
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

FORM 8-K

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

Date of Report (Date of earliest event reported): November 5, 2018

CA, INC.

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or other jurisdiction
of incorporation)

1-9247
(Commission
File Number)

13-2857434
(IRS Employer
Identification No.)

520 Madison Avenue, New York, New York
(Address of principal executive offices)

10022
(Zip Code)

(800) 225-5224
(Registrant's telephone number, including area code)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Emerging growth company

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

Introductory Note.

As previously reported, on July 11, 2018, CA, Inc., a Delaware corporation (the “Company”), entered into an Agreement and Plan of Merger (the “Merger Agreement”) with Broadcom Inc., a Delaware corporation (“Broadcom”), and Collie Acquisition Corp., a Delaware corporation and a wholly owned subsidiary of Broadcom (“Merger Sub”). On November 5, 2018 (the “Effective Date”), Broadcom completed its acquisition of the Company.

Pursuant to the Merger Agreement, the acquisition was structured as a merger of Merger Sub with and into the Company (the “Merger”), with the Company surviving the Merger and becoming a wholly owned subsidiary of Broadcom.

Pursuant to the terms of the Merger Agreement, at the effective time of the Merger (the “Effective Time”), each issued and outstanding share of common stock, par value \$0.10 per share, of the Company (the “Company Common Stock”) (other than shares of Company Common Stock (i) owned or held in treasury by the Company or owned by Broadcom or Merger Sub, or (ii) owned by any subsidiary of Broadcom or of the Company) was canceled and automatically converted into the right to receive \$44.50 per share in cash, without interest (the “Merger Consideration”). The aggregate consideration paid by Broadcom in the Merger was approximately \$18.7 billion, without giving effect to the related transaction fees and expenses.

At the Effective Time, each Company option (“Company Option”) that was vested and outstanding as of immediately prior to the Effective Time was cancelled, and the holder of such Company Option became entitled to receive, within five business days following the Effective Date, an amount in cash equal to (i) the number of shares of Company Common Stock subject to such Company Option immediately prior to the Effective Time multiplied by (ii) the excess (if any) of the Merger Consideration over the per share exercise price applicable to the Company Option.

At the Effective Time, each Company Option that was unvested and outstanding as of immediately prior to the Effective Time was assumed and converted automatically into an option to purchase shares of Broadcom common stock (each such option, an “Adjusted Option”). Each Adjusted Option is subject to the same terms and conditions that were applicable to the Company Option, except that (i) the number of shares of Broadcom common stock, par value \$0.001 per share (“Broadcom Common Stock”), subject to the Adjusted Option is equal to the product obtained by multiplying (A) the number of shares of Company Common Stock subject to such Company Option immediately prior to the Effective Time, by (B) 0.2010 (the “Equity Award Exchange Ratio”), which ratio was determined as the Merger Consideration divided by the volume weighted average closing sale price per share of Broadcom Common Stock as reported on NASDAQ for the ten consecutive trading days ending on the day immediately preceding the Effective Time, rounded to four decimal places, with any fractional share rounded down to the nearest whole share and (ii) the Adjusted Option has an exercise price per share of Broadcom common stock equal to (A) the per share exercise price for shares of Company Common Stock subject to the corresponding Company Option immediately prior to the Effective Time divided by (B) the Equity Award Exchange Ratio, rounded up to the nearest whole cent.

At the Effective Time, each Company deferred stock unit award (“DSU Award”) that was outstanding immediately prior to the Effective Time and that was held by a non-employee director of the Company vested and was cancelled, and the holder of such DSU Award became entitled to receive, at the time or times elected by the applicable non-employee director, the Merger Consideration in respect of each share of Company Common Stock subject to such DSU Award immediately prior to the Effective Time.

