in writing or in an electronic transmission. No consent shall be effective to take the corporate action referred to therein unless consents signed by a sufficient number of holders to take action are delivered to the Corporation in the manner required by Delaware Law within 60 days of the first date on which a consent is so delivered to the Corporation.

Section 2.8 *Organization*. At each meeting of stockholders, the Chairman of the Board, if one shall have been elected, or in the Chairman's absence or if one shall not have been elected, the director designated by the vote of the majority of the directors present at such meeting, shall act as chairman of the meeting. The Secretary (or in the Secretary's absence or inability to act, the person whom the chairman of the meeting shall appoint secretary of the meeting) shall act as secretary of the meeting and keep the minutes thereof.

Section 2.9 *Order of Business*. The order of business at all meetings of stockholders shall be as determined by the chairman of the meeting.

ARTICLE 3  
DIRECTORS

Section 3.1 *General Powers*. Except as otherwise provided in Delaware Law or the Certificate of Incorporation, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

Section 3.2 *Number, Election and Term of Office*.

(a) The number of directors which shall constitute the whole Board shall initially be three and thereafter may be fixed from time to time by resolution of the Board of Directors but shall not be less than two or more than nine. The directors shall be elected at the annual meeting of the stockholders, except as provided in Section 2.2 and Section 3.11, and each director so elected shall hold office until such director's successor is duly elected and qualified or until such director's earlier death, resignation or removal. Directors need not be stockholders.

(b) Except as otherwise expressly provided in the Certificate of Incorporation, directors shall be elected by a plurality of the votes of the shares of capital stock of the Corporation present in person or represented by proxy at the meeting and entitled to vote on the election of directors.

Section 3.3 *Quorum and Manner of Acting*. Unless the Certificate of Incorporation or these bylaws require a greater number, a majority of the total number of directors shall constitute a quorum for the transaction of business, and 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. When a meeting is adjourned to another time or place (whether or not a quorum is present), notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Board of Directors may transact any business which might have been transacted at the original meeting. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting, from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 3.4 *Annual Meeting*. The Board of Directors shall meet for the purpose of organization, the election of officers and the transaction of other business, as soon as practicable after each annual meeting of stockholders, on the same day and at the same place where such annual meeting shall be held. Notice of such meeting need not be given. In the event such annual meeting is not so held, the annual meeting of the Board of Directors may be held at such place, either within or without the State of Delaware, on such date and at such time as shall be specified in a notice thereof given to each director at least 24 hours before the date of the meeting.

Section 3.5 *Regular Meetings*. Regular meetings of the Board of Directors may be held at such time and place, within or without the State of Delaware, as the Board of Directors may from time to time determine.

Section 3.6 *Special Meetings*. Special meetings of the Board of Directors may be called by the Chairman of the Board, the President or any member of the Board of Directors and held at such time and place, within or without the State of Delaware, as the person calling the special meeting may determine. Notice of special meetings of the Board of Directors shall be given to each director at least 24 hours before the date of the meeting.

Section 3.7 *Committees*. The Board of Directors may 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 of such committee present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, 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; but no such committee shall have the power or authority in reference to any of 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 Delaware Law to be submitted to the stockholders for approval or (b) adopting, amending or repealing any bylaw of the Corporation. Unless the Board of Directors otherwise provides, 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 provision by the Board of Directors or such rules made by the committee, each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to this [Article 3](#).

Section 3.8 *Action by Consent*. Unless otherwise restricted by the Certificate of Incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission. After the action is taken, the consent or consents relating thereto shall be filed with the minutes of proceedings of the Board of Directors, or the committee thereof, as the case may be, in the same paper or electronic form as the minutes are maintained.

Section 3.9 *Telephonic Meetings*. Members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or 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 shall constitute presence in person at the meeting.

Section 3.10 *Resignation*. Any director may resign at any time upon notice given in writing or by electronic transmission to the Corporation. The resignation of any director is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events.

