
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) December 27, 2005

STEPAN COMPANY

(Exact Name of Registrant as Specified in its Charter)

Delaware

(State or Other Jurisdiction of Incorporation)

1-4462

(Commission File Number)

36-1823834

(I.R.S. Employer Identification No.)

**Edens and Winnetka Road,
Northfield, Illinois**

(Address of Principal Executive Offices)

60093

(Zip Code)

Registrant's telephone number, including area code: (847) 446-7500

Former name or former address, if changed since last report: Not Applicable

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

Effective December 27, 2005, the Board of Directors (“Board”) of Stepan Company (“Stepan”) approved the Restated Certificate of Incorporation of Stepan Company and the Amended and Restated Bylaws of Stepan Company.

The Restated Certificate of Incorporation only restates and integrates and does not further amend the provisions of the Certificate of Incorporation of Stepan, as previously amended and supplemented, and there is no discrepancy between the provisions of the existing Certificate of Incorporation and the provisions of the Restated Certificate of Incorporation. A copy of the Restated Certificate of Incorporation of Stepan Company is attached as Exhibit 3(i) hereto and incorporated herein by reference.

The changes to the Amended and Restated Bylaws were to increase the size of the Board from “seven” to “no more than eight” members, eliminate the Board’s Executive Committee, conform the description of each Board committee to its respective committee charter, eliminate the requirement that the Chairman of the Board and the Chief Executive Officer be the same individual, increase the dollar amounts of authorizations for the Chairman of the Board, the Chief Executive Officer and the President for certain corporate actions to \$1 million, clarify the indemnity provisions, and add other language consistent with the Sarbanes-Oxley Act of 2002, current Stepan practices and corporate governance principles. A copy of the Amended and Restated Bylaws of Stepan Company is attached as Exhibit 3(ii) hereto and incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(c) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
3(i)	Restated Certificate of Incorporation of Stepan Company effective December 27, 2005
3(ii)	Amended and Restated Bylaws of Stepan Company effective December 27, 2005

SIGNATURE

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

STEPAN COMPANY

By: /s/ Kathleen M. Owens

Kathleen M. Owens
Assistant Secretary

Date: December 28, 2005

EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
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**RESTATED CERTIFICATE OF INCORPORATION
OF
STEPAN COMPANY**

STEPAN COMPANY, a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The name of the corporation is STEPAN COMPANY and the name under which the corporation was originally incorporated was Delaware Stepan Chemical Company. The date of filing its original Certificate of Incorporation with the Secretary of State of Delaware was February 19, 1959.

2. This Restated Certificate of Incorporation only restates and integrates and does not further amend the provisions of the Certificate of Incorporation of this corporation as heretofore amended or supplemented and there is no discrepancy between those provisions and the provisions of this Restated Certificate of Incorporation.

3. The text of the Certificate of Incorporation as amended or supplemented heretofore is hereby restated without further amendments or changes to read as herein set forth in full:

ARTICLE I

The name of the corporation is STEPAN COMPANY.

ARTICLE II

Its principal office in the State of Delaware is located at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801 in the County of New Castle. The name and address of its registered agent is The Corporation Trust Company.

ARTICLE III

The nature of the business, or objects or purposes to be transacted, promoted or carried on are

To manufacture, compound, prepare, buy, sell, deal in and use chemicals, alkalis, dye stuffs, colors, essential oils, insecticides, fungicides, pharmaceuticals, drugs and any and all other chemical products, by-products, allied products and compounds, together with all allied and interdependent lines of business; and to manufacture, sulphonate, hydrogenate, blow, compound, prepare, buy, sell, deal in and use animal, marine, mineral and vegetable oils.

To manufacture, purchase or otherwise acquire, and to hold, own, use, sell or otherwise dispose of and deal in and with, at wholesale and retail, goods, wares and merchandise and personal property of every class and description.

To acquire, and pay for in cash, stock or bonds of this corporation or otherwise, the good will, rights, assets and property, and to undertake or assume the whole or any part of the obligations or liabilities of any person, firm, association or corporation.

To acquire, hold, use, sell, assign, lease, grant licenses in respect of, mortgage or otherwise dispose of letters patent of the United States or any foreign country, patent rights, licenses and privileges, inventions, improvements and processes, copyrights, trade-marks and trade names, relating to or useful in connection with any business of this corporation.

To acquire by purchase, subscription or otherwise, and to receive, hold, own, guarantee, sell, assign, exchange, transfer, mortgage, pledge or otherwise dispose of or deal in and with any of the shares of the capital stock, or any voting trust certificates in respect of the shares of capital stock, scrip, warrants, rights, bonds, debentures, notes, trust receipts and other securities, obligations, choses in action and evidences of indebtedness or interest issued or created by any corporations, joint stock companies, syndicates, associations, firms, trusts or persons, public or private, or by the government of the United States of America, or by any foreign government, or by any state, territory, province, municipality or other political subdivision or by any governmental agency, and as owner thereof to possess and exercise all the rights, powers and privileges of ownership, including the right to execute consents and vote thereon, and to do any and all acts and things necessary or advisable for the preservation, protection, improvement and enhancement in value thereof. Nothing herein contained shall authorize the corporation to engage in the business of discounting bills and notes or the buying and selling of bills of exchange.

To enter into, make and perform contracts of every kind and description with any person, firm, association, corporation, municipality, county, state, body politic or government or colony or dependency thereof.

To borrow or raise moneys for any of the purposes of the corporation and, from time to time, without limit as to amount to draw, make, accept, endorse, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness, and to secure the payment of any thereof and of the interest thereon by mortgage upon or pledge, conveyance or assignment in trust of the whole or any part of the property of the corporation, whether at the time owned or thereafter acquired, and to sell, pledge or otherwise dispose of such bonds or other obligations of the corporation for its corporate purposes.

