
UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended **December 29, 2017**

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number **001-05560**

SKYWORKS SOLUTIONS, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

04-2302115

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

20 Sylvan Road, Woburn, Massachusetts

(Address of principal executive offices)

01801

(Zip Code)

Registrant's telephone number, including area code: **(781) 376-3000**

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company," in Rule 12b-2 of the Exchange Act.

Large Accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company Emerging growth company

(Do not check if a smaller reporting 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.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Class	Outstanding as of January 26, 2018
Common Stock, par value \$.25 per share	182,482,749

SKYWORKS SOLUTIONS, INC.
QUARTERLY REPORT ON FORM 10-Q
FOR THE QUARTER ENDED DECEMBER 29, 2017

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PART 1. FINANCIAL INFORMATION

Item 1. *Financial Statements.*

SKYWORKS SOLUTIONS, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited, in millions, except per share amounts)

	Three Months Ended	
	December 29, 2017	December 30, 2016
Net revenue	\$ 1,051.9	\$ 914.3
Cost of goods sold	515.1	450.4
Gross profit	536.8	463.9
Operating expenses:		
Research and development	98.0	82.0
Selling, general and administrative	51.3	50.9
Amortization of acquisition-related intangibles	4.0	8.5
Restructuring and other charges	—	0.6
Total operating expenses	153.3	142.0
Operating income	383.5	321.9
Other income (expense), net	2.1	(0.8)
Income before income taxes	385.6	321.1
Provision for income taxes	315.2	63.3
Net income	\$ 70.4	\$ 257.8
Earnings per share:		
Basic	\$ 0.38	\$ 1.39
Diluted	\$ 0.38	\$ 1.38
Weighted average shares:		
Basic	183.1	184.8
Diluted	185.5	187.3
Cash dividends declared and paid per share	\$ 0.32	\$ 0.28

See accompanying Notes to Consolidated Financial Statements.

SKYWORKS SOLUTIONS, INC.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(Unaudited, in millions)

	Three Months Ended	
	December 29, 2017	December 30, 2016
Net income	\$ 70.4	\$ 257.8
Other comprehensive income		
Fair value of investments	—	0.9
Foreign currency translation adjustment	—	1.0
Comprehensive income	<u>\$ 70.4</u>	<u>\$ 259.7</u>

See accompanying Notes to Consolidated Financial Statements.

SKYWORKS SOLUTIONS, INC.
CONSOLIDATED BALANCE SHEETS
(Unaudited, in millions, except per share amounts)

	As of	
	December 29, 2017	September 29, 2017
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 1,681.5	\$ 1,616.8
Receivables, net of allowance for doubtful accounts of \$0.5 and \$0.5, respectively	458.8	454.7
Inventory	458.6	493.5
Other current assets	87.7	68.7
Total current assets	2,686.6	2,633.7
Property, plant and equipment, net	869.1	882.3
Goodwill	883.0	883.0
Intangible assets, net	68.2	67.8
Deferred tax assets, net	45.3	66.5
Other assets	42.1	40.3
Total assets	\$ 4,594.3	\$ 4,573.6
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 161.6	\$ 258.4
Accrued compensation and benefits	63.9	68.1
Other current liabilities	96.0	61.4
Total current liabilities	321.5	387.9
Long-term tax liabilities	331.7	92.9
Other long-term liabilities	40.6	27.1
Total liabilities	693.8	507.9
Commitments and contingencies (Note 7)		
Stockholders' equity:		
Preferred stock, no par value: 25.0 shares authorized, no shares issued	—	—
Common stock, \$0.25 par value; 525.0 shares authorized; 227.3 shares issued and 182.4 shares outstanding at December 29, 2017, and 226.0 shares issued and 183.1 shares outstanding at September 29, 2017	45.6	45.8
Additional paid-in capital	2,936.3	2,893.8
Treasury stock, at cost	(2,142.2)	(1,925.0)
Retained earnings	3,069.3	3,059.6
Accumulated other comprehensive loss	(8.5)	(8.5)
Total stockholders' equity	3,900.5	4,065.7
Total liabilities and stockholders' equity	\$ 4,594.3	\$ 4,573.6

See accompanying Notes to Consolidated Financial Statements.

SKYWORKS SOLUTIONS, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited, in millions)

	Three Months Ended	
	December 29, 2017	December 30, 2016
Cash flows from operating activities:		
Net income	\$ 70.4	\$ 257.8
Adjustments to reconcile net income to net cash provided by operating activities:		
Share-based compensation	25.8	21.6
Depreciation	63.6	55.3
Amortization of intangible assets	5.5	8.5
Deferred income taxes	21.4	1.2
Excess tax benefit from share-based compensation	—	(21.5)
Changes in assets and liabilities net of acquired balances:		
Receivables, net	(4.1)	49.3
Inventory	34.5	0.6
Other current and long-term assets	(20.6)	12.3
Accounts payable	(105.4)	50.9
Other current and long-term liabilities	269.7	59.9
Net cash provided by operating activities	<u>360.8</u>	<u>495.9</u>
Cash flows from investing activities:		
Capital expenditures	(28.2)	(50.1)
Payments for acquisitions, net of cash acquired	—	(13.7)
Purchased intangibles	(6.0)	—
Maturity of investments	—	3.2
Net cash used in investing activities	<u>(34.2)</u>	<u>(60.6)</u>
Cash flows from financing activities:		
Excess tax benefit from share-based compensation	—	21.5
Repurchase of common stock - payroll tax withholdings on equity awards	(44.7)	(44.4)
Repurchase of common stock - stock repurchase program	(172.5)	(106.5)
Dividends paid	(59.1)	(52.2)
Net proceeds from exercise of stock options	14.4	14.7
Payments of contingent consideration	—	(1.7)
Net cash used in financing activities	<u>(261.9)</u>	<u>(168.6)</u>
Net increase in cash and cash equivalents	64.7	266.7
Cash and cash equivalents at beginning of period	1,616.8	1,083.8
Cash and cash equivalents at end of period	<u>\$ 1,681.5</u>	<u>\$ 1,350.5</u>
Supplemental cash flow disclosures:		
Income taxes paid	\$ 7.2	\$ 2.5

See accompanying Notes to Consolidated Financial Statements.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. DESCRIPTION OF BUSINESS AND BASIS OF PRESENTATION

Skyworks Solutions, Inc., together with its consolidated subsidiaries (“Skyworks” or the “Company”), is empowering the wireless networking revolution. The Company’s highly innovative analog semiconductors are connecting people, places, and things, spanning a number of new and previously unimagined applications within the automotive, broadband, cellular infrastructure, connected home, industrial, medical, military, smartphone, tablet and wearable markets.

The accompanying unaudited interim consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”) for interim financial reporting. Certain information and footnote disclosures, normally included in annual consolidated financial statements prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”), have been condensed or omitted pursuant to those rules and regulations. However, in management’s opinion, the financial information reflects all adjustments, including those of a normal recurring nature, necessary to present fairly the results of operations, financial position, and cash flows of the Company for the periods presented. The results of operations, financial position, and cash flows for the Company during the interim periods are not necessarily indicative of those expected for the full year. This information should be read in conjunction with the Company’s financial statements and notes thereto contained in the Company’s Annual Report on Form 10-K for the fiscal year ended September 29, 2017, filed with the SEC on November 13, 2017, as amended by Amendment No. 1 to such Annual Report on Form 10-K, filed with the SEC on January 26, 2018 (the “2017 10-K”).

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts of assets, liabilities, revenue, expenses, comprehensive income and accumulated other comprehensive loss that are reported in these unaudited consolidated financial statements and accompanying disclosures. The Company evaluates its estimates on an ongoing basis using historical experience and other factors, including the current economic environment. Significant judgment is required in determining the reserves for and fair value of items such as allowance for doubtful accounts, overall fair value assessments of assets and liabilities, particularly those classified as Level 2 or Level 3 in the fair value hierarchy, inventory, intangible assets associated with business combinations, share-based compensation, loss contingencies, and income taxes. In addition, significant judgment is required in determining whether a potential indicator of impairment of long-lived assets exists and in estimating future cash flows for any necessary impairment testing. Actual results could differ significantly from these estimates.

The Company’s fiscal year ends on the Friday closest to September 30. Fiscal year 2018 consists of 52 weeks and ends on September 28, 2018. Fiscal year 2017 consisted of 52 weeks and ended on September 29, 2017. The first quarters of fiscal year 2018 and fiscal year 2017 each consisted of 13 weeks and ended on December 29, 2017, and December 30, 2016, respectively.

Recently Adopted Accounting Pronouncements

In March 2016, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) 2016-09, *Improvements to Employee Share-Based Payment Accounting*, which is intended to simplify several aspects of the accounting for share-based payment transactions, including the income tax consequences, classification of awards as either equity or liabilities, and classification on the statement of cash flows. The Company adopted ASU 2016-09 at the beginning of the first quarter of fiscal year 2018. As a result of adoption, the Company recognized a discrete income tax benefit of \$16.2 million to the income tax provision for excess tax benefits generated by the settlement of share-based awards in the first quarter of fiscal year 2018. The adoption also resulted in an increase in cash flow from operations and a decrease of cash flow from financing of \$16.2 million in the first quarter of fiscal year 2018. Prior periods have not been adjusted. The Company has elected to account for forfeitures as they occur and will no longer estimate future forfeitures. The change in accounting for forfeitures was applied using a modified retrospective transition method and resulted in a cumulative-effect adjustment to retained earnings as of the beginning of the first quarter of fiscal year 2018 in the amount of \$1.9 million. Forfeitures in the future will now be recorded as a benefit in the period they are realized.

Supplemental Cash Flow Information

At December 29, 2017, the Company had \$13.6 million for capital equipment that was accrued to other long-term liabilities, and \$8.6 million for capital equipment that was accrued to accounts payable. These amounts accrued for capital equipment purchases have been excluded from the consolidated statements of cash flows for the three months ended December 29, 2017, and are expected to be paid in subsequent periods.

2. FAIR VALUE

The Company groups its financial assets and liabilities measured at fair value on a recurring basis in three levels, based on the markets in which the assets and liabilities are traded and the reliability of the assumptions used to determine fair value. These levels are:

- Level 1 - Quoted prices in active markets for identical assets or liabilities.
- Level 2 - Observable inputs other than Level 1 prices, such as quoted prices for similar assets or liabilities, quoted prices in markets with insufficient volume or infrequent transactions (less active markets), or model-driven valuations in which all significant inputs are observable or can be derived principally from, or corroborated with, observable market data.
- Level 3 - Fair value is derived from valuation techniques in which one or more significant inputs are unobservable, including assumptions and judgments made by the Company.

Assets and Liabilities Measured and Recorded at Fair Value on a Recurring Basis

The Company measures certain assets and liabilities at fair value on a recurring basis such as its financial instruments. There have been no transfers between Level 1, 2 or 3 assets or liabilities during the three months ended December 29, 2017.

Contingent consideration related to business combinations is recorded as a Level 3 liability because management uses significant judgments and unobservable inputs to determine the fair value. The Company reassesses the fair value of its contingent consideration liabilities on a quarterly basis and records any fair value adjustments to earnings in the period that they are determined.

Assets and liabilities recorded at fair value on a recurring basis consisted of the following (in millions):

	As of December 29, 2017				As of September 29, 2017			
	Total	Fair Value Measurements			Total	Fair Value Measurements		
		Level 1	Level 2	Level 3		Level 1	Level 2	Level 3
Assets								
Money market funds	\$ 629.2	\$ 629.2	\$ —	\$ —	\$ 592.6	\$ 592.6	\$ —	\$ —
Total	\$ 629.2	\$ 629.2	\$ —	\$ —	\$ 592.6	\$ 592.6	\$ —	\$ —
Liabilities								
Contingent consideration liability recorded for business combinations	\$ 11.9	\$ —	\$ —	\$ 11.9	\$ 11.9	\$ —	\$ —	\$ 11.9
Total	\$ 11.9	\$ —	\$ —	\$ 11.9	\$ 11.9	\$ —	\$ —	\$ 11.9

There were no changes to the fair value of the Level 3 liabilities during the three months ended December 29, 2017.

Assets Measured and Recorded at Fair Value on a Nonrecurring Basis

The Company's non-financial assets and liabilities, such as goodwill, intangible assets, and other long-lived assets resulting from business combinations, are measured at fair value using income approach valuation methodologies at the date of acquisition and are subsequently re-measured if there are indicators of impairment. There were no indicators of impairment identified during the three months ended December 29, 2017.

3. INVENTORY

Inventory consists of the following (in millions):

	As of	
	December 29, 2017	September 29, 2017
Raw materials	\$ 24.9	\$ 24.6
Work-in-process	302.7	330.6
Finished goods	115.9	123.0
Finished goods held on consignment by customers	15.1	15.3
Total inventory	\$ 458.6	\$ 493.5

4. PROPERTY, PLANT AND EQUIPMENT

Property, plant and equipment, net consists of the following (in millions):

	As of	
	December 29, 2017	September 29, 2017
Land and improvements	\$ 11.6	\$ 11.6
Buildings and improvements	142.3	137.8
Furniture and fixtures	29.7	29.5
Machinery and equipment	1,815.3	1,715.3
Construction in progress	109.0	164.8
Total property, plant and equipment, gross	2,107.9	2,059.0
Accumulated depreciation	(1,238.8)	(1,176.7)
Total property, plant and equipment, net	\$ 869.1	\$ 882.3

5. GOODWILL AND INTANGIBLE ASSETS

There were no changes to the carrying amount of goodwill during the three months ended December 29, 2017.

The Company tests its goodwill for impairment annually as of the first day of its fourth fiscal quarter and in interim periods if certain events occur indicating the carrying value of goodwill may be impaired. There were no indicators of impairment noted during the three months ended December 29, 2017.

Intangible assets consist of the following (in millions):

	Weighted Average Amortization Period (Years)	As of December 29, 2017			As of September 29, 2017		
		Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
		Customer relationships	5	\$ 78.5	\$ (64.6)	\$ 13.9	\$ 78.5
Developed technology and other	5	150.2	(113.6)	36.6	150.2	(110.9)	39.3
Trademarks	3	1.6	(0.4)	1.2	1.6	(0.3)	1.3
Internally developed software	3	18.0	(1.5)	16.5	12.1	—	12.1
Total intangible assets		\$ 248.3	\$ (180.1)	\$ 68.2	\$ 242.4	\$ (174.6)	\$ 67.8

Annual amortization expense for the next five fiscal years related to intangible assets is expected to be as follows (in millions):

	Remaining 2018	2019	2020	2021	2022	Thereafter
Amortization expense	\$ 16.2	\$ 20.1	\$ 17.4	\$ 8.5	\$ 0.5	\$ 5.5

6. INCOME TAXES

The provision for income taxes consists of the following components (in millions):

	Three Months Ended	
	December 29, 2017	December 30, 2016
United States income taxes	\$ 304.9	\$ 56.5
Foreign income taxes	10.3	6.8
Provision for income taxes	\$ 315.2	\$ 63.3
Effective tax rate	81.7%	19.7%

The difference between the Company's effective tax rate and the 24.6% United States federal statutory rate for the three months ended December 29, 2017, resulted primarily from a one-time charge of \$257.8 million related to the mandatory deemed repatriation tax on foreign earnings, a one-time charge of \$18.5 million related to the revaluation of the deferred tax assets and liabilities related to tax reform, and an increase in tax expense related to a change in the reserve for uncertain tax positions, partially offset by foreign earnings taxed at rates lower than the federal statutory rate, the domestic production activities deduction, research and experimentation tax credits earned, and a benefit of \$16.2 million related to windfall stock deductions.

On December 22, 2017, the President of the United States signed into law new tax legislation, which includes, among other things, a reduction of the United States corporate tax rate from 35% to 21%, a mandatory deemed repatriation tax on foreign earnings, repeal of the corporate alternative minimum tax and the domestic production activities deduction, and expensing of certain capital investments. The new law makes fundamental changes to the taxation of multinational entities, including a shift from worldwide taxation with deferral to a hybrid territorial system, featuring a participation exemption regime, a minimum tax on low-taxed foreign earnings, and new measures to deter base erosion and promote export from the United States. The Company expects this tax reform to have significant continued impact on its provision for income taxes and is in the process of evaluating the impact.