Section 3.11 *Vacancies*. Unless otherwise provided by applicable law or the Certificate of Incorporation, vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected. Each director so chosen shall hold office until his or her successor is elected and qualified, or until his or her earlier death, resignation or removal. If there are no directors in office, then an election of directors may be held in accordance with Delaware Law. Unless otherwise provided in the Certificate of Incorporation or these bylaws, when one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who shall have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this Section 3.11 in the filling of other vacancies.

Section 3.12 *Removal*. Any director or the entire Board of Directors may be removed, with or without cause, at any time by the affirmative vote of the holders of a majority of the outstanding capital stock of the Corporation then entitled to vote at any election of directors and the vacancies thus created may be filled in accordance with Section 3.11.

Section 3.13 *Compensation*. Unless otherwise restricted by the Certificate of Incorporation or these bylaws, the Board of Directors shall have authority to fix the compensation of directors, including fees and reimbursement of expenses.

Section 3.14 *Manner of Notice*. Except as otherwise provided in these bylaws or permitted by applicable law, notices to directors shall be given in writing and delivered by courier service or mailed to the directors at their addresses appearing on the records of the Corporation or by electronic transmission to their electronic mail addresses appearing on the records of the Corporation.

Section 3.15 *Organization*. Meetings of the Board of Directors shall be presided over by the Chairman of the Board, if one shall have been elected, or in the Chairman's absence or if one shall not have been elected, by a chairman chosen at the meeting. The Secretary (or in the Secretary's absence or inability to act, the person whom the chairperson of the meeting shall appoint secretary of the meeting) shall act as secretary of the meeting and keep minutes thereof.

#### ARTICLE 4 OFFICERS

Section 4.1 *Principal Officers*. The officers of the Corporation shall be a President, a Treasurer and a Secretary, who shall have the duty, among other things, to record the proceedings of the meetings of stockholders and directors in a book kept for that purpose. The Corporation may also have such other officers as the Board of Directors may in its discretion appoint, including a Chief Executive Officer and one or more Vice Presidents. One person may hold the offices and perform the duties of any two or more of said offices.

Section 4.2 *Election, Term of Office and Remuneration*. The officers of the Corporation shall be elected annually by the Board of Directors at the annual meeting thereof. Each such officer shall hold office until his or her successor is elected and qualified, or until his or her earlier death, resignation or removal. The remuneration of all officers of the Corporation shall be fixed by the Board of Directors. Any vacancy in any office shall be filled in such manner as the Board of Directors shall determine.

Section 4.3 *Subordinate Officers*. In addition to the officers enumerated in Section 4.1, the Corporation may have one or more Assistant Treasurers and Assistant Secretaries and such other officers, agents and employees as the Board of Directors may deem necessary or desirable, each of whom shall hold office for such period as the Board of Directors may from time to time determine. The Board of Directors may delegate to the President the power to appoint and to remove any officers (other than the Treasurer or Secretary), agents or employees.

Section 4.4 *Removal*. Except as otherwise permitted with respect to officers appointed and removable by the President pursuant to a delegation made by the Board of Directors pursuant to the last sentence of Section 4.3, any officer may be removed, with or without cause, at any time, by resolution adopted by the Board of Directors.

Section 4.5 *Resignations*. Any officer may resign at any time upon written notice to the Corporation.

Section 4.6 *Powers and Duties*. The officers of the Corporation shall have such powers and perform such duties incident to each of their respective offices and such other duties as may from time to time be conferred upon or assigned to them by the Board of Directors.

## ARTICLE 5 CAPITAL STOCK

Section 5.1 *Certificates For Stock; Uncertificated Shares*. 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 authorized officers of the Corporation representing the number of shares registered in certificate form. Each of the President and the Secretary, in addition to any other officers of the Corporation authorized by the Board of Directors or these bylaws, is hereby authorized to sign certificates by, or in the name of, the Corporation. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate 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.

