UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

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

Date of Report (Date of earliest event reported)
July 19, 2017

DARÉ BIOSCIENCE, INC.

(Exact name of registrant as specified in its charter)

Delaware	001-36395	20-4139823
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification No.)

11119 North Torrey Pines Road, Suite 200
La Jolla, CA 92037
(Address of Principal Executive Offices and Zip Code)

Registrant's telephone number, including area code
(858) 769-9145

Cerulean Pharma Inc.
35 Gatehouse Drive
Waltham, MA 02451
(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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. ☒

Item 1.02 Termination of a Material Definitive Agreement

The disclosure in Item 2.01 of this Current Report is incorporated herein by reference.

Item 2.01 Completion of Acquisition or Disposition of Assets.

Completion of Daré Transaction

On July 19, 2017, Daré Bioscience, Inc., a Delaware corporation previously known as Cerulean Pharma Inc., or the Company, completed its business combination with Daré Bioscience Operations, Inc., a Delaware corporation previously known as Daré Bioscience, Inc., or Daré Operations, in accordance with the terms of the Stock Purchase Agreement, dated as of March 19, 2017, or the Daré Stock Purchase Agreement, by and among the Company, Daré Operations and the holders of capital stock and securities convertible into capital stock of Daré Operations named therein, or the Selling Stockholders. Pursuant to the Daré Stock Purchase Agreement, each Selling Stockholder sold their shares of Daré Operations to the Company in exchange for newly issued shares of the Company's common stock and, as a result, Daré Operations became a wholly owned subsidiary of the Company.

Also on July 19, 2017, in connection with, and immediately prior to completion of, the transactions contemplated by the Daré Stock Purchase Agreement, or the Daré Transaction, the Company filed two Certificate of Amendments to its Amended and Restated Certificate of Incorporation, or the Restated Certificate, with the Secretary of State of the State of Delaware to effect a 1-for-10 reverse stock split of its common stock, or the Reverse Stock Split, and to change the Company's name to "Daré Bioscience, Inc.", or the Name Change. As disclosed below under Item 5.07, the Reverse Stock Split was approved by the Company's stockholders at the special meeting of the Company's stockholders held on July 19, 2017. The Reverse Stock Split and Name Change became effective on July 20, 2017. As a result of the Reverse Stock Split, the number of issued and outstanding shares of the Company's common stock immediately prior to the Reverse Stock Split was reduced into a smaller number of shares, such that every ten shares of the Company's common stock held by a stockholder immediately prior to the Reverse Stock Split were combined and reclassified into one share of the Company's common stock. Immediately following the Reverse Stock Split and the Daré Transaction, there were approximately 6,047,200 shares of the Company's common stock outstanding.

No fractional shares were issued in connection with the Reverse Stock Split. Any fractional shares resulting from the Reverse Stock Split were rounded down to the nearest whole number, and each stockholder who would otherwise be entitled to a fraction of a share of common stock upon the Reverse Stock Split is, in lieu thereof, entitled to receive a cash payment at a price equal to the fraction to which the stockholder would otherwise be entitled multiplied by the closing price of the Company's common stock on The NASDAQ Capital Market on July 19, 2017.

The foregoing description of the Reverse Stock Split amendment and Name Change amendment is not complete and is subject to and qualified in its entirety by reference to the Reverse Stock Split amendment and Name Change amendment, copies of which are attached hereto as Exhibit 3.1 and Exhibit 3.2, respectively, and incorporated herein by reference.

Following the completion of the Daré Transaction, the business of the Company became the business conducted by Daré Operations, which is a pharmaceutical company focused on advancing products for women's reproductive health. Unless otherwise noted, all references to share amounts in this Current Report on Form 8-K, including references to shares or options issued in connection with the Daré Transaction, reflect the Reverse Stock Split.

Under the terms of the Daré Stock Purchase Agreement, at the closing of the Daré Transaction, or the Closing, the Company issued an aggregate of 3,154,175 shares of its common stock to the Selling Stockholders, based on an exchange ratio of 0.2029969 shares of the Company's common stock for each Daré Operations share outstanding immediately prior to the Closing. The exchange ratio was determined in accordance with the Daré Stock Purchase Agreement. As a result of the Daré Transaction, former Daré Operations equity holders own approximately 51% of the issued and outstanding shares of the Company's common stock, equity holders of the Company prior to the Closing own approximately 49% of the issued and outstanding shares of the Company's common stock and a change of control has occurred.

In addition, effective upon the Closing, the holder of unexercised Daré Operations stock options immediately prior to the Closing was issued replacement stock options, or Replacement Options, to purchase 10,149 shares of the Company's common stock. The Replacement Options were assumed by the Company in accordance with their terms and the terms of Daré Operations Amended and Restated 2015 Employee, Director and Consultant Equity Incentive Plan (which was assumed by the Company at the Closing) and the number of shares of Company common stock subject to each Replacement Option was determined by multiplying the number of shares of Daré Operations common stock that were subject to such option by the exchange ratio noted above and rounding the resulting number down for such Replacement Option to the nearest whole number of shares of Company common stock. The per share exercise price for the Replacement Options was determined by dividing the per share exercise price of the Daré Operations stock options by the exchange ratio noted above and rounding the resulting exercise price up to the nearest whole cent.