At the Effective Time, subject to and upon the conditions set forth in the Merger Agreement, each Company restricted stock unit award (“RSU Award”) and each Company performance share unit award (“PSU Award”) that was outstanding immediately prior to the Effective Time was assumed and converted automatically into a restricted stock unit award with respect to shares of Broadcom Common Stock (each such award, an “Adjusted RSU Award”). Each Adjusted RSU Award is subject to the same terms and conditions that were applicable to the RSU Award or the PSU Award, as applicable, except that (i) the

number of shares of Broadcom Common Stock subject to the Adjusted RSU Award is equal to the product obtained by multiplying (A) the total number of shares of Company Common Stock subject to the RSU Award or the PSU Award (with such number of shares subject to the PSU Award determined based on the achievement of target performance), as applicable, immediately prior to the Effective Time, by (B) the Equity Award Exchange Ratio, with the result rounded up to the nearest whole share and (ii) any Adjusted RSU Award that replaced a PSU Award is no longer subject to any performance based vesting conditions and will instead vest solely based on continued service following the Merger.

At the Effective Time, subject to and upon the conditions set forth in the Merger Agreement, each Company restricted share award (“RS Award”) that was outstanding immediately prior to the Effective Time was assumed and converted automatically into an award of restricted shares of Broadcom Common Stock (each such award, an “Adjusted RS Award”). Each Adjusted RS Award is subject to the same terms and conditions that were applicable to the RS Award, except that the number of shares of Broadcom Common Stock subject to the Adjusted RS award is equal to the product obtained by multiplying (i) the total number of shares of Company Common Stock subject to the RS Award immediately prior to the Effective Time, by (ii) the Equity Award Exchange Ratio, with the result rounded up to the nearest whole share. At the Effective Time, each restricted share of Company Common Stock that was outstanding immediately prior to the Effective Time and underlying a RS Award was cancelled without the payment of any consideration therefor.

Item 1.02 Termination of a Material Definitive Agreement.

On the Effective Date, in connection with the completion of the Merger and as required by the terms of the Merger Agreement, CA prepaid (or caused to be prepaid) in full all obligations outstanding and terminated all commitments under (i) the Amended and Restated Credit Agreement, dated as of June 27, 2017 (the “Revolving Credit Agreement”), among the Company, the lenders and other parties from time to time party thereto and Citibank, N.A., as administrative agent, and (ii) the Amended and Restated Term Loan Agreement, dated as of April 20, 2018 (the “Term Loan Agreement”), among the Company, the lenders from time to time party thereto and Bank of America, N.A., as administrative agent, in each case as amended, restated, supplemented or otherwise modified.

The Revolving Credit Agreement initially created a \$1.0 billion unsecured revolving credit facility that the Company could draw upon for general corporate purposes. Absent termination (or extension pursuant to its terms), the commitments under the Revolving Credit Agreement would have terminated on June 27, 2022. Borrowings under the Revolving Credit Agreement bore interest, at the Company’s option, at a Base Rate or a Eurodollar Rate, in each case, plus an applicable margin calculated based on the Company’s public debt rating from time to time. The Revolving Credit Agreement contained customary events of default and covenants for borrowings of this type, including two financial covenants: (i) a maximum leverage ratio and (ii) a minimum interest coverage ratio. As of the Effective Date, there were no loans outstanding under the Revolving Credit Agreement. Early termination of the Revolving Credit Agreement did not require payment of any early termination penalties.

The Term Loan Agreement initially created a \$300 million unsecured term loan facility, the proceeds of which the Company could use for general corporate purposes. Absent prepayment, the loans under the Term Loan Agreement would have matured on April 20, 2023. Borrowings under the Term Loan Agreement bore interest, at the Company’s option, at a Base Rate or a Eurodollar Rate, in each case, plus an applicable margin calculated based on the Company’s public debt rating from time to time. The Term Loan Agreement contained events of default and covenants substantially consistent with the Company’s Revolving Credit Agreement. As of the Effective Date, the aggregate outstanding principal amount of loans under the Term Loan Agreement was \$273.75 million. Early termination of the Term Loan Agreement did not require payment of any early termination penalties and required repayment of approximately \$274.1 million in respect of principal, accrued interest and other fees.

The foregoing is only a description of the Revolving Credit Agreement and Term Loan Agreement and is qualified in its entirety by reference to the full text of the Revolving Credit Agreement

and Term Loan Agreement, as applicable, copies of which are filed as Exhibit 10.1 to the Company's Current Report on Form 8-K filed on June 10, 2013 and Exhibit 10.52 to the Company's Annual Report on Form 10-K filed on May 9, 2018, respectively, and are incorporated herein by reference.