Section 5.2 *Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates or Uncertificated Shares*. The Corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

Section 5.3 *Restrictions*. If the Corporation issues any shares of capital stock that are not registered under the Securities Act of 1933, as amended, and registered or qualified under applicable state securities laws, such shares may not be transferred without the consent of the Corporation and the certificates evidencing such shares or the notice required by Delaware law, as the case may be, shall contain substantially the following legend (or such other legend adopted by resolution or resolutions of the Board of Directors):

THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY SET FORTH IN THE CORPORATION'S BYLAWS (AS THE SAME MAY BE AMENDED OR AMENDED AND RESTATED FROM TIME TO TIME) AND MAY NOT BE TRANSFERRED EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND APPLICABLE STATE SECURITIES LAWS, PURSUANT TO A REGISTRATION STATEMENT OR AN EXEMPTION THEREFROM, WITHOUT THE CONSENT OF THE CORPORATION.

## ARTICLE 6 INDEMNIFICATION

Section 6.1 *Definitions*. For purposes of this Article 6:

(a) "**Corporate Status**" describes the status of a person who is serving or has served (i) as a Director, (ii) as an Officer, (iii) as a Non-Officer Employee, or (iv) as a director, partner, trustee, officer, employee or agent of any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan, foundation, association, organization or other legal entity which such person is or was serving at the request of the Corporation. For purposes of this Section 6.1(a), a Director, Officer or Non-Officer Employee who is serving or has served as a director, partner, trustee, officer, employee or agent of a Subsidiary shall be deemed to be serving at the request of the Corporation. Notwithstanding the foregoing, "Corporate Status" shall not include the status of a person who is serving or has served as a director, officer, employee or agent of a constituent corporation absorbed in a merger or consolidation transaction with the Corporation with respect to such person's activities prior to said transaction, unless specifically authorized by the Board of Directors or the stockholders of the Corporation;

(b) "**Director**" means any person who serves or has served the Corporation as a director on the Board of Directors;

(c) "**Disinterested Director**" means, with respect to each Proceeding in respect of which indemnification is sought hereunder, a Director who is not and was not a party to such Proceeding;

(d) “**Expenses**” means all attorneys’ fees, retainers, court costs, transcript costs, fees of expert witnesses, private investigators and professional advisors (including, without limitation, accountants and investment bankers), travel expenses, duplicating costs, printing and binding costs, costs of preparation of demonstrative evidence and other courtroom presentation aids and devices, costs incurred in connection with document review, organization, imaging and computerization, telephone charges, postage, delivery service fees, and all other disbursements, costs or expenses of the type customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, settling or otherwise participating in, a Proceeding;

(e) “**Liabilities**” means judgments, damages, liabilities, losses, penalties, excise taxes, fines and amounts paid in settlement;

(f) “**Non-Officer Employee**” means any person who serves or has served as an employee or agent of the Corporation, but who is not or was not a Director or Officer;

(g) “**Officer**” means any person who serves or has served the Corporation as an officer of the Corporation appointed by the Board of Directors;

(h) “**Proceeding**” means any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, inquiry, investigation, administrative hearing or other proceeding, whether civil, criminal, administrative, arbitral or investigative; and

(i) “**Subsidiary**” shall mean any corporation, partnership, limited liability company, joint venture, trust or other entity of which the Corporation owns (either directly or through or together with another Subsidiary of the Corporation) either (i) a general partner, managing member or other similar interest or (ii) (A) fifty percent (50%) or more of the voting power of the voting capital equity interests of such corporation, partnership, limited liability company, joint venture or other entity, or (B) fifty percent (50%) or more of the outstanding voting capital stock or other voting equity interests of such corporation, partnership, limited liability company, joint venture or other entity.

#### Section 6.2 *Indemnification of Directors and Officers.*

(a) Subject to the operation of Section 6.4, each Director and Officer shall be indemnified and held harmless by the Corporation to the fullest extent authorized by Delaware Law (but, in the case of any amendment thereto, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), and to the extent authorized in this Section 6.2.

