

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 **July 31, 2001**

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 **1-8929**

ABM INDUSTRIES INCORPORATED

(Exact name of registrant as specified in its charter)

Delaware

94-1369354

(State or other jurisdiction of
incorporation or organization)

(IRS Employer
Identification No.)

160 Pacific Avenue, Suite 222, San Francisco, California

94111

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code: **415/733-4000**

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 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

Number of shares of Common Stock outstanding as of September 7, 2001: 24,300,230.

TABLE OF CONTENTS

PART I. FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

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

Item 3. Qualitative and Quantitative Disclosures about Market Risk

PART II. OTHER INFORMATION

Item 6. Exhibits and Reports on Form 8-K

SIGNATURES

EXHIBIT INDEX

Bylaws, as amended July 23, 2001

ABM Industries Incorporated

Form 10-Q

For the three months and nine months ended July 31, 2001

Table of Contents

Page

	Notes to the Condensed Consolidated Financial Statements	7
Item 2	Management's Discussion and Analysis of Financial Condition and Results of Operations	10
Item 3	Qualitative and Quantitative Disclosures About Market Risk	21
PART II	OTHER INFORMATION	
Item 6	Exhibits and Reports on Form 8-K	21

[Table of Contents](#)
PART I. FINANCIAL INFORMATION**Item 1. Condensed Consolidated Financial Statements**

ABM INDUSTRIES INCORPORATED AND SUBSIDIARIES

CONDENSED CONSOLIDATED BALANCE SHEETS

(In thousands except share amounts)

	October 31, 2000	July 31, 2001
ASSETS:		
Current assets:		
Cash and cash equivalents	\$ 2,000	\$ 2,386
Trade accounts receivable, net	353,017	348,987
Inventories	25,513	24,353
Deferred income taxes	17,531	19,705
Prepaid expenses and other current assets	38,758	44,261
	<u>436,819</u>	<u>439,692</u>
Total current assets	436,819	439,692
Investments and long-term receivables	13,920	13,966
Property, plant and equipment, at cost:		
Land and buildings	5,212	5,031
Transportation equipment	13,127	15,324
Machinery and other equipment	73,056	76,300
Leasehold improvements	15,092	14,576
	<u>106,487</u>	<u>111,231</u>
Less accumulated depreciation and amortization	(65,753)	(68,455)
	<u>40,734</u>	<u>42,776</u>
Property, plant and equipment, net	40,734	42,776
Intangible assets — net	110,097	119,118
Deferred income taxes	32,537	32,044
Other assets	7,878	8,649
	<u>641,985</u>	<u>656,245</u>
Total assets	\$641,985	\$656,245

(Continued)

[Table of Contents](#)

ABM INDUSTRIES INCORPORATED AND SUBSIDIARIES

CONDENSED CONSOLIDATED BALANCE SHEETS

(In thousands except share amounts)

	October 31, 2000	July 31, 2001
LIABILITIES AND STOCKHOLDERS' EQUITY:		
Current liabilities:		
Short-term debt	\$ —	\$ 8,000
Current portion of long-term debt	865	877
Bank overdraft	15,952	4,618
Trade accounts payable	45,312	51,425
Income taxes payable	8,083	6,564

Accrued liabilities:		
Compensation	54,901	55,283
Taxes — other than income	18,195	19,123
Insurance claims	43,361	43,436
Other	25,951	30,234
	<u> </u>	<u> </u>
Total current liabilities	212,620	219,560
Long-term debt (less current portion)	36,811	943
Retirement plans	22,386	24,286
Insurance claims	47,459	46,166
	<u> </u>	<u> </u>
Total liabilities	319,276	290,955
	<u> </u>	<u> </u>
Series B 8% senior redeemable cumulative preferred stock	6,400	6,400
	<u> </u>	<u> </u>
Stockholders' equity:		
Preferred stock, \$0.01 par value, 500,000 shares authorized; none issued	—	—
Common stock, \$0.01 par value, 100,000,000 shares authorized; 22,999,000 and 24,182,000 shares issued and outstanding at October 31, 2000 and July 31, 2001, respectively	230	242
Additional capital	102,902	123,951
Accumulated other comprehensive income	(653)	(687)
Retained earnings	213,830	235,384
	<u> </u>	<u> </u>
Total stockholders' equity	316,309	358,890
	<u> </u>	<u> </u>
	<u>\$641,985</u>	<u>\$656,245</u>

The accompanying notes are an integral part of the condensed consolidated financial statements.

3

[Table of Contents](#)

ABM INDUSTRIES INCORPORATED AND SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF INCOME

(In thousands except per share amounts)

	Three Months Ended July 31,		Nine Months Ended July 31,	
	2000	2001	2000	2001
REVENUES AND OTHER INCOME	\$461,890	\$492,454	\$1,330,459	\$1,453,367
EXPENSES:				
Operating expenses and cost of goods sold	401,754	429,775	1,160,756	1,268,914
Selling, general and administrative	38,438	41,356	117,491	127,883
Interest	956	521	2,459	2,230
	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Total expenses	441,148	471,652	1,280,706	1,399,027
	<u> </u>	<u> </u>	<u> </u>	<u> </u>
INCOME BEFORE INCOME TAXES	20,742	20,802	49,753	54,340
INCOME TAXES	8,297	7,569	19,901	20,649
	<u> </u>	<u> </u>	<u> </u>	<u> </u>
NET INCOME	\$ 12,445	\$ 13,233	\$ 29,852	\$ 33,691
	<u> </u>	<u> </u>	<u> </u>	<u> </u>
NET INCOME PER COMMON SHARE				
Basic	\$ 0.54	\$ 0.55	\$ 1.31	\$ 1.41
Diluted	\$ 0.52	\$ 0.52	\$ 1.25	\$ 1.34
AVERAGE NUMBER OF SHARES OUTSTANDING				
Basic	22,623	24,006	22,442	23,670
Diluted	23,832	25,338	23,567	24,903
DIVIDENDS PER COMMON SHARE	\$ 0.155	\$ 0.165	\$ 0.465	\$ 0.495

The accompanying notes are an integral part of the condensed consolidated financial statements.

4

[Table of Contents](#)

**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
FOR THE NINE MONTHS ENDED JULY 31, 2000 AND 2001**

(In thousands)

	2000	2001
Cash Flows from Operating Activities:		
Cash received from customers	\$ 1,299,038	\$ 1,443,282
Other operating cash receipts	1,713	4,400
Interest received	325	733
Cash paid to suppliers and employees	(1,251,583)	(1,368,184)
Interest paid	(2,438)	(2,661)
Income taxes paid	(23,303)	(23,849)
Net cash provided by operating activities	23,752	53,721
Cash Flows from Investing Activities:		
Additions to property, plant and equipment	(12,986)	(13,701)
Proceeds from sale of assets	920	1,737
Increase in investments and long-term receivables	(1,586)	(46)
Purchase of businesses	(11,675)	(21,392)
Proceeds from sale of business	—	12,000
Net cash used in investing activities	(25,327)	(21,402)
Cash Flows from Financing Activities:		
Common stock issued, including tax benefit	11,431	19,395
Common stock repurchased	(8,390)	—
Dividends paid	(10,855)	(12,137)
Decrease in cash overdraft	(3,471)	(11,334)
Long-term borrowings	106,000	55,000
Repayments of long-term borrowings	(93,102)	(82,857)
Net cash provided by (used in) financing activities	1,613	(31,933)
Net Increase in Cash and Cash Equivalents	38	386
Cash and Cash Equivalents Beginning of Period	2,139	2,000
Cash and Cash Equivalents End of Period	\$ 2,177	\$ 2,386

(Continued)

[Table of Contents](#)

**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
FOR THE NINE MONTHS ENDED JULY 31, 2000 AND 2001**

(In thousands)

	2000	2001
Reconciliation of Net Income to Net Cash Provided by Operating Activities:		
Net Income	\$ 29,852	\$33,691
Adjustments:		
Depreciation	8,942	10,079
Amortization	8,327	9,216
Provision for bad debts	2,202	4,287
(Gain) loss on sale of assets	(162)	45
Gain on sale of business	—	(718)
Increase in deferred income taxes	(3,435)	(1,681)
Increase in trade accounts receivable	(29,221)	(4,279)
Increase in inventories	(1,274)	(1,602)
Increase in prepaid expenses and other current assets	(4,936)	(5,548)
Decrease (increase) in other assets	1,667	(982)
Increase (decrease) in income taxes payable	33	(1,518)
Increase in retirement plans accrual	2,345	1,900
Increase (decrease) in insurance claims liability	4,410	(2,468)
Increase in trade accounts payable and other accrued liabilities	5,002	13,299

Total adjustments to net income	(6,100)	20,030
Net Cash Provided by Operating Activities	\$ 23,752	\$53,721
Supplemental Data:		
Non-cash investing activities:		
Common stock issued for net assets of business acquired	\$ 1,581	\$ 1,666

The accompanying notes are an integral part of the condensed consolidated financial statements.