Many of the lenders under the Revolving Credit Agreement and Term Loan Agreement and/or their affiliates have in the past performed, and may in the future from time to time perform, investment banking, financial advisory, lending and/or commercial banking services, or other services for the Company and its subsidiaries (including in connection with the transactions described in this Current Report on Form 8-K), for which they have received, and may in the future receive, customary compensation and expense reimbursement.

Item 2.01 Completion of Acquisition or Disposition of Assets.

The description contained under the Introductory Note above is hereby incorporated by reference in its entirety into this Item 2.01.

The description of the effects of the Merger and the Merger Agreement, and the transactions contemplated thereby, does not purport to be complete and is subject to, and qualified in its entirety by reference to, the full text of the Merger Agreement, which was filed as Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the SEC on July 12, 2018 and which is incorporated herein by reference herein.

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

The information set forth under Item 2.01 of this Current Report on Form 8-K is incorporated herein by reference.

On the Effective Date, the Company notified the NASDAQ Global Select Market ("NASDAQ") of the consummation of the Merger. In connection therewith, the Company notified NASDAQ that each outstanding share of Company Common Stock (except as described in Item 2.01) was converted pursuant to the Merger Agreement as set forth in Item 2.01. The Company requested that NASDAQ file a notification of removal from listing on Form 25 with the Securities and Exchange Commission ("SEC") with respect to the Company Common Stock and to deregister the Company Common Stock pursuant to Section 12(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Trading of Company Common Stock on NASDAQ was halted prior to the opening of trading on November 5, 2018.

The Company intends to file with the SEC, on Form 15, a certification and notice of termination of the registration of the Company Common Stock under Section 12(g) of the Exchange Act and suspension of its obligations to file reports under Sections 13 and 15(d) of the Exchange Act.

Item 3.03 Material Modification to Rights of Security Holders.

The information set forth under Items 2.01, 3.01 and 5.03 of this Current Report on Form 8-K is incorporated herein by reference.

As a result of the Merger, each share of Company Common Stock that was issued and outstanding immediately prior to the Effective Time (except as described in Item 2.01) was converted, at the Effective Time, into the right to receive the Merger Consideration. Accordingly, at the Effective Time, the holders of such shares of Company Common Stock ceased to have any rights as stockholders of the Company, other than the right to receive the Merger Consideration.

Item 5.01 Changes in Control of Registrant.

The information set forth under Items 2.01, 3.01 and 5.02 of this Current Report on Form 8-K is incorporated herein by reference.

On the Effective Date, as a result of the Merger, a change in control of the Company occurred, and the Company became a wholly owned subsidiary of Broadcom.

The Merger and the other transactions contemplated by the Merger Agreement were funded by net proceeds from borrowings incurred under that certain Credit Agreement, dated as of the Effective Date, among Broadcom, the lenders and other parties party thereto, and Bank of America, N.A. as administrative agent, together with cash on hand of Broadcom and CA.

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

The information set forth under Item 2.01 of this Current Report on Form 8-K is incorporated herein by reference.

In accordance with the terms of the Merger Agreement, as of the Effective Time, the officers of Merger Sub immediately prior to the Effective Time became the officers of the Company and the directors of Merger Sub immediately prior to the Effective Time became the directors of the Company, in each case to serve until their respective successors are duly elected, appointed or qualified or until their earlier death, resignation or removal in accordance with the certificate of incorporation and bylaws of the Company. As a result, as of the Effective Time, each of the officers and directors of the Company as of immediately prior to the Effective Time ceased to serve as officers or directors, as applicable, of the Company, except that each of Michael P. Gregoire, Kieran McGrath and Anthony Radesca will continue to serve as an officer of the Company until the Company files its Form 10-Q for the quarter ended September 30, 2018.

Prior to the Effective Date, Broadcom and the Company entered into letter agreements with the 17 Company executives who participate in the Company's Change in Control Severance Policy, including, but not limited to, Mr. Gregoire, Mr. McGrath, Lauren Flaherty, Ava Hahn, Jacob Lamm, Paul Pronzani and Ayman Sayed (the "Company Executives"), that provide that immediately prior to the Effective Time, all unvested Company Options, RSU Awards, PSU Awards and RS awards held by each of the Company Executives will be converted into the right to receive the Merger Consideration in respect of each share of Company Common Stock covered by such Company equity awards (assuming target performance for PSU Awards), less applicable tax withholdings and, in the case of any Company Option, less the aggregate exercise price corresponding to such Company Option.