(1) *Actions, Suits and Proceedings Other than By or In the Right of the Corporation.* Each Director and Officer shall be indemnified and held harmless by the Corporation against any and all Expenses and Liabilities that are incurred or paid by such Director or Officer or on such Director’s or Officer’s behalf in connection with any Proceeding or any claim, issue or matter therein (other than an action by or in the right of the Corporation), which such Director or Officer is, or is threatened to be made, a party to or participant in by reason of such Director’s or Officer’s Corporate Status, if such Director or Officer acted in good faith and in a manner such Director or Officer reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful.



(2) *Actions, Suits and Proceedings By or In the Right of the Corporation.* Each Director and Officer shall be indemnified and held harmless by the Corporation against any and all Expenses that are incurred by such Director or Officer or on such Director's or Officer's behalf in connection with any Proceeding or any claim, issue or matter therein by or in the right of the Corporation, which such Director or Officer is, or is threatened to be made, a party to or participant in by reason of such Director's or Officer's Corporate Status, if such Director or Officer acted in good faith and in a manner such Director or Officer reasonably believed to be in or not opposed to the best interests of the Corporation; *provided, however,* that no indemnification shall be made under this Section 6.2(a)(2) in respect of any claim, issue or matter as to which such Director or Officer shall have been finally adjudged by a court of competent jurisdiction to be liable to the Corporation, unless, and only to the extent that, the Court of Chancery of the State of Delaware or another court in which such Proceeding was brought shall determine upon application that, despite adjudication of liability, but in view of all the circumstances of the case, such Director or Officer is fairly and reasonably entitled to indemnification for such Expenses that such court deems proper.

(3) *Survival of Rights.* The rights of indemnification provided by this Section 6.2 shall continue as to a Director or Officer after he or she has ceased to be a Director or Officer and shall inure to the benefit of his or her heirs, executors, administrators and personal representatives.

(4) *Actions by Directors or Officers.* Notwithstanding the foregoing, the Corporation shall indemnify any Director or Officer seeking indemnification in connection with a Proceeding initiated by such Director or Officer only if such Proceeding (including any parts of such Proceeding not initiated by such Director or Officer) was authorized in advance by the Board of Directors, unless such Proceeding was brought to enforce such Officer's or Director's rights to indemnification or, in the case of Directors, advancement of Expenses under these Bylaws in accordance with the provisions set forth herein.

Section 6.3 Indemnification of Non-Officer Employees. Subject to the operation of Section 6.4, each Non-Officer Employee may, in the discretion of the Board of Directors, be indemnified by the Corporation to the fullest extent authorized by Delaware Law, against any or all Expenses and Liabilities that are incurred by such Non-Officer Employee or on such Non-Officer Employee's behalf in connection with any threatened, pending or completed Proceeding, or any claim, issue or matter therein, which such Non-Officer Employee is, or is threatened to be made, a party to or participant in by reason of such Non-Officer Employee's Corporate Status, if such Non-Officer Employee acted in good faith and in a manner such Non-Officer Employee reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. The rights of indemnification provided by this Section 6.3 shall exist as to a Non-Officer Employee after he or she has ceased to be a Non-Officer Employee and shall inure to the benefit of his or her heirs, personal representatives, executors and administrators. Notwithstanding the foregoing, the Corporation may indemnify any Non-Officer Employee seeking indemnification in connection with a Proceeding initiated by such Non-Officer Employee only if such Proceeding was authorized in advance by the Board of Directors.

Section 6.4 *Determination*. Unless ordered by a court, no indemnification shall be provided pursuant to this Article 6 to a Director, to an Officer or to a Non-Officer Employee unless a determination shall have been made that such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal Proceeding, such person had no reasonable cause to believe his or her conduct was unlawful. Such determination shall be made by (a) a majority vote of the Disinterested Directors, even though less than a quorum of the Board of Directors, (b) a committee comprised of Disinterested Directors, such committee having been designated by a majority vote of the Disinterested Directors (even though less than a quorum), (c) if there are no such Disinterested Directors, or if a majority of Disinterested Directors so directs, by independent legal counsel in a written opinion, or (d) by the stockholders of the Corporation.