6

[Table of Contents](#)

ABM INDUSTRIES INCORPORATED AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. General

In the opinion of management, the accompanying unaudited condensed consolidated financial statements contain all material adjustments which are necessary to present fairly ABM Industries Incorporated (the Company) financial position as of July 31, 2001, and the results of operations and cash flows for the nine months then ended. These adjustments are of a normal, recurring nature.

These condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and the notes thereto included in the Company's Form 10-K for the fiscal year ended October 31, 2000, as filed with the Securities and Exchange Commission.

2. Net Income per Common Share

The Company has reported its earnings in accordance with Statement of Financial Accounting Standards No. 128, Earnings per Share. Basic net income per common share, after the reduction for preferred stock dividends, is based on the weighted average number of shares outstanding during the period. Diluted net income per common share, after the reduction for preferred stock dividends, is based on the weighted average number of shares outstanding during the period, including dilutive securities equivalents.

	Three months ended July 31,	
	2000	2001
Net Income	\$12,445,000	\$13,233,000
Preferred Stock Dividends	(128,000)	(128,000)
	<u>\$12,317,000</u>	<u>\$13,105,000</u>
Common shares outstanding — basic	22,623,000	24,006,000
Effect of dilutive securities:		
Stock options	1,086,000	1,272,000
Other	123,000	60,000
Common shares outstanding — diluted	<u>23,832,000</u>	<u>25,338,000</u>

7

[Table of Contents](#)

	Nine months ended July 31,	
	2000	2001
Net Income	\$29,852,000	\$33,691,000
Preferred Stock Dividends	(384,000)	(384,000)
	<u>\$29,468,000</u>	<u>\$33,307,000</u>
Common shares outstanding — basic	22,442,000	23,670,000
Effect of dilutive securities:		
Stock options	1,002,000	1,173,000
Other	123,000	60,000
Common shares outstanding — diluted	<u>23,567,000</u>	<u>24,903,000</u>

For purposes of computing diluted net income per common share, weighted average common share equivalents do not include stock options with an exercise price that exceeds the average fair market value of the Company's common stock for the period. For the nine months ended July 31, 2001, options to purchase approximately 249,500 shares of common stock at an average exercise price of \$36.69 were excluded from the computation. For the nine months ended July 31, 2000, options to purchase approximately 1,197,000 shares of common stock at an average exercise price of \$31.22 were excluded from the computation.

3. Comprehensive Income

Accumulated other comprehensive income at October 31, 2000 and July 31, 2001 consists of foreign currency translation adjustments. Comprehensive income for the three and nine month periods ended July 31, 2001 approximated net income.

4. Acquisitions and Divestitures

The Company acquired the operations and selected assets of four businesses during the nine months ended July 31, 2001. These business combinations were accounted for under the purchase method of accounting. The aggregate consideration paid for these acquisitions was \$11,749,000 including \$7,222,000 allocated to goodwill. The aggregate purchase price does not include payments of contingent consideration based upon the future results of operations of the businesses acquired. As these acquisitions were not significant, pro forma information is not included in these financial statements. Operations of the acquired businesses have

[Table of Contents](#)

been included in the financial statements from the respective dates of acquisition.

On April 30, 2001, the Company sold its Easterday Janitorial Supply Division to AmSan West, Inc. for an estimated sales price of \$12,500,000, of which cash of \$12,000,000 was received on May 1, 2001. Included in operating profits for the nine months ended July 31, 2001, is an estimated pre-tax gain of \$718,000.

5. Segment Information

The Company's operations have been grouped into nine industry segments or divisions as defined under Statement of Financial Accounting Standards (SFAS) No. 131. The results of operations from the Company's five operating divisions that are reportable under SFAS No. 131 for the three months and nine months ended July 31, 2001, as compared to the three months and nine months ended July 31, 2000, are more fully described below. Included in Other Divisions are ABM Service Network, American Commercial Security Services, CommAir Mechanical Services, and Easterday Janitorial Supply Company, which was sold on April 30, 2001. Certain reclassifications were made to prior year operating profits to conform to the current presentation for the three and nine months.

	2000	Three months ended July 31, 2001
	(in thousands)	
Revenues:		
ABM Janitorial Services	\$268,842	\$293,989
Ampco System Parking	44,917	41,577
ABM Engineering Services	38,735	42,537
Amtech Lighting Services	29,916	41,103
Amtech Elevator Services	29,124	31,408
Other Divisions	50,321	41,515
Corporate	35	325
Total Revenues	\$461,890	\$492,454
Operating Profit:		
ABM Janitorial Services	\$ 14,811	\$ 16,262
Ampco System Parking	2,544	1,084
ABM Engineering Services	2,008	2,393
Amtech Lighting Services	2,632	3,217
Amtech Elevator Services	1,742	1,692
Other Divisions	1,970	2,080
Corporate	(4,009)	(5,405)
Total Operating Profit	\$ 21,698	\$ 21,323

[Table of Contents](#)

Revenues:

ABM Janitorial Services	\$ 776,107	\$ 864,421
Ampco System Parking	126,991	126,138
ABM Engineering Services	115,593	126,948
Amtech Lighting Services	86,219	104,257
Amtech Elevator Services	82,566	91,197
Other Divisions	142,792	139,883
Corporate	191	523
Total Revenues	\$1,330,459	\$1,453,367

Operating Profit:

ABM Janitorial Services	\$ 38,482	\$ 44,196
Ampco System Parking	6,349	3,865
ABM Engineering Services	5,683	6,700
Amtech Lighting Services	6,436	7,169
Amtech Elevator Services	4,528	4,562
Other Divisions	4,068	5,644
Corporate	(13,334)	(15,566)
Total Operating Profit	\$ 52,212	\$ 56,570

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

Funds provided from operations and bank borrowings have historically been the sources for meeting working capital requirements, financing capital expenditures and acquisitions, and paying cash dividends. Management believes that funds from these sources will remain available and adequately serve the Company's liquidity needs. The Company has an unsecured revolving credit agreement with a syndicate of U.S. banks that provides a \$150 million line of credit expiring July 1, 2002. At the Company's option, the credit facility provides interest at the prime rate or IBOR+.35%. As of July 31, 2001, the total amount outstanding was approximately \$50 million, which was comprised of loans in the amount of \$8 million and standby letters of credit of \$42 million. This agreement requires the Company to meet certain financial ratios, places some limitations on outside

[Table of Contents](#)

borrowing and prohibits declaring or paying cash dividends exceeding 50% of the Company's net income for any fiscal year. Because this agreement is scheduled to mature within the next twelve months, outstanding loans under this facility as of July 31, 2001 have been classified as short-term debt. The Company expects to enter into a replacement facility in an amount that is expected to meet its credit requirements prior to the maturity of the existing facility. In addition, the Company has a loan agreement with a major U.S. bank with a balance of \$1.8 million at July 31, 2001. This loan bears interest at a fixed rate of 6.78% with annual payments of principal, in varying amounts, and interest due each February 15 through 2003. The Company's effective interest rate for all borrowings for the nine months ended July 31, 2001 was 6.87%.

At July 31, 2001, the Company had 6,400 shares of Series B 8% Senior Redeemable Cumulative Preferred Stock outstanding having a par value of \$0.01 per share and redemption price of \$1,000 per share. These shares were redeemed on September 4, 2001.

At July 31, 2001, working capital was \$220.1 million, as compared to \$224.2 million at October 31, 2000. The largest component of working capital consists of trade accounts receivable that totaled \$349.0 million at July 31, 2001 compared to \$353.0 million at October 31, 2000. These amounts were net of an allowance for doubtful accounts of \$9.0 million and \$8.8 million at July 31, 2001 and October 31, 2000, respectively. As of July 31, 2001, accounts receivable that were over 90 days past due had increased \$6.5 million to \$55.8 million (16% of the total outstanding) from \$49.3 million (14% of the total outstanding) at October 31, 2000.

During the nine months ended July 31, 2001, net cash provided by operating activities amounted to \$53.7 million, compared to \$23.8 million in the same period of 2000. The improvement is primarily a result of an increase in trade accounts receivable collections.

Net cash used in investing activities was \$21.4 million in the nine months ended July 31, 2001, compared to \$25.3 million used in the same period of the prior year.

Net cash used in financing activities was \$31.9 million in the first nine months of 2001, compared to net cash provided by financing activities of \$1.6 million in the first nine months of the prior year. The change was primarily due to lower long-term borrowings in 2001 compared to 2000.

[Table of Contents](#)

The Company self-insures, generally up to \$500,000 per occurrence, certain insurable risks such as general liability, property damage and workers' compensation. It is the Company's policy to annually retain an outside actuary to review the adequacy of its self-insurance claim reserves. The actuarial evaluation for 2001 is currently underway and is scheduled to be completed by October 31, 2001.

The energy crisis in the State of California has not had a material impact on the Company.

Environmental Matters

The nature of the Company's operations, primarily services, would not ordinarily involve it in environmental contamination. However, the Company's operations are subject to various federal, state and/or local laws regulating the discharge of materials into the environment or otherwise relating to the protection of the environment, such as discharge into soil, water and air, and the generation, handling, storage, transportation and disposal of waste and hazardous substances. These laws generally have the effect of increasing costs and potential liabilities associated with the conduct of the Company's operations, although historically they have not had a material adverse effect on the Company's financial position, cash flows or its results of operations.