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

The information set forth under Item 2.01 of this Current Report on Form 8-K is incorporated herein by reference.

In accordance with the Merger Agreement, at the Effective Time, the certificate of incorporation and bylaws of Merger Sub as in effect immediately prior to the Effective Time, as adjusted pursuant to the Merger Agreement, became the certificate of incorporation and bylaws, respectively, of the Company.

Copies of the certificate of incorporation and bylaws of the Company as in effect as of the Effective Time are attached hereto as Exhibit 3.1 and Exhibit 3.2, respectively, and are incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
2.1	<u>Agreement and Plan of Merger, dated as of July 11, 2018, by and among Broadcom Inc., Collie Acquisition Corp. and CA, Inc. (incorporated by reference to Exhibit 2.1 to CA, Inc.'s Form 8-K filed on July 12, 2018)</u>
3.1	<u>Fourth Restated Certificate of Incorporation of CA, Inc.</u>
3.2	<u>Amended and Restated Bylaws of CA, Inc.</u>

SIGNATURE

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

CA, INC.

Date: November 5, 2018

By: /s/ Michael P. Gregoire

Name: Michael P. Gregoire

Title: Chief Executive Officer

FOURTH RESTATED CERTIFICATE OF INCORPORATION

OF
CA, INC.

ARTICLE I

The name of the corporation is CA, Inc. (the "Corporation").

ARTICLE II

The address, including street, number, city, and county, of the registered office of the Corporation in the State of Delaware is c/o the Corporation Service Company, 251 Little Falls Drive, City of Wilmington, County of New Castle, State of Delaware 19808; and the name of the registered agent of the Corporation in the State of Delaware at such address is the Corporation Service Company.

ARTICLE III

The purpose of the Corporation shall be to engage in any lawful act or activity for which corporations may be organized and incorporated under the General Corporation Law of the State of Delaware or any successor statute.

ARTICLE IV

Section 1. The Corporation shall be authorized to issue 300,000,000 shares of capital stock, all of which 300,000,000 shares shall be shares of common stock, par value \$0.001 per share (the "Common Stock").

Section 2. Except as otherwise provided by law, the Common Stock shall have the exclusive right to vote for the election of directors and for all other purposes. Each share of the Common Stock shall have one vote and the Common Stock shall vote together as a single class.

ARTICLE V

Any one or more directors may be removed, with or without cause, by the vote or written consent of the holders of a majority of the issued and outstanding shares of capital stock of the Corporation entitled to be voted in the election of directors.

ARTICLE VI

In furtherance and not in limitation of those powers conferred by law, the board of directors of the Corporation (the "Board") is expressly authorized and empowered to make, alter and repeal the by-laws of the Corporation (the "By-Laws").

ARTICLE VII

Meetings of the stockholders shall be held at such place, within or without the State of Delaware as may be designated by, or in the manner provided in, the By-Laws or, if not so designated, at the registered office of the Corporation in the State of Delaware. Elections of directors need not be by written ballot unless and to the extent that the By-Laws so provide.

ARTICLE VIII

The Corporation reserves the right at any time and from time to time to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, and any other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereinafter prescribed by law, and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the right reserved in this Article VIII.

ARTICLE IX

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of the State of Delaware or (iv) for any transaction from which the director derived an improper personal benefit.

ARTICLE X

The Corporation shall, to the fullest extent permitted by Section 145 of the General Corporation Law of Delaware, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said section from and against any and all of the expenses, liabilities or other matters referred to in or covered by said section, and the indemnification provided for herein, shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

AMENDED AND RESTATED BY-LAWS

OF

CA, INC.

ARTICLE I**OFFICES**

SECTION 1.01 REGISTERED OFFICE — The registered office of CA, Inc. (the “Corporation”) shall be established and maintained at the office of the Corporation Service Company, 251 Little Falls Drive, City of Wilmington, County of New Castle, Delaware 19808, and the Corporation Service Company shall be the registered agent of the Corporation in charge thereof.