To loan to any person, firm or corporation any of its surplus funds, either with or without security, provided, that no loan of money shall be made by the corporation to any officer of the corporation.

To purchase, hold, sell and transfer the shares of its own capital stock; provided it shall not use its funds or property for the purchase of its own shares of capital stock when such use would cause any impairment of its capital except as otherwise permitted by law, and provided further that shares of its own capital stock belonging to it shall not be voted upon directly or indirectly.

To have one or more offices, to carry on all or any of its operations and business and without restriction or limit as to amount to purchase or otherwise acquire, hold, own, mortgage, sell, convey, or otherwise dispose of real and personal property of every class and description in any of the states, districts, territories or colonies of the United States, and in any and all foreign countries, subject to the laws of such state, district, territory, colony or country.

In general, to carry on any other business in connection with the foregoing, and to have and exercise all the powers conferred by the laws of Delaware upon corporations formed under the General Corporation Law of the State of Delaware, and to do any or all the things hereinbefore set forth to the same extent as natural persons might or could do.

The objects and purposes specified in the foregoing clauses shall, except where otherwise expressed, be in nowise limited or restricted by reference to, or inference from the terms of any other clause in this certificate of incorporation, but the objects and purposes specified in each of the foregoing clauses of this article shall be regarded as independent objects and purposes.

ARTICLE IV

The total number of shares of stock which the corporation shall have authority to issue is Thirty Two Million (32,000,000) shares, of which Thirty Million (30,000,000) shares shall be Common Stock of a par value of \$1.00 per share, and Two Million (2,000,000) shares shall be Preferred Stock without par value.

No holder of shares of any class of the corporation shall have any preemptive or preferential right to subscribe to or purchase any shares of any class of the corporation, whether now or hereafter authorized, or any shares or securities of any kind, whether or not convertible into or evidencing or carrying any right to subscribe to or purchase shares of any class of the corporation now or hereafter authorized, other than such rights, if any, as the board of directors in its discretion may from time to time determine and at such price or prices, permitted by law, as the board of directors may from time to time determine, but any and all such shares and securities may be issued, sold or disposed of from time to time by the board of directors to such persons, firms and corporations and for such consideration, permitted by law, whether cash, services, property or otherwise, as the board of directors may from time to time determine.

The designations and the powers, preferences and rights, and the qualifications, limitations or restrictions thereof shall be as follows:

A. COMMON STOCK

1. Dividend Rights

Subject to the prior rights of the holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of the assets of the corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. Liquidation Rights

Upon the voluntary or involuntary dissolution, liquidation or winding-up of the corporation, after the payment in full of all preferential amounts to which the holders of all classes of stock at the time outstanding having prior rights thereto shall be entitled, the remainder of the assets of the corporation shall be distributed equally among the shares of Common Stock at the time outstanding.

3. Voting Rights

At all meetings of the stockholders, each holder of record of common stock shall be entitled to vote and have one vote for each share held by him of record.

B. PREFERRED STOCK

The Board of Directors of the corporation shall have authority to fix by resolution or resolutions in accordance with the laws of the State of Delaware, the designations and the powers, preferences and rights, and the qualifications, limitations or restrictions of the Preferred Stock, including (without limitation) the authority to issue from time to time one or more series of the Preferred Stock and to fix any dividend, liquidation, redemption, voting or conversion characteristics of the Preferred Stock of any series thereof.

ARTICLE V

The minimum amount of capital with which the corporation will commence business is One Thousand Dollars (\$1,000).

ARTICLE VI

[Intentionally omitted]

ARTICLE VII

The corporation is to have perpetual existence.

ARTICLE VIII

The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

ARTICLE IX

In furtherance and not in limitation of the powers conferred by statute, the board of directors is expressly authorized:

To make, alter or repeal the by-laws of the corporation.

To authorize and cause to be executed mortgages and liens upon the real and personal property of the corporation.

To set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and to abolish any such reserve in the manner in which it was created.

By resolution passed by a majority of the whole board, to designate one or more committees, each committee to consist of two or more directors of the corporation, which, to the extent provided in the resolution or in the by-laws of the corporation, shall have and may exercise the powers 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. Such committee or committees shall have such name or names as may be stated in the by-laws of the corporation or as may be determined from time to time by resolution adopted by the board of directors.

When and as authorized by the affirmative vote of the holders of a majority of the stock issued and outstanding having voting power given at a stockholders' meeting called for that purpose, or when authorized by the written consent of the holders of a majority of the voting stock issued and outstanding, to sell, lease or exchange all of the property and assets of the corporation, including its good will and its corporate franchises, upon such terms and conditions and for such consideration, which may be in whole or in part shares of stock in, and or other securities of, any other corporation or corporations, as its board of directors shall deem expedient and for the best interests of the corporation.

ARTICLE X

Section 1. No director of the corporation shall be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except (i) for any breach of a director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of Delaware, or (iv) for any transaction from which a director derived an improper personal benefit.

Section 2. The corporation shall indemnify, in accordance with and to the full extent now or hereafter permitted by law, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including, without limitation, an action by or in the right of the corporation), by reason of his acting as a director or officer of the corporation (and the corporation, in the discretion of the Board of Directors, may so indemnify a person by reason of the fact that he is or was an employee of the corporation or is or was serving at the request of the corporation in any other capacity for or on behalf of the corporation) against any liability or expense actually and reasonably incurred by such person in respect thereof. Such indemnification is not exclusive of any other right to indemnification provided by law or otherwise. The right to indemnification conferred by this Section shall be deemed to be a contract between the corporation and each person referred to herein.