The Company is currently involved in three proceedings relating to environmental matters: one involving alleged potential soil and groundwater contamination at a Company facility in Florida; one involving alleged potential soil contamination at a former dry-cleaning facility leased by the Company in Nevada. While it is difficult to predict the ultimate outcome of these matters, based on information currently available, management believes that none of these matters, individually or in the aggregate, are reasonably likely to have a material adverse effect on the Company's financial position, cash flows, or its results of operations. As any liability related to these claims is neither probable nor estimable, no accruals have been made related to these matters.

12

[Table of Contents](#)

Acquisitions and Divestitures

The operating results of businesses acquired during the nine months ended July 31, 2001 have been included in the accompanying condensed consolidated financial statements from their respective dates of acquisition. Similarly, the operating results of the business sold during the period have been included to its date of sale.

Effective February 1, 2001, the Company acquired the operations and selected assets of Arcade Cleaning L.P., a janitorial services company, with customers located in the Northeast and Midwest regions. The terms included a cash payment made at closing plus annual contingent payments based on operating profits to be made over five years. This acquisition was accounted for under the purchase method of accounting.

Effective March 26, 2001, the Company acquired selected customer contracts and certain assets of SLI Lighting Solutions, a lighting services company, with customers in the Mid-Atlantic and Southeastern regions. The terms included a cash payment made at closing plus semi-annual contingent payments based on gross profits to be made over three years. This acquisition was accounted for under the purchase method of accounting.

Effective April 1, 2001, the Company acquired the operations and selected assets of CarpetMaster Cleaning, a provider of janitorial and related services in Albany and the surrounding capital district of New York. The terms included a cash payment, of which 51% was made at closing and 49% paid in May 2001, plus annual contingent payments based on operating profits to be made over five years. This acquisition was accounted for under the purchase method of accounting.

Effective June 11, 2001, the Company acquired the operations and selected assets of Sundown Security, Inc., a security services company, with customers located in the Sacramento, California area. The terms included a cash payment made at closing plus annual contingent payments based on operating profits to be made over five years. This acquisition was accounted for under the purchase method of accounting.

The aggregate consideration paid for these acquisitions was \$11.7 million including \$7.2 million allocated to goodwill.

Effective April 30, 2001, the Company sold its Easterday Janitorial Supply Division to AmSan West, Inc. In fiscal 2000, this Division had annual revenues of approximately \$44 million,

13

[Table of Contents](#)

of which approximately 27% were intercompany sales, and assets of approximately \$11 million. In 2001, this Division contributed \$15 million in revenues after intercompany sales elimination. The sale of Easterday will allow the Company to focus on its building maintenance and other operational services. The sale does not have a material effect on the Company's consolidated net assets, financial position or results of operations. The estimated sales price for Easterday was \$12.5 million, of which cash of \$12 million was received on May 1, 2001. Included in operating profits for the nine months ended July 31, 2001, is an estimated pre-tax gain of \$718,000.

Recent Accounting Pronouncements

In July 2001, the Financial Accounting Standards Board issued SFAS No. 141, "Business Combinations", and SFAS No. 142, "Goodwill and Other Intangible Assets". The new rules require all business combinations initiated after June 30, 2001 to be accounted for using the purchase method of accounting and goodwill will not be amortized. However, goodwill existing at June 30, 2001, will continue to be amortized through the end of fiscal 2001. As required, the Company has adopted the provisions of SFAS No. 141 effective July 1, 2001. Upon adoption of this standard there was no effect on the Company's financial statements. SFAS No. 142 becomes effective in fiscal years beginning after December 15, 2001, with early adoption permitted. The Company plans to adopt the provisions of SFAS No. 142 beginning in the first quarter of fiscal 2002; therefore, goodwill will no longer be amortized but will be subject to annual assessment for impairment by applying a fair-value-based test. The Company has not yet determined the effect of applying the impairment provisions of SFAS No. 142. All other intangible assets will continue to be amortized over their estimated useful lives. Goodwill amortization expense was \$3.1 million for the three months and \$9.1 million for the nine months ended July 31, 2001.

In fiscal 1998, the Financial Accounting Standards Board issued SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities" ("SFAS No. 133") (as amended by SFAS Nos. 137 and 138). SFAS No. 133 relates to accounting for derivative instruments, including certain derivative instruments

embedded in other contracts, and hedging activities. It requires that an entity recognizes all derivatives as either assets or liabilities and measures those instruments at fair value. The Company adopted SFAS No. 133 on November 1, 2000; however, the Company is not a party to any contracts that would meet the definition of a

[Table of Contents](#)

derivative under SFAS No. 133. Upon adoption of this standard there was no effect on the Company's financial statements.

Results of Operations

The following discussion should be read in conjunction with the condensed consolidated financial statements of the Company. All information in the discussion and references to the years and quarters are based on the Company's fiscal year and third quarter which end on October 31 and July 31, respectively.

Three Months Ended July 31, 2001 vs. Three Months Ended July 31, 2000

Revenues and other income (hereafter called revenues) for the third quarter of 2001 were \$492.5 million compared to \$461.9 million for the third quarter of 2000, an increase of 6.6%. The increase in revenues was due to acquisitions, net new business, and price increases, particularly in the Janitorial Division which contributed \$25.1 million or 82.3% of the \$30.6 million increase. For the quarter ended July 31, 2001, revenues from acquisitions made during the prior fiscal year were approximately \$7.3 million. In addition, acquisitions during the first and second quarter of the current fiscal year contributed \$21.4 million of revenues during the three months ended July 31, 2001. The Easterday Janitorial Supply Division, included in Other Divisions for segment reporting, accounted for approximately \$8.6 million in revenues in the third quarter of 2000. This division was sold on April 30, 2001 and, therefore, contributed no revenues in the third quarter of 2001.

As a percentage of revenues, operating expenses and cost of goods sold were 87.3% for the third quarter of 2001, compared to 87.0% for the third quarter of 2000. Consequently, as a percentage of revenues, the Company's gross profit (revenue minus operating expenses and cost of goods sold) of 12.7% in the third quarter of 2001 was slightly lower than the gross profit of 13.0% for the third quarter of 2000. The decrease in the gross profit margin was due primarily to higher labor and insurance costs in the third quarter of 2001.

Selling, general and administrative expenses for the third quarter of 2001 were \$41.4 million compared to \$38.4 million for the corresponding three months of 2000. The absolute increase in selling, general and administrative expenses of \$2.9 million for the three months ended July 31, 2001, compared to the same period

[Table of Contents](#)

in 2000, is partially due to routine wage increases, additional bad debt expense, litigation expenses and settlements. The Company's reversal in the third quarter of 2000 of \$1.2 million in profit sharing expense that related to the first six months of fiscal year 2000 contributed to the dollar increase for the current three months compared to the same period last year. Therefore, as a percentage of revenues, selling, general and administrative expenses increased slightly to 8.4% for the three months ended July 31, 2001 from 8.3% for the same period in 2000.

Interest expense was \$521,000 for the third quarter of 2001 compared to \$956,000 for the same period in 2000, a decrease of \$435,000. This decrease was primarily due to lower weighted average borrowings and interest rates during the third quarter of 2001, compared to the same period in 2000.

The estimated effective federal and state income tax rate was 36.4% for the third quarter of 2001, compared to 40.0% for the third quarter of 2000. Due to an increase in estimated federal tax credits, the estimated annual tax rate for fiscal 2001 was reduced from 39% to 38% in the third quarter.

Net income for the third quarter of 2001 was \$13.2 million, an increase of 6.3% from the net income of \$12.4 million for the third quarter of 2000. Diluted net income per common share remained at 52 cents for the third quarter of 2001 compared to the same period in 2000. The net income per share calculation for the third quarter of 2001 includes an increase in actual and equivalent shares outstanding.

Segment Information

Revenues for ABM Janitorial Services (also known as American Building Maintenance) increased by 9.4% during the third quarter of 2001 as compared to the same quarter of 2000 as a result of increased business nationwide, but particularly in the Northeast and Mid-Atlantic regions due in part to the acquisition of Arcade Cleaning on February 1, 2001. This Division's operating profits increased 9.8% during the third quarter of 2001 when compared to the same period last year. The increase in operating profits is higher than the increase in revenues primarily due to improved margins on sales in several regions offset by losses in its Southeast region and legal settlements.

Ampco System Parking (also known as Ampco System Airport Parking and Ampco Express Airport Parking) revenues decreased by 7.4% while its operating profits decreased 57.4% during the third quarter of 2001 compared to the third quarter of 2000. The

[Table of Contents](#)

decrease in revenues was primarily due to loss of three airport accounts. The decrease in operating profits resulted from litigation expenses, substantially higher insurance charges and increased costs in the airport parking and shuttle operations.