Staff Accounting Bulletin 118 ("SAB 118"), provides a measurement period during which companies may analyze the impacts of newly enacted legislation when the company does not have the necessary information available, prepared, or analyzed in reasonable detail to complete the accounting for certain income tax effects of the new legislation, not to exceed one year. In accordance with SAB 118, the Company has estimated the impact of the new legislation as it pertains to various items, including a one-time charge of \$257.8 million related to the mandatory deemed repatriation tax on foreign earnings and a one-time charge of \$18.5 million related to the revaluation of its deferred tax assets and liabilities, using the new federal statutory tax rate of 21%. The Company believes these amounts are reasonable estimates; however these amounts are provisional and are subject to change. Additional time is needed to gather the information necessary to finalize the computations of the impact of the new tax legislation. The changes included in the new tax legislation are broad and complex. The final transition impacts of the new tax legislation may differ from the above estimates, possibly materially, due to, among other things, changes in interpretations of the new tax legislation, any legislative action to address questions that arise because of the new tax legislation, any changes in accounting standards for income taxes or related interpretations in response to the new tax legislation, or any updates or changes to estimates the Company has utilized to calculate the transition impacts. SAB 118 would allow for a measurement period of up to one year after the enactment date of the new tax legislation to finalize the recording of the related tax impacts. The Company currently anticipates finalizing and recording any resulting adjustments by the end of its current fiscal year ending September 28, 2018.

The reduction of the corporate tax rate to 21% is effective within fiscal year 2018, therefore the Company is subject to a blended fiscal year 2018 tax rate of approximately 24.6%, which is computed by using the number of days of the fiscal year during which the Company is subject to the old tax rate of 35% and the number of days the Company is subject to the newly enacted tax rate of 21%.

Accrued taxes of \$62.5 million and \$32.2 million have been included in other current liabilities within the consolidated balance sheets as of December 29, 2017, and December 30, 2016, respectively. The \$257.8 million deemed repatriation tax is payable over the next eight years, \$20.6 million per year for each of the next five years, followed by payments of \$38.7 million, \$51.6 million, and \$64.5 million in years six through eight, respectively. The Company has accrued \$237.2 million of the deemed repatriation tax in long term liabilities within the consolidated balance sheet as of December 29, 2017. Certain balances accrued by the Company during the three months ended December 29, 2017, related to the enactment of the legislation, including a charge related to the mandatory deemed repatriation tax on foreign earnings and the revaluation of the Company's deferred tax assets and liabilities, are based on estimates which will be refined during the measurement period as defined in Staff Accounting Bulletin No. 118.

The difference between the Company's effective tax rate and the 35% United States federal statutory rate for the three months ended December 30, 2016, resulted primarily from foreign earnings taxed at rates lower than the federal statutory rate, the domestic production activities deduction, research and experimentation tax credits earned, and benefits from the settlement of a Canadian audit of the fiscal years 2010 and 2011 income tax returns, partially offset by an increase in the Company's tax expense related to a change in the Company's reserve for uncertain tax positions.

7. COMMITMENTS AND CONTINGENCIES

Legal Matters

From time to time, various lawsuits, claims and proceedings have been, and may in the future be, instituted or asserted against the Company, including those pertaining to patent infringement, intellectual property, environmental hazards, product liability and warranty, safety and health, employment and contractual matters.

The semiconductor industry is characterized by vigorous protection and pursuit of intellectual property rights. From time to time, third parties have asserted and may in the future assert patent, copyright, trademark and other intellectual property rights to technologies that are important to the Company's business and have demanded and may in the future demand that the Company license their technology. The outcome of any such litigation cannot be predicted with certainty and some such lawsuits, claims or proceedings may be disposed of unfavorably to the Company. Generally speaking, intellectual property disputes often have a risk of injunctive relief, which, if imposed against the Company, could materially and adversely affect the Company's financial condition, or results of operations. From time to time the Company may also be involved in legal proceedings in the ordinary course of business.

The Company monitors the status of legal proceedings and other contingencies on an ongoing basis to ensure loss contingencies are recognized and/or disclosed in its financial statements and footnotes. The Company does not believe there are any pending legal proceedings that are reasonably possible to result in a material loss. The Company is engaged in various legal actions in the normal course of business and, while there can be no assurances, the Company believes the outcome of all pending litigation involving the Company will not have, individually or in the aggregate, a material adverse effect on its business.

Guarantees and Indemnifications

The Company has made no significant contractual guarantees for the benefit of third parties. However, the Company generally indemnifies its customers from third-party intellectual property infringement litigation claims related to its products and, on occasion, also provides other indemnities related to product sales. In connection with certain facility leases, the Company has indemnified its lessors for certain claims arising from the facility or the lease.

The Company indemnifies its directors and officers to the maximum extent permitted under the laws of the state of Delaware. The duration of the indemnities varies, and in many cases is indefinite. The indemnities to customers in connection with product sales generally are subject to limits based upon the amount of the related product sales and in many cases are subject to geographic and other restrictions. In certain instances, the Company's indemnities do not provide for any limitation of the maximum potential future payments the Company could be obligated to make. The Company has not recorded any liability for these indemnities in the accompanying consolidated balance sheets and does not expect that such obligations will have a material adverse impact on its financial condition or results of operations.

8. STOCKHOLDERS' EQUITY

Stock Repurchase Program

On January 17, 2017, the Board of Directors approved a stock repurchase program, pursuant to which the Company is authorized to repurchase up to \$500 million of its common stock from time to time prior to January 17, 2019, on the open market or in privately negotiated transactions, as permitted by securities laws and other legal requirements. During the three months ended December 29, 2017, the Company paid \$172.5 million (including commissions) in connection with the repurchase of 1.65 million shares of its common stock (paying an average price of \$104.52 per share). As of December 29, 2017, \$1.7 billion remained available under the existing stock repurchase authorization.

On January 31, 2018, the Board of Directors approved a new stock repurchase program, pursuant to which the Company is authorized to repurchase up to \$1 billion of its common stock from time to time prior to January 31, 2020, on the open market or in privately negotiated transactions, as permitted by securities laws and other legal requirements. This newly authorized stock repurchase plan replaces in its entirety the aforementioned January 17, 2017, plan. The timing and amount of any shares of the Company's common stock that are repurchased under the new repurchase program will be determined by the Company's

management based on its evaluation of market conditions and other factors. The repurchase program may be suspended or discontinued at any time. The Company currently expects to fund the repurchase program using the Company's working capital.

Dividends

On February 5, 2018, the Company announced that the Board of Directors had declared a cash dividend on its common stock of \$0.32 per share, payable on March 15, 2018, to the Company's stockholders of record as of the close of business on February 22, 2018. During the three months ended December 29, 2017, the Company declared and paid a \$0.32 dividend per common share with a total charge to retained earnings of \$58.8 million.

Share-based Compensation

The following table summarizes the share-based compensation expense by line item in the Statements of Operations (in millions):

	Three Months Ended	
	December 29, 2017	December 30, 2016
Cost of goods sold	\$ 4.1	\$ 3.8
Research and development	11.2	8.3
Selling, general and administrative	10.5	9.5
Total share-based compensation	<u>\$ 25.8</u>	<u>\$ 21.6</u>

On November 15, 2017, the Company agreed to potentially issue not more than 1% of our common stock to an unaffiliated third party as a contingent consideration for its role under a multi-year collaboration agreement, upon the achievement of certain product sales milestones. The shares have been valued utilizing a Monte Carlo valuation model and could be issued after mid-2020. The shares will be marked to estimated fair value each reporting period through earnings. The amount recorded in the statement of operations within selling, general and administrative expense for the three months ended December 29, 2017, is not material.

9. EARNINGS PER SHARE

The following table sets forth the computation of basic and diluted earnings per share (in millions, except per share amounts):

	Three Months Ended	
	December 29, 2017	December 30, 2016
Net income	<u>\$ 70.4</u>	<u>\$ 257.8</u>
Weighted average shares outstanding – basic	183.1	184.8
Dilutive effect of equity based awards	2.4	2.5
Weighted average shares outstanding – diluted	<u>185.5</u>	<u>187.3</u>
Net income per share – basic	<u>\$ 0.38</u>	<u>\$ 1.39</u>
Net income per share – diluted	<u>\$ 0.38</u>	<u>\$ 1.38</u>
Anti-dilutive common stock equivalents	0.4	1.4

Basic earnings per share are calculated by dividing net income by the weighted average number of shares of the Company's common stock outstanding during the period. The calculation of diluted earnings per share includes the dilutive effect of equity based awards that were outstanding during the three months ended December 29, 2017, and December 30, 2016, using the treasury stock method. Certain of the Company's outstanding share-based awards, noted in the table above, were excluded because they were anti-dilutive, but they could become dilutive in the future.

10. RESTRUCTURING AND OTHER CHARGES

During the three months ended December 29, 2017, the Company paid the \$0.2 million in restructuring-related charges that remained accrued at September 29, 2017, but did not incur any restructuring-related charges during the period.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

This report and other documents we have filed with the SEC contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), and are subject to the "safe harbor" created by those sections. Words such as "anticipates," "believes," "continue," "could," "estimates," "expects," "intends," "may," "plans," "potential," "predicts," "seek," "should," "will," "would," and similar expressions or variations or negatives of such words are intended to identify forward-looking statements, but are not the exclusive means of identifying forward-looking statements in this report. Additionally, statements concerning future matters such as the development of new products, enhancements of technologies, sales levels, expense levels and other statements regarding matters that are not historical are forward-looking statements. Although forward-looking statements in this report reflect the good faith judgment of our management, such statements can only be based on facts and factors currently known by us. Consequently, forward-looking statements involve inherent risks and uncertainties and actual results and outcomes may differ materially and adversely from the results and outcomes discussed in or anticipated by the forward-looking statements. A number of important factors could cause actual results to differ materially and adversely from those in the forward-looking statements. We urge you to consider the risks and uncertainties discussed in this Quarterly Report on Form 10-Q and the 2017 10-K, under the heading "Risk Factors" and in the other documents we have filed with the SEC in evaluating our forward-looking statements. We have no plans, and undertake no obligation, to revise or update our forward-looking statements to reflect any event or circumstance that may arise after the date of this Quarterly Report on Form 10-Q. We caution readers not to place undue reliance upon any such forward-looking statements, which speak only as of the date made.

In this document, the words "we," "our," "ours" and "us" refer only to Skyworks Solutions, Inc. and its subsidiaries and not any other person or entity.

RESULTS OF OPERATIONS**THREE MONTHS ENDED DECEMBER 29, 2017, AND DECEMBER 30, 2016**

The following table sets forth the results of our operations expressed as a percentage of net revenue:

	Three Months Ended	
	December 29, 2017	December 30, 2016
Net revenue	100.0%	100.0 %
Cost of goods sold	49.0	49.3
Gross profit	51.0	50.7
Operating expenses:		
Research and development	9.3	9.0
Selling, general and administrative	4.9	5.6
Amortization of acquisition-related intangibles	0.4	0.9
Restructuring and other charges	—	0.1
Total operating expenses	14.6	15.6
Operating income	36.4	35.1
Other income (expense), net	0.2	(0.1)
Income before income taxes	36.6	35.0
Provision for income taxes	30.0	6.9
Net income	6.6%	28.1 %

OVERVIEW

We, together with our consolidated subsidiaries, are empowering the wireless networking revolution. Our highly innovative analog semiconductors are connecting people, places, and things spanning a number of new and previously unimagined applications within the automotive, broadband, cellular infrastructure, connected home, industrial, medical, military, smartphone, tablet and wearable markets.

GENERAL

During the three months ended December 29, 2017, the following key factors contributed to our overall results of operations, financial position and cash flows:

- Net revenue increased by 15% to \$1,052 million for the three months ended December 29, 2017, as compared with the corresponding period in fiscal year 2017. This increase in revenue was primarily driven by our success in capturing a higher share of the increasing radio frequency and analog content per device as smartphone models continue to evolve, the increasing number of applications for the Internet of Things, and our expanding analog product portfolio supporting new vertical markets including automotive, industrial, medical and military.
- Our ending cash and cash equivalents balance increased approximately 4% to \$1,682 million as of December 29, 2017, from \$1,617 million as of September 29, 2017. This increase in cash and cash equivalents was primarily the result of cash generated from operations of \$361 million, partially offset by the repurchase of 1.65 million shares of common stock for \$173 million, dividend payments of \$59 million, and capital expenditures of \$28 million during the three months ended December 29, 2017.

NET REVENUE

	Three Months Ended		
	December 29, 2017	Change	December 30, 2016
(dollars in millions)			
Net revenue	\$ 1,051.9	15.0%	\$ 914.3

We market and sell our products directly to original equipment manufacturers of communications and electronics products, third-party original design manufacturers and contract manufacturers, and indirectly through electronic components distributors. We generally experience seasonal peaks during the second half of the calendar year, primarily as a result of increased worldwide production of consumer electronics in anticipation of increased holiday sales, whereas our second fiscal quarter is typically lower and in line with seasonal industry trends.

We generated net revenue of \$1,051.9 million for the three months ended December 29, 2017, an increase of \$137.6 million or 15%, as compared with \$914.3 million for the corresponding period in fiscal year 2017. This increase in net revenue for the three months ended December 29, 2017, is primarily related to an increase in demand for our components from a key smartphone customer as compared with the corresponding period in fiscal year 2017, partially offset by decreases in average selling prices.

GROSS PROFIT

	Three Months Ended		
	December 29, 2017	Change	December 30, 2016
(dollars in millions)			
Gross profit	\$ 536.8	15.7%	\$ 463.9
% of net revenue	51.0%		50.7%

Gross profit represents net revenue less cost of goods sold. Our cost of goods sold consists primarily of purchased materials, labor and overhead (including depreciation and share-based compensation expense) associated with product manufacturing. Erosion of average selling prices of established products is typical of the semiconductor industry. As part of our normal course of business, we mitigate the gross margin impact of declining average selling prices with efforts to increase unit volumes, reduce material costs, improve manufacturing efficiencies, lower manufacturing costs of existing products and by introducing new and higher value-added products.

The \$72.9 million increase in gross profit for the three months ended December 29, 2017, as compared with the corresponding period in fiscal year 2017, was primarily the result of favorable product mix and higher unit volumes that positively impacted gross profit by \$81.2 million. These positive impacts were partially offset by lower average selling prices with a gross profit impact of \$8.3 million. Gross profit margin increased to 51.0% of net revenue for the three months ended December 29, 2017, as compared with the corresponding period in fiscal year 2017, due to the overall increase in revenue and the aforementioned factors.

RESEARCH AND DEVELOPMENT

	Three Months Ended		
	December 29, 2017	Change	December 30, 2016
(dollars in millions)			
Research and development	\$ 98.0	19.5%	\$ 82.0
% of net revenue	9.3%		9.0%

Research and development expenses consist primarily of direct personnel costs including share-based compensation expense, costs for pre-production evaluation and testing of new devices, masks, engineering prototypes and design tool costs.

The increase in research and development expenses for the three months ended December 29, 2017, as compared with the corresponding period in fiscal year 2017, was primarily related to an increase in employee-related compensation expense and product development– related expenses. Research and development expense increased as a percentage of net revenue when compared with the corresponding period in fiscal year 2017 as a result of our increased investment in developing new product capabilities.

SELLING, GENERAL AND ADMINISTRATIVE

	Three Months Ended		
	December 29, 2017	Change	December 30, 2016
(dollars in millions)			
Selling, general and administrative	\$ 51.3	0.8%	\$ 50.9
% of net revenue	4.9%		5.6%

Selling, general and administrative expenses include legal and related costs, accounting, treasury, human resources, information systems, customer service, bad debt expense, sales commissions, share-based compensation expense, advertising, marketing, and costs associated with business combinations completed or contemplated during the period and other costs.

The increase in selling, general and administrative expenses for the three months ended December 29, 2017, as compared with the corresponding period in fiscal year 2017, was primarily related to an increase in employee compensation. Selling, general and administrative expense decreased as a percentage of net revenue when compared with the corresponding period in fiscal year 2017 primarily due to the increase in net revenue.

AMORTIZATION OF INTANGIBLES

	Three Months Ended		
	December 29, 2017	Change	December 30, 2016
(dollars in millions)			
Amortization of acquisition-related intangibles	\$ 4.0	(52.9)%	\$ 8.5
% of net revenue	0.4%		0.9%

The decrease in amortization expense for the three months ended December 29, 2017, as compared with the corresponding period in fiscal year 2017, was primarily due to the end of the useful lives of certain intangible assets that were acquired in prior fiscal years.

RESTRUCTURING AND OTHER CHARGES

	Three Months Ended		
	December 29, 2017	Change	December 30, 2016
(dollars in millions)			
Restructuring and other charges	\$ —	(100.0)%	\$ 0.6
% of net revenue	—%		0.1%

There were no new restructuring charges incurred during the three months ended December 29, 2017.

PROVISION FOR INCOME TAXES

	Three Months Ended		
	December 29, 2017	Change	December 30, 2016
(dollars in millions)			
Provision for income taxes	\$ 315.2	397.9%	\$ 63.3
% of net revenue	30.0%		6.9%

We recorded a provision for income taxes of \$315.2 million (which consisted of \$304.9 million and \$10.3 million related to United States and foreign income taxes, respectively) for the three months ended December 29, 2017.