Section 3. No amendment to or repeal of these provisions shall apply to or have any effect on the liability or alleged liability of any person for or with respect to any acts or omissions of such persons occurring prior to such amendment.

ARTICLE XI

In the absence of fraud, no contract or transaction between this corporation and any other corporation shall be affected by the fact that the directors of this corporation or any of them are interested in or are directors or officers of such other corporation, and any director individually may be a party to, or may be interested in any such contract or transaction of this corporation; and no such contract or transaction of this corporation with any person or persons, firm or association, shall be affected by the fact that any director of this corporation is a party to, or interested in such contract or transaction, or in any way connected with such person or persons, firm or association, provided that the interest in any such contract or transaction of any such director shall be fully disclosed, and that such contract or other transaction shall be authorized or ratified by the vote of a sufficient number of the directors of this corporation not so interested;

and each and every person who may become a director in this corporation is hereby relieved from any liability that might otherwise exist from thus contracting with this corporation for the benefit of himself or any firm, association or corporation in which he may be in any wise interested.

ARTICLE XII

Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or of any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for this corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under the provisions of Section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as the said Court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the Court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this corporation, as the case may be, and also on this corporation.

ARTICLE XIII

Meetings of stockholders may be held without the State of Delaware, if the by-laws so provide. The books of the corporation may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be from time to time designated by the board of directors or in the by-laws of the corporation. Elections of directors need not be by ballot unless the by-laws of the corporation shall so provide.

ARTICLE XIV

The corporation reserves the right to amend, alter, change or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

4. This Restated Certificate of Incorporation was duly adopted by the Board of Directors in accordance with Section 245 of the General Corporation Law of the State of Delaware.

5. This Restated Certificate of Incorporation shall be effective on December 27, 2005.

IN WITNESS WHEREOF, said STEPAN COMPANY has caused this Restated Certificate of Incorporation to be signed by Nicholas J. Nedeau, its Vice President, General Counsel and Secretary, this 27th day of December, 2005.

Name: Nicholas J. Nedeau
Its: Vice President, General Counsel and Secretary

**AMENDED AND RESTATED BY-LAWS
STEPAN COMPANY
A DELAWARE CORPORATION**

ARTICLE I

OFFICES

Section 1. Registered Office in Delaware. The address of the registered office of Stepan Company (the "Corporation") in the State of Delaware and the registered agent of the Corporation at such address shall be as provided in the Amended and Restated Certificate of Incorporation of the Corporation, as it may be amended or restated from time to time (the "Certificate of Incorporation").

Section 2. Other Offices. The Corporation may have such other offices, either within or without the State of Delaware, as the business of the Corporation may require from time to time.

ARTICLE II

STOCKHOLDERS

Section 1. Annual Meeting. The annual meeting of the stockholders for the election of directors and for the transaction of such other business as may properly come before the meeting shall be held on such date and at such time as the Board of Directors of the Corporation (the "Board") shall determine from time to time. If the election of directors shall not be held on the day designated herein for any annual meeting, or at any adjournment thereof, the Board shall cause the election to be held at a special meeting of the stockholders as soon thereafter as conveniently may be.

Section 2. Special Meetings. Special meetings of the stockholders for any purpose or purposes, unless otherwise prescribed by law or by the Certificate of Incorporation may be called by the Chairman of the Board, by the Board, or by the holders of shares of the Corporation's common stock or preferred stock or any other stock of the Corporation as may be designated by the Board (the "Capital Stock") representing not less than one-third of the voting power of all the outstanding shares of the Capital Stock.

Section 3. Place of Meeting. Meetings of the stockholders for the election of directors and for all other purposes shall be held at the Corporation's principal executive offices in Northfield, Illinois or at such other place within or without the State of Illinois, as the Board shall designate.

Section 4. Meetings by Remote Communication. The Board may, in its sole discretion, determine that any meeting of the stockholders shall not be held at any place, but may instead be held solely by means of remote communication, subject to such guidelines and procedures as the Board may adopt from time to time.

Section 5. Advance Notification of Proposals at Stockholders' Meetings. If a stockholder desires to submit a proposal for consideration at the annual or special stockholders' meeting, or to nominate persons for election as directors at any stockholders' meeting duly called for the election of directors, written notice of such stockholder's intent to make such a proposal or nomination must be given and received by the Secretary at the principal executive offices of the Corporation either by personal delivery or by United States mail not later than (a) with respect to an annual meeting of stockholders, 90 days prior to the anniversary date of the immediately preceding annual meeting, and (b) with respect to a special meeting of stockholders, the close of business on the tenth day following the date on which notice of such meeting is first given to stockholders. Each notice shall describe the proposal or nomination in sufficient detail for the proposal or nomination to be summarized on the agenda for the meeting and shall set forth (x) the name and address, as it appears on the books of the Corporation, of the stockholder making the proposal or nomination; (y) a representation that such stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to present such proposal or nomination; and (z) the class and number of shares of Capital Stock that are beneficially owned by the stockholder. In addition, in the case of a stockholder proposal, the notice shall set forth the reasons for conducting such proposed business at the meeting and any material interest of the stockholder in such business. In the case of a director nomination, the notice shall set forth: (A) the name and address of the person to be nominated; (B) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder; (C) such other information regarding such proposed director nominee that would be required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission; and (D) the consent of each director nominee to serve if elected. The presiding officer of the annual or special meeting shall, if the facts warrant, refuse to acknowledge a proposal or nomination not made in compliance with the foregoing procedure, and any proposal or nomination not properly brought before the meeting shall not be transacted. Nothing contained in this Section 5 shall be deemed to decrease any time period set forth in the Securities Exchange Act of 1934, as amended, or any rule or regulation of the Securities and Exchange Commission promulgated thereunder.