ABM Engineering Services' revenues increased by 9.8% while its operating profits increased 19.2% for the third quarter of 2001 compared to the same period in 2000. The higher revenues reflect new business in Northern and Southern California offset by decreases in Arizona. The increase in operating profits is primarily due to a negotiated settlement with a major customer on termination of its contract partially offset by the write-off of accounts receivable related to the bankruptcy of a large customer.

Amtech Lighting Services (also known as Sica Lighting & Electrical Services in the Northeast) reported a 37.4% revenue increase while its operating profits increased 22.2% during the third quarter of 2001 compared to the same quarter of the prior year. The increase in revenues and operating profits was primarily due to increased business in the Northwest region and increased revenues in the North Central and Southeast regions as a result of the SLI Lighting Solutions acquisition on March 26, 2001.

Revenues for Amtech Elevator Services increased by 7.8% in the third quarter of 2001 compared to the same period in 2000 primarily due to new work secured in Chicago, Detroit and Houston. The Division reported a 2.9% decrease in operating profits for the third quarter of 2001 compared to the corresponding quarter of 2000. This decrease in operating profits can be attributed primarily to lower margins on maintenance contracts, particularly in the Division's Philadelphia and Chicago offices, as well as higher operating expenses including insurance and computer-related expenses.

Nine Months Ended July 31, 2001 vs. Nine Months Ended July 31, 2000

Revenues for the first nine months of 2001 were \$1,453.4 million compared to \$1,330.5 million for the first nine months of 2000, a 9.2% increase. Higher Janitorial Division revenues contributed \$88.3 million or 71.9% of this \$122.9 million total increase. For the nine months ended July 31, 2001, revenues relating to acquisitions made during the prior fiscal year were approximately \$19.7 million. In addition, acquisitions during the current year contributed \$39.4 million of the revenue increase.

[Table of Contents](#)

The Easterday Janitorial Supply Division, included in Other Divisions for segment reporting, accounted for approximately \$8.6 million in revenues in the third quarter of 2000. This division was sold on April 30, 2001 and, therefore, contributed no revenues in the third quarter of 2001.

As a percentage of revenues, operating expenses and cost of goods sold were 87.3% for the first nine months of 2001, compared to 87.2% for the same period of 2000. Consequently, as a percentage of revenues, the Company's gross profit of 12.7% in the first nine months of 2001 was slightly lower than the gross profit of 12.8% for the first nine months of 2000. The decrease in the gross profit margin was primarily due to higher labor and insurance costs, which was partially offset by one less workday for which the Company had to pay its hourly workers.

Selling, general and administrative expenses for the first nine months of 2001 were \$127.9 million compared to \$117.5 million for the corresponding nine months of 2000. As a percentage of revenues, selling, general and administrative expenses were 8.8% for both periods. The \$10.4 million increase in the dollar amount of selling, general and administrative expenses for the nine months ended July 31, 2001, compared to the same period in 2000, is primarily due to routine wage increases, expenses related to growth including amortization of goodwill, cost of integrating operations from acquisitions, increased bad debt expense, and, to a somewhat lesser extent, expenses associated with the implementation of a new accounting system.

Interest expense was \$2.2 million for the first nine months of 2001 compared to \$2.5 million for the same period in 2000, an decrease of \$229,000. This decrease was primarily due to lower weighted average borrowings and interest rates during the first nine months of 2001, compared to the first nine months of 2000.

The estimated effective federal and state income tax rate for the first nine months of 2001 was 38.0%, compared to 40.0% in the first nine months of 2000. The lower tax rate was due for the most part to an increase in the estimated federal tax credits.

Net income for the first nine months of 2001 was \$33.7 million, an increase of 12.9% from the net income of \$29.9 million for the same period of 2000. Diluted net income per common share also rose 7.2% to \$1.34 for the first nine months of 2001, compared to \$1.25 for the same period in 2000.

[Table of Contents](#)

Segment Information

Revenues for ABM Janitorial Services increased by 11.4% during the first nine months of 2001 as compared to the same period of 2000 as a result of increased business nationwide and, to a lesser extent, the acquisitions of Allied Maintenance Services, Inc. on March 1, 2000, and Arcade Cleaning on February 1, 2001. This Division's operating profits increased by 14.8% when compared to the same period in 2000. Operating profits increased at a higher rate than revenues primarily because the first nine months of fiscal 2001 had one less workday for which the Company had to pay its hourly workers.

Ampco System Parking's revenues decreased by 0.7%, while its operating profits decreased 39.1% during the first nine months of 2001 compared to the first nine months of 2000. The decrease in revenues was primarily due to the loss of three airport accounts offset in part by newly acquired contracts in the first quarter. The decrease in operating profits resulted from substantially higher insurance charges and increased costs in the airport parking and shuttle operations and litigation expenses.

ABM Engineering Services' revenues increased by 9.8%, while its operating profits increased by 17.9% for the first nine months of 2001 compared to the same period in 2000. The higher revenues reflect new business in Northern and Southern California offset by decreases in Arizona. Operating profits increased at a higher rate than revenues primarily due to a negotiated settlement with a major customer on termination of its contract partially offset by the write-off of accounts receivable related to the bankruptcy of a large customer.

Amtech Lighting Services reported a 20.9% revenue increase, and operating profits increased by 11.4% during the first nine months of 2001 compared to the same nine months of the prior year. The increase in revenues and operating profits was primarily due to increased business in the Northwest region and increased revenues in the North Central and Southeast regions as a result of the SLI Lighting Solutions acquisition on March 26, 2001. The smaller increase in operating profits can be attributed primarily to the second quarter integration costs related to the acquisition of SLI Lighting Solutions.

Revenues for Amtech Elevator Services increased by 10.5% in the first nine months of 2001 compared to the same period in 2000 primarily due to new work secured in Chicago, Detroit, Houston, Las Vegas, Phoenix and Washington, DC. The Division reported a 0.8% increase in operating profit for the first nine months

[Table of Contents](#)

compared to the corresponding nine months of 2000. This smaller increase in operating profits can be attributed primarily to lower margins on maintenance contracts in the Division's Philadelphia and Chicago offices as well as higher operating expenses including insurance and computer-related expenses.

Subsequent Event

At the time of its destruction, the World Trade Center in New York was the Company's largest single job site, with annual sales of approximately \$65 million (3% of ABM's consolidated revenues) and nearly 800 operating engineers, janitorial workers and lighting technicians from three divisions of the Company working various shifts throughout the day and night. Additionally, the Company provided approximately \$10 million in services to an adjacent building which was also destroyed. Other business may also be effected by the disruption or closure of additional buildings in the nearby vicinity. As of the date of this Form 10-Q quarterly report, management is unable to assess the human and financial toll of this tragedy.

Safe Harbor Statement

Cautionary Safe Harbor Disclosure for Forward Looking Statements under the Private Securities Litigation Reform Act of 1995: Because of the factors set forth below, as well as other variables affecting the Company's operating results, past financial performance, should not be considered a reliable indicator of future performance, and investors should not use historical trends to anticipate results or trends in future periods. The statements contained herein which are not historical facts are forward-looking statements that are subject to meaningful risks and uncertainties, including but not limited to: (1) significant decreases in commercial real estate occupancy, resulting in reduced demand and prices for building maintenance and other facility services in the Company's major markets, (2) loss or bankruptcy of one or more of the Company's major customers, which could adversely affect the Company's ability to collect its accounts receivable or recover its deferred costs, (3) major collective bargaining issues that may cause loss of revenues or cost increases that non-union companies can use to their advantage in gaining market share, (4) significant shortfalls in adding additional customers in existing and new territories and markets, (5) a protracted slowdown in the Company's acquisition activities, (6) legislation or other governmental action that severely impacts one or more of the

[Table of Contents](#)

Company's lines of business, such as price controls that could restrict price increases, or the unrecovered cost of any universal employer-paid health insurance, as well as government investigations that adversely affect the Company, (7) reduction or revocation of the Company's line of credit, which would increase interest expense or the cost of capital, (8) cancellation or nonrenewal of the Company's primary insurance policies, as many customers contract out services based on the contractor's ability to provide adequate insurance coverage and limits, (9) catastrophic uninsured or underinsured claims against the Company, the inability of the Company's insurance carriers to pay otherwise insured claims, or inadequacy in the Company's reserve for self-insured claims, (10) inability to employ entry level personnel due to labor shortages, (11) resignation, termination, death or disability of one or more of the Company's key executives, which could adversely affect customer retention and day-to-day management of the Company, and (12) other material factors that are disclosed from time to time in the Company's public filings with the United States Securities and Exchange Commission, such as reports on Forms 8-K, 10-K and 10-Q.

Item 3. Qualitative and Quantitative Disclosures about Market Risk

The Company does not issue or invest in financial instruments or their derivatives for trading or speculative purposes. The operations of the Company are conducted primarily in the United States, and, as such, are not subject to material foreign currency exchange rate risk. The Company has variable rate debt but believes the market risk in interest rate exposure is not material.

PART II. OTHER INFORMATION

Item 6. Exhibits and Reports on Form 8-K

(a) Exhibits

Exhibit 3.2 — Bylaws, as amended July 23, 2001

(b) Reports on Form 8-K: No reports on Form 8-K were filed during the quarter ended July 31, 2001.