On December 22, 2017, the President of the United States signed into law new tax legislation, which includes, among other things, a reduction of the United States corporate tax rate from 35% to 21%, a mandatory deemed repatriation tax on foreign earnings, repeal of the corporate alternative minimum tax and the domestic production activities deduction, and expensing of certain capital investments. The new law makes fundamental changes to the taxation of multinational entities, including a shift from worldwide taxation with deferral to a hybrid territorial system, featuring a participation exemption regime, a minimum tax on low-taxed foreign earnings, and new measures to deter base erosion and promote export from the United States. We expect this tax reform to have significant continued impact on our provision for income taxes and are in the process of evaluating the impact.

Staff Accounting Bulletin 118 ("SAB 118"), provides a measurement period during which companies may analyze the impacts of newly enacted legislation when the company does not have the necessary information available, prepared, or analyzed in reasonable detail to complete the accounting for certain income tax effects of the new legislation, not to exceed one year. In accordance with SAB 118, we have estimated the impact of the new legislation as it pertains to various items, including a one-time charge of \$257.8 million related to the mandatory deemed repatriation tax on foreign earnings and a one-time charge of \$18.5 million related to the revaluation of our deferred tax assets and liabilities, using the new federal statutory tax rate of 21%. We believe these amounts are reasonable estimates; however these amounts are provisional and are subject to change. Additional time is needed to gather the information necessary to finalize the computations of the impact of the new tax legislation. The changes included in the new tax legislation are broad and complex. The final transition impacts of the new tax legislation may differ from the above estimates, possibly materially, due to, among other things, changes in interpretations of the new tax legislation, any legislative action to address questions that arise because of the new tax legislation, any changes in accounting standards for income taxes or related interpretations in response to the new tax legislation, or any updates or changes to estimates we have utilized to calculate the transition impacts. SAB 118 would allow for a measurement period of up to one year after the enactment date of the new tax legislation to finalize the recording of the related tax impacts. We currently anticipate finalizing and recording any resulting adjustments by the end of our current fiscal year ending September 28, 2018.

The reduction of the corporate tax rate to 21% is effective within fiscal year 2018, therefore we are subject to a blended fiscal year 2018 tax rate of approximately 24.6%, which is computed by using the number of days of the fiscal year during which we are subject to the old tax rate of 35% and the number of days we are subject to the newly enacted tax rate of 21%.

The effective tax rate for the three months ended December 29, 2017, was 81.7%, as compared with 19.7% for the three months ended December 30, 2016. The difference between our three month effective tax rate of 81.7% and the federal statutory rate of 24.6% resulted primarily from a one-time charge of \$257.8 million related to the mandatory deemed repatriation tax on foreign earnings, a one-time charge of \$18.5 million related to the revaluation of our deferred tax assets and liabilities related to tax reform, and an increase in tax expense related to a change in the reserve for uncertain tax positions, partially offset by foreign earnings taxed at rates lower than the federal statutory rate, the domestic production activities deduction, research and experimentation tax credits earned, and a benefit of \$16.2 million related to windfall stock deductions.

LIQUIDITY AND CAPITAL RESOURCES

(in millions)	Three Months Ended	
	December 29, 2017	December 30, 2016
Cash and cash equivalents at beginning of period	\$ 1,616.8	\$ 1,083.8
Net cash provided by operating activities	360.8	495.9
Net cash used in investing activities	(34.2)	(60.6)
Net cash used in financing activities	(261.9)	(168.6)
Cash and cash equivalents at end of period	<u>\$ 1,681.5</u>	<u>\$ 1,350.5</u>

Cash flow provided by operating activities:

Cash provided by operating activities consists of net income for the period adjusted for certain non-cash items and changes in certain operating assets and liabilities. During the three months ended December 29, 2017, we generated \$360.8 million of cash from operating activities, a decrease of \$135.1 million as compared with the \$495.9 million generated during the three months ended December 30, 2016. The decrease in cash flow from operating activities during the three months ended December 29, 2017, was primarily related to a net change in cash outflows of \$156.3 million related to a decrease in accounts payable as a result of the timing of vendor payments.

Cash flow used in investing activities:

Cash used in investing activities consists primarily of cash paid for acquisitions net of cash acquired, capital expenditures, cash received from the sale of capital assets, and cash related to the sale or maturity of investments. Cash used in investing activities was \$34.2 million during the three months ended December 29, 2017, as compared with \$60.6 million during the three months ended December 30, 2016. The cash used for capital expenditures was \$28.2 million, primarily related to the purchase of manufacturing equipment to support the expansion of our assembly and test operations, filter production operations, and wafer fabrication facilities. During the three months ended December 29, 2017, we paid \$6.0 million related to purchased intangibles.

Cash flow used in financing activities:

Cash used in financing activities consists primarily of cash transactions related to equity. During the three months ended December 29, 2017, we had net cash outflows from financing activities of \$261.9 million, as compared with net cash outflows from financing activities of \$168.6 million during the three months ended December 30, 2016. During the three months ended December 29, 2017, we had the following significant uses of cash:

- \$172.5 million related to our repurchase of 1.65 million shares of our common stock pursuant to the stock repurchase program approved by our Board of Directors on January 17, 2017;
- \$59.1 million related to the payment of cash dividends on our common stock; and
- \$44.7 million related to the minimum statutory payroll tax withholdings payments on the vesting of employee performance and restricted stock awards.

These uses of cash were partially offset by the net proceeds from employee stock option exercises of \$14.4 million during the three months ended December 29, 2017.

Liquidity:

Cash and cash equivalent balances were \$1,681.5 million as of December 29, 2017, representing an increase of \$64.7 million from September 29, 2017. The increase resulted from \$360.8 million in cash generated from operations which was partially offset by \$172.5 million used to repurchase 1.65 million shares of stock, \$59.1 million in cash dividend payments, \$44.7 million used to repurchase shares related to payroll tax withholdings on equity awards, and \$28.2 million in capital expenditures. Based on our historical results of operations, we expect that our cash and cash equivalents on hand and the cash we expect to generate from operations will be sufficient to fund our research and development, capital expenditures, potential acquisitions, working capital, quarterly cash dividend payments (if such dividends are declared by the Board of Directors), outstanding commitments and other liquidity requirements associated with existing operations for at least the next 12 months. However, we cannot be certain that our cash on hand and cash generated from operations will be available in the future to fund all of our capital and operating requirements. In addition, any future strategic investments and acquisitions may require additional cash and capital resources. If we are unable to obtain sufficient cash or capital to meet our needs on a timely basis and on favorable terms, our business and operations could be materially and adversely affected.

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Our invested cash balances primarily consist of highly liquid term deposits with original maturities of 90 days or less and money market funds where the underlying securities primarily consist of United States treasury obligations, United States agency obligations and repurchase agreements collateralized by United States government and agency obligations.

Our cash and cash equivalent balance of \$1,681.5 million as of December 29, 2017, consisted of \$742.0 million held domestically and \$939.5 million held by foreign subsidiaries.

On January 31, 2018, the Board of Directors approved a new stock repurchase program, pursuant to which we are authorized to repurchase up to \$1 billion of our common stock from time to time prior to January 31, 2020, on the open market or in privately negotiated transactions, as permitted by securities laws and other legal requirements. This newly authorized stock repurchase plan replaces in its entirety the aforementioned January 17, 2017 plan. The timing and amount of any shares of the Company's common stock that are repurchased under the new repurchase program will be determined based on our evaluation of market conditions and other factors. The repurchase program may be suspended or discontinued at any time. We currently expect to fund the repurchase program using our working capital.

CONTRACTUAL OBLIGATIONS

Our contractual obligations disclosure in the 2017 10-K has not materially changed since we filed that report, except for the \$257.8 million deemed repatriation tax on foreign earnings, which is payable over the next eight years, \$20.6 million per year for each of the next five years, followed by payments of \$38.7 million, \$51.6 million and \$64.5 million in years six through eight, respectively.

OFF-BALANCE SHEET ARRANGEMENTS

We have no material off-balance sheet arrangements as defined in SEC Regulation S-K Item- 303(a)(4)(ii).

Item 3. *Quantitative and Qualitative Disclosures about Market Risk.*

We are subject to overall financial market risks, such as changes in market liquidity, credit quality, investment risk, interest rate risk, and foreign exchange rate risk as described below.

Investment and Interest Rate Risk

Our exposure to interest rate and general market risks relates principally to our investment portfolio, which consists of cash and cash equivalents (time deposits, certificates of deposit and money market funds) that total approximately \$1,681.5 million as of December 29, 2017.

The main objectives of our investment activities are liquidity and preservation of capital. Our cash equivalent investments have short-term maturity periods that dampen the impact of market or interest rate risk. Credit risk associated with our investments is not material because our money market and deposits are diversified across several financial institutions with high credit ratings, which reduces the amount of credit exposure to any one counterparty.

Based on our results of operations for the three months ended December 29, 2017, a hypothetical reduction in the interest rates on our cash and cash equivalents to zero would result in an immaterial reduction of interest income with a de minimis impact on income before taxes.

Given the low interest rate environment, the objectives of our investment activities, and the relatively low interest income generated from our cash and cash equivalents and other investments, we do not believe that investment or interest rate risks pose material exposures to our current business or results of operations.

Foreign Exchange Rate Risk

Substantially all sales to customers and arrangements with third-party manufacturers provide for pricing and payment in United States dollars, thereby reducing the impact of foreign exchange rate fluctuations on our results. A percentage of our international operational expenses are denominated in foreign currencies and exchange rate volatility could positively or negatively impact those operating costs. Increases in the value of the United States dollar relative to other currencies could make our products more expensive, which could negatively impact our ability to compete. Conversely, decreases in the value of the United States dollar relative to other currencies could result in our suppliers raising their prices to continue doing business with us. Given the relatively small number of customers and arrangements with third-party manufacturers denominated in foreign currencies, we do not believe that foreign exchange volatility has a material impact on our current business or results of operations. However,

fluctuations in currency exchange rates could have a greater effect on our business or results of operations in the future to the extent our expenses increasingly become denominated in foreign currencies.

We may enter into foreign currency forward and option contracts with financial institutions to protect against foreign exchange risks associated with certain existing assets and liabilities, certain firmly committed transactions, forecasted future cash flows and net investments in foreign subsidiaries. However, we may choose not to hedge certain foreign exchange exposures for a variety of reasons, including, but not limited to, accounting considerations and the prohibitive economic cost of hedging particular exposures.

Recently Issued Accounting Pronouncements

In August 2015, the FASB deferred the effective date of ASU 2014-09, Revenue from Contracts with Customers (Topic 606), which outlines a single comprehensive model for entities to use in accounting for revenue arising from contracts with customers and will supersede most current revenue recognition guidance. We will adopt this guidance during the first quarter of fiscal year 2019. The new guidance is required to be applied retrospectively to each prior reporting period presented or retrospectively with the cumulative effect of initially applying it recognized at the date of initial application. We have established a cross-functional team to assess the potential impact of the new revenue standard. The assessment process consists of reviewing its current accounting policies and practices to identify potential differences that would result from applying the requirements of the new standard to our revenue contracts and identifying appropriate changes to the business processes, systems and controls to support revenue recognition and disclosure requirements under the new standard. We are currently evaluating the potential impact on our business processes, systems, controls and our consolidated financial statements of the new revenue standard and do not anticipate significant changes to our statement of operations. Our assessment will be completed during fiscal year 2018 at which time the method of adoption will be selected.

In February 2016, the FASB issued ASU 2016-02, Leases (Topic 842) (“ASU 2016-02”), which requires lessees to reflect most leases on their balance sheet as assets and obligations. The effective date for the standard is for fiscal years beginning after December 15, 2018, with early adoption permitted. The standard is to be applied under the modified retrospective method, with elective reliefs, which requires application of the new guidance for all periods presented. We are currently evaluating the effect that ASU 2016-02 will have on the consolidated financial statements and related disclosures.

In May 2017, the FASB issued ASU 2017-09, Compensation-Stock Compensation (Topic 718), Scope of Modification Accounting. The ASU provides guidance about which changes to the terms or conditions of a share-based payment award require an entity to apply modification accounting in Topic 718. The effective date for the standard is for interim periods in fiscal years beginning after December 15, 2017, with early adoption permitted, including adoption in any interim period for which financial statements have not yet been issued. We are currently evaluating the potential impact of this standard on the consolidated financial statements.

In August 2016, the FASB issued ASU No. 2016-15, Statement of Cash Flows (Topic 230), (“ASU 2016-15”). This ASU provides guidance on the presentation and classification of specific cash flow items to improve consistency within the statement of cash flows. The effective date for the standard is for fiscal years beginning after December 15, 2017, with early adoption permitted. We are currently evaluating the effect that ASU 2016-15 will have on the consolidated financial statements and related disclosures.

In October 2016, the FASB issued ASU No. 2016-16, Income taxes (Topic 740), Intra-entity transfers of an asset other than inventory (“ASU 2016-16”). This ASU provides guidance that changes the accounting for income tax effects of intra-entity transfers of assets other than inventory. Under the new guidance, the selling (transferring) entity is required to recognize a current tax expense or benefit upon transfer of the asset. Similarly, the purchasing (receiving) entity is required to recognize a deferred tax asset or deferred tax liability, as well as the related deferred tax benefit or expense, upon receipt of the asset. The effective date for the standard is for fiscal years beginning after December 15, 2017, on a modified retrospective basis, and early adoption is permitted. We are currently evaluating the effect ASU 2016-16 will have on the consolidated financial statements.

In January 2017, the FASB issued ASU No. 2017-04, Intangibles - Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment (“ASU 2017-04”). This ASU simplifies the subsequent measurement of goodwill and eliminates Step 2 from the goodwill impairment test. The annual or interim goodwill impairment test is performed by comparing the fair value of a reporting unit with its carrying amount, and an impairment charge should be recognized for the amount by which the carrying amount exceeds the reporting unit’s fair value; however, the loss recognized should not exceed the total amount of goodwill allocated to that reporting unit. In addition, income tax effects from any tax deductible goodwill on the carrying amount of the reporting unit should be considered when measuring the goodwill impairment loss, if applicable. The amendments are to be applied on a prospective basis. The effective date for adoption of this standard is for the first annual or interim goodwill impairment test in the fiscal year beginning after December 15, 2019, with early adoption permitted for interim or annual

goodwill impairment tests performed on testing dates after January 1, 2017. We will adopt this amendment during our second fiscal quarter of 2018.

In May 2017, the FASB issued ASU 2017-09, Compensation-Stock Compensation (Topic 718), Scope of Modification Accounting. The ASU provides guidance about which changes to the terms or conditions of a share-based payment award require an entity to apply modification accounting in Topic 718. The effective date for the standard is for interim periods in fiscal years beginning after December 15, 2017, with early adoption permitted, including adoption in any interim period for which financial statements have not yet been issued. We are currently evaluating the potential impact of this standard on the consolidated financial statements.

Item 4. Controls and Procedures.

Evaluation of disclosure controls and procedures

Our management, with the participation of our chief executive officer and chief financial officer, evaluated the effectiveness of our disclosure controls and procedures as of December 29, 2017. The term “disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company’s management, including its principal executive and principal financial officers, as appropriate, to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. Based on management’s evaluation of our disclosure controls and procedures as of December 29, 2017, our chief executive officer and chief financial officer concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

Changes in internal controls over financial reporting

There are no changes to our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) that occurred during the period covered by this report that have materially affected or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings.

From time to time, various lawsuits, claims and proceedings have been, and may in the future be, instituted or asserted against the Company, including those pertaining to patent infringement, intellectual property, environmental hazards, product liability and warranty, safety and health, employment and contractual matters.

The semiconductor industry is characterized by vigorous protection and pursuit of intellectual property rights. From time to time, third parties have asserted and may in the future assert patent, copyright, trademark and other intellectual property rights to technologies that are important to the Company’s business and have demanded and may in the future demand that the Company license their technology. The outcome of any such litigation cannot be predicted with certainty and some such lawsuits, claims or proceedings may be disposed of unfavorably to the Company. Generally speaking, intellectual property disputes often have a risk of injunctive relief, which, if imposed against the Company, could materially and adversely affect the Company’s financial condition, or results of operations. From time to time the Company may also be involved in legal proceedings in the ordinary course of business.

The Company monitors the status of legal proceedings and other contingencies on an ongoing basis to ensure loss contingencies are recognized and/or disclosed in its financial statements and footnotes. The Company does not believe there are any pending legal proceedings that are reasonably possible to result in a material loss. The Company is engaged in various legal actions in the normal course of business and, while there can be no assurances, the Company believes the outcome of all pending litigation involving the Company will not have, individually or in the aggregate, a material adverse effect on its business.

Item 1A. Risk Factors.