SECTION 1.02 OTHER OFFICES — The Corporation may have other offices, either within or without the State of Delaware, at such place or places as the Board of Directors may from time to time select or the business of the Corporation may require.

ARTICLE II**MEETINGS OF STOCKHOLDERS**

SECTION 2.01 ANNUAL MEETINGS — Annual meetings of stockholders for the election of directors, and for such other business as may be stated in the notice of the meeting, shall be held at such place, either within or without the State of Delaware, and at such time and date as the Board of Directors, by resolution, shall determine and as set forth in the notice of the meeting. At each annual meeting, the stockholders entitled to vote shall elect a Board of Directors and they may transact such other corporate business as shall be stated in the notice of the meeting.

SECTION 2.02 SPECIAL MEETINGS — Special meetings of the stockholders for any purpose or purposes may be called by the President and Chief Executive Officer or the Secretary, or by resolution of the Board of Directors.

SECTION 2.03 VOTING — Each stockholder entitled to vote in accordance with the terms of the Certificate of Incorporation of the Corporation and these By-Laws may vote in person or by proxy, but no proxy shall be voted after three years from its date unless such proxy provides for a longer period. All elections for directors shall be decided by plurality vote; all other questions shall be decided by majority vote except as otherwise provided by the Certificate of Incorporation of the Corporation or the laws of the State of Delaware.

A complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, with the address of each, and the number of shares held by each, 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, which place shall be specified in the notice of the meeting, 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 entitled to be present at such meeting.

SECTION 2.04 QUORUM — Except as otherwise required by law, by the Certificate of Incorporation of the Corporation or by these By-Laws, the presence, in person or by proxy, of stockholders holding shares constituting a majority of the voting power of the Corporation shall constitute a quorum at all meetings of the stockholders. In case a quorum shall not be present at any meeting, a majority in interest of the stockholders entitled to vote thereat, present in person or by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until the requisite amount of stock entitled to vote shall be present. At any such adjourned meeting at which the requisite amount of stock entitled to vote shall be represented, any business may be transacted that might have been transacted at the meeting as originally noticed; but only those stockholders entitled to vote at the meeting as originally noticed shall be entitled to vote at any adjournment or adjournments thereof.

SECTION 2.05 NOTICE OF MEETINGS — Written notice, stating the place, date and time of the meeting, and the general nature of the business to be considered, shall be given to each stockholder entitled to vote thereat, at his or her address as it appears on the records of the Corporation, not less than ten nor more than sixty days before the date of the meeting. No business other than that stated in the notice shall be transacted at any meeting without the unanimous consent of all the stockholders entitled to vote thereat.

SECTION 2.06 ACTION WITHOUT MEETING — Unless otherwise provided by the Certificate of Incorporation of the Corporation, any action required or permitted to be taken at any annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

ARTICLE III

DIRECTORS

SECTION 3.01 NUMBER AND TERM — The business and affairs of the Corporation shall be managed under the direction of a Board of Directors, which shall consist of

not less than one person. The exact number of directors shall initially be two and may thereafter be fixed from time to time by the Board of Directors. Directors shall be elected at the annual meeting of stockholders and each director shall be elected to serve until his or her successor shall be elected and shall qualify. A director need not be a stockholder.

SECTION 3.02 RESIGNATIONS — Any director may resign at any time. Such resignation shall be made in writing, and shall take effect at the time specified therein, and if no time be specified, at the time of its receipt by the President and Chief Executive Officer or the Secretary. The acceptance of a resignation shall not be necessary to make it effective.

SECTION 3.03 VACANCIES — If the office of any director becomes vacant, the remaining directors in the office, though less than a quorum, by a majority vote, may appoint any qualified person to fill such vacancy, who shall hold office for the unexpired term and until his or her successor shall be duly chosen. If the office of any director becomes vacant and there are no remaining directors, the stockholders, by the affirmative vote of the holders of shares constituting a majority of the voting power of the Corporation, at a special meeting called for such purpose, may appoint any qualified person to fill such vacancy.