The shares of Company common stock and the Replacement Options issued in the Daré Transaction were exempt from registration under Section 4(a)(2) and Regulation D under the Securities Act of 1933, as amended, and the rules promulgated thereunder. As disclosed below under Item 5.07, the issuance of shares of the Company's common stock pursuant to the Daré Stock Purchase Agreement, was approved by the Company's stockholders at the special meeting of the Company's stockholders held on July 19, 2017.

The Company's common stock, which is listed on The NASDAQ Capital Market, traded through market close on Wednesday, July 19, 2017 under the ticker symbol "CERU," and is expected to continue trading on The NASDAQ Capital Market, on a post-Reverse Stock Split adjusted basis, under the ticker symbol "DARE" beginning as of market open on Thursday, July 20, 2017. The Company's common stock is represented by a new CUSIP number, 23666P 101.

For accounting purposes, the Daré Transaction is treated as a "reverse acquisition" and Daré Operations is considered the accounting, but not the legal, acquirer. Accordingly, Daré Operations will be reflected as the predecessor and acquirer in the Company's financial statements. The Company's financial statements will reflect the historical financial statements of Daré Operations as the Company's historical financial statements, except for the legal capital which will reflect the Company's legal capital (common stock).

The foregoing description of the Daré Stock Purchase Agreement and the Daré Transaction does not purport to be complete and is qualified in its entirety by reference to the full text of the Daré Stock Purchase Agreement, which was filed as Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission, or the SEC, on March 20, 2017 and is incorporated by reference herein.

Completion of Novartis Asset Sale

As previously disclosed, on March 19, 2017 the Company entered into an Asset Purchase Agreement, or the Novartis Asset Purchase Agreement, with Novartis Institutes for BioMedical Research, Inc., a Delaware corporation, or Novartis. The terms of the Novartis Asset Purchase Agreement were previously disclosed by the Company through, and a copy of the Novartis Asset Purchase Agreement was furnished as an exhibit to, a Current Report on Form 8-K dated March 19, 2017 filed with the SEC on March 20, 2017.

Immediately following the closing of the Daré Transaction on July 19, 2017, the Company completed the transactions contemplated by the Novartis Asset Purchase Agreement, resulting in the sale and assignment to Novartis of all of the Company's right, title and interest in and to the patent rights, know-how and third-party license agreements relating to the Company's proprietary Dynamic Tumor Targeting™ platform technology, or the Platform. The Company also transferred and assigned to Novartis all agreements that the Company had with third parties conducting research, development, or manufacturing activities with the Platform, except to the extent such agreements related solely to the manufacture or development of the clinical product candidates CRLX101 and CRLX301.

As disclosed below under Item 5.07, the transactions contemplated by the Novartis Asset Purchase Agreement, or the Novartis Transaction, were approved by the Company's stockholders at the special meeting of the Company's stockholders held on July 19, 2017.

At the closing of the Novartis Transaction, Novartis paid the Company a cash purchase price of $6,000,000. In addition, pursuant to the terms of the Novartis Asset Purchase Agreement, Novartis previously delivered offers of employment or engagement to certain former employees of the Company who were deemed knowledgeable in the practice and development of the Platform.

As a result of closing the Novartis Transaction, the Company's existing research collaboration agreement with Novartis, dated October 18, 2016, or the Novartis Collaboration Agreement, will be superseded by the Novartis Asset Purchase Agreement. As a result, the Company will no longer be entitled to any payments for research and development staff expenditures, milestone payments or royalties under the Novartis Collaboration Agreement. No additional payments were made by either party in connection with this termination other than as provided in the Novartis Asset Purchase Agreement.

The foregoing description of the Novartis Asset Purchase Agreement and the Novartis Transaction does not purport to be complete and is qualified in its entirety by reference to the full text of the Novartis Asset Purchase Agreement, which was filed as Exhibit 2.2 to the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission, or the SEC, on March 20, 2017 and is incorporated by reference herein.

Item 3.02 Unregistered Sales of Equity Securities.

The disclosure in Item 2.01 of this Current Report is incorporated herein by reference.

Item 3.03 Material Modification to Rights of Security Holders.

The disclosure in Item 2.01 of this Current Report is incorporated herein by reference.

Item 5.01 Changes in Control of Registrant.

As a result of the closing of the Daré Transaction pursuant to the Daré Stock Purchase Agreement, a change of control of the Company has occurred. The disclosures in Items 2.01 and 5.02 of this Current Report are incorporated herein by reference.