In addition to the other information set forth in this Quarterly Report on Form 10-Q, you should carefully consider the factors discussed in Part I, Item 1A Risk Factors in the 2017 10-K, which could materially affect our business, financial condition or future results. There have been no material changes from the risk factors previously disclosed in the 2017 10-K.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

The following table provides information regarding repurchases of common stock made during the three months ended December 29, 2017:

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs (1)	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs (1)
09/30/17-10/27/17	—	\$—	—	\$174.1 million
10/28/17-11/24/17	703,287(2)	\$110.48	300,000	\$141.1 million
11/25/17-12/29/17	1,350,605(3)	\$103.29	1,350,000	\$1.7 million
Total	2,053,892		1,650,000	

(1) The stock repurchase program approved by the Board of Directors on January 17, 2017, authorizes the repurchase of up to \$500.0 million of our common stock from time to time on the open market or in privately negotiated transactions as permitted by securities laws and other legal requirements. On January 31, 2018, the Board of Directors approved a new stock repurchase program that replaces in its entirety the January 17, 2017, plan.

(2) 300,000 shares were repurchased at an average price of \$110.03 per share as part of our stock repurchase program, and 403,287 shares were repurchased by us at the fair market value of the common stock as of the applicable purchase date, in connection with the satisfaction of tax withholding obligations under equity award agreements with an average price of \$110.82 per share.

(3) 1,350,000 shares were repurchased at an average price of \$103.30 per share as part of our stock repurchase program, and 605 shares were repurchased by us at the fair market value of the common stock as of the applicable purchase date, in connection with the satisfaction of tax withholding obligations under equity award agreements with an average price of \$99.20 per share.

On November 15, 2017, we agreed to potentially issue not more than 1% of our common stock to an unaffiliated third party as contingent consideration for its role under a multi-year collaboration agreement. The shares are issuable for no cash payment but only upon the achievement of certain product sale milestones, certain terminations of the agreement or if the Company engages in certain competition with the third party. Though the timing is not certain, the Company does not expect achievement of the product sale milestones to occur any time prior to mid-2020. The transaction was made in reliance on the exemption from registration in Section 4(a)(2) of the Securities Act. The Company has agreed to file a registration statement with the Securities and Exchange Commission registering the resale of any issued shares.

Item 5. Other Information.*Approval of Revised Fiscal Year 2018 Executive Incentive Plan*

On January 30, 2018, the Compensation Committee (the “Compensation Committee”) of the Company’s Board of Directors amended the Company’s Fiscal Year 2018 Executive Incentive Plan (the “Incentive Plan”) to provide that the portion of the incentive awards under the Incentive Plan that previously was attainable based on the Company’s achievement against a non-GAAP earnings per share (“EPS”) performance metric will instead be attainable based on the Company’s achievement against a non-GAAP operating income performance metric. The non-GAAP operating income performance metric was established by the Compensation Committee on November 7, 2017, concurrently with the non-GAAP EPS performance metric.

The Compensation Committee approved the change in metrics in light of the favorable impact on the Company’s non-GAAP EPS for fiscal year 2018 that is now expected as a result of the new U.S. tax legislation, which was enacted on December 22, 2017, as well as the potential favorable impact on non-GAAP EPS of the Company’s new stock repurchase program. The Compensation Committee believes this change maintains the original rigor of the performance incentive objectives of the Incentive Plan. No other changes were made to the Incentive Plan.

Amendment to Third Amended and Restated By-laws

Effective January 31, 2018, the Board of Directors approved and adopted an amendment to our Third Amended and Restated By-laws (the “By-laws”) to grant stockholders the right to call a special meeting of stockholders. Prior to the adoption of this provision, a special meeting of stockholders could only be called pursuant to a resolution adopted by a majority of the members of the Board of Directors.

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Article II, Section 3 of the By-laws has been amended to permit stockholders who, individually or in the aggregate, own at least 25% of our outstanding shares of common stock and who have held such shares continuously for at least one year prior to their request, to call a special meeting of stockholders, subject to the terms and conditions set forth in the By-laws.

This description of the amendment to the By-laws is qualified in its entirety by reference to the text of the By-laws, as amended, which is filed as Exhibit 3.1 to this Quarterly Report on Form 10-Q.

Item 6. Exhibits.

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Incorporated by Reference</u>			<u>Filed Herewith</u>
		<u>Form</u>	<u>File No.</u>	<u>Exhibit</u>	
3.1	Third Amended and Restated By-laws, as Amended				X
10.1	Fiscal Year 2018 Executive Incentive Plan				X
10.2	Fiscal Year 2018 Executive Incentive Plan, as Amended				X
31.1	Certification of the Company's Chief Executive Officer pursuant to Securities and Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002				X
31.2	Certification of the Company's Chief Financial Officer pursuant to Securities and Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002				X
32.1	Certification of the Company's Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002				X
32.2	Certification of the Company's Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002				X
101.INS	XBRL Instance Document				X
101.SCH	XBRL Taxonomy Extension Schema Document				X
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document				X
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document				X
101.LAB	XBRL Taxonomy Extension Label Linkbase Document				X
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document				X

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 thereunto duly authorized.

SKYWORKS SOLUTIONS, INC.

Date: February 5, 2018

By: /s/ Liam K. Griffin

Liam K. Griffin
President and Chief Executive Officer
(Principal Executive Officer)

By: /s/ Kris Sennesael

Kris Sennesael

Senior Vice President and Chief Financial Officer
(Principal Accounting and Financial Officer)

THIRD AMENDED AND RESTATED
BY-LAWS OF
SKYWORKS SOLUTIONS, INC., AS AMENDED

ARTICLE I

OFFICES

SECTION 1 Registered Office in Delaware; Resident Agent. The address of the Corporation's registered office in the State of Delaware and the name and address of its resident agent in charge thereof are as filed with the Secretary of State of the State of Delaware.

SECTION 2 Other Offices. The Corporation may also have an office or offices at such other place or places either within or without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation requires.

ARTICLE II

MEETINGS OF STOCKHOLDERS

SECTION 1 Place of Meetings. All meetings of the stockholders of the Corporation shall be held at such place, within or without the State of Delaware, as may from time to time be designated by resolution passed by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meetings shall not be held at any place, but may instead be held solely by means of remote communication.

SECTION 2 Annual Meeting. An annual meeting of the stockholders for the election of directors and for the transaction of such other proper business, notice of which was given in the notice of meeting, shall be held on a date and at a time as may from time to time be designated by resolution passed by the Board of Directors.

SECTION 3 Special Meetings.

(A) A special meeting of the stockholders for any purpose or purposes may be called at any time by the Board of Directors pursuant to a resolution adopted by a majority of the whole Board. A special meeting of the stockholders shall be called by the Secretary upon written request to the Secretary (each such request, a "Special Meeting Request" and such meeting, a "Stockholder Requested Special Meeting") by one or more Requesting Stockholder(s) (as defined below) representing in the aggregate at least 25% of the outstanding shares of common stock of the Corporation which shares are determined to be "Net Long Shares" (as defined below) (the "Requisite Percentage"), who have held such shares continuously for at least one year prior to the date such Special Meeting Request is delivered to the Corporation (such period, the "One-Year Period"), and who have complied in full with the requirements set forth in these By-laws. A special meeting of stockholders may be held at such date, time and place, if any, within or without the State of Delaware as may be designated by the Board of Directors; provided, however, that the date of any Stockholder Requested Special Meeting shall be not more than 120 days after the date that the Secretary has received one or more valid Special Meeting Request(s) satisfying the requirements set forth in these By-laws for the calling of a Stockholder Requested Special Meeting (provided that, if any documentary evidence required by these By-laws is not simultaneously delivered with one or more Stockholder Meeting Request(s) under the circumstances expressly permitted by these By-laws, then the date of the Stockholder Requested Special Meeting shall be not more than 120 days after the date that all such documentary evidence is received by the Secretary in compliance with these

By-laws). In fixing a date, time and place, if any, for any special meeting of stockholders, the Board of Directors may consider such factors as it deems relevant, including without limitation, the nature of the matters to be considered, the facts and circumstances related to any request for a meeting and any plan of the Board of Directors to call an annual meeting or special meeting. The Corporation may postpone, reschedule or cancel any previously scheduled special meeting of stockholders.

For purposes of determining the Requisite Percentage, "Net Long Shares" mean those shares of common stock of the Corporation as to which the stockholder(s) of record making the Special Meeting Request or beneficial owner(s), if any, on whose behalf the Special Meeting Request is being made (each such record owner and beneficial owner, a "Requesting Stockholder") is deemed to "own" (as such term is defined in subparagraphs (A)(3)(g)-(h) of ARTICLE II, Section 8 of these By-laws). Whether shares constitute "Net Long Shares" and any other questions relating to the validity of any Special Meeting Request or of compliance with the requirements set forth in these By-laws shall be decided in good faith by the Board of Directors.

(B) In order for a Stockholder Requested Special Meeting to be called, one or more Special Meeting Requests must be signed and dated by the record holders of shares representing in the aggregate at least the Requisite Percentage who have held such shares continuously for the One-Year Period and by each of the beneficial owners, if any, on whose behalf the Special Meeting Request is being made. Each Special Meeting Request shall be delivered to the Secretary at the Corporation's principal executive offices and shall be accompanied by a written notice setting forth the information required by paragraph (A)(2) of ARTICLE II, Section 8 of these By-laws. In addition to the foregoing, a Special Meeting Request must include: (1) documentary evidence of the number of Net Long Shares owned by the Requesting Stockholder(s) as of the date on which the Special Meeting Request is delivered to the Secretary and documentary evidence that such shares have been held continuously for the One-Year Period, provided that, if the stockholder submitting the Special Meeting Request is not the beneficial owner of such shares, then to be valid, the Special Meeting Request must also include documentary evidence (or, if not simultaneously provided with the Special Meeting Request, such documentary evidence must be delivered to the Secretary within 10 days after the date on which the Special Meeting Request is delivered to the Secretary) of the number of Net Long Shares owned by the beneficial owner(s) as of the date on which the Special Meeting Request is delivered to the Secretary and documentary evidence that such shares have been held for the One-Year Period; (2) a representation that the Requesting Stockholder(s) intends to continue to satisfy the Requisite Percentage through the date of the Stockholder Requested Special Meeting and an agreement by the Requesting Stockholder(s) to promptly notify the Corporation upon any decrease occurring between the date on which the Special Meeting Request is delivered to the Secretary and the date of the Stockholder Requested Special Meeting in the number of Net Long Shares owned by such stockholder; and (3) an acknowledgment of the Requesting Stockholder(s) that any decrease after the date on which the Special Meeting Request is delivered to the Secretary in the number of Net Long Shares held by such stockholder shall be deemed a revocation of the Special Meeting Request with respect to such shares and that such shares will no longer be included in determining whether the Requisite Percentage has been satisfied.

Each Requesting Stockholder is required to update and supplement the Special Meeting Request delivered pursuant to this Section 3, if necessary, so that the information provided or required to be provided in such notice, including the information specified in paragraph (A)(2) of ARTICLE II, Section 8 of these By-laws, shall be true and correct as of the record date for determining the stockholders entitled to receive notice of the Stockholder Requested Special Meeting, and such update and supplement shall be received by the Secretary at the principal executive offices of the Corporation not later than 5 business days after the record date for determining the stockholders entitled to receive notice of such

meeting. In addition to the foregoing, the Requesting Stockholder(s) shall promptly provide any other information reasonably requested by the Corporation.

(C) In determining whether a special meeting of stockholders has been requested by Requesting Stockholder(s) holding shares representing in the aggregate at least the Requisite Percentage who have held such shares continuously for the One-Year Period, multiple Special Meeting Requests delivered to the Secretary will be considered together only if (1) each Special Meeting Request identifies substantially the same purpose or purposes of the special meeting and substantially the same matters proposed to be acted on at the special meeting (which, if such purpose is the election or removal of directors, changing the size of the Board of Directors and/or the filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors, will mean that the exact same person or persons are proposed for election or removal in each relevant Stockholder Meeting Request), and (2) such Special Meeting Requests have been dated and delivered to the Secretary within 60 days of the earliest dated Special Meeting Request. A stockholder may revoke a Special Meeting Request at any time by written revocation delivered to the Secretary. If, following such revocation (or any deemed revocation hereunder), at any time before the time of the Stockholder Requested Special Meeting, the remaining unrevoked requests from stockholders (if any) represent in the aggregate less than the Requisite Percentage, the Board of Directors, in its discretion, may cancel the special meeting.

(D) At any Stockholder Requested Special Meeting, the business transacted shall be limited to the purpose(s) stated in the Special Meeting Request; provided, however, that the Board of Directors shall have the authority in its discretion to submit additional matters to the stockholders and to cause other business to be transacted. Notwithstanding the foregoing provisions of this Section 3, a Special Meeting Request shall not be valid and a Stockholder Requested Special Meeting shall not be called or held if: (1) the Special Meeting Request does not comply with these By-laws; (2) the business specified in the Special Meeting Request is not a proper subject for stockholder action under applicable law; (3) the Board of Directors has called or calls for an annual or special meeting of stockholders to be held within 120 days after the Secretary receives the Special Meeting Request and the Board of Directors determines that the business of such meeting includes (among any other matters properly brought before the annual or special meeting) the business specified in the Special Meeting Request; (4) the Special Meeting Request is received by the Secretary during the period commencing 90 days prior to the anniversary date of the prior year's annual meeting of stockholders and ending on the date of the final adjournment of the next annual meeting of stockholders; (5) an identical or substantially similar item (a "Similar Item") was presented at any meeting of stockholders held within 90 days prior to receipt by the Secretary of the Special Meeting Request (and, for purposes of this clause (5), the nomination, election or removal of directors shall be deemed a "Similar Item" with respect to all items of business involving the nomination, election or removal of directors, the changing of the size of the Board of Directors and the filling of vacancies and/or newly created directorships); (6) a Similar Item, other than the nomination, election or removal of directors, was presented at an annual or special meeting of stockholders held not more than 12 months prior to receipt by the Secretary of the Special Meeting Request; or (7) the Special Meeting Request was made in a manner that involved a violation of Regulation 14A under the Exchange Act (as defined in paragraph (A)(2) of ARTICLE II, Section 8 of these By-laws), or other applicable law.

(E) Except to the extent previously determined by the Board of Directors in connection with a Stockholder Requested Special Meeting or any related Special Meeting Request, the chairperson of the Stockholder Requested Special Meeting shall determine at such meeting whether any proposed business or other matter to be transacted by the stockholders has not been properly brought before the special meeting and, if he or she should so determine, the chairperson shall declare that such proposed business or other matter was not properly brought before the meeting and such business or other matter shall not be presented for stockholder action at the meeting. In addition, notwithstanding the foregoing

provisions of this Section 3, unless otherwise required by law, if the Requesting Stockholder(s) (or a qualified representative of the stockholder (as defined below)) does not appear at the special meeting to present a nomination or other proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 3 and paragraph (A)(3) of ARTICLE II, Section 8 of these By-laws, to be considered a "qualified representative" a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a written instrument executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such written instrument or electronic transmission, or a reliable reproduction of the written instrument or electronic transmission, at the meeting of stockholders.

SECTION 4 Notice of Meetings. Except as otherwise provided by law, written notice of each meeting of the stockholders, whether annual or special, shall be mailed, postage prepaid, or sent by electronic transmission, not less than ten nor more than sixty days before the date of the meeting, to each stockholder entitled to vote at such meeting, at the stockholder's address as it appears on the records of the Corporation. Every such notice shall state the place, 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 or by proxy and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Notice of any adjourned meeting of the stockholders shall not be required to be given, except when expressly required by law.

SECTION 5 List of Stockholders. The Secretary shall, from information obtained from the transfer agent, prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a specified place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access the list shall be provided with the notice of the meeting. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list referred to in this section or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

SECTION 6 Quorum. At each meeting of the stockholders, the holders of a majority of the issued and outstanding stock of the Corporation present either in person or by proxy shall constitute a quorum for the transaction of business except where otherwise provided by law or by the Certificate of Incorporation or by these By-laws for a specified action. Except as otherwise provided by law, in the absence of a quorum, a majority in interest of the stockholders of the Corporation present in person or by proxy and entitled to vote shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until stockholders holding the requisite amount of stock shall be present or represented. At any such adjourned meeting at which a quorum may be present, any business may be transacted which might have been transacted at a meeting as originally called, and only those

stockholders entitled to vote at the meeting as originally called shall be entitled to vote at any adjournment or adjournments thereof. The absence from any meeting of the number of stockholders required by law or by the Certificate of Incorporation or by these By-laws for action upon any given matter shall not prevent action at such meeting upon any other matter or matters which may properly come before the meeting, if the number of stockholders required in respect of such other matter or matters shall be present.

SECTION 7 Organization. At every meeting of the stockholders the Chief Executive Officer, or in the absence of the Chief Executive Officer, a director or an officer of the Corporation designated by the Board, shall act as Chairman of the meeting. The Secretary, or, in the Secretary's absence, an Assistant Secretary, shall act as Secretary at all meetings of the stockholders. In the absence from any such meeting of the Secretary and the Assistant Secretaries, the Chairman may appoint any person to act as Secretary of the meeting.

SECTION 8 Notice of Stockholder Business and Nominations.