[Table of Contents](#)

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.

ABM Industries Incorporated

September 14, 2001

/s/ George B. Sundby

Senior Vice President and
Chief Financial Officer,
Principal Financial Officer

September 14, 2001

/s/ Maria Placida Y. de la Pena

Vice President and Controller
Chief Accounting Officer

22

[Table of Contents](#)

EXHIBIT INDEX

NUMBER	DESCRIPTION
Exhibit 3.2	Bylaws, as amended July 23, 2001

23

ABM INDUSTRIES INCORPORATED

BYLAWS

As Amended July 23, 2001

ARTICLE I

OFFICES

Section 1.1. Registered Office. The registered office shall be located in the City of Wilmington, County of New Castle, State of Delaware.

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

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 2.1. Place of Meeting. All meetings of stock-holders shall be held at the principal executive office of the Corporation or at any other place, either within or without the State of Delaware, as may be designated by the Board of Directors.

Section 2.2. Annual Meeting. The annual meeting of stockholders shall be held on such date and at such time as the Board of Directors may designate.

At each annual meeting the stockholders shall elect directors to succeed those whose terms expire in that year and to

EXHIBIT 3.2

serve until their successors are elected, and shall transact such other business as may properly be brought before the meeting.

Section 2.3. Notice of Annual Meeting. Written notice of the annual meeting stating the place, date and hour of the meeting shall be given to each stockholder entitled to vote at such meeting not less than ten nor more than sixty days before the date of the meeting. Such notice shall be given either personally or by mail or other means of written communication, addressed or delivered to each stockholder entitled to vote at such meeting at the address of such stockholder appearing on the books of the Corporation or given by him to the Corporation for the purpose of such notice. If no such address appears or is given, notice shall be given either personally or by mail or other means of written communication addressed to the stockholder at the place where the principal executive office of the Corporation is located. The notice shall be deemed to have been given at the time when delivered personally or deposited in the mail or sent by other means of written communication.

Section 2.4. Business at Annual Meetings. At an annual meeting of stockholders, only such business shall be conducted as shall have been brought before the meeting (i) pursuant to the Corporation's notice of the meeting, (ii) by or at the direction of the Board of Directors or (iii) by any stockholder of the Corporation who is a stockholder of record at the time of giving of the notice provided for in this Bylaw, who shall be entitled to vote at such meeting and who shall have complied with the notice procedures set forth in this Bylaw.

EXHIBIT 3.2

For business to be properly brought before an annual meeting by a stockholder pursuant to Section 2.4(a) of this Bylaw, notice in writing must be delivered or mailed, postage prepaid, to the Secretary of the Corporation and received at the principal executive offices of the Corporation not less than 60 days prior to the first anniversary of the date on which the Corporation first mailed its proxy materials for the preceding year's annual meeting of stockholders; provided, however, that in the event that the date of the meeting is advanced by more than 30 days or delayed by more than 60 days from such meeting's anniversary date, notice by the stockholder must be received not later than the close of business on the later of the 60th day prior to such date of mailing of proxy materials or the 10th day following the day on which public announcement of the date of the annual meeting is first made. Such stockholder's notice shall set forth as to each matter the stockholder proposes to bring before the annual meeting (i) a brief description of the business to be brought before the annual meeting and the reasons for conducting such business at such meeting; (ii) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business, and the name and address of the beneficial owner, if any, on whose behalf the proposal is made; (iii) the class and number of shares of the Corporation's stock which are beneficially owned by the stockholder, and by the beneficial owner, if any, on whose behalf the proposal is made; and (iv) any material interest of the stockholder, and of the beneficial owner, if any, on whose behalf the proposal is made, in such business.

EXHIBIT 3.2

Business. For purposes of these Bylaws, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act").

Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at an annual meeting except in accordance with the procedures set forth in this Bylaw. The chairman of the meeting may, if the facts warrant, determine that the business was not properly brought before the meeting in accordance with the provisions of this Bylaw; and if the chairman should so determine, the chairman shall so declare to the meeting, and any such business not properly brought before the meeting shall not be transacted. Notwithstanding the foregoing provisions of this Bylaw, 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 Bylaw. Nothing in this Bylaw shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

Section 2.5. List of Stockholders. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of stockholders entitled to vote at the meeting, ar-

EXHIBIT 3.2

ranged in alphabetical order, and showing the address of the 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, either at a place within the city where the meeting is to be held, or, if not so specified, at the place where the meeting is to be held. The list shall also 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.

Section 2.6. Special Meetings. Special meetings of the stockholders, for any purpose or purposes, may be called at any time by the Board of Directors, or by a committee of the Board of Directors which has been duly designated by the Board of Directors and whose power and authority, as provided in a resolution of the Board of Directors, include the power to call such meetings, but such special meetings may not be called by any other person or persons.

Section 2.7. Notice of Special Meetings. Written notice of a special meeting of stockholders stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called shall be given not less than ten nor more than sixty days before the date of the meeting to each stockholder entitled to vote at such meeting.

Section 2.8. Business at Special Meetings. The business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

EXHIBIT 3.2

Section 2.9. Adjourned Meetings and Notice Thereof. Any stockholders' meeting, annual or special, whether or not a quorum is present, may be adjourned from time to time by the vote of a majority of the shares represented either in person or by proxy, but in the absence of a quorum, no other business may be transacted at such meeting, except as provided in Section 2.10 of these bylaws.

When a stockholders' meeting is adjourned to another time or place, notice of the adjourned meeting need not be given if the time and place thereof are announced at the meeting at which the adjournment is taken; except that if the adjournment is for more than thirty days or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote thereat.

At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting.

Section 2.10. Quorum. The holders of a majority of the shares issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the certificate of incorporation.

Section 2.11. Majority Vote. If a quorum is present at any meeting, the vote of the holders of a majority of the shares having voting power, present in person or represented by

EXHIBIT 3.2

proxy, shall decide any question brought before such meeting, unless a different vote is required on that question by express provision of statute or of the certificate of incorporation, in which case such express provision shall govern and control.

The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum, in any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum, unless a different vote is required as set forth above.

Section 2.12. Voting. Except as otherwise provided in the certificate of incorporation and subject to Section 8.4 of these bylaws, each stockholder shall be entitled to one vote, in person or by proxy, for each share of capital stock having voting power held by such stockholder, but no proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. Vote may be viva voce or by ballot; provided, however, that elections for directors must be by ballot.

Any holder of shares entitled to vote on any matter may vote part of the shares in favor of the proposal and refrain from voting the remaining shares or vote them against the proposal, other than elections to office but, if the stockholder fails to specify the number of shares such stockholder is voting affirmatively, it shall be conclusively presumed that the stockholder's ap-

EXHIBIT 3.2

proving vote is with respect to all shares said stockholder is entitled to vote.

Section 2.13. Stockholder Action. Any action required or permitted to be taken by the stockholders must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent in writing by such holders.

Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when a person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened; provided, that attendance at a meeting is not a waiver of any right to object to the consideration of matters required by law or these bylaws to be included in the notice but not so included if such objection is expressly made at the meeting.

Section 2.14. Presiding Officer. The chairman of the Board of Directors, if there be such officer, shall, if present, call the meetings of the stockholders to order and shall act as the presiding officer thereof.

Section 2.15. Secretary. The secretary of the Corporation, if present, shall act as secretary of all meetings of the stockholders. In the absence of the secretary, an assistant secretary if present shall act as secretary of the meetings of the stockholders. In the absence of the secretary or any assistant secretary, the presiding officer may appoint a person to act as secretary of such meeting.

EXHIBIT 3.2

Section 2.16. Confidential Voting.

(a) Proxies and ballots that identify the votes of specific stockholders shall be kept in absolute confidence by the tabulators and the inspectors of election unless (i) there is an opposing solicitation with respect to the election or removal of Directors, (ii) disclosure is required by applicable law, (iii) a stockholder expressly requests or otherwise authorizes disclosure of the vote(s) cast by that stockholder, or (iv) the Corporation concludes in good faith that a bona fide dispute exists as to the authenticity of one or more proxies, ballots or votes, or as to the accuracy of any tabulation of such proxies, ballots or votes. Otherwise, no person, group or entity (including but not limited to any past, present or prospective director, officer, employee, agent or stockholder of the Corporation) shall be shown, told or given any information about the vote(s) cast by any specific stockholder.

(b) Comments written on proxies, consents or ballots shall be transcribed and provided to the secretary of the Corporation with the name and address of the stockholder. The vote of the stockholder shall not be disclosed at the time any such comment is provided to the secretary except where such vote is included in the comment or disclosure is necessary, in the opinion of the inspector, for an understanding of the comment.

EXHIBIT 3.2

(c) The tabulators and inspectors of election and any authorized agents or other persons engaged in the receipt, count and tabulation of proxies and ballots shall be advised of this Bylaw and instructed to comply herewith.

(d) The inspectors of election shall certify, to the best of their knowledge based on due inquiry, that proxies and ballots have been kept in confidence as required by this Section 2.16.