SECTION 3.04 REMOVAL — Except as hereinafter provided, any director or directors may be removed either for or without cause at any time by the affirmative vote of the holders of a majority of the voting power entitled to vote for the election of directors, at an annual meeting or a special meeting called for the purpose, and the vacancy thus created may be filled, at such meeting, by the affirmative vote of holders of shares constituting a majority of the voting power of the Corporation.

SECTION 3.05 COMMITTEES — The Board of Directors may, by resolution or resolutions passed by a majority of the whole Board of Directors, designate one or more committees, each committee to consist of one or more directors of the Corporation.

Any such committee, to the extent provided in the resolution of the Board of Directors, or in these By-Laws, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it.

SECTION 3.06 MEETINGS — Regular meetings of the Board of Directors may be held without notice at such places and times as shall be determined from time to time by resolution of the Board of Directors.

Special meetings of the Board of Directors may be called by the President and Chief Executive Officer or by the Secretary upon the written request of at least one-third of the directors then in office, on at least one day's notice to each director (except that notice to any director may be waived in writing by such director or shall be deemed waived by any such director's attendance at a meeting, except when any such director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not called or convened in accordance with these By-Laws) and shall be held at such place or places as may be determined by the Board of Directors, or as shall be stated in the call of the meeting.

Unless otherwise restricted by the Certificate of Incorporation of the Corporation or these By-Laws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in any meeting of the Board of Directors or any committee thereof by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

SECTION 3.07 QUORUM — A majority of the Directors shall constitute a quorum for the transaction of business. If at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time until a quorum is obtained, and no further notice thereof need be given other than by announcement at the meeting which shall be so adjourned. The vote of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless the Certificate of Incorporation of the Corporation or these By-Laws shall require the vote of a greater number.

SECTION 3.08 COMPENSATION — Directors shall not receive any stated salary for their services as directors or as members of committees, but by resolution of the Board of Directors a fixed fee and expenses of attendance may be allowed for attendance at each meeting. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity as an officer, agent or otherwise, and receiving compensation therefor.

SECTION 3.09 ACTION WITHOUT MEETING — 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 a written consent thereto is signed by all members of the Board of Directors or of such committee, as the case may be, and such written consent is filed with the minutes of proceedings of the Board of Directors or such committee.

ARTICLE IV

OFFICERS

SECTION 4.01 OFFICERS — The officers of the Corporation shall be a President and Chief Executive Officer, one or more Vice Presidents, a Treasurer and a Secretary, all of whom shall be elected by the Board of Directors and shall hold office until their successors are duly elected and qualified. In addition, the Board of Directors may elect such Assistant Secretaries and Assistant Treasurers as they may deem proper. The Board of Directors may appoint such other officers and agents as it may deem advisable, who 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. Any number of offices may be held by the same person.

SECTION 4.02 PRESIDENT AND CHIEF EXECUTIVE OFFICER — The President and Chief Executive Officer shall be the chief executive officer of the Corporation. He or she shall preside at all meetings of the Board of Directors and shall have and perform such other duties as may be assigned to him or her by the Board of Directors. The President and Chief Executive Officer shall have the power to execute bonds, mortgages and other contracts on behalf of the Corporation, and to cause the seal of the Corporation to be affixed to any instrument requiring it, and when so affixed the seal shall be attested to by the signature of the Secretary or the Treasurer or an Assistant Secretary or an Assistant Treasurer.

SECTION 4.03 VICE PRESIDENTS — Each Vice President shall have such powers and shall perform such duties as shall be assigned to him or her by the Board of Directors.

SECTION 4.04 TREASURER — The Treasurer shall be the Chief Financial Officer of the Corporation. He or she shall have the custody of the corporate funds and securities and shall keep full and accurate account of receipts and disbursements in books belonging to the Corporation. He or she shall deposit all moneys and other valuables in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. He or she shall disburse the funds of the Corporation as may be ordered by the Board of Directors or the President and Chief Executive Officer, taking proper vouchers for such disbursements. He or she shall render to the President and Chief Executive Officer and Board of Directors at the regular meetings of the Board of Directors, or whenever they may request it, an account of all of his or her transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, he or she shall give the Corporation a bond for the faithful discharge of his or her duties in such amount and with such surety as the Board of Directors shall prescribe.