(A) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board of Directors of the Corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders (a) pursuant to the Corporation's notice of meeting, (b) by or at the direction of the Board of Directors, (c) by any stockholder of the Corporation who was a stockholder of record at the time of giving of notice provided for in this By-law, who is entitled to vote at the meeting and who complies with the notice procedures set forth in paragraph (A)(2) of this By-law, or (d) by any Eligible Stockholder (as defined in clause (a) of paragraph (A)(3) of this By-law) who complies with the procedures set forth in paragraph (A)(3) and whose Stockholder Nominee (as defined in clause (a) of paragraph (A)(3) of this By-law) is included in the Corporation's proxy materials for the relevant annual meeting.

(2) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (c) of paragraph (A)(1) of this By-law, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and such other business must otherwise be a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the case of the annual meeting to be held in 2003 or in the event that the date of the annual meeting is more than 30 days before or after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Rule 14a-11 thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial

owner, if any, on whose behalf the proposal is made; and (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner and (ii) the class and number of shares of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owner.

Notwithstanding anything in the second sentence of paragraph (A)(2) of this By-law to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least 100 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this By-law shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

(3) Proxy Access.

(a) Subject to the provisions of this paragraph (A)(3) of this By-law, the Corporation shall include in its proxy statement (including its form of proxy) for an annual meeting of stockholders the name of any stockholder nominee for election to the Board of Directors submitted pursuant to this paragraph (A)(3) of this By-law (each a "Stockholder Nominee") provided (i) timely written notice of such Stockholder Nominee satisfying this paragraph (A)(3) of this By-law ("Notice") is delivered to the Corporation by or on behalf of a stockholder or stockholders that, at the time the Notice is delivered, satisfy the ownership and other requirements of this paragraph (A)(3) of this By-law (such stockholder or stockholders, and any person on whose behalf they are acting, the "Eligible Stockholder"), (ii) the Eligible Stockholder expressly elects in writing at the time of providing the Notice to have its nominee included in the Corporation's proxy statement pursuant to this paragraph (A)(3) of this By-law, and (iii) the Eligible Stockholder and the Stockholder Nominee otherwise satisfy the requirements of this paragraph (A)(3) of this By-law and the director qualifications requirements set forth in the Corporation's Corporate Governance Guidelines and any other document(s) setting forth qualifications for directors.

(b) To be timely, an Eligible Stockholder's notice must be received in writing by the Secretary of the Corporation at the principal executive offices of the Corporation not less than 120 days nor more than 150 days prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced by more than thirty (30) days, or delayed (other than as a result of adjournment) by more than sixty (60) days, from the first anniversary of the preceding year's annual meeting, or if no annual meeting was held in the preceding year, a stockholder's notice must be so received not earlier than the 150th day prior to such annual meeting and not later than the close of business on the later of (i) the 120th day prior to such annual meeting and (ii) the tenth day following the day on which notice of the date of such annual meeting was mailed or public disclosure of the date of such annual meeting was made, whichever first occurs. In no event shall the public announcement of any adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of an Eligible Stockholder's notice as described above.

(c) In addition to including the name of the Stockholder Nominee in the Corporation's proxy statement for the annual meeting, the Corporation also shall include (i) the information concerning the Stockholder Nominee and the Eligible Stockholder that is required to be disclosed in the Corporation's proxy statement pursuant to Section 14 of the Exchange Act and the rules

and regulations promulgated thereunder and (ii) if the Eligible Stockholder so elects, a Statement (defined below) (collectively, the "Required Information"). Nothing in this paragraph (A)(3) of this By-law shall limit the Corporation's ability to solicit against and include in its proxy statement its own statements relating to any Stockholder Nominee.

(d) The number of Stockholder Nominees (including Stockholder Nominees that were submitted by an Eligible Stockholder for inclusion in the Corporation's proxy statement pursuant to this paragraph (A)(3) of this By-law but either are subsequently withdrawn or that the Board of Directors decides to nominate (a "Board Nominee")) appearing in the Corporation's proxy statement with respect to an annual meeting of stockholders shall not exceed the greater of (i) two or (ii) 20% of the number of directors in office as of the last day on which notice of a nomination may be received pursuant to this paragraph (A)(3) of this By-law (the "Final Proxy Access Nomination Date") or, if such amount is not a whole number, the closest whole number below 20% (such greater number, the "Permitted Number"); provided, however, that (A) the Permitted Number shall be reduced by the number of director candidates for which the Corporation shall have received one or more valid notices that a stockholder intends to nominate director candidates at an annual meeting of stockholders pursuant to paragraph (A)(2) of this By-law, but only to the extent the Permitted Number after such reduction equals or exceeds one, (B) any director in office as of the nomination deadline who was included in the Corporation's proxy statement as a Stockholder Nominee for any of the two preceding annual meetings and whom the Board of Directors decides to nominate for election to the Board of Directors also will be counted against the Permitted Number, and (C) in the event that one or more vacancies for any reason occurs on the Board of Directors at any time after the Final Proxy Access Nomination Date and before the date of the applicable annual meeting of stockholders and the Board of Directors resolves to reduce the size of the Board of Directors in connection therewith, the Permitted Number shall be calculated based on the number of directors in office as so reduced.

(e) In the event that the number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this paragraph (A)(3) of this By-law exceeds the Permitted Number, each Eligible Stockholder shall select one Stockholder Nominee for inclusion in the Corporation's proxy statement until the Permitted Number is reached, going in order of the amount (greatest to least) of the Corporation's capital stock entitled to vote on the election of directors as disclosed in the Notice. If the Permitted Number is not reached after each Eligible Stockholder has selected one Stockholder Nominee, this selection process shall continue as many times as necessary, following the same order each time, until the Permitted Number is reached.

(f) An Eligible Stockholder must have owned (as defined below) continuously for at least three years as of the date of Notice a number of shares that represents 3% or more of the Corporation's outstanding shares of capital stock entitled to vote in the election of directors (the "Required Shares") as of both the date the Notice is received by the Corporation in accordance with this paragraph (A)(3) of this By-law and the record date for determining stockholders entitled to vote at the annual meeting and must continue to own the Required Shares through the annual meeting date. For purposes of satisfying the ownership requirement under this paragraph (A)(3) of this By-law, the shares of the Corporation's capital stock owned by one or more stockholders, or by the person or persons who own shares of the Corporation's capital stock and on whose behalf any stockholder is acting, may be aggregated, provided that (i) the number of stockholders and other persons whose ownership of shares is aggregated for such purpose shall not exceed 20, (ii) each stockholder or other person whose shares are aggregated shall have held such shares continuously for at least three years as of the date of Notice, and (iii) a group of two or more funds that are (A) under common management and investment control, (B) under common management and funded primarily by the same employer (or by a group of related

employers that are under common control), or (C) a “group of investment companies,” as such term is defined in Section 12(d)(1)(G) (ii) of the Investment Company Act of 1940, as amended, shall be treated as one stockholder or person for this purpose. Whenever an Eligible Stockholder consists of a group of stockholders and/or other persons, any and all requirements and obligations for an Eligible Stockholder set forth in this paragraph (A)(3) of this By-law must be satisfied by and as to each such stockholder or other person, except that shares may be aggregated to meet the Required Shares as provided in this paragraph (A)(3) of this By-law. With respect to any one particular annual meeting, no stockholder or other person may be a member of more than one group of persons constituting an Eligible Stockholder under this paragraph (A)(3) of this By-law.

(g) For purposes of this paragraph (A)(3) of this By-law, an Eligible Stockholder shall be deemed to “own” only those outstanding shares of the Corporation’s capital stock as to which the person possesses both (i) the full voting and investment rights pertaining to the shares and (ii) the full economic interest in (including the opportunity for profit and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (i) and (ii) shall not include any shares (x) sold by such person or any of its affiliates in any transaction that has not been settled or closed, (y) borrowed by such person or any of its affiliates for any purposes or purchased by such person or any of its affiliates pursuant to an agreement to resell, or (z) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such person or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding shares of the Corporation’s capital stock, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of (A) reducing in any manner, to any extent or at any time in the future, such person’s or affiliates’ full right to vote or direct the voting of any such shares, and/or (B) hedging, offsetting or altering to any degree gain or loss arising from the full economic ownership of such shares by such person or affiliate. A person shall “own” shares held in the name of a nominee or other intermediary so long as the person retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares.

(h) A person’s ownership of shares shall be deemed to continue during any period in which (i) the person has loaned such shares, provided that the person has the power to recall such loaned shares on five business days’ notice and provides a representation that it will promptly recall, and promptly recalls, such loaned shares upon being notified that any of its Stockholder Nominees will be included in the Corporation’s proxy statement, or (ii) the person has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement that is revocable at any time by the person. The terms “owned,” “owning” and other variations of the word “own” shall have correlative meanings. For purposes of this paragraph (A)(3) of this By-law, the term “affiliate” shall have the meaning ascribed thereto in the regulations promulgated under the Exchange Act.

(i) An Eligible Stockholder must provide with its Notice the following in writing to the Secretary: (i) one or more written statements from the record holder of the shares (and from each intermediary through which the shares are or have been held during the requisite three-year holding period) verifying that, as of a date within seven calendar days prior to the date the Notice is received by the Corporation, the Eligible Stockholder owns, and has owned continuously for the preceding three years, the Required Shares, and the Eligible Stockholder’s agreement to provide (A) within five business days after the record date for the annual meeting, written statements from the record holder and intermediaries verifying the Eligible Stockholder’s continuous ownership of the Required Shares through the record date and (B) immediate notice if the Eligible Stockholder ceases to own any of the Required Shares prior to the date of the applicable annual meeting of stockholders; (ii) documentation satisfactory

to the Corporation demonstrating that a group of funds qualifies to be treated as one stockholder or person for purposes of this paragraph (A)(3) of this By-law, if applicable; (iii) a representation that the Eligible Stockholder (including each member of any group of stockholders and/or persons that together is an Eligible Stockholder hereunder) (A) intends to continue to own the Required Shares through the date of the annual meeting, (B) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control of the Corporation, and does not presently have such intent, (C) has not nominated and will not nominate for election to the Board of Directors at the annual meeting any person other than the Stockholder Nominee(s) being nominated pursuant to this paragraph (A)(3) of this By-law, (D) has not engaged and will not engage in, and has not and will not be, a “participant” in another person’s “solicitation” within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the annual meeting other than its Stockholder Nominee(s) or a Board Nominee, (E) will not distribute to any stockholder any form of proxy for the annual meeting other than the form distributed by the Corporation, and (F) has provided and will provide facts, statements and other information in all communications with the Corporation and its stockholders that are or will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; (iv) the written consent of each Stockholder Nominee to be named in the Corporation’s proxy statement as a nominee and to serve as a director if elected; (v) a copy of the Schedule 14N that has been filed with the SEC as required by Rule 14a-18 under the Exchange Act; (vi) the information required to be provided by paragraph (A)(2) of this By-law, as applicable; (vii) in the case of a nomination by a group of stockholders that together is an Eligible Stockholder, the designation by all group members of one group member that is authorized to act on behalf of all members of the nominating stockholder group with respect to the nomination and matters related thereto, including withdrawal of the nomination; and (viii) an undertaking that the Eligible Stockholder agrees to (A) assume all liability stemming from any legal or regulatory violation arising out of the Eligible Stockholder’s communications with the Corporation’s stockholders or out of the information that the Eligible Stockholder provides to the Corporation, (B) indemnify and hold harmless the Corporation and each of its directors, officers and employees individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers or employees in connection with the Eligible Stockholder’s nomination and/or efforts to elect its nominee(s) pursuant to this paragraph (A)(3) of this By-law, (C) file with the SEC any solicitation materials relating to the annual meeting at which the Stockholder Nominee will be nominated, regardless of whether any such filing is required under Section 14 of the Exchange Act and the rules and regulations promulgated thereunder or whether any exemption from filing is available for such solicitation or other communication under Section 14 of the Exchange Act and the rules and regulations promulgated thereunder, and any other communication with the Corporation’s stockholders that is required to be filed under applicable law, and (D) comply with all other applicable laws, rules, regulations and listing standards with respect to any solicitation in connection with the annual meeting.

(j) The Eligible Stockholder may include with its Notice a written statement for inclusion in the Corporation’s proxy statement for the annual meeting, not to exceed 500 words per Stockholder Nominee, in support of each Stockholder Nominee’s candidacy (the “Statement”). Notwithstanding anything to the contrary contained in this Article II, the Corporation may omit from its proxy statement any information or Statement that it believes would violate Rule 14a-9 under the Exchange Act or any other applicable law, rule, regulation or listing standard.

(k) Each Stockholder Nominee must (i) provide within five business days of the Corporation’s request an executed agreement, in a form deemed satisfactory to the Corporation, that (A) the Stockholder Nominee has read and agrees to adhere to the Corporation’s Corporate Governance

Guidelines and all other Corporation policies and guidelines applicable to directors, including with regard to securities trading, (B) the Stockholder Nominee is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (2) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law, and (C) the Stockholder Nominee is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification (a "Compensation Agreement") in connection with such person's nomination or candidacy for director and/or service as a director that has not been disclosed to the Corporation; (ii) complete, sign and submit all questionnaires required of the Corporation's Board of Directors within five business days of receipt of each such questionnaire from the Corporation; and (iii) provide within five business days of the Corporation's request such additional information as the Corporation determines may be necessary to permit the Board of Directors to determine whether such Stockholder Nominee meets the requirements of this paragraph (A)(3) of this By-law and/or the Corporation's requirements with regard to director qualifications and policies and guidelines applicable to directors, including whether (A) such Stockholder Nominee is independent under the audit committee and compensation committee independence requirements set forth in the rules of any U.S. exchange upon which the Corporation's capital stock is listed, the listing standards of any U.S. exchange upon which the Corporation's capital stock is listed, any applicable rules of the Securities and Exchange Commission, and any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the directors (collectively, the "Independence Standards"), (B) such Stockholder Nominee has any direct or indirect relationship with the Corporation, and (C) such Stockholder Nominee has been subject to (1) any event specified in Item 401(f) of Regulation S-K under the Securities Act of 1933, as amended (the "Securities Act") or (2) any order of the type specified in Rule 506(d) of Regulation D under the Securities Act.

(l) In the event that any information or communications provided by the Eligible Stockholder or Stockholder Nominee to the Corporation or its stockholders ceases to be true and correct in any respect or omits a fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, each Eligible Stockholder or Stockholder Nominee, as the case may be, shall promptly notify the Secretary of any such inaccuracy or omission in such previously provided information and of the information that is required to make such information or communication true and correct; it being understood that providing any such notification shall not be deemed to cure any defect or limit the Corporation's right to omit a Stockholder Nominee from its proxy materials as provided in this paragraph (A)(3) of this By-law.

(m) The Corporation shall not be required to include, pursuant to this paragraph (A)(3) of this By-law, a Stockholder Nominee in its proxy statement (or, if the proxy statement has already been filed, to allow the nomination of a Stockholder Nominee, notwithstanding that proxies in respect of such vote may have been received by the Corporation) (i) if the Eligible Stockholder who has nominated such Stockholder Nominee has nominated for election to the Board of Directors at the annual meeting any person other than pursuant to this paragraph (A)(3) of this By-law, or has or is engaged in, or has been or is a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the annual meeting other than its Stockholder Nominee(s) or a Board Nominee, (ii) who is not independent under the Independence Standards, (iii) whose election as a member of the Board of Directors would violate or cause the Corporation to be in violation of these By-laws, the Corporation's certificate of incorporation, the

Corporation's Corporate Governance Guidelines or other document setting forth qualifications for directors, the listing standards of any U.S. exchange upon which the Corporation's capital stock is listed, or any applicable state or federal law, rule or regulation, (iv) if the Stockholder Nominee is or becomes a party to any undisclosed or prohibited Voting Commitment, (v) if the Stockholder Nominee is or becomes a party to any undisclosed Compensation Agreement, (vi) who is or has been, within the past three years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, (vii) whose then-current or prior business or personal interests place such Stockholder Nominee in a conflict of interest with the Corporation or any of its subsidiaries that would cause such Stockholder Nominee to violate any fiduciary duties of directors established pursuant to Delaware law, including but not limited to the duty of loyalty and duty of care, (viii) who is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in such a criminal proceeding within the past ten years, (ix) who is subject to any order of the type specified in Rule 506(d) of Regulation D under the Securities Act, or (x) if such Stockholder Nominee or the applicable Eligible Stockholder shall have provided information to the Corporation in respect of such nomination that was untrue in any material respect or omitted to state a material fact necessary in order to make the statement made, in light of the circumstances under which they were made, not misleading or shall have breached any of its or their agreements, representations, undertakings and/or obligations pursuant to this paragraph (A)(3) of this By-law.