(e) Nothing in this Bylaw shall prohibit the inspector from making available to the Corporation, during the period prior to any annual or special meeting, information as to which stockholders have not voted and periodic status reports on the aggregate vote.

ARTICLE III

DIRECTORS

Section 3.1. Number of Directors, Election and Term of Office. The number of directors which shall constitute the whole board shall be ten. The Board of Directors shall be classified, with respect to the time for which they severally hold office, into three classes, as nearly equal in number as possible, as determined by the Board of Directors, one class to hold office initially for a term expiring at the annual meeting of stockholders to be held in 1986, another class to hold office initially for a term expiring at the annual meeting of stockholders to be held in 1987, and another class to hold office initially for a term expiring at the annual meeting of stockholders

EXHIBIT 3.2

to be held in 1988, with the members of each class to hold office until their successors are elected and qualified. At each annual meeting of stockholders, the successors of the class of directors whose term expires at that meeting shall be elected to hold office for a term expiring at the annual meeting of stockholders held in the third year following the year of their election.

The term "entire board" as used in these bylaws means the total number of directors which the Corporation would have if there were no vacancies.

Section 3.2. Vacancies. A vacancy in the Board of Directors shall be deemed to exist in case of the death, resignation, or removal of any director, or if the authorized number of directors be increased, or if the stockholders fail at any annual or special meeting of stockholders to elect the full authorized number of directors to be voted for at that meeting.

Unless otherwise provided in the certificate of incorporation, vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director, and any director so chosen shall hold office until the next election of the class for which he was chosen and until his successor is fully elected and qualified, unless sooner displaced. If at any time the Corporation should have no directors in office, then an election of directors may be held in the manner provided by statute. If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less

EXHIBIT 3.2

than a majority of the entire board (as constituted immediately prior to any such increase), the Court of the Chancery may upon application of any stockholder or stockholders holding at least ten percent (10%) of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships or to replace the directors chosen by the directors then in office.

Section 3.3. Powers. The business and affairs of the Corporation shall be managed by its Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the certificate of incorporation or by these bylaws directed or required to be exercised or done by the stockholders.

Section 3.4. Compensation of Directors. The Board of Directors shall have the authority to fix the compensation of directors. No such compensation shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 3.5. Resignation. Any director may resign effective upon giving written notice to the chief executive officer, the secretary, or the Board of Directors of the Corporation, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective.

EXHIBIT 3.2

Section 3.6. Nominations of Directors. Only persons who are nominated in accordance with the procedures set forth in these Bylaws shall be eligible for election as directors. Nominations of persons for election to the Board of Directors may be made at a meeting of stockholders (i) by the Board of Directors or a committee appointed by the Board of Directors authorized to make such nominations or (ii) by any stockholder of the Corporation who is a stockholder of record at the time of giving of the notice provided for in this Bylaw, who shall be entitled to vote for the election of directors at the meeting and who complies with the notice procedures set forth in this Bylaw. Nominations by stockholders shall be made pursuant to notice in writing, delivered or mailed, postage prepaid, to the Secretary of the Corporation and received at the principal executive offices of the Corporation (i) in the case of an annual meeting, not less than 60 days prior to the first anniversary of the date on which the Corporation first mailed its proxy materials for the preceding year's annual meeting of stockholders, provided, however, that in the event that the date of the meeting is advanced by more than 30 days or delayed by more than 60 days from such anniversary date, notice by the stockholder must be received not later than the close of business on the later of the 60th day prior to such date of mailing of proxy materials or the 10th day following the day on which public announcement of the date of the meeting is first made; or (ii) in the case of a special meeting at

EXHIBIT 3.2

which directors are to be elected, not later than the close of business on the later of the 60th day prior to such special meeting or the 10th day following the day on which public announcement of the date of the meeting and of the nominees proposed by the Board of Directors to be elected at such meeting is first made. Such stockholder's notice shall set forth (i) the name and address of the stockholder who intends to make the nomination and of the person or persons to be nominated; (ii) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice; (iii) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder; (iv) such other information regarding each nominee proposed by such stockholder as would be required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission, had the nominee been nominated, or intended to be nominated by the Board of Directors; and (v) the written consent of such nominee to serve as a director of the Corporation if elected. At the request of the Board of Directors, or any committee appointed by the Board of Directors authorized to make such nominations, any person nominated by the Board of Directors, or such committee, for election as a

EXHIBIT 3.2

director shall furnish to the Secretary of the Corporation that information required to be set forth in a stockholder's notice of nomination that pertains to the nominee. Notwithstanding anything in this Bylaw 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 statement naming all the nominees for Director or specifying the size of the increased Board of Directors made by the Corporation at least 70 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Bylaw 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.

No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in these Bylaws. The chairman of the meeting may, if the facts warrant, determine that a nomination was not made in accordance with the procedures prescribed in this Bylaw; and if the chairman should so determine, the chairman shall so declare to the meeting, and the defective nomination shall be disregarded. Notwithstanding the foregoing provisions of this Bylaw, a stockholder shall also comply with all applicable requirements of the Exchange

EXHIBIT 3.2

Act, and the rules and regulations thereunder with respect to the matters set forth in this Bylaw.

ARTICLE IV

MEETINGS OF THE BOARD OF DIRECTORS

Section 4.1. Place of Meeting. The Board of Directors of the Corporation may hold meetings, both regular and special, either within or without the State of Delaware.

Section 4.2. Organization Meeting. Immediately after each annual meeting of stockholders, the Board of Directors shall hold a regular meeting for the purpose of organization, electing officers and transacting other business. No notice of such meeting need be given. In the event such meeting is not so held, the meeting may be held at such time and place as shall be specified in a notice given as hereafter provided for special meetings of the Board of Directors, or as shall be specified in a written waiver signed by all of the directors.

Section 4.3. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and at such place as shall from time to time be determined by the Board of Directors; provided, however, that if the date so designated falls upon a legal holiday, then the meeting shall be held at the same time and place on the next succeeding day which is not a legal holiday. Such regular meetings may be held without notice.

EXHIBIT 3.2

Section 4.4. Special Meetings. Special meetings of the Board of Directors may be called by the chairman of the board of directors, chairman of the executive committee of the Board of Directors, the chief executive officer or the president or on the written request of the directors constituting a majority of the entire board.

Section 4.5. Notice of Special Meetings. Notice of the time and place of special meetings of the Board of Director shall be delivered personally to each director, or sent to each director by mail, telephone, or telegraph. In case such notice is sent by mail or telegraphed it shall be deposited in the United States mail or delivered to the telegraph company in the place in which the principal office of the Corporation is located at least 48 hours prior to the time of the holding of the meeting. In case such notice is delivered personally or by telephone, it shall be so delivered at least 24 hours prior to the time of the holding of the meeting. Such notice shall not be necessary if appropriate waivers, consents and/or approvals are filed in accordance with Section 4.6 of these bylaws.

Section 4.6. Waiver of Notice. Notice of a meeting need not be given to any director who signs a waiver of notice, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such director.

The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be

EXHIBIT 3.2

as valid as though had at a meeting duly held after regular call and notice if a quorum is present and if, either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 4.7. Quorum. At all meetings of the board, the presence of one-third of the entire board shall constitute a quorum for the transaction of business, and the act of a majority of the directors present at any meetings at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute or by the certificate of incorporation. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting without notice other than announcement at the meeting, until a quorum shall be present. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for such meeting.

Section 4.8. Adjournment. Any meeting of the Board of Directors, whether or not a quorum is present, may be adjourned to another time and place by the vote of a majority of the directors present. Notice of the time and place of

EXHIBIT 3.2

the adjourned meeting need not be given to absent directors if said time and place are fixed at the meeting adjourned.

Section 4.9. Action Without Meeting. Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the board or committee.

Section 4.10. Conference Communication. Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the Board of Directors or any committee designated by the board may participate in a meeting of the Board of Directors or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear one another. Participation in a meeting pursuant to this action shall constitute presence in person at such meeting.

ARTICLE V

COMMITTEES OF DIRECTORS

Section 5.1. Committees of Directors. The Board of Directors may, by resolution passed by a majority of the entire board, designate one or more committees, each committee to consist of one or more of the directors of the Corpora-

EXHIBIT 3.2

tion. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolutions of the Board of Directors, shall have and may exercise all the power and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the certificate of incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of substantially all of the Corporation's property and assets, recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution, or amending the bylaws of the Corporation and, unless the resolution or the certificate of incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock. Such committee or committees shall have such name or names as may be determined from

EXHIBIT 3.2

time to time by resolution adopted by the Board of Directors.

Section 5.2. Committee Minutes. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

Section 5.3. Audit Committee. There shall be an Audit Committee comprised of at least three members of the Board. The members will be appointed by and serve at the pleasure of the board. Each member of the Audit committee will be "independent" as defined by and to the extent required by the rules of the New York Stock Exchange. Each member of the Audit Committee will be "financially literate" as interpreted by the board, in its business judgement, or must become "financially literate" within a reasonable period of time after his or her appointment to the Audit Committee. At least one member of the Audit Committee must have "accounting or related financial management expertise", as interpreted by the board in its business judgement.