Section 6. Notice of Stockholders' Meetings. Written or printed notice stating the place, day and hour of each meeting of the stockholders, and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be given not less than ten nor more than 60 days before the date of the meeting, or, in case of a merger or consolidation, not less than 20 nor more than 60 days before the date of the meeting, either personally or by mail or by a form of electronic transmission consented to by the stockholders, by or at the direction of the Chairman of the Board, the President, the Secretary, or the persons calling the meeting, to each stockholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail and addressed to the stockholder at his address as it appears on the records of the Corporation, with postage thereon prepaid.

Section 7. Closing of Transfer Books and Fixing Record Date. The Board shall have power to close the stock transfer books of the Corporation for a period which shall not be more than 60 nor less than ten days preceding the date of any meeting of stockholders, or the date for payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of Capital Stock shall go into effect, or a date in connection with

obtaining the consent of stockholders for any purpose, or a date for the purpose of any other lawful action. In lieu of closing the stock transfer books as aforesaid, the Board may fix in advance a date, which shall not be more than 60 nor less than ten days preceding the date of any meeting of stockholders, or the date for the payment of any dividend, or the date for the allotment of rights, or the date when any change or conversion or exchange of Capital Stock shall go into effect, or a date in connection with obtaining the consent of stockholders for any purpose, or a date for the purpose of any other lawful action, as a record date for the determination of stockholders entitled to notice of, and to vote at, any such meeting and any adjournment thereof, or entitled to receive payment of any such dividend, or to any such allotment of rights, or to exercise the rights in respect of any such change, conversion or exchange of Capital Stock, or to give such consent, or to take such lawful action, and in such case such stockholders, and only such stockholders, as shall be stockholders of record on the date so fixed shall be entitled to such notice of, and to vote at, such meeting and any adjournment thereof, or to receive payment of such dividend, or to receive such allotment of rights, or to exercise such rights, or to give such consent, or to take such lawful action, as the case may be, notwithstanding any transfer of any stock on the books of the Corporation after any such record date fixed as aforesaid.

Section 8. Voting Lists. The officer or agent having charge of the stock ledgers of the Corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting of stockholders, arranged by class and series of Capital Stock in alphabetical order within each series or class, and showing the address of each stockholder and the number of shares of such series or class of Capital Stock registered in the name of each stockholder. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting during ordinary business hours for a period of at least ten days prior to the meeting of stockholders, either at a place within the city, town or village where the meeting of stockholders is to be held, and which place shall be specified in the notice of the meeting, or, if not so specified, at the place where said meeting is to be held, and the list shall also be produced and kept at the time and place of the meeting of stockholders during the whole time thereof, and may be inspected by any stockholder who is present thereat. The original or duplicate share ledger or transfer book shall be the only evidence as to who are the stockholders entitled to examine such list or share ledgers or transfer books or to vote at the meeting of stockholders.

Section 9. Quorum and Voting. Holders of shares representing a majority of the voting power of the outstanding shares of Capital Stock entitled to vote at a meeting of the stockholders represented in person or by proxy, shall constitute a quorum at such meeting of stockholders, except as otherwise provided by law, the Certificate of Incorporation, or these By-laws. If a quorum is present, (a) in all matters other than the election of directors, the affirmative vote of holders of shares having a majority of the voting power of the shares of Capital Stock 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, unless the vote of a greater number is required by law or by the Certificate of Incorporation, and (b) directors shall be elected by a plurality of the voting power of the shares of Capital Stock present in person or represented by proxy at the meeting and entitled to vote on the election of directors. If shares representing less than a majority of the voting power of the outstanding shares of Capital Stock are represented at a meeting of stockholders, shares with a majority of the voting power of the shares so represented may adjourn the meeting from time to time without further notice.

Section 10. Voting of Shares. At each meeting of the stockholders, each holder of Capital Stock, which shall, at the time, possess voting powers, shall be entitled to vote, in person or by proxy, and shall have the number of votes provided by the Certificate of Incorporation, any applicable Certificate of Designation for the Corporation's preferred stock or as otherwise required by law for each such share of Capital Stock registered in his name on the date the stock transfer books were closed preceding such meeting for the purpose of determining stockholders entitled to vote at said meeting, or on the record date fixed for the purpose of determining stockholders entitled to vote at such meeting or, in the event that the stock transfer books shall not be so closed or a record date so fixed, on the date next preceding the date notice of such meeting was given; *provided, however*, that, except where the stock transfer books shall have been so closed, or a record date shall have been so fixed, no share of stock shall be voted on at any election of directors, which shall have been transferred on the books of the Corporation within 20 days next preceding such election of directors, and no proxy shall be voted or acted upon after three years from its date unless such proxy provides for a longer period. The vote for directors and, upon the demand of any stockholder entitled to vote, the vote upon any question before any stockholders' meeting, shall be by ballot.

Section 11. Voting of Shares of Certain Holders. (a) Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent, or proxy as the by-laws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine.

(b) Shares standing in the name of a deceased person may be voted by his administrator or executor, either in person or by proxy. Shares standing in the name of a guardian, conservator, or trustee may be voted by such fiduciary, either in person or by proxy.

(c) A stockholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

Section 12. Proxies. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy. Such proxy shall be filed with the Secretary before such meeting of stockholders at such time as the Board may require.