SECTION 4.05 SECRETARY — The Secretary shall give, or cause to be given, notice of all meetings of stockholders and of the Board of Directors and all other notices required by law or by these By-Laws, and in the case of his or her absence or refusal or neglect so to do, any such notice may be given by any person thereunto directed by the President and Chief Executive Officer, or by the Board of Directors, upon whose request the meeting is called as provided in these By-Laws. He or she shall record all the proceedings of the meetings of the Board of Directors, any committees thereof and the stockholders of the Corporation in a book to be kept for that purpose, and shall perform such other duties as may be assigned to him or her by the Board of Directors or the President and Chief Executive Officer. He or she shall have the custody of the seal of the Corporation and shall affix the same to all instruments requiring it, when authorized by the Board of Directors or the President and Chief Executive Officer, and attest to the same.

SECTION 4.06 ASSISTANT TREASURERS AND ASSISTANT SECRETARIES — Assistant Treasurers and Assistant Secretaries, if any, shall be elected and shall have such powers and shall perform such duties as shall be assigned to them, respectively, by the Board of Directors.

ARTICLE V

MISCELLANEOUS

SECTION 5.01 CERTIFICATES OF STOCK — Certificates of the Corporation's stock may be certificated or uncertificated in accordance with the General Corporation Law of the State of Delaware. A certificate of stock shall be issued to each stockholder certifying the number of shares owned by such stockholder in the Corporation. Certificates of stock of the Corporation shall be of such form and device as the Board of Directors may from time to time determine.

SECTION 5.02 LOST CERTIFICATES — A new certificate of stock may be issued in the place of any certificate theretofore issued by the Corporation, alleged to have been lost or destroyed, and the Board of Directors may, in its discretion, require the owner of the lost or destroyed certificate, or such owner's legal representatives, to give the Corporation a bond, in such sum as they may direct, not exceeding double the value of the stock, to indemnify the Corporation against any claim that may be made against it on account of the alleged loss of any such certificate, or the issuance of any such new certificate.

SECTION 5.03 TRANSFER OF SHARES — The shares of stock of the Corporation shall be transferable only upon its books by the holders thereof in person or by their duly authorized attorneys or legal representatives, and upon such transfer the old certificates shall be surrendered to the Corporation by the delivery thereof to the person in charge of the stock and transfer books and ledgers, or to such other person as the Board of Directors may designate, by whom they shall be cancelled, and new certificates shall thereupon be issued. A record shall be made of each transfer and whenever a transfer shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer.

SECTION 5.04 STOCKHOLDERS RECORD DATE — In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, 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 a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date: (1) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be more than sixty nor less than ten days before the date of such meeting; (2) in the case of determination of stockholders entitled to express consent to corporate action in writing without a meeting, shall not be more than ten days from the date upon which the resolution fixing the record date is adopted by the Board of Directors; and (3) in the case of any other action, shall not be more than sixty days prior to such other action. If no record date is fixed: (1) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the

day next preceding the day on which the meeting is held; (2) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting when no prior action of the Board of Directors is required by law, shall be the first day on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law, or, if prior action by the Board of Directors is required by law, shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action; and (3) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

SECTION 5.05 DIVIDENDS — Subject to the provisions of the Certificate of Incorporation of the Corporation, the Board of Directors may, out of funds legally available therefor at any regular or special meeting, declare dividends upon stock of the Corporation as and when they deem appropriate. Before declaring any dividend there may be set apart out of any funds of the Corporation available for dividends, such sum or sums as the Board of Directors from time to time in their discretion deem proper for working capital or as a reserve fund to meet contingencies or for equalizing dividends or for such other purposes as the Board of Directors shall deem conducive to the interests of the Corporation.

SECTION 5.06 SEAL — The corporate seal of the Corporation shall be in such form as shall be determined by resolution of the Board of Directors. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise imprinted upon the subject document or paper.

SECTION 5.07 FISCAL YEAR — The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.

SECTION 5.08 CHECKS — All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, or agent or agents, of the Corporation, and in such manner as shall be determined from time to time by resolution of the Board of Directors.