(n) Notwithstanding anything to the contrary set forth herein, (i) if the Eligible Stockholder shall not have satisfied in full the requirements of subsection (i) of this paragraph (A)(3) of this By-law as of the date of Notice, the Board of Directors may deem the nomination invalid and may disregard such nomination as such and (ii) if (A) the Stockholder Nominee and/or the applicable Eligible Stockholder shall have breached its or their agreements, representations, undertakings and/or obligations pursuant to this paragraph (A)(3) of this By-law, as determined by the Board of Directors or the person presiding at the annual meeting, or (B) the Eligible Stockholder (or a qualified representative thereof) does not appear at the annual meeting to present any nomination pursuant to this paragraph (A)(3) of this By-law, (x) the Board of Directors or the person presiding at the annual meeting shall be entitled to declare a nomination by an Eligible Stockholder to be invalid, and such nomination shall be disregarded notwithstanding that proxies in respect of such vote may have been received by the Corporation and (y) the Corporation shall not be required to include in its proxy statement any successor or replacement nominee proposed by the applicable Eligible Stockholder or any other Eligible Stockholder.

(o) Any Stockholder Nominee who is included in the Corporation's proxy statement for a particular annual meeting of stockholders but either withdraws from or becomes ineligible or unavailable for election at the annual meeting shall be ineligible to be included in the Corporation's proxy statement as a Stockholder Nominee pursuant to this paragraph (A)(3) of this By-law for the next two annual meetings of stockholders following the annual meeting for which the Stockholder Nominee has been nominated for election.

(B) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (a) by or at the direction of the Board of Directors or (b) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time of giving of notice provided for in this By-law, who shall be entitled to vote at the meeting and who complies with the notice procedures set forth in this By-law. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the

Board of Directors, any stockholder who shall be entitled to vote at the meeting may nominate a person or persons (as the case may be), for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by paragraph (A)(2) of this By-law shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment of a special meeting commence a new time period for the giving of a stockholder's notice as described above.

(C) General.

(1) Only such persons who are nominated in accordance with the procedures set forth in this By-law shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this By-law. Except as otherwise provided by law, the Certificate of Incorporation or these By-laws, the Chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this By-law and, if any proposed nomination or business is not in compliance with this By-law, to declare that such defective proposal or nomination shall be disregarded.

(2) For purposes of this By-law, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(3) Notwithstanding the foregoing provisions of this By-law, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this By-law. Nothing in this By-law shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (ii) of the holders of any series of Preferred Stock to elect directors under specified circumstances.

SECTION 9 Business and Order of Business. At each meeting of the stockholders such business may be transacted as may properly be brought before such meeting, except as otherwise provided by law or in these By-laws. The order of business at all meetings of the stockholders shall be as determined by the Chairman of the meeting.

SECTION 10 Voting. Except as otherwise provided by law, the Certificate of Incorporation or these By-laws, each stockholder shall at every meeting of the stockholders be entitled to one vote for each share of stock held by such stockholder. Any vote on stock may be given by the stockholder entitled thereto in person or by proxy appointed by an instrument in writing, subscribed (or transmitted by electronic means and authenticated as provided by law) by such stockholder or by the stockholder's attorney thereunto authorized, and delivered to the Secretary; provided, however, that no proxy shall be voted after three years from its date unless the proxy provides for a longer period. Except as otherwise provided by law, the Certificate of Incorporation or these By-laws, at all meetings of the stockholders, all matters, other than the election of directors (which is addressed in ARTICLE III, Section 3), shall be decided by the vote (which need not be by ballot) of a majority in interest of the stockholders present in person or by proxy and entitled to vote thereon, a quorum being present.

SECTION 11 Participation at Meetings Held by Remote Communication. If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxy holders not physically present at a meeting of stockholders may, by means of remote communication: (A) participate in a meeting of stockholders; and (B) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication.

SECTION 12 Inspectors of Election. In advance of any meeting, of stockholders, the Board by resolution or the Chief Executive Officer shall appoint one or more inspectors of election to act at the meeting and make a written report thereof. One or more other persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is present, ready and willing to act at a meeting of stockholders, the Chairman of the meeting shall appoint one or more inspectors to act at the meeting. Unless otherwise required by law, inspectors may be officers, employees or agents of the Corporation. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector shall have the duties prescribed by law and shall take charge of the polls and, when the vote is completed, shall make a certificate of the result of the vote taken and of such other facts as may be required by law.

ARTICLE III

BOARD OF DIRECTORS

SECTION 1 General Powers. The property, affairs and business of the Corporation shall be managed by or under the direction of its Board of Directors.

SECTION 2 Number, Qualifications, and Term of Office. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the number of directors of the Corporation shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the whole Board. A director need not be a stockholder.

SECTION 3 Election of Directors. Other than in a Contested Election Meeting (as defined below), at each meeting of the stockholders for the election of directors at which a quorum is present, a nominee for election as a director at such meeting shall be elected to the Board of Directors if the votes cast "for" such nominee's election exceed the votes cast "against" such nominee's election (with "abstentions" and "broker non-votes" not counted as votes "for" or "against" such nominee's election). In a Contested Election Meeting at which a quorum is present, the directors shall be elected by a plurality vote of all votes cast for the election of directors at such Contested Election Meeting. If directors are to be elected by a plurality of the votes cast, stockholders shall not be permitted to vote against a nominee. A meeting of stockholders shall be a "Contested Election Meeting" if the number of nominees for election as directors exceeds the number of directors to be elected at such meeting, as of the tenth day preceding the date of the Corporation's first notice to stockholders of such meeting sent pursuant to ARTICLE II, Section 4 of these By-laws (the "Determination Date"); provided, however, that if in accordance with ARTICLE II, Section 8 of these By-laws stockholders are entitled to nominate persons for election as directors, including pursuant to paragraph (A)(3) of ARTICLE II, Section 8 of these By-laws, after the otherwise applicable Determination Date, the Determination Date will instead be the last day on which stockholders are entitled to nominate persons for election as director.

SECTION 4 Chairman of the Board of Directors. The Board of Directors may elect from among its members one director to serve at its pleasure as Chairman of the Board.

SECTION 5 Quorum and Manner of Acting. A majority of the members of the Board of Directors shall constitute a quorum for the transaction of business at any meeting, and the act of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors unless otherwise provided by law, the Certificate of Incorporation or these By-laws. In the absence of a quorum, a majority of the directors present may adjourn any meeting from time to time until a quorum shall be obtained. Notice of any adjourned meeting need not be given. The directors shall act only as a board and the individual directors shall have no power as such.

SECTION 6 Place of Meetings. The Board of Directors may hold its meetings at such place or places within or without the State of Delaware as the Board may from time to time determine or as shall be specified or fixed in the respective notices or waivers of notice thereof.

SECTION 7 First Meeting. Promptly after each annual election of directors, the Board of Directors shall meet for the purpose of organization, the election of officers and the transaction of other business, at the same place as that at which the annual meeting of stockholders was held or as otherwise determined by the Board. Notice of such meeting need not be given. Such meeting may be held at any other time or place which shall be specified in a notice given as hereinafter provided for special meetings of the Board of Directors.

SECTION 8 Regular Meetings. Regular meetings of the Board of Directors shall be held at such places and at such times as the Board shall from time to time determine. If any day fixed for a regular meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting which would otherwise be held on that day shall be held at the same hour on the next succeeding business day not a legal holiday. Notice of regular meetings need not be given.

SECTION 9 Special Meetings; Notice. Special meetings of the Board of Directors shall be held whenever called by the Chairman of the Board or the Chief Executive Officer and shall be called by the Chairman of the Board, the Chief Executive Officer or the Secretary of the Corporation at the written request of three directors. Notice of each such meeting stating the time and place of the meeting shall be given to each director by mail, telephone, other electronic transmission or personally. If by mail, such notice shall be given not less than five days before the meeting; and if by telephone, other electronic transmission or personally, not less than two days before the meeting. A notice mailed at least two weeks before the meeting need not state the purpose thereof except as otherwise provided in these By-laws. In all other cases the notice shall state the principal purpose or purposes of the meeting. Notice of any meeting of the Board need not be given to a director, however, if waived by the director in writing before or after such meeting or if the director shall be present at the meeting, except when the 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 10 Organization. At each meeting of the Board of Directors, the Chairman of the Board, or, in the absence of the Chairman of the Board, the Chief Executive Officer, or, in his or her absence, a director or an officer of the Corporation designated by the Board shall act as Chairman of the meeting. The Secretary, or, in the Secretary's absence, any person appointed by the Chairman of the meeting, shall act as Secretary of the meeting.

SECTION 11 Order of Business. At all meetings of the Board of Directors, business shall be transacted in the order determined by the Board.

SECTION 12 Resignations. Any director of the Corporation may resign at any time by giving written notice to the Chairman of the Board, the Chief Executive Officer or the Secretary of the

Corporation. The resignation of any director 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 13 Compensation. Each director shall be paid such compensation, if any, as shall be fixed by the Board of Directors.

SECTION 14 Indemnification.

(A) The Corporation 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 such person is or was a director, officer, employee or agent of the Corporation or any of its majority-owned subsidiaries or is or was serving at the request of the Corporation as a director, officer, employee or agent (except in each of the foregoing situations to the extent any agreement, arrangement or understanding of agency contains provisions that supersede or abrogate indemnification under this section) of another corporation or of any partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(B) The Corporation 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 such person is or was a director, officer, employee or agent of the Corporation or any of its majority-owned subsidiaries, or is or was serving at the request of the Corporation as a director, officer, employee or agent (except in each of the foregoing situations to the extent any agreement, arrangement or understanding of agency contains provisions that supersede or abrogate indemnification under this section) of another corporation or of any partnership, joint venture, trust, employee benefit plan or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery 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 of Delaware or such other court shall deem proper.

(C) To the extent that a director, officer, employee or agent of the Corporation or any of its majority-owned subsidiaries has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (A) and (B), or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by or on behalf of such person in connection therewith. If any such person is not wholly successful in any such action, suit or proceeding but is successful, on the merits or otherwise, as to

one or more but less than all claims, issues or matters therein, the Corporation shall indemnify such person against all expenses (including attorneys' fees) actually and reasonably incurred by or on behalf of such person in connection with each claim, issue or matter that is successfully resolved. For purposes of this subsection and without limitation, the termination of any claim, issue or matter by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

(D) Notwithstanding any other provision of this section, to the extent any person is a witness in, but not a party to, any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director, officer, employee or agent of the Corporation or any of its majority-owned subsidiaries, or is or was serving at the request of the Corporation as a director, officer, employee or agent (except in each of the foregoing situations to the extent any agreement, arrangement or understanding of agency contains provisions that supersede or abrogate indemnification under this section) of another corporation or of any partnership, joint venture, trust, employee benefit plan or other enterprise, such person shall be indemnified against all expenses (including attorneys' fees) actually and reasonably incurred by or on behalf of such person in connection therewith.

(E) Indemnification under subsections (A) and (B) shall be made only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because such person has met the applicable standard of conduct set forth in subsections (A) and (B). Such determination shall be made (1) if a Change of Control (as hereinafter defined) shall not have occurred, (a) with respect to a person who is a present or former director or officer of the Corporation, (i) by the Board of Directors by a majority vote of the Disinterested Directors (as hereinafter defined), even though less than a quorum, or (ii) if there are no Disinterested Directors or, even if there are Disinterested Directors, a majority of such Disinterested Directors so directs, by (x) Independent Counsel (as hereinafter defined) in a written opinion to the Board of Directors, a copy of which shall be delivered to the claimant, or (y) the stockholders of the Corporation; or (b) with respect to a person who is not a present or former director or officer of the Corporation, by the chief executive officer of the Corporation or by such other officer of the Corporation as shall be designated from time to time by the Board of Directors; or (2) if a Change of Control shall have occurred, by Independent Counsel selected by the claimant in a written opinion to the Board of Directors, a copy of which shall be delivered to the claimant, unless the claimant shall request that such determination be made by or at the direction of the Board of Directors (in the case of a claimant who is a present or former director or officer of the Corporation) or by an officer of the Corporation authorized to make such determination (in the case of a claimant who is not a present or former director or officer of the Corporation), in which case it shall be made in accordance with clause (1) of this sentence. Any claimant shall be entitled to be indemnified against the expenses (including attorneys' fees) actually and reasonably incurred by such claimant in cooperating with the person or entity making the determination of entitlement to indemnification (irrespective of the determination as to the claimant's entitlement to indemnification) and, to the extent successful, in connection with any litigation or arbitration with respect to such claim or the enforcement thereof.

(F) If a Change of Control shall not have occurred, or if a Change of Control shall have occurred and a director, officer, employee or agent requests pursuant to clause (2) of the second sentence in subsection (E) that the determination as to whether the claimant is entitled to indemnification be made by or at the direction of the Board of Directors (in the case of a claimant who is a present or former director or officer of the Corporation) or by an officer of the Corporation authorized to make such determination (in the case of a claimant who is not a present or former director or officer of the Corporation), the claimant shall be conclusively presumed to have been determined pursuant to subsection (E) to be entitled to indemnification if (1) in the case of a claimant who is a present or former director or

officer of the Corporation, (a) (i) within fifteen days after the next regularly scheduled meeting of the Board of Directors following receipt by the Corporation of the request therefor, the Board of Directors shall not have resolved by majority vote of the Disinterested Directors to submit such determination to (x) Independent Counsel for its determination or (y) the stockholders for their determination at the next annual meeting, or any special meeting that may be held earlier, after such receipt, and (ii) within sixty days after receipt by the Corporation of the request therefor (or within ninety days after such receipt if the Board of Directors in good faith determines that additional time is required by it for the determination and, prior to expiration of such sixty-day period, notifies the claimant thereof), the Board of Directors shall not have made the determination by a majority vote of the Disinterested Directors, or (b) after a resolution of the Board of Directors, timely made pursuant to clause (a)(i)(y) above, to submit the determination to the stockholders, the stockholders meeting at which the determination is to be made shall not have been held on or before the date prescribed (or on or before a later date, not to exceed sixty days beyond the original date, to which such meeting may have been postponed or adjourned on good cause by the Board of Directors acting in good faith), or (2) in the case of a claimant who is not a present or former director or officer of the Corporation, within sixty days after receipt by the Corporation of the request therefor (or within ninety days after such receipt if an officer of the Corporation authorized to make such determination in good faith determines that additional time is required for the determination and, prior to expiration of such sixty-day period, notifies the claimant thereof), an officer of the Corporation authorized to make such determination shall not have made the determination; provided, however, that this sentence shall not apply if the claimant has misstated or failed to state a material fact in connection with his or her request for indemnification. Such presumed determination that a claimant is entitled to indemnification shall be deemed to have been made (I) at the end of the sixty-day or ninety-day period (as the case may be) referred to in clause (1)(a)(ii) or (2) of the immediately preceding sentence or (II) if the Board of Directors has resolved on a timely basis to submit the determination to the stockholders, on the last date within the period prescribed by law for holding such stockholders meeting (or a postponement or adjournment thereof as permitted above).

(G) Expenses (including attorneys' fees) incurred in defending a 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 to a present or former director or officer of the Corporation, promptly after receipt of a request therefor stating in reasonable detail the expenses incurred, and to a person who is not a present or former director or officer of the Corporation as authorized by the chief executive officer of the Corporation or such other officer of the Corporation as shall be designated from time to time by the Board of Directors; provided that in each case the Corporation shall have received an undertaking by or on behalf of the present or former director, officer, employee or agent to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this section.

(H) The Board of Directors shall establish reasonable procedures for the submission of claims for indemnification pursuant to this section, determination of the entitlement of any person thereto and review of any such determination. Such procedures shall be set forth in an appendix to these By-laws and shall be deemed for all purposes to be a part hereof.

(I) For purposes of this section,

(1) "Change of Control" means any of the following:

(a) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Exchange Act) (a "Person") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20% or more of either (i) the then outstanding shares of common stock of the Corporation (the "Outstanding Corporation Common Stock")

or (ii) the combined voting power of the then outstanding voting securities of the Corporation entitled to vote generally in the election of directors (the “Outstanding Corporation Voting Securities”); provided, however, that for purposes of this subparagraph (a), the following acquisitions shall not constitute a Change of Control: (w) any acquisition directly from the Corporation, (x) any acquisition by the Corporation, (y) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Corporation or any corporation controlled by the Corporation or (z) any acquisition pursuant to a transaction which complies with clauses (i), (ii) and (iii) of subsection (c) of this Paragraph 13(I)(1); or

(b) Individuals who, as of the date of the Distribution, constitute the Board of Directors (the “Incumbent Board”) cease for any reason to constitute at least a majority of the Board of Directors; provided, however, that any individual becoming a director subsequent to that date whose election, or nomination for election by the Corporation’s stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual who was a Stockholder Nominee or whose initial assumption of office otherwise occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board of Directors; or

(c) Consummation of a reorganization, merger or consolidation or sale or other disposition of all or substantially all of the assets of the Corporation or the acquisition of assets of another entity (a “Corporate Transaction”), in each case, unless, following such Corporate Transaction, (i) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Corporation Common Stock and Outstanding Corporation Voting Securities immediately prior to such Corporate Transaction beneficially own, directly or indirectly, more than 60% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Corporate Transaction (including, without limitation, a corporation which as a result of such transaction owns the Corporation or all or substantially all of the Corporation’s assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Corporate Transaction, of the Outstanding Corporation Common Stock and Outstanding Corporation Voting Securities, as the case may be, (ii) no Person (excluding any employee benefit plan (or related trust) of the Corporation or of such corporation resulting from such Corporate Transaction) beneficially owns, directly or indirectly, 20% or more of, respectively, the then outstanding shares of common stock of the corporation resulting from such Corporate Transaction or the combined voting power of the then outstanding voting securities of such corporation except to the extent that such ownership existed prior to the Corporate Transaction and (iii) at least a majority of the members of the board of directors of the corporation resulting from such Corporate Transaction were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board of Directors, providing for such Corporate Transaction; or

(d) Approval by the Corporation’s stockholders of a complete liquidation or dissolution of the Corporation.