ARTICLE III

DIRECTORS

Section 1. General Powers. The property, business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all such powers of the Corporation or by these By-laws and do all such lawful acts and things that are not by law or by the Certificate of Incorporation directed or required to be exercised or done by the stockholders.

Section 2. Number and Tenure. The Board shall consist of no more than eight (8) members, but the number of directors may, from time to time, be altered by amendment of these By-laws. The directors shall serve staggered three-year terms. The directors shall be classified in respect to the time for which they shall severally hold office, into three classes, each class to

consist of one-third (1/3) in number of the directors as near as may be. At each annual election, the successors to the class of directors whose term expires in that year shall be elected for the term of three years. The directors shall be elected by the stockholders at the stockholders' annual meeting, except as provided in Section 4 of this Article III, and each director elected shall hold office until his successor is duly elected and qualified.

Section 3. Place of Meetings; Records. The directors may hold their meetings and have one or more offices and keep the books of the Corporation (except the original or duplicate stock ledger) outside the State of Delaware at such place or places as they may from time to time determine. The directors may determine that their meetings shall not be held at any place, but may instead be held solely by means of remote communication, subject to such guidelines and procedures as the Board may adopt from time to time.

Section 4. Vacancies. Except as otherwise provided by law, a vacancy in the office of any director, because of death, resignation, or otherwise, and newly created directorships resulting from any increase in the authorized number of directors, may be filled by the vote of a majority of the remaining directors, though less than a quorum, and the directors so chosen shall hold office until the next annual meeting of the stockholders and until their successors are duly elected and qualified.

Section 5. Regular Meetings. Regular meetings of the Board may be held without notice immediately after the annual meeting of the stockholders and at such other time and place as shall from time to time be determined by the Board. The Board shall hold at least four regular meetings in each year.

Section 6. Special Meetings. Special meetings of the Board may be called by or at the request of the Chairman of the Board, the President or any two directors. The person or persons authorized to call special meetings of the Board may fix the time and place, either within or without the State of Delaware, for holding such special meeting of the Board.

Section 7. Notice. Notice of any regular or special meeting of the Board shall be given at least three days prior thereto. Such notice shall be in writing and shall be given personally or mailed or faxed or sent by electronic transmission (if previously agreed to by the director) to each director at the director's business address or at such other address as the director shall specify to the Secretary. If mailed, such notice shall be deemed to be given when deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid. If notice be given by facsimile or electronic transmission, such notice shall be deemed to be given when transmitted. Any director may waive notice of any meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 8. Quorum. A majority of the Board shall constitute a quorum for the transaction of business at any meeting of the Board, *provided* that, if less than a quorum of the directors are present at said meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

Section 9. Manner of Acting. Except where otherwise provided in these By-laws, the act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board.

Section 10. Compensation. Directors employed by the Corporation shall not receive compensation for their services as directors or as members of any committee of the Board on which they serve. Directors not employed by the Corporation shall be paid reasonable compensation for services as directors and as members of any committee of the Board on which such directors serve, which compensation shall be fixed by resolution of the Board. Directors shall be reimbursed for reasonable expenses incurred in attending meetings of the Board and meetings of committees appointed by the Board. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

ARTICLE IV

COMMITTEES

Section 1. Audit Committee. (a) The Board at any regular or special meeting shall, by resolution adopted by a majority of the Board, designate three or more independent directors to constitute an Audit Committee and appoint one of the directors so designated as the chairman of the Audit Committee. Membership on the Audit Committee shall be restricted to those directors who are independent of the management of the Corporation as set forth in Section 301 of the Sarbanes-Oxley Act of 2002 and the rules and applicable exchange's listing requirements promulgated thereunder and are free from any relationship that, in the opinion of the Board, would interfere with the exercise of the independent judgment as a member of the Audit Committee. Vacancies on the Audit Committee may be filled by the Board. Each member of the Audit Committee shall hold office until such member's successor is duly elected, or until such member's death, resignation or removal from the Audit Committee by the Board, or such member ceases to be an independent director. Any member of the Audit Committee may be removed from the Audit Committee by resolution adopted by a majority of the Board whenever in its judgment (1) such Audit Committee member is no longer an independent director or free from any relationship with the Corporation or any of its officers prohibited by this Section 1 or (2) the best interests of the Corporation would be served thereby. The compensation, if any, of members of the Audit Committee shall be established by resolution of the Board in accordance with Section 10 of Article III.

(b) The duties of the Audit Committee shall be as set forth in the Audit Committee Charter.

(c) Minutes of all meetings of the Audit Committee shall be submitted to the Board. The minute book of the Audit Committee shall at all times be open to the inspection of any director.

(d) The Audit Committee shall meet regularly, at least four times per year, at the call of its chairman or any two members of the Audit Committee. The Audit Committee shall meet on such other occasions as required by the Audit Committee Charter. A majority of the members of the Audit Committee shall constitute a quorum for the transaction of business and the act of a majority of those present shall constitute the act of the Audit Committee.

Section 2. Compensation and Development Committee. (a) The Board at any regular or special meeting shall, by resolution adopted by a majority of the Board, designate three or more independent directors to constitute a Compensation and Development Committee and appoint one of the directors so designated as the chairman of the Compensation and Development Committee. Membership on the Compensation and Development Committee shall be restricted to those directors who are independent of the management of the Corporation as set forth in Section 301 of the Sarbanes-Oxley Act of 2002 and the rules and applicable exchange's listing requirements promulgated thereunder and are free from any relationship that, in the opinion of the Board, would interfere with the exercise of the independent judgment as a member of the Compensation and Development Committee. Vacancies on the Compensation and Development Committee may be filled by the Board. Each member of the Compensation and Development Committee shall hold office until such member's successor is duly elected, or until such member's death, resignation, or removal from the Compensation and Development Committee by the Board, or such member ceases to be an independent director. Any member of the Compensation and Development Committee may be removed from the Compensation and Development Committee by resolution adopted by a majority of the Board whenever in its judgment (1) such Compensation and Development Committee member is no longer an independent director or free from any relationship with the Corporation or any of its officers prohibited by this Section 2 or (2) the best interests of the Corporation would be served thereby. The compensation, if any, of members of the Compensation and Development Committee shall be established by resolution of the Board in accordance with Section 10 of Article III.