The Audit Committee as a group will meet individually with the Company's outside auditors, Chief Executive Officer and Chief Financial Officer upon completion of the annual audit, and at such other times as it deems appropriate, to review the outside auditors' examination and management report.

The Audit Committee shall oversee the corporate financial reporting process and the internal and external audits of the Corporation. The Audit Committee will under-

EXHIBIT 3.2

take those specific duties, responsibilities and processes listed below and such other duties as the Board of Directors from time to time prescribe. The Audit Committee will ensure that there is effective communication among the Board, management and outside auditors.

The responsibilities of the Audit Committee include:

1. Recommending outside auditors for approval by the Board and, if necessary, the termination of the outside auditors presently engaged;
2. Approving the fees for the audit and related services at least annually;
3. Reviewing the quarterly and annual financial statements, and discussing the audited annual financial statements with both the Company's outside auditors and the Company's management, prior to any public filing of those reports;
4. Discussing with the Company's outside auditors the quality of accounting principles applied in the Company's financial statements and the other matters required by SAS 61 and amendments or supplements thereto, such as management judgments and accounting estimates that affect financial statements, significant new accounting policies and disagreements with management;
5. Ensuring the receipt of, and reviewing, a formal written statement from the Company's outside auditors delineating all relationships between the outside auditor and the

EXHIBIT 3.2

Company, consistent with Independence Standards Board Standard 1;

6. Reviewing and actively discussing with the Company's outside auditors the auditor's independence, including any disclosed relationship or service that may impact the objectivity and independence of the outside auditor;

7. Recommending that the Board take appropriate action to ensure the independence of the outside auditor;

8. Overseeing the Company's compliance with SEC requirements for disclosure of auditor's services and Audit Committee members and activities;

9. Reviewing the Company's system of internal accounting controls;

10. Making inquiries into matters within the scope of its functions and retaining outside counsel if it deems appropriate in connection with such inquiries;

11. Ensuring that the Company provides annual written affirmation to the NYSE regarding: (i) any Board determination regarding the independence of the Audit Committee members, (ii) the financial literacy of the Audit Committee members, (iii) the determination that at least one member has the requisite accounting or financial expertise; and (iv) the annual review of this Charter;

12. Ensure that the outside auditors understand both: (i) their ultimate accountability to the Board and to the Audit Committee, as representatives of the Company's stockholders, and (ii) the Board's and the Audit Committee's ul-

EXHIBIT 3.2

timate authority and responsibility to select, evaluate and, where appropriate in the exercise of their business judgment, replace the Company's outside auditors, or nominate the outside auditor to be proposed for stockholder approval in any proxy statement.

13. review and reassess the adequacy of its committee charter at least once a year.

Section 5.4 Executive Committee. There shall be an Executive Committee of the Board of Directors that shall include a minimum of any three directors appointed from time to time by the Board. If appointed as a member of the Executive Committee, the Chairman of the Board shall be a non-voting member. The functions of the Executive Committee shall be to exercise all power and authority of the Board in the management of the business and affairs of the Corporation, except for: (a) any functions delegated to other committees of the Board. (b) amending the Articles or Certificate of Incorporation, (c) adopting an agreement of merger or consolidation, (d) recommending to the stockholders the sale, lease or exchange of substantially all of the Corporation's property and assets, (e) recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution, (f) amending the Bylaws of the Corporation, (g) declaring a dividend, or (h) authorizing the issuance of stock in the Corporation.

EXHIBIT 3.2

Section 5.5. Executive Officer Compensation & Stock Option Committee. There shall be an Executive Officer Compensation & Stock Option Committee of the Board of Directors that shall include a minimum of any three independent directors appointed from time to time by the Board. The functions of the Executive Officer Compensation & Stock Option Committee shall be to: (a) review and recommend to the Board the compensation and other contractual terms and conditions for employment of the Corporation's executive officers, (b) review and recommend to the Board the compensation and other contractual terms and conditions for employment of any and all former executive officers of the company who resume service to the Company as independent contractors or non-officer employees, (c) review the compensation and other contractual terms and conditions for employment of other corporate or subsidiary officers whose annual cash compensation exceeds \$250,000, (d) to administer the Corporation's stock option plans and authorize grants thereunder, and (e) to administer the Corporation's employee stock purchase plan.

Section 5.6 Nominating, Governance & Succession Committee. There shall be a Nominating, Governance & Succession Committee of the Board of Directors that shall include a minimum of any three independent directors appointed from time to time by the board. The functions of the Nominating, Governance & Succession Committee shall be to: (a) make recommendations to the board as to the optimal

EXHIBIT 3.2

number of directors on the Board, (b) review and recommend criteria for the reelection of incumbent directors, (c) have jurisdiction over the compensation of directors, (d) review and recommend executive officer succession, and (e) be responsible for all matters of corporate governance.

ARTICLE VI

OFFICERS

Section 6.1 Officers The officers of the Corporation shall be a chief executive officer, a chief administrative officer, a president, a chairman of the Board, one or more executive vice presidents, one or more senior vice presidents, one or more vice presidents, a secretary, a controller, and a treasurer, each of whom shall be an executive officer of the Corporation appointed by the Board of Directors. The Corporation may also have one or more assistant vice presidents, one or more assistant secretaries, one or more assistant controllers, and one or more assistant treasurers, each of whom shall be an assistant officer of the Corporation appointed by the Executive Committee of the Board of Directors. Any number of offices may be held by the same person, unless the certificate of incorporation or these bylaws otherwise provide.

Section 6.2 Election. The Board of Directors at its first meeting after each annual meeting of stockholders shall elect all principal officers for the ensuing year and

EXHIBIT 3.2

shall designate a chief executive officer and a chief financial officer. At its first meeting after each annual meeting of stockholders, the Executive Committee shall elect all assistant officers.

Section 6.3 Other Officers. The Board of Directors may appoint such other officers and agents as it shall deem necessary and they shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors.

Section 6.4 Term. Subject to an applicable written employment agreement, if any, between the Corporation and any principal officer elected or appointed by the Board of Directors or any assistant officer appointed by the Executive Committee of the Board of Directors, said officer may be removed at any time, either with or without cause, by the affirmative vote of a majority of the Board of Directors or of the Executive Committee of the Board of Directors, respectively. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors or by the Executive Committee of the Board of Directors pursuant to the requirements of Section 6.1 of this Article VI. Compensation and other terms and conditions of employment of any principal officer shall be subject to approval of the Officer Compensation and Stock Option Committee and the Board of Directors. Compensation and other terms and conditions of

EXHIBIT 3.2

employment of assistant officers shall be subject to approval of the Executive Committee of the Board of Directors.

Section 6.5 The Chairman of the Board of Directors. The chairman of the Board of Directors shall be responsible to the Board of Directors, shall prepare communications to the Board, and with input from the Executive Committee, shall prepare agenda for meetings of the Board of Directors. The Chairman of the Board of Directors shall be a member of the Executive Committee and shall preside over all meetings of the Board of Directors and of the stockholders. At the request of the President and Chief Executive Officer, the Chairman shall assist him in communications with stockholders, the press and the investment community. The chairman shall exercise and perform such other powers and duties as may, from time to time, be assigned to him by the Board of Directors or prescribed by these bylaws.

Section 6.6 The President. The president shall have general and active management over the business and affairs of the corporation, subject, however, to the powers and authority of the chief executive officer and to the control of the Board of Directors. In the absence or disability of the chief executive officer, the president shall perform the duties of the chief executive officer, and when so acting, shall have all the powers of, and be subject to all the restrictions upon, the chief executive officer.

Section 6.7 The Chief Administrative Officer. In the absence or disability of the chief executive officer and the

EXHIBIT 3.2

president, the chief administrative officer or any other officer of the corporation designated by the Board of Directors, shall perform the duties of the chief executive officer, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the chief executive officer. The chief administrative officer shall have such powers and perform such other duties as from time to time may be prescribed by the chief executive officer.

Section 6.8 The Senior Vice Presidents. In the absence of the chairman of the board or any executive vice presidents, the senior vice presidents, in order of their rank as fixed by the board of directors, or, if not ranked, the senior vice president designated by the Board of Directors shall perform the duties of the president, and when so acting shall have all the powers of, and be subject to all the restrictions upon the president. The senior vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Executive Committee of the Board of Directors.

Section 6.9 The Vice Presidents. The vice presidents shall have such powers and perform such duties as may from time to time be prescribed by the Executive Committee of the Board of Directors.

Section 6.10 The Secretary. The secretary shall keep, or cause to be kept, a book of minutes in written form of the proceedings of the Board of Directors, committees of the board, and stockholders. Such minutes shall include all

EXHIBIT 3.2

waivers of notice, consents to the holding of meeting, or approvals of the minutes of meetings executed pursuant to these bylaws or statute. The secretary shall keep, or cause to be kept, at the principal executive office or at the office of the Corporation's transfer agent or registrar, a record of its stockholders, giving the names and addresses of all stockholders, and the number and class of shares held by each.