Section 6.5 *Advancement of Expenses to Directors Prior to Final Disposition*.

(a) The Corporation shall advance all Expenses incurred by or on behalf of any Director in connection with any Proceeding in which such Director is involved by reason of such Director's Corporate Status within 30 days after the receipt by the Corporation of a written statement from such Director requesting such advance or advances from time to time prior to the final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by such Director and shall be preceded or accompanied by an undertaking by or on behalf of such Director to repay any Expenses so advanced if it shall ultimately be determined that such Director is not entitled to be indemnified against such Expenses. Notwithstanding the foregoing, the Corporation shall advance all Expenses incurred by or on behalf of any Director seeking advancement of expenses hereunder in connection with a Proceeding initiated by such Director only if such Proceeding (including any parts of such Proceeding not initiated by such Director) was (i) authorized by the Board of Directors, or (ii) brought to enforce such Director's rights to indemnification or advancement of Expenses under these Bylaws.

(b) If a claim for advancement of Expenses under Section 6.5(a) by a Director is not paid in full by the Corporation within 30 days after receipt by the Corporation of documentation of Expenses and the required undertaking, such Director may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and if successful in whole or in part, such Director shall also be entitled to be paid the expenses of prosecuting such claim. The failure of the Corporation (including its Board of Directors or any committee thereof, independent legal counsel, or stockholders) to make a determination concerning the permissibility of such advancement of Expenses under this Article 6 shall not be a defense to an action brought by a Director for recovery of the unpaid amount of an advancement claim and shall not create a presumption that such advancement is not permissible. The burden of proving that a Director is not entitled to an advancement of expenses shall be on the Corporation.

(c) In any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that the Director has not met any applicable standard for indemnification set forth in Delaware Law.

Section 6.6 *Advancement of Expenses to Officers and Non-Officer Employees Prior to Final Disposition.*

(a) The Corporation may, at the discretion of the Board of Directors, advance any or all Expenses incurred by or on behalf of any Officer or any Non-Officer Employee in connection with any Proceeding in which such person is involved by reason of his or her Corporate Status as an Officer or Non-Officer Employee upon the receipt by the Corporation of a statement or statements from such Officer or Non-Officer Employee requesting such advance or advances from time to time prior to the final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by such Officer or Non-Officer Employee and shall be preceded or accompanied by an undertaking by or on behalf of such person to repay any Expenses so advanced if it shall ultimately be determined that such Officer or Non-Officer Employee is not entitled to be indemnified against such Expenses.

(b) In any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that the Officer or Non-Officer Employee has not met any applicable standard for indemnification set forth in Delaware Law.

Section 6.7 *Contractual Nature of Rights.*

(a) The provisions of this Article 6 shall be deemed to be a contract between the Corporation and each Director and Officer entitled to the benefits hereof at any time while this Article 6 is in effect, in consideration of such person's past or current and any future performance of services for the Corporation. Neither amendment, repeal, modification or elimination of any provision of this Article 6 nor the adoption of any provision of the Certificate of Incorporation inconsistent with this Article 6 shall eliminate or reduce any right conferred by this Article 6 in respect of any act or omission occurring, or any cause of action or claim that accrues or arises or any state of facts existing, at the time of or before such amendment, repeal, modification, elimination or adoption of an inconsistent provision (even in the case of a proceeding based on such a state of facts that is commenced after such time), and all rights to indemnification and advancement of Expenses granted herein or arising out of any act or omission shall vest at the time of the act or omission in question, regardless of when or if any proceeding with respect to such act or omission is commenced. The rights to indemnification and to advancement of expenses provided by, or granted pursuant to, this Article 6 shall continue notwithstanding that the person has ceased to be a director or officer of the Corporation and shall inure to the benefit of the estate, heirs, executors, administrators, legatees and distributees of such person.