(b) The duties of the Compensation and Development Committee shall be as set forth in the Compensation and Development Committee Charter.

(c) The Compensation and Development Committee shall meet, at least two times per year, at the call of its chairman or any two members of the Compensation and Development Committee. A majority of the members of the Compensation and Development Committee shall constitute a quorum and an act of the majority of those present shall constitute the act of the Compensation and Development Committee.

Section 3. Nominating and Corporate Governance Committee. (a) The Board at any regular or special meeting may, by resolution adopted by a majority of the Board, designate three or more independent directors to constitute a Nominating and Corporate Governance Committee and appoint one of the directors so designated as the chairman of the Nominating and Corporate Governance Committee. Membership on the Nominating and Corporate Governance Committee shall be restricted to those directors who are independent of the management of the Corporation as set forth in Section 301 of the Sarbanes-Oxley Act of 2002 and the rules and applicable exchange's listing requirements promulgated thereunder and are free from any relationship that, in the opinion of the Board, would interfere with the exercise of the independent judgment as a member of the Nominating and Corporate Governance Committee. Vacancies on the Nominating and Corporate Governance Committee may be filled by the Board. Each member of the Nominating and Corporate Governance Committee shall hold office until such member's successor is duly elected, or until such member's death, resignation, or removal from the Nominating and Corporate Governance Committee by the Board, or until such member ceases to be a director. Any member of the Nominating Committee may be removed by resolution of the Board whenever in its judgment (1) such Nominating and Corporate Governance Committee member is no longer an independent director or free from any relationship with the Corporation

or any of its officers prohibited by this Section 3 or (2) the best interests of the Corporation would be served thereby. The compensation, if any, of members of the Nominating and Corporate Governance Committee shall be established by resolution of the Board in accordance with Section 10 of Article III.

(b) The duties of the Nominating and Corporate Governance Committee shall be as set forth in the Nominating and Corporate Governance Committee Charter.

(c) The Nominating and Corporate Governance Committee shall meet, at least two times per year, at the call of its chairman or any two members of the Nominating and Corporate Governance Committee. A majority of the members of the Nominating and Corporate Governance Committee shall constitute a quorum and an act of the majority of those present shall constitute the act of the Nominating and Corporate Governance Committee.

(d) Nothing in these By-laws is intended to prevent any individual director from making a recommendation of a person to be a director of the Corporation either to the Nominating and Corporate Governance Committee or to the Board.

Section 4. Additional Committees. The Board may, by resolution adopted by a majority of the Board, from time to time create and appoint such committees in addition to the Audit, Compensation and Development, and Nominating and Corporate Governance Committees as it deems desirable. Each additional committee shall bear such designation, shall have such powers, and shall perform such duties, not inconsistent with these By-laws, the law or the Certificate of Incorporation, as may be assigned to it by the Board; provided that no such additional committee may exercise the powers of the Board in the management of the business and affairs of the Corporation except such as shall be expressly delegated to it. The Board shall have the power to change the members of any such additional committee at any time, to fill vacancies, and to discharge any such additional committee at any time. The compensation, if any, of members of any such additional committee shall be established by resolution of the Board in accordance with Section 10 of Article III. A majority of the members of any such committee shall constitute a quorum for the transaction of business and the act of a majority of those present shall constitute the act of such additional committee.

ARTICLE V

OFFICERS

Section 1. Generally. The officers of the Corporation shall be elected by the Board and shall consist of a Chairman of the Board, Chief Executive Officer, President and a Secretary. 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 Treasurers, one or more Assistant Secretaries, a Controller and such other officers as the Board may from time to time determine. Notwithstanding the foregoing, by specific action the Board may authorize the Chief Executive Officer to appoint any person to any office other than Chairman of the Board, Chief Executive Officer or Secretary. 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 Corporation 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 2. Election and Term of Office. The officers of the Corporation shall be elected annually by the Board at the first meeting of the Board held after each annual meeting of stockholders. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently may be. Each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall resign or shall have been removed in the manner hereinafter provided.

Section 3. Removal. Any officer may be removed, either with or without cause, at any time by the Board, the Chairman of the Board, the Chief Executive Officer or the President, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

Section 4. Resignations. Any officer may resign at any time by giving written notice to the Board, the Chairman of the Board, the Chief Executive Officer or the President. Such resignation shall take effect at the time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board, the Chairman of the Board, the Chief Executive Officer or the President for the unexpired portion of the term, and new offices may be created and filled by the Board, the Chairman of the Board, the Chief Executive Officer or the President.

Section 6. Chairman of the Board. The Chairman of the Board shall preside at all meetings of the stockholders and of the Board and he shall have such other duties and responsibilities as may be assigned to him by the Board. The Chairman of the Board may delegate to any qualified person authority to chair any meeting of the stockholders, either on a temporary or a permanent basis. In case of the inability or failure of the Chairman of the Board to perform the duties of that office, the Chief Executive Officer shall perform the duties of the Chairman of the Board, unless otherwise determined by the Board.

Section 7. President. The President shall be responsible for the active management and direction of the business and affairs of the Corporation.