(2) “Disinterested Director” means a director of the Corporation who is not and was not a party to an action, suit or proceeding in respect of which indemnification is sought by a director, officer, employee or agent.

(3) “Independent Counsel” means a law firm, or a member of a law firm, that (i) is experienced in matters of corporation law; (ii) neither presently is, nor in the past five years has been, retained to represent the Corporation, the director, officer, employee or agent claiming

indemnification or any other party to the action, suit or proceeding giving rise to a claim for indemnification under this section, in any matter material to the Corporation, the claimant or any such other party, and (iii) would not, under applicable standards of professional conduct then prevailing, have a conflict of interest in representing either the Corporation or such director, officer, employee or agent in an action to determine the Corporation's or such person's rights under this section.

(J) The indemnification and advancement of expenses herein provided, or granted pursuant hereto, shall not be deemed exclusive of any other rights to which any of those indemnified or eligible for advancement of expenses may be entitled under any agreement, vote of stockholders or Disinterested Directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, and shall 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 person. Notwithstanding any amendment, alteration or repeal of this section or any of its provisions, or of any of the procedures established by the Board of Directors pursuant to subsection (H) hereof, any person who is or was a director, officer, employee or agent of the Corporation or any of its majority-owned subsidiaries or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of any partnership, joint venture, employee benefit plan or other enterprise shall be entitled to indemnification in accordance with the provisions hereof and thereof with respect to any action taken or omitted prior to such amendment, alteration or repeal except to the extent otherwise required by law.

(K) No indemnification shall be payable pursuant to this section with respect to any action against the Corporation commenced by an officer, director, employee or agent unless the Board of Directors shall have authorized the commencement thereof or unless and to the extent that this section or the procedures established pursuant to subsection (H) shall specifically provide for indemnification of expenses relating to the enforcement of rights under this section and such procedures.

SECTION 15 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 or of any partnership, joint venture, trust, employee benefit plan or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of Section 14 of this Article III.

ARTICLE IV

COMMITTEES

SECTION 1 Appointment and Powers. The Board of Directors may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of two or more directors of the Corporation (or in the case of a special-purpose committee, one or more directors of the Corporation), which, to the extent provided in said resolution or in these By-laws and not inconsistent with Section 141 of the Delaware General Corporation Law, as amended, 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 determined from time to time by resolution adopted by the Board of Directors.

SECTION 2 Term of Office and Vacancies. Each member of a committee shall continue in office until a director to succeed him or her shall have been elected and shall have qualified, or until he or she

ceases to be a director or until he or she shall have resigned or shall have been removed in the manner hereinafter provided. Any vacancy in a committee shall be filled by the vote of a majority of the whole Board of Directors at any regular or special meeting thereof.

SECTION 3 Alternates. The Board of Directors may, by resolution passed by a majority of the whole Board, 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.

SECTION 4 Organization. Unless otherwise provided by the Board of Directors, each committee shall appoint a chairman. Each committee shall keep a record of its acts and proceedings and report the same from time to time to the Board of Directors.

SECTION 5 Resignations. Any regular or alternate member of a committee may resign at any time by giving written notice to the Chairman of the Board, the Chief Executive Officer or the Secretary of the Corporation. Such resignation shall take effect at the time of the receipt of such notice or at any later time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 6 Removal. Any regular or alternate member of a committee may be removed with or without cause at any time by resolution passed by a majority of the whole Board of Directors at any regular or special meeting.

SECTION 7 Meetings. Regular meetings of each committee, of which no notice shall be necessary, shall be held on such days and at such places as the chairman of the committee shall determine or as shall be fixed by a resolution passed by a majority of all the members of such committee. Special meetings of each committee will be called by the Secretary at the request of any two members of such committee, or in such other manner as may be determined by the committee. Notice of each special meeting of a committee shall be mailed to each member thereof at least two days before the meeting or shall be given personally or by telephone or other electronic transmission at least one day before the meeting. Every such notice shall state the time and place, but need not state the purposes of the meeting. No notice of any meeting of a committee shall be required to be given to any alternate.

SECTION 8 Quorum and Manner of Acting. Unless otherwise provided by resolution of the Board of Directors, a majority of a committee (including alternates when acting in lieu of regular members of such committee) shall constitute a quorum for the transaction of business and the act of a majority of those present at a meeting at which a quorum is present shall be the act of such committee. The members of each committee shall act only as a committee and the individual members shall have no power as such.

SECTION 9 Compensation. Each regular or alternate member of a committee shall be paid such compensation, if any, as shall be fixed by the Board of Directors.

ARTICLE V

OFFICERS

SECTION 1 Officers. The officers of the Corporation shall be a Chief Executive Officer, a President, one or more Vice Presidents (one or more of whom may be Executive Vice Presidents, Senior Vice Presidents or otherwise as may be designated by the Board), a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors. Any two or more offices may be held by the same person. The Board of Directors may also from time to time elect such other officers as it deems necessary.

SECTION 2 Term of Office. Each officer shall hold office until his or her successor shall have been duly elected and qualified in his or her stead, or until his or her death or until he or she shall have resigned or shall, have been removed in the manner hereinafter provided.

SECTION 3 Additional Officers; Agents. The Chief Executive Officer or the President may from time to time appoint and remove such additional officers and agents as may be deemed necessary. Such persons shall hold office for such period, have such authority, and perform such duties as provided in these By-laws or as the Chief Executive Officer or the President may from time to time prescribe. The Board of Directors or the Chief Executive Officer or the President may from time to time authorize any officer to appoint and remove agents and employees and to prescribe their powers and duties.

SECTION 4 Salaries. Unless otherwise provided by resolution passed by a majority of the whole Board, the salaries of all officers elected by the Board of Directors shall be fixed by the Board of Directors.

SECTION 5 Removal. Except where otherwise expressly provided in a contract authorized by the Board of Directors, any officer may be removed, either with or without cause, by the vote of a majority of the Board at any regular or special meeting or, except in the case of an officer elected by the Board, by any superior officer upon whom the power of removal may be conferred by the Board or by these By-laws.

SECTION 6 Resignations. Any officer elected by the Board of Directors may resign at any time by giving written notice to the Chairman of the Board, the Chief Executive Officer, the President or the Secretary. Any other officer may resign at any time by giving written notice to the Chief Executive Officer or the President. Any such resignation shall take effect at the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 7 Vacancies. A vacancy in any office because of death, resignation, removal or otherwise, shall be filled for the unexpired portion of the term in the manner provided in these By-laws for regular election or appointment to such office.

SECTION 8 Chief Executive Officer. Subject to the control of the Board of Directors, the Chief Executive Officer shall have general and overall charge of the business and affairs of the Corporation and of its officers. The Chief Executive Officer shall keep the Board of Directors appropriately informed on the business and affairs of the Corporation. The Chief Executive Officer shall preside at all meetings of the stockholders and shall enforce the observance of the rules of order for the meetings of the stockholders and of the By-laws of the Corporation.

SECTION 9 President. The President shall be the chief operating officer of the Corporation and, subject to the control of the Chief Executive Officer, shall direct and be responsible for the operation of the business and affairs of the Corporation. The President shall keep the Chief Executive Officer and the Board of Directors appropriately informed on the business and affairs of the Corporation. In the case of the absence or disability of the Chief Executive Officer, the President shall perform all the duties and functions and execute all the powers of, and be subject to all the restrictions upon, the Chief Executive Officer.

SECTION 10 Executive and Senior Vice Presidents. One or more Executive or Senior Vice Presidents shall, subject to the control of the Chief Executive Officer, have lead accountability for components or functions of the Corporation as and to the extent designated by the Chief Executive

Officer. Each Executive or Senior Vice President shall keep the Chief Executive Officer appropriately informed on the business and affairs of the designated components or functions of the Corporation.

SECTION 11 Vice Presidents. The Vice Presidents shall perform such duties as may from time to time be assigned to them or any of them by the Chief Executive Officer.

SECTION 12 Secretary. The Secretary shall keep or cause to be kept in books provided for the purpose the minutes of the meetings of the stockholders, of the Board of Directors and of any committee constituted pursuant to Article IV of these By-laws. The Secretary shall be custodian of the corporate seal and see that it is affixed to all documents as required and attest the same. The Secretary shall perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her.

SECTION 13 Assistant Secretaries. At the request of the Secretary, or in the Secretary's absence or disability, the Assistant Secretary designated by the Secretary shall perform all the duties of the Secretary and, when so acting, shall have all the powers of, and be subject to all the restrictions upon, the Secretary. The Assistant Secretaries shall perform such other duties as from time to time may be assigned to them.

SECTION 14 Treasurer. The Treasurer shall have charge of and be responsible for the receipt, disbursement and safekeeping of all funds and securities of the Corporation. The Treasurer shall deposit all such funds in the name of the Corporation in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of these By-laws. From time to time and whenever requested to do so, the Treasurer shall render statements of the condition of the finances of the Corporation to the Board of Directors. The Treasurer shall perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her.

SECTION 15 Assistant Treasurers. At the request of the Treasurer, or in the Treasurer's absence or disability, the Assistant Treasurer designated by the Treasurer shall perform all the duties of the Treasurer and, when so acting, shall have all the powers of, and be subject to all the restrictions upon, the Treasurer. The Assistant Treasurers shall perform such other duties as from time to time may be assigned to them.

SECTION 16 Certain Agreements. The Board of Directors shall have power to authorize or direct the proper officers of the Corporation, on behalf of the Corporation, to enter into valid and binding agreements in respect of employment, incentive or deferred compensation, stock options, and similar or related matters, notwithstanding the fact that a person with whom the Corporation so contracts may be a member of its Board of Directors. Any such agreement may validly and lawfully bind the Corporation for a term of more than one year, in accordance with its terms, notwithstanding the fact that one of the elements of any such agreement may involve the employment by the Corporation of an officer, as such, for such term.

ARTICLE VI

AUTHORIZATIONS

SECTION 1 Contracts. The Board of Directors, except as otherwise provided in these By-laws, may authorize any officer, employee or agent of the Corporation 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.

SECTION 2 Loans. No loan shall be contracted on behalf of the Corporation and no negotiable paper shall be issued in its name, unless authorized by the Board of Directors.

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, employee or employees, of the Corporation as shall from time to time be determined in accordance with authorization of the Board of Directors.

SECTION 4 Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may from time to time designate, or as may be designated by any officer or officers of the Corporation to whom such power may be delegated by the Board, and for the purpose of such deposit the officers and employees who have been authorized to do so in accordance with the determinations of the Board may endorse, assign and deliver checks, drafts, and other orders for the payment of money which are payable to the order of the Corporation.

SECTION 5 Proxies. Except as otherwise provided in these By-laws or in the Certificate of Incorporation, and unless otherwise provided by resolution of the Board of Directors, the Chief Executive Officer or any other officer may from time to time appoint an attorney or attorneys or agent or agents of the Corporation, in the name and on behalf of the Corporation, to cast the votes which the Corporation may be entitled to cast as a stockholder or otherwise in any other corporation any of whose stock or other securities may be held by the Corporation, at meetings of the holders of the stock or other securities of such other corporations, or to consent in writing to any action by such other corporation, and may instruct the person or persons so appointed as to the manner of casting such vote or giving such consent, and may execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal, or otherwise, all such written proxies or other instruments as such officer may deem necessary or proper in the premises.

ARTICLE VII

SHARES AND THEIR TRANSFER

SECTION 1 Shares of Stock. Certificates for shares of the stock of the Corporation shall be in such form as shall be approved by the Board of Directors. They shall be numbered in the order of their issue, by class and series, and shall be signed by the Chief Executive Officer or a Vice President, and the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, of the Corporation. If a share certificate is countersigned (1) by a transfer agent other than the Corporation or its employee, or (2) by a registrar other than the Corporation or its employee, any other signature on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a share 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 Board of Directors may by resolution or resolutions provide that some or all of any or all classes or series of the shares of stock of the Corporation shall be uncertificated shares. Notwithstanding the preceding sentence, every holder of uncertificated shares, upon request, shall be entitled to receive from the Corporation a certificate representing the number of shares registered in such stockholder's name on the books of the Corporation.

SECTION 2 Record Ownership. A record of the name and address of each holder of the shares of the Corporation, the number of shares held by such stockholder, the number or numbers of any share certificate or certificates issued to such stockholder and the number of shares represented thereby, and the date of issuance of the shares held by such stockholder shall be made on the Corporation's books. The Corporation shall be entitled to treat the holder of record of any share of stock (including any holder registered in a book-entry or direct registration system maintained by the Corporation or a transfer agent or a registrar designated by the Board of Directors) 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 on the part of any other person, whether or not it shall have express or other notice thereof, except as required by law.

SECTION 3 Transfer of Stock. Shares of stock shall be transferable on the books of the Corporation by the holder of record of such stock in person or by such person's attorney or other duly constituted representative, pursuant to applicable law and such rules and regulations as the Board of Directors shall from time to time prescribe. Any shares represented by a certificate shall be transferable upon surrender of such certificate with an assignment endorsed thereon or attached thereto duly executed and with such guarantee of signature as the Corporation may reasonably require.

SECTION 4 Lost, Stolen and Destroyed Certificates. The Corporation may issue a new certificate of stock or may register uncertificated shares, if then authorized by the Board of Directors, 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 person'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, the issuance of such new certificate or the registration of such uncertificated shares.

SECTION 5 Transfer Agent and Registrar; Regulations. The Corporation shall, if and whenever the Board of Directors shall so determine, maintain one or more transfer offices or agencies, each in charge of a transfer agent designated by the Board of Directors, where the shares of the stock of the Corporation shall be directly transferable, and also one or more registry offices, each in charge of a registrar designated by the Board of Directors, where such shares of stock shall be registered, and no certificate for shares of the stock of the Corporation, in respect of which a registrar and transfer agent shall have been designated, shall be valid unless countersigned by such transfer agent and registered by such registrar. The Board of Directors may also make such additional rules and regulations as it may deem expedient concerning the issue, transfer and registration of shares of stock of the Corporation and concerning the registration of pledges of uncertificated shares.

SECTION 6 Fixing Record Date. For the purpose of determining the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or 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, in advance, a record date, which shall not be more than sixty nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action. If no record date is fixed, (1) the record date for determining stockholders entitled to notice of or 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 and (2) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. 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 the adjourned meeting.

SECTION 7 Examination of Books by Stockholders. The Board of Directors shall, subject to the laws of the State of Delaware, have power to determine from time to time, whether and to what extent and under what conditions and regulations the accounts and books of the Corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right to inspect any book or document of the Corporation, except as conferred by the laws of the State of Delaware, unless and until authorized so to do by resolution of the Board of Directors or of the stockholders of the Corporation.

ARTICLE VIII

NOTICE

SECTION 1 Manner of Giving Written Notice.

(A) Any notice in writing required by law or by these By-laws to be given to any person shall be effective if delivered personally, by depositing the same in the post office or letter box in a postpaid envelope addressed to such person at such address as appears on the books of the Corporation or by a form of electronic transmission consented to by such person to whom the notice is to be given. Any such consent shall be deemed revoked if (i) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (ii) such inability becomes known to the Secretary or an Assistant Secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice; provided however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(B) Notice by mail shall be deemed to be given at the time when the same shall be mailed and notice by other means shall be deemed given when actually delivered (and in the case of notice transmitted by a form of electronic transmission, such notice shall be deemed given (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (a) such posting and (b) the giving of such separate notice; and (iv) if by any other form of electronic transmission, when directed to the stockholder).

SECTION 2 Waiver of Notice. Whenever any notice is required to be given to any person, a waiver thereof by such person in writing or transmitted by electronic means (and authenticated if and as required by law), whether before or after the time stated therein, shall be deemed equivalent thereto.

ARTICLE IX

SEAL

SECTION 1 The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal" and "Delaware".

ARTICLE X

FISCAL YEAR

The fiscal year of the Corporation shall end on the Friday closest to September 30 in each year.

APPENDIX

PROCEDURES FOR SUBMISSION AND DETERMINATION OF CLAIMS FOR INDEMNIFICATION PURSUANT TO ARTICLE III, SECTION 14 OF THE BY-LAWS.