(b) If a claim for indemnification under Section 6.1 by a Director or Officer is not paid in full by the Corporation within 60 days after receipt by the Corporation of a written claim for indemnification, such Director or Officer may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim, and if successful in whole or in part, such Director or Officer shall also be entitled to be paid the expenses of prosecuting such claim. The failure of the Corporation (including its Board of Directors or any committee thereof, independent legal counsel, or stockholders) to make a determination concerning the permissibility of such indemnification under this Article 6 shall not be a defense to an action brought by a Director or Officer for recovery of the unpaid amount of an indemnification claim and shall not create a presumption that such indemnification is not permissible. The burden of proving that a Director or Officer is not entitled to indemnification shall be on the Corporation.

(c) In any suit brought by a Director or Officer to enforce a right to indemnification hereunder, it shall be a defense that such Director or Officer has not met any applicable standard for indemnification set forth in Delaware Law.

Section 6.8 *Non-Exclusivity of Rights*. The rights to indemnification and to advancement of Expenses set forth in this Article 6 shall not be exclusive of any other right which any Director, Officer or Non-Officer Employee may have or hereafter acquire under any statute, provision of the Certificate or these bylaws, agreement, vote of stockholders or Disinterested Directors or otherwise.

Section 6.9 *Insurance*. The Corporation may maintain insurance, at its expense, to protect itself and any Director, Officer or Non-Officer Employee against any liability of any character asserted against or incurred by the Corporation or any such Director, Officer or Non-Officer Employee, or arising out of any such person's Corporate Status, whether or not the Corporation would have the power to indemnify such person against such liability under Delaware Law or the provisions of this Article 6.

Section 6.10 *Other Indemnification*. The Corporation's obligation, if any, to indemnify or provide advancement of Expenses to any person under this Article 6 as a result of such person serving, at the request of the Corporation, as a director, partner, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount such person may collect as indemnification or advancement of Expenses from such other corporation, partnership, joint venture, trust, employee benefit plan or enterprise (the "**Primary Indemnitor**"). Any indemnification or advancement of Expenses under this Article 6 owed by the Corporation as a result of a person serving, at the request of the Corporation, as a director, partner, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall only be in excess of, and shall be secondary to, the indemnification or advancement of Expenses available from the applicable Primary Indemnitor(s) and any applicable insurance policies.

## ARTICLE 7 GENERAL PROVISIONS

Section 7.1 *Fixing the Record Date*. (a) 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 60 nor less than 10 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 the 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 foregoing provisions of this Section 7.1(a) at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action 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 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action without a meeting, when no prior action by the Board of Directors is required by Delaware Law, shall be the first date on which a signed consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with Delaware Law. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by Delaware Law, the record date for determining stockholders entitled to consent to corporate action 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.

(c) 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 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

**Section 7.2 *Dividends*.** Subject to any limitations contained in applicable law and the Certificate of Incorporation, the Board of Directors may declare and pay dividends upon the shares of capital stock of the Corporation, which dividends may be paid either in cash, in property or in shares of the capital stock of the Corporation.

**Section 7.3 *Year*.** The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.

**Section 7.4 *Corporate Seal*.** The corporate seal of the Corporation shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware". The seal may be used by causing it or a facsimile thereof to be impressed, affixed or otherwise reproduced.

**Section 7.5 *Voting of Stock Owned by the Corporation*.** The Board of Directors may authorize any person, on behalf of the Corporation, to attend, vote at and grant proxies to be used at any meeting of stockholders of any corporation (except this Corporation) in which the Corporation may hold stock.

---

Section 7.6 *Amendments*. These bylaws or any of them, may be altered, amended or repealed, or new bylaws may be made, by the stockholders entitled to vote thereon at any annual or special meeting thereof or by the Board of Directors.