Section 8. Execution of Documents and Action with Respect to Securities of Other Corporations. Each of the Chairman of the Board, the Chief Executive Officer and the President shall have and is hereby given, full power and authority, except as otherwise required by law or directed by the Board, (a) to execute, on behalf of the Corporation, all duly authorized contracts, agreements, deeds, conveyances or other obligations of the Corporation, applications, consents, proxies and other powers of attorney, and other documents and instruments, and (b) to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of stockholders (or with respect to any action of such stockholders) of any other corporation in which the Corporation may hold securities and otherwise to exercise any and all rights and powers which the Corporation may possess by reason of its ownership of securities of such other corporation. In addition, each of the Chairman of the Board, the Chief Executive Officer and the President may delegate to other officers, employees and agents of the Corporation the power and authority

to take any action which the Chairman of the Board, the Chief Executive Officer or the President is authorized to take under this Section 8, with such limitations as the Chairman of the Board, the Chief Executive Officer or the President, as the case may be, may specify; such authority so delegated by the Chairman of the Board, the Chief Executive Officer or the President shall not be re-delegated by the person to whom such execution authority has been delegated.

Section 9. Vice President. Each Vice President, however titled, shall perform such duties and services and shall have such authority and responsibilities as shall be assigned to or required from time to time by the Board, the Chairman of the Board, the Chief Executive Officer or the President. The Vice Presidents may be given additional title designations descriptive of their general duties.

Section 10. Secretary and Assistant Secretaries. (a) The Secretary shall attend all meetings of the stockholders and all meetings of the Board and record all proceedings of the meetings of the stockholders and of the Board and shall perform like duties for the standing committees when requested by the Board. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and meetings of the Board. The Secretary shall perform such duties as may be prescribed by the Board. The Secretary shall have charge of the corporate seal and authority to affix the seal to any instrument. The Secretary or any Assistant Secretary may attest to the corporate seal by handwritten or facsimile signature. The Secretary shall keep and account for all books, documents, papers and records of the Corporation except those for which some other officer or agent has been designated or is otherwise properly accountable. The Secretary shall have authority to sign the Corporation's stock certificates.

(b) Assistant Secretaries, in the order of their seniority, shall assist the Secretary and, if the Secretary is unavailable or fails to act, perform the duties and exercise the authorities of the Secretary.

Section 11. Treasurer and Assistant Treasurers. (a) The Treasurer, or such Vice President who is designated by the Board to perform the duties of the Treasurer, shall have the custody of the funds and securities belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Treasurer with the prior approval of the Board, the Chairman of the Board, the Chief Executive Officer or the President. The Treasurer shall disburse the funds and pledge the credit of the Corporation as may be directed by the Board and shall render to the Board, as and when required by it, an account of all transactions by the Treasurer.

(b) Assistant Treasurers, in the order of their seniority, shall assist the Treasurer and, if the Treasurer is unable or fails to act, perform the duties and exercise the powers of the Treasurer.

Section 12. The Controller. The Controller, or such Vice President who is designated by the Board to perform the duties of the Controller, shall maintain adequate records of all assets, liabilities and other financial transactions of the Corporation and, in general, shall perform all duties incident to the office of Controller and such other duties as from time to time may be assigned to him by the Board, the Chairman of the Board, the President, or the Vice President, Finance.

CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 1. Contracts. The Board may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. However, each of the Chairman of the Board, the Chief Executive Officer and the President is specifically empowered to execute the following documents or instruments in the ordinary course of business by and on behalf of the Corporation:

(a) Powers of attorney appointing persons, firms or corporations as attorney-in-fact of the Corporation, which powers of attorney may be necessary or appropriate in connection with the import or export of goods by or for the Corporation.

(b) Deeds or any other instruments or conveyance conveying real property or interests therein to or from the Corporation if such real property or interests therein have a value or purchase price not in excess of \$1,000,000.

(c) Leases pursuant to which the Corporation leases, as lessor or lessee, property (real, personal or mixed) if such leases call for the payment by or to the Corporation of rental in the amount of not more than \$1,000,000 per year.

(d) Any and all other written agreements, documents or instruments deemed necessary or appropriate to the conduct of the business of the Corporation in the ordinary course, and within the ordinary or customary duties of the Chairman of the Board, the Chief Executive Officer, the President or the Vice President executing the same.

Section 2. Loans. No loans shall be contracted on behalf of the Corporation and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board. Such authority may be general or confined to specific instances. However, each of the Chairman of the Board, the President, the Vice President—Finance and the Treasurer, is authorized to borrow funds in the ordinary course of business and to execute the necessary related documents or instruments by and on behalf of the Corporation:

(a) up to the maximum amount provided in any agreement previously approved by the Board; or

(b) up to a maximum of \$1,000,000 on an open account, under a line of credit or under an agreement not previously authorized by the Board.

Section 3. Checks, Drafts, etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board.

Section 4. Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may select.

ARTICLE VII

CERTIFICATES FOR SHARES AND THEIR TRANSFER

Section 1. Certificates. Certificates representing shares of Capital Stock shall be in such form as may be determined from time to time by the Board, subject to applicable legal requirements. Such certificates shall be numbered and their issuance recorded in the books of the Corporation, and such certificate shall exhibit the holder's name and the number of shares and shall be signed by, or in the name of the Corporation by, the Chairman of the Board, the Chief Executive Officer or the President and the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer of the Corporation and shall bear the corporate seal. Any or all of the signatures and the seal of the Corporation, if any, upon such certificates may be facsimiles, engraved or printed. All certificates for shares of Capital Stock of the same class and series shall be consecutively numbered. The name of the person owning the shares of Capital Stock represented thereby with the number of shares and date of issue shall be entered on the books of the Corporation. All certificates surrendered to the Corporation for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled, except that in the case of a lost, destroyed or mutilated certificate, a new one may be issued therefore upon such terms and indemnity to the Corporation as the Board may prescribe.