SECTION 5.09 NOTICE AND WAIVER OF NOTICE — Whenever any notice is required to be given under these By-Laws, personal notice is not required unless expressly so stated, and any notice so required shall be deemed to be sufficient if given by depositing the same in the United States mail, postage prepaid, addressed to the person entitled thereto at his or her address as it appears on the records of the Corporation, and such notice shall be deemed to have been given on the day of such mailing. Stockholders not entitled to vote shall not be entitled to receive notice of any meetings except as otherwise provided by law. Whenever any notice is required to be given under the provisions of any law, or under the provisions of the Certificate of Incorporation of the Corporation or of these By-Laws, a waiver thereof, in writing and signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to such required notice. In addition, the attendance of any

stockholder at a meeting, whether in person or by proxy, shall constitute a waiver of notice by such stockholder, except when a stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

ARTICLE VI

AMENDMENTS

These By-Laws may be altered, amended or repealed at any annual meeting of the stockholders (or at any special meeting thereof if notice of such proposed alteration, amendment or repeal to be considered is contained in the notice of such special meeting) by the affirmative vote of the holders of shares constituting a majority of the voting power of the Corporation. Except as otherwise provided in the Certificate of Incorporation of the Corporation, the Board of Directors may by majority vote of those present at any meeting at which a quorum is present alter, amend or repeal these By-Laws, or enact such other By-Laws as in their judgment may be advisable for the regulation and conduct of the affairs of the Corporation.

ARTICLE VII

INDEMNIFICATION

To the fullest extent permitted by the General Corporation Law of the State of Delaware, 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, and whether brought by a third party or by or in the right of the Corporation, by reason of the fact that he or she is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of, or in a similar capacity with respect to, any subsidiary or joint venture of the Corporation or other entity or enterprise, or as a fiduciary, trustee or administrator or in any similar capacity with respect to any employee benefit plan or other plan or program sponsored by the Corporation or any subsidiary of the Corporation, against expenses (including attorneys' fees), liability, loss, judgment, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding. Excise taxes assessed on any such person with respect to an employee benefit plan shall be deemed to be indemnifiable expenses, and action by any such person with respect to an employee benefit plan which he or she reasonably believes to be in the interests of the participants and beneficiaries of such plan shall be deemed to be action not opposed to the best interests of the Corporation.

Expenses (including attorneys' fees) actually and reasonably incurred by any such person in defending any such threatened, pending or completed action, suit or proceeding shall be paid on behalf of such person by the Corporation in advance of the final disposition of such action, suit, or proceeding and within 30 days of receipt by the Secretary of the Corporation of (1) an application from such person setting forth the basis for such advancement, and (2) an

undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article VII. A plea of guilty to a felony charge arising out of misconduct committed by such person in his or her capacity (a) as a director or officer of the Corporation, (b) as a director or officer of, or in a similar capacity with respect to, any subsidiary or joint venture of the Corporation or other entity or enterprise referred to in the preceding paragraph of this Article, or (c) as a fiduciary, trustee or administrator or in a similar capacity with respect to any employee benefit plan or other plan or program sponsored by the Corporation or any subsidiary of the Corporation shall, for purposes of the mandatory advancement of expenses provided in the preceding sentence, constitute a final disposition of such action or proceeding. The financial ability of any person to make a repayment contemplated by this provision shall not be a prerequisite to the making of an advance.

Such indemnity and right to advancement of expenses shall inure to the benefit of the heirs, executors and administrators of any person so indemnified pursuant to this Article. The right to indemnification and to advancement of expenses under this Article VII shall be a contract right. Such indemnification and advancement of expenses shall be in addition to any other rights to which those persons seeking indemnification and advancement of expenses may be entitled under any law, agreement, vote of stockholders, or otherwise.

Any repeal or amendment of this Article VII by the Board of Directors or stockholders of the Corporation or by changes in applicable law shall, to the extent permitted by applicable law, be prospective only, and shall not adversely affect any right to indemnification or advancement of expenses of any person existing at the time of such repeal or amendment. In addition to the foregoing, the right to indemnification and advancement of expenses shall be to the fullest extent permitted by the General Corporation Law of the State of Delaware or any other applicable law and all amendments to such laws as hereafter enacted from time to time.