The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the Board of Directors required by these bylaws or by law to be given, and shall keep the seal of the Corporation in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these bylaws.

Section 6.11 The Assistant Secretary. The assistant secretary shall have all the powers and perform all the duties of the secretary in the absence or inability of the secretary to act.

Section 6.12 The Controller. The Controller of the Corporation shall be the general manager of the accounting, tax and internal audit functions of the Corporation and its subsidiaries, subject to the control of the chief financial officer. The controller shall have such other powers and perform such other duties as from time to time may be prescribed by the chief financial officer.

EXHIBIT 3.2

Section 6.13 The Treasurer. The treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company and shall deposit all monies and other valuables in the name and to the credit of the Company. The treasurer shall also have such other powers and perform such other duties as may be prescribed by the Executive Committee of the Board of Directors.

ARTICLE VII

INDEMNIFICATION OF DIRECTORS,
OFFICERS, EMPLOYEES AND AGENTS

Section 7.1. Actions, Suits or Proceedings Other Than by or in the Right of the Corporation. 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 he is or was or has agreed to become a director, officer, employee or agent of the Corporation, or is or was serving or has agreed to serve at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted in such capacity, against costs, charges, expenses (including attorneys' fees) judgments, fines and

EXHIBIT 3.2

amounts paid in settlement actually and reasonably incurred by him or on his behalf in connection with such action, suit or proceeding and any appeal therefrom, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful; provided however, that the foregoing indemnity shall not be applicable as to any person who is or was or agreed to become an employee or agent of the Corporation (other than employees or agents who are or were also officers or directors of the Corporation), or is or was serving or agreed to serve at the request of the Corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise (other than employees or agents who are or were also officers or directors of any such other corporation, partnership, joint venture, trust or enterprise), unless and until such indemnity is specifically approved by the Board of Directors. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

EXHIBIT 3.2

Section 7.2. Actions or Suits by or in the Right of the Corporation. 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 he is or was or has agreed to become a director, officer, employee or agent of the Corporation, or is or was serving or has agreed to serve at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted in such capacity, against costs, charges and expenses (including attorneys' fees) actually and reasonably incurred by him or on his behalf in connection with the defense or settlement of such action or suit and any appeal therefrom, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation 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 such liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnify for such costs, charges and expenses which the Court of

EXHIBIT 3.2

Chancery or such other court shall deem proper; provided, however, that the foregoing indemnity shall not be applicable as to any person who is or was or agreed to become an employee or agent of the Corporation (other than employees or agents who are or were also officers or directors of the Corporation), or is or was serving or agreed to serve at the request of the Corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise other than employees or agents who are or were also officers or directors of any such other corporation, partnership, joint venture, trust or enterprise), unless and until such indemnity is specifically approved by the Board of Directors.

Section 7.3. Indemnification for Costs, Charges and Expenses of Successful Party. Notwithstanding the other provisions of this Article, to the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise, including, without limitation, the dismissal of an action without prejudice, in defense of any action, suit or proceeding referred to in Sections 7.1 and 7.2 of this Article, or in defense of any claim, issue or matter therein, he shall be indemnified against all costs, charges and expenses (including attorneys' fees) actually and reasonably incurred by him or on his behalf in connection therewith.

Section 7.4. Determination of Right to Indemnification. Any indemnification under Sections 7.1 and 7.2 of

EXHIBIT 3.2

this Article (unless ordered by a court) shall be paid by the Corporation unless a determination is made (1) by the Board of Directors by a majority vote of the quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the stockholders, that indemnification of the director, officer, employee or agent is not proper in the circumstances because he has not met the applicable standard of conduct set forth in Sections 7.1 and 7.2 of this Article.

Section 7.5. Advance of Costs, Charges and Expenses. Costs, charges and expenses (including attorneys' fees incurred by a person referred to in Sections 7.1 and 7.2 of this Article in defending a civil or criminal action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding; providing, however, that the payment of such costs, charges and expenses incurred by a director or officer in his capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer) in advance of the final disposition of such action, suit or proceeding shall be made only upon receipt of an undertaking by or on behalf of the director or officer to repay all amounts so advanced in the event that it shall ultimately be determined that such director or of-

EXHIBIT 3.2

ficer is not entitled to be indemnified by the Corporation as authorized in this Article. Such costs, charges and expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board of Directors deems appropriate. The Board of Directors may, in the manner set forth above, and upon approval of such director, officer, employee or agent of the Corporation, authorize the Corporation's counsel to represent such person, in any action, suit or proceeding, whether or not the Corporation is a party to such action suit or proceeding.

Section 7.6. Procedure for Indemnification. Any indemnification under Sections 7.1., 7.2 or 7.3, or advance of costs, charges and expenses under Section 7.5 of this Article, shall be made promptly, and in any event within 30 days, upon the written request of the director, officer, employee or agent. The right to indemnification or advances as granted by this Article shall be enforceable by the director, officer, employee or agent in any court of competent jurisdiction, if the Corporation denies such request, in whole or in part, or if no disposition thereof is made within 30 days. Such persons; costs and expenses incurred in connection with successfully establishing his right to indemnification, in whole or in part, in any such action shall also be indemnified by the Corporation. It shall be a defense to any such action (other than an action brought to enforce a claim for the advance of costs, charges and expenses under Section 7.5 of this Article where the required

EXHIBIT 3.2

undertaking, if any, has been received by the Corporation) that the claimant has not met the standard of conduct set forth in Sections 7.1 or 7.2 of this Article, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, its independent legal counsel, and its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in Sections 7.1 or 7.2 of this Article, nor the fact that there has been an actual determination by the Corporation (including its Board of Directors, its independent legal counsel, and its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

Section 7.7. Other Rights; Continuation of Right to Indemnification. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under any law (common or statutory), agreement, vote of stockholders or disinterested director or otherwise, both as to action in his official capacity and as to action in another capacity while holding office or while employed by or acting as agent for the Corporation, and shall continue as to a person who has ceased to be a director, officer, employee or

EXHIBIT 3.2

agent, and shall inure to the benefit of the estate, heirs, executors and administrators of such person. All rights to indemnification under this Article shall be deemed to be a contract between the Corporation and each director, officer, employee or agent of the Corporation who serves or served in such capacity at any time while this Article is in effect. Any repeal or modification of this Article or any repeal or modification of relevant provisions of the Delaware General Corporation Law or any other applicable laws shall not in any way diminish any rights to indemnification of such director, officer, employee or agent or the obligations of the Corporation arising hereunder.

Section 7.8. Insurance. The Corporation shall purchase and maintain insurance on behalf of any person who is or was or has agreed to become a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him or on his behalf in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article, provided that such insurance is available on acceptable terms, which determination shall be made by a vote of a majority of the entire Board of Directors.

EXHIBIT 3.2

Section 7.9. Savings Clause. If this Article or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each director, officer, employee and agent of the Corporation as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, including an action by or in the right of the Corporation, to the full extent permitted by any applicable portion of this Article that shall not have been invalidated and to the full extent permitted by applicable law.

ARTICLE VIII

STOCKHOLDERS

Section 8.1. Certificates of Stock. Every holder of shares in the Corporation shall be entitled to have a certificate, signed by, or in the name of the Corporation by, the chairman, the president or a vice president and the secretary or an assistant secretary of the Corporation, or the treasurer or an assistant treasurer, certifying the number of shares owned by him in the Corporation. Any or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued

EXHIBIT 3.2

by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

Section 8.2. Lost Certificates. The Board of Directors may direct a new certificate or certificates of stock to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates the Corporation may, in its discretion, and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or to give the Corporation a bond (or other adequate security) in such sum as it may direct as indemnity against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate.

Section 8.3. Transfer of Stock. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

EXHIBIT 3.2

Section 8.4. Stockholders of Record. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of the 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. 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, unless the Board of Directors fixes a new record date for the adjourned meeting, but the board shall fix a new record date if the meeting is adjourned for more than forty-five days from the date set for the original meeting.

Section 8.5. No Record Date. If no record date is fixed, 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 at the day next preceding the day on which notice is given, or, if notice is waived, at the end of business of the day next preceding the day on which the meeting is held. The record date for determining stockholders for any other purpose shall be at the close of

EXHIBIT 3.2

business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 8.6. Registered Stockholders. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE IX

GENERAL PROVISIONS

Section 9.1. Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 9.2. Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization, and the name of the state of its incorporation. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE X

AMENDMENTS

Section 10.1. Amendments. Subject to the provisions of the Certificate of Incorporation, these by-laws may be altered, amended or repealed at any regular meeting of the stockholders (or at any special meeting thereof duly called for that purpose) by a vote of not less than 70% of the outstanding stock entitled to vote at such meeting; provided that in the notice of such special meeting notice of such purpose shall be given. Subject to the laws of the State of Delaware, the certificate of incorporation and these bylaws, the Board of Directors may by majority vote of those present at any meeting at which a quorum is present amend these bylaws, or enact such other bylaws as in their judgment may be advisable for the regulation of the conduct of the affairs of the Corporation.