Section 2. Transfer. Transfers of shares of Capital Stock of the Corporation shall be made on the books of the Corporation only by the person named in the certificates evidencing such shares of Capital Stock or such person's successor or assignee, or by such person's attorney lawfully constituted in writing, and upon surrender of such certificates and delivery to the Corporation of proper evidence of succession, assignment or other authority, to transfer.

Section 3. Holder of Record. The Corporation shall be entitled to treat the holder of record of any share or shares of Capital Stock as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to, or interest in, such share or shares on the part of any other person, whether or not the Corporation shall have express or other notice thereof, save as expressly provided by the laws of the State of Delaware.

Section 4. Transfer Agent and Registrars. The Board may from time to time appoint a transfer agent and registrar in one or more cities, may require all certificates evidencing shares of stock of the Corporation to bear the signatures of a transfer agent or registrar, and may provide that such certificates shall be transferable in more than one city.

Section 5. Lost, Stolen or Destroyed Certificates. The Board may authorize the transfer agent and registrars of the Corporation to issue and register, respectively, new certificates in place of any certificates alleged to have been lost, stolen or destroyed, and in its discretion and as a condition precedent to the issuance thereof, may prescribe such terms and conditions as it deems expedient, and may require such indemnities as it deems necessary to protect the Corporation and said transfer agent and registrars.

ARTICLE VIII

FISCAL YEAR

The fiscal year of the Corporation will end on December 31 of each year or such other date as may be fixed from time to time by the Board.

ARTICLE IX

DIVIDENDS

Dividends on the Capital Stock may be declared by the Board at any meeting, regular or special, pursuant to law and to the provisions of the Certificate of Incorporation.

ARTICLE X

INDEMNIFICATION

Section 1. General. The Corporation (i) shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he or she is or was a director or an officer of the Corporation, or is or was serving at the request of the Corporation as a director or an officer of another corporation, partnership, joint venture, trust or other enterprise, to the full extent authorized or permitted by law, as now or hereafter in effect, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful, and (ii) may indemnify, if the Board determines such indemnification is appropriate, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he or she is or was an employee or agent of the Corporation, or is or was serving at the request of the Corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise, to the full extent authorized or permitted by law, as now or hereafter in effect, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

Section 2. Derivative Actions. The Corporation (i) shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director or an officer of the Corporation, or is or was serving at the request of the Corporation as a director or an officer of another corporation, partnership, joint venture, trust or other enterprise, to the full extent authorized or permitted by law, as now or hereafter in effect, against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and (ii) may indemnify, if the Board determines such indemnification is appropriate, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was an employee or an agent of the Corporation, or is or was serving at the request of the Corporation as an employee or an agent of another corporation, partnership, joint venture, trust or other enterprise, to the full extent authorized or permitted by law, as now or hereafter in effect, against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation; provided, however, that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 3. Successful Defense. To the extent that a present or former director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 1 and 2 of this Article X, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

Section 4. Proceedings Initiated by any Person. Notwithstanding anything to the contrary contained in Sections 1 and 2 of this Article X, except for proceedings to enforce rights to indemnification, the Corporation shall not be obligated to indemnify any person in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized in advance, or consented to, by the Board.

Section 5. Procedure. Any indemnification under Sections 1 and 2 of this Article X (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because such person has met the applicable standard of conduct set forth in Sections 1 and 2 of this Article X. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (a) by a majority vote of the directors who are not parties to such action, suit or proceeding even though less than a quorum, or (b) by a committee of such directors designated by majority vote of such directors, even though less than a quorum, or (c) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (d) by the stockholders.

Section 6. Advancement of Expenses. Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation pursuant to this Article X or as otherwise authorized by law. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the Corporation deems appropriate.

Section 7. Rights Not Exclusive. The indemnification and advancement of expenses provided by, or granted pursuant to, the other sections of this Article X shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any Bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

Section 8. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of the General Corporation Law of the State of Delaware (the "DGCL").

Section 9. Definition of "Corporation". For purposes of this Article X, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article X with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued.

Section 10. Certain Other Definitions. For purposes of this Article X, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves service by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation", as referred to in this Article X.

Section 11. Continuation of Rights. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article X shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 12. Repeal or Modification. Any repeal or modification of this Article X by the stockholders of the Corporation shall not adversely affect any rights to indemnification and to advancement of expenses that any person may have at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

Section 13. Amendments to DGCL. If the DGCL is amended hereafter to broaden the rights of those seeking indemnification or advancement of expenses, then such rights shall be extended to such persons to the fullest extent authorized by the DGCL, as so amended, without further action by either the Board or the stockholders of the Corporation.

ARTICLE XI

WAIVER OF NOTICE

Whenever any notice whatever is required to be given by law or under the provisions of these By-laws or under the provisions of the Certificate of Incorporation, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to the giving of such notice. Attendance at any meeting shall constitute a waiver of notice of such meeting, except where 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 XII

CORPORATE SEAL

The corporate seal 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 or affixed or reproduced otherwise.

ARTICLE XIII

SEVERABILITY OF PROVISIONS

If any provision of these By-laws, or the application thereof to any person or circumstances, is held invalid, the remainder of these By-laws, and the application of such provision to other persons or circumstances, shall not be affected thereby.

ARTICLE XIV

AMENDMENTS

These By-laws may be altered, amended or repealed and new by-laws may be adopted by the Board.