SECTION 1 Purpose. The Procedures for Submission and Determination of Claims for Indemnification Pursuant to Article III, Section 14 of the By-laws (the "Procedures") are to implement the provisions of Article III, Section 14 of the By-laws of the Corporation (the "By-laws") in compliance with the requirement of subsection (H) thereof.

SECTION 2 Definitions. For purposes of these Procedures:

(A) All terms that are defined in Article III, Section 14 of the By-laws shall have the meanings ascribed to them therein when used in these Procedures unless otherwise defined herein.

(B) “Expenses” include all reasonable attorneys’ fees, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, or being or preparing to be a witness in, a Proceeding; and shall also include such retainers as counsel may reasonably require in advance of undertaking the representation of an Indemnitee in a Proceeding.

(C) “Indemnitee” includes any person who was or is, or is threatened to be made, a witness in or a party to any Proceeding by reason of the fact that such person is or was a director, officer, employee or agent of the Corporation or any of its majority-owned subsidiaries or is or was serving at the request of the Corporation as a director, officer, employee or agent (except in each of the foregoing situations to the extent any agreement, arrangement or understanding of agency contains provisions that supersede or abrogate indemnification under Article III, Section 14 of the By-laws) of another corporation or of any partnership, joint venture, trust, employee benefit plan or other enterprise.

(D) “Proceeding” includes any action, suit, arbitration, alternative dispute resolution mechanism, investigation, administrative hearing or any other proceeding, whether civil, criminal, administrative or investigative, except one initiated by an Indemnitee unless the Board of Directors shall have authorized the commencement thereof.

SECTION 3 Submission and Determination of Claims.

(A) To obtain indemnification or advancement of Expenses under Article III, Section 14 of the By-laws, an Indemnitee shall submit to the Secretary of the Corporation a written request therefor, including therein or therewith such documentation and information as is reasonably available to the Indemnitee and is reasonably necessary to permit a determination as to whether and what extent the Indemnitee is entitled to indemnification or advancement of Expenses, as the case may be. The Secretary shall, promptly upon receipt of a request for indemnification, advise the Board of Directors (if the Indemnitee is a present or former director or officer of the Corporation) or the officer of the Corporation authorized to make the determination as to whether an Indemnitee is entitled to indemnification (if the Indemnitee is not a present or former director or officer of the Corporation) thereof in writing if a determination in accordance with Article III, Section 14(E) of the By-laws is required.

(B) Upon written request by an Indemnitee for indemnification pursuant to Section 3(A) hereof, a determination with respect to the Indemnitee’s entitlement thereto in the specific case, if required by the By-laws, shall be made in accordance with Article III, Section 14(E) of the By-laws, and, if it is so determined that the Indemnitee is entitled to indemnification, payment to the Indemnitee shall be made within ten days after such determination. The Indemnitee shall cooperate with the person, persons or entity making such determination, with respect to the Indemnitee’s entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to the Indemnitee and reasonably necessary to such determination.

(C) If entitlement to indemnification is to be made by Independent Counsel pursuant to Article III, Section 14(E) of the By-laws, the Independent Counsel shall be selected as provided in this Section 3(C). If a Change of Control shall not have occurred, the Independent Counsel shall be selected by the Board of Directors, and the Corporation shall give written notice to the Indemnitee advising the

Indemnitee of the identity of the Independent Counsel so selected. If a Change of Control shall have occurred, the Independent Counsel shall be selected by the Indemnitee (unless the Indemnitee shall request that such selection be made by the Board of Directors, in which event the immediately preceding sentence shall apply), and the Indemnitee shall give written notice to the Corporation advising it of the identity of the Independent Counsel so selected. In either event, the Indemnitee or the Corporation, as the case may be, may, within seven days after such written notice of selection shall have been given, deliver to the Corporation or to the Indemnitee, as the case may be, a written objection to such selection. Such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Article III, Section 14 of the By-laws, and the objection shall set forth with particularity the factual basis of such assertion. If such written objection is made, the Independent Counsel so selected may not serve as Independent Counsel unless and until a court has determined that such objection is without merit. If, within twenty days after the next regularly scheduled Board of Directors meeting following submission by the Indemnitee of a written request for indemnification pursuant to Section 3(A) hereof, no Independent Counsel shall have been selected and not objected to, either the Corporation or the Indemnitee may petition the Court of Chancery of the State of Delaware or other court of competent jurisdiction for resolution of any objection which shall have been made by the Corporation or the Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the Court or by such other person as the Court shall designate, and the person with respect to whom an objection is favorably resolved or the person so appointed shall act as Independent Counsel under Article III, Section 14(E) of the By-laws. The Corporation shall pay any and all reasonable fees and expenses (including without limitation any advance retainers reasonably required by counsel) of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to Article III, Section 14(E) of the By-laws, and the Corporation shall pay all reasonable fees and expenses (including without limitation any advance retainers reasonably required by counsel) incident to the procedures of Article III, Section 14(E) of the By-laws and this Section 3(C), regardless of the manner in which Independent Counsel was selected or appointed. Upon the delivery of its opinion pursuant to Article III, Section 14 of the By-laws or, if earlier, the due commencement of any judicial proceeding or arbitration pursuant to Section 4(A)(3) of these Procedures, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

(D) If a Change of Control shall have occurred, in making a determination with respect to entitlement to indemnification under the By-laws, the person, persons or entity making such determination shall presume that an Indemnitee is entitled to indemnification under the By-laws if the Indemnitee has submitted a request for indemnification in accordance with Section 3(A) hereof, and the Corporation shall have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption.

SECTION 4 Review and Enforcement of Determination.

(A) In the event that (1) advancement of Expenses is not timely made pursuant to Article III, Section 14(G) of the By-laws, (2) payment of indemnification is not made pursuant to Article III, Section 14(C) or (D) of the By-laws within ten days after receipt by the Corporation of written request therefor, (3) a determination is made pursuant to Article III, Section 14(E) of the By-laws that an Indemnitee is not entitled to indemnification under the By-laws, (4) the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Article III, Section 14(E) of the By-laws and such determination shall not have been made and delivered in a written opinion within ninety days after receipt by the Corporation of the written request for indemnification, or (5) payment of indemnification is not made within ten days after a determination has been made pursuant to Article III, Section 14(E) of the By-laws that an Indemnitee is entitled to indemnification or within ten days after

such determination is deemed to have been made pursuant to Article III, Section 14(F) of the By-laws, the Indemnitee shall be entitled to an adjudication in an appropriate court of the State of Delaware, or in any other court of competent jurisdiction, of the Indemnitee's entitlement to such indemnification or advancement of Expenses. Alternatively, the Indemnitee, at his or her option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the rules of the American Arbitration Association. The Indemnitee shall commence such proceeding seeking an adjudication or an award in arbitration within one year following the date on which the Indemnitee first has the right to commence such proceeding pursuant to this Section 4(A). The Corporation shall not oppose the Indemnitee's right to seek any such adjudication or award in arbitration.

(B) In the event that a determination shall have been made pursuant to Article III, Section 14(E) of the By-laws that an Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 4 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and the Indemnitee shall not be prejudiced by reason of that adverse determination. If a Change of Control shall have occurred, the Corporation shall have the burden of proving in any judicial proceeding or arbitration commenced pursuant to this Section 4 that the Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be.

(C) If a determination shall have been made or deemed to have been made pursuant to Article III, Section 14(E) or (F) of the By-laws that an Indemnitee is entitled to indemnification, the Corporation shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 4, absent (1) a misstatement or omission of a material fact in connection with the Indemnitee's request for indemnification, or (2) a prohibition of such indemnification under applicable law.

(D) The Corporation shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 4 that the procedures and presumptions of these Procedures are not valid, binding and enforceable, and shall stipulate in any such judicial proceeding or arbitration that the Corporation is bound by all the provisions of these Procedures.

(E) In the event that an Indemnitee, pursuant to this Section 4, seeks to enforce the Indemnitee's rights under, or to recover damages for breach of, Article III, Section 14 of the By-laws or these Procedures in a judicial proceeding or arbitration, the Indemnitee shall be entitled to recover from the Corporation, and shall be indemnified by the Corporation against, any and all expenses (of the types described in the definition of Expenses in Section 2 of these Procedures) actually and reasonably incurred in such judicial proceeding or arbitration, but only if the Indemnitee prevails therein. If it shall be determined in such judicial proceeding or arbitration that the Indemnitee is entitled to receive part but not all of the indemnification or advancement of Expenses sought, the expenses incurred by the Indemnitee in connection with such judicial proceeding or arbitration shall be appropriately prorated.

SECTION 5 Amendments. These Procedures may be amended at any time and from time to time in the same manner as any By-law of the Corporation in accordance with the Certificate of Incorporation; provided, however, that notwithstanding any amendment, alteration or repeal of these Procedures or any provision hereof, any Indemnitee shall be entitled to utilize these Procedures with respect to any claim for indemnification arising out of any action taken or omitted prior to such amendment, alteration or repeal except to the extent otherwise required by law.



FY18 Executive Incentive Plan

- Purpose:** The FY18 Executive Incentive Plan (the "FY18 Plan") is designed to reward key management for achieving certain financial and business objectives.
- Plan Period:** The FY18 Plan covers the period from September 30, 2017 through September 28, 2018.
- Eligibility:** This program applies to the Chief Executive Officer and his direct reporting senior executives. Other key employees may be added based upon the recommendation of the Chief Executive Officer and subsequent approval of the Compensation Committee. Those employees not covered by this plan may be eligible for other programs established by Skyworks.
- Incentive Targets:** Participants are eligible to earn a percentage of their base salary for attaining certain performance objectives. Nominal, target and stretch incentive awards have been established as follows (shown as a percentage of the participant's base salary):

Name	Incentive At Nominal	Incentive At Target	Incentive At Stretch
CEO	80%	160%	320%
CFO	45%	90%	180%
Other SVP/VPs	35%	70%	140%
Special Participants	TBD	TBD	TBD

- Metrics:** The performance metrics for FY18 are as follows:

Company Metric	Nominal	Target	Stretch
Revenue (\$M)	REDACTED	REDACTED	REDACTED
EPS ¹	REDACTED	REDACTED	REDACTED

¹ Non-GAAP earnings per share (EPS)

Performance periods are annual. The individual metrics above are for normal operations and any changes or adjustments to the performance metrics (or metric weightings) to take account of extraordinary, unusual, or special items (e.g., restructurings, acquisitions and/or dispositions) will be made in the sole discretion of the Compensation Committee.

Metrics will be weighted based on corporate performance for FY18 as follows:

	Corporate	
	Revenue	EPS
All Executives	50%	50%

6. **How the Plan Works:** Upon completion of the Fiscal Year, the Chief Executive Officer will provide the Compensation Committee with recommendations for incentive award payments to the named participants of the plan. The Committee will review the recommendations and approve the actual amount to be paid to each participant. The Committee will rely upon the CEO for the appropriate distribution of the authorized incentive pool. All incentive award payments under the FY18 Plan, if earned, will be paid by March 15th of the calendar year following the end of the fiscal year in which the performance occurs.
7. **Administration:** Actual performance between the Nominal and Target metrics will be paid on a linear sliding scale beginning at the Nominal percentage and moving up to the Target percentage. The same linear scale will apply for performance between Target and Stretch metrics. In order to fund the incentive plans and insure the overall Company's financial performance, the following terms apply.
 - No incentive award will be paid unless the Company meets its threshold operating income goal (in dollars) after accounting for any incentive award payments.
 - Incentive payments will be processed in a timely manner at the completion of the performance period. Skyworks' CEO, subject to approval by the Compensation Committee, retains discretion to award below nominal or above Stretch and to modify all individual incentive payments to ensure equitable distribution of incentives; such modifications may include, but are not limited to, the delivery of equity or similar instruments in lieu of cash payments.
 - Any payout shall be conditioned upon the Participant's employment by the Company on the date of payment; provided, however, that the Compensation Committee may make exceptions to this requirement, in its sole discretion, including, without limitation, in the case of a participant's termination of employment, retirement, death or disability.
 - Any payments made under this Plan will be subject to the provisions of the compensation clawback policy that Skyworks implements to comply with applicable law following the SEC's adoption of final rules related to compensation clawback policies as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act.
8. **Taxes:** All awards are subject to federal, state, local and social security taxes. Payments under this Plan will not affect the base salary, which is used as the basis for Skyworks' benefits program.



FY18 Executive Incentive Plan, as Amended

- Purpose:** The FY18 Executive Incentive Plan (the "FY18 Plan") is designed to reward key management for achieving certain financial and business objectives.
- Plan Period:** The FY18 Plan covers the period from September 30, 2017 through September 28, 2018.
- Eligibility:** This program applies to the Chief Executive Officer and his direct reporting senior executives. Other key employees may be added based upon the recommendation of the Chief Executive Officer and subsequent approval of the Compensation Committee. Those employees not covered by this plan may be eligible for other programs established by Skyworks.
- Incentive Targets:** Participants are eligible to earn a percentage of their base salary for attaining certain performance objectives. Nominal, target and stretch incentive awards have been established as follows (shown as a percentage of the participant's base salary):

Name	Incentive At Nominal	Incentive At Target	Incentive At Stretch
CEO	80%	160%	320%
CFO	45%	90%	180%
Other SVP/VPs	35%	70%	140%
Special Participants	TBD	TBD	TBD

- Metrics:** The performance metrics for FY18 are as follows:

Company Metric	Nominal	Target	Stretch
Revenue (\$M)	REDACTED	REDACTED	REDACTED
Operating Income \$ ¹	REDACTED	REDACTED	REDACTED

¹ After incentive

Performance periods are annual. The individual metrics above are for normal operations and any changes or adjustments to the performance metrics (or metric weightings) to take account of extraordinary, unusual, or special items (e.g., restructurings, acquisitions and/or dispositions) will be made in the sole discretion of the Compensation Committee.

Metrics will be weighted based on corporate performance for FY18 as follows:

	Corporate	
	Revenue	OIS
All Executives	50%	50%

6. **How the Plan Works:** Upon completion of the Fiscal Year, the Chief Executive Officer will provide the Compensation Committee with recommendations for incentive award payments to the named participants of the plan. The Committee will review the recommendations and approve the actual amount to be paid to each participant. The Committee will rely upon the CEO for the appropriate distribution of the authorized incentive pool. All incentive award payments under the FY18 Plan, if earned, will be paid by March 15th of the calendar year following the end of the fiscal year in which the performance occurs.

7. **Administration:** Actual performance between the Nominal and Target metrics will be paid on a linear sliding scale beginning at the Nominal percentage and moving up to the Target percentage. The same linear scale will apply for performance between Target and Stretch metrics. In order to fund the incentive plans and insure the overall Company's financial performance, the following terms apply.
 - No incentive award will be paid unless the Company meets its threshold operating income goal (in dollars) after accounting for any incentive award payments.
 - Incentive payments will be processed in a timely manner at the completion of the performance period. Skyworks' CEO, subject to approval by the Compensation Committee, retains discretion to award below nominal or above Stretch and to modify all individual incentive payments to ensure equitable distribution of incentives; such modifications may include, but are not limited to, the delivery of equity or similar instruments in lieu of cash payments.
 - Any payout shall be conditioned upon the Participant's employment by the Company on the date of payment; provided, however, that the Compensation Committee may make exceptions to this requirement, in its sole discretion, including, without limitation, in the case of a participant's termination of employment, retirement, death or disability.
 - Any payments made under this Plan will be subject to the provisions of the compensation clawback policy that Skyworks implements to comply with applicable law following the SEC's adoption of final rules related to compensation clawback policies as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

8. **Taxes:** All awards are subject to federal, state, local and social security taxes. Payments under this Plan will not affect the base salary, which is used as the basis for Skyworks' benefits program.

CERTIFICATION OF THE CEO PURSUANT TO SECURITIES EXCHANGE ACT RULES 13a-14(a) OR 15d-14(a) AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Liam K. Griffin, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Skyworks Solutions, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 5, 2018

/s/ Liam K. Griffin

Liam K. Griffin

President and Chief Executive Officer

CERTIFICATION OF THE CFO PURSUANT TO SECURITIES EXCHANGE ACT RULES 13a-14(a) OR 15d-14(a) AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Kris Sennesael, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Skyworks Solutions, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 5, 2018

/s/ Kris Sennesael

Kris Sennesael

Senior Vice President and Chief Financial Officer

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the quarterly report of Skyworks Solutions, Inc. (the "Company") on Form 10-Q for the period ended December 29, 2017 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Liam K. Griffin, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

/s/ Liam K. Griffin

Liam K. Griffin
President and Chief Executive Officer
February 5, 2018

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the quarterly report of Skyworks Solutions, Inc. (the "Company") on Form 10-Q for the period ended December 29, 2017 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Kris Sennesael, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

/s/ Kris Sennesael

Kris Sennesael
Senior Vice President and Chief Financial Officer
February 5, 2018