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

Board of Directors

On July 19, 2017, pursuant to the Daré Stock Purchase Agreement and in connection with the completion of the Daré Transaction, Christopher D.T. Guiffre, Stuart A. Arbuckle, Alan L. Crane, David R. Parkinson, David R. Walt, Paul A. Friedman and William T. McKee resigned from the Board of Directors of the Company and Sabrina Martucci Johnson, Roger L. Hawley and Robin J. Steele were each appointed to the Board of Directors. The Daré Stock Purchase Agreement provides that the size of the Company's Board of Directors immediately following the Closing will initially be fixed at five members, consisting of two members appointed by the Company and three members appointed by Daré Operations. In accordance with the Daré Stock Purchase Agreement, the Company's Board of Directors and its committees were reconstituted, with Susan L. Kelley, M.D. appointed as a Class I director of the Company whose term expires at the Company's 2018 annual meeting of stockholders, William H. Rastetter, Ph.D. and Robin J. Steele appointed as Class II directors of the Company whose terms expire at the Company's 2019 annual meeting of stockholders and Sabrina Martucci Johnson and Roger L. Hawley appointed as Class III directors of the Company whose terms expire at the Company's 2020 annual meeting of stockholders (with Mr. Hawley appointed to serve as Chairman of the Board of Directors). In addition, Dr. Rastetter, Ms. Steele and Mr. Hawley were appointed to the Company's Audit Committee (with Mr. Hawley appointed to serve as chair of the committee); Dr. Rastetter and Ms. Steele were appointed to the Company's Compensation Committee (with Dr. Rastetter appointed to serve as chair of the committee); and Mr. Hawley and Dr. Kelley were appointed to the Nominating and Corporate Governance Committee (with Dr. Kelley appointed to serve as chair of the committee). The Board of Directors has determined that Drs. Kelley and Rastetter, Ms. Steele and Mr. Hawley are "independent" as contemplated by the rules of the NASDAQ Stock Market and other governing laws and applicable regulations.

The information required by Item 5.02 of Form 8-K for Drs. Kelley and Rastetter, Mesdames Steele and Johnson and Mr. Hawley is incorporated herein by reference to the relevant sections of the Company's definitive proxy statement filed with the SEC on June 19, 2017, or the Proxy Statement.

Non-Employee Directors

Each of Drs. Kelley and Rastetter, Ms. Steele and Mr. Hawley will receive compensation for their service as non-employee directors in accordance with the Company's previously disclosed non-employee director compensation policy. In addition and in accordance with the non-employee director compensation policy, each of Ms. Steele and Mr. Hawley, as newly appointed non-employee directors, were granted a one-time nonqualified stock option under the Company's 2014 Stock Incentive Plan to purchase 2,200 shares of the Company's common stock, with an exercise price of $6.56 per share equal to the closing price of the Company's common stock on the NASDAQ Capital Market on July 19, 2017. These options will vest in equal annual installments over a three-year period measured from the date of grant, subject to such recipient's continued service as a director.

These non-employee directors received the following Company securities in connection with the Closing:

- Mr. Hawley, in his capacity as a holder of common stock and options to purchase common stock of Daré Operations, received 182,697 shares of the Company's common stock in exchange of his shares of Daré Operations common stock and Replacement Options to purchase 10,149 shares of the Company's common stock. Mr. Hawley is also a trustee of The Hawley Family Trust Dated October 22, 2004, which in its capacity as a holder of common stock of Daré Operations, received 307,714 shares of the Company's common stock in exchange of its shares of Daré Operations common stock; and
- Ms. Steele is trustee of the Robin J. Steele Trust DTD 1/30/2015, which in its capacity as a holder of common stock of Daré Operations, received 246,171 shares of the Company's common stock in exchange of its shares of Daré Operations common stock.

The disclosure in Item 2.01 of this Current Report is incorporated herein by reference.

Roger L. Hawley. Mr. Hawley has served as Chairman of the Board of Directors of Daré Operations since its inception in 2015. Mr. Hawley is an experienced pharmaceutical executive and director with more than 25 years of industry experience. He has held senior management roles in both private start-up companies as well as small to mid-sized public companies. His senior level experience includes executive management, finance and accounting, sales and marketing. During his career, Mr. Hawley was a

member of the board of directors of two previously publicly-traded biopharmaceutical companies and has served in various executive positions involving commercial operations, partnership management, sales and corporate finance.

From 1976 to 1987, Mr. Hawley held various financial management positions with Marathon Oil Company, including serving four years in London, England, at which time he was a certified treasury manager and a certified public accountant. From 1987 to 2001, Mr. Hawley held a broad range of management positions in commercial operations, alliance/partnership management, regional/national sales and corporate finance at Glaxo/Glaxo Wellcome/GSK. His last position at GSK in 2001 was Vice President of Sales, CNS/GI Division. From 2001 to 2002, Mr. Hawley served as General Manager & Vice President of Sales and Marketing at Elan Pharmaceuticals in San Diego, and from 2002 to 2003, Mr. Hawley was the Chief Commercial Officer at Prometheus Laboratories Inc., a specialty pharmaceutical and diagnostics company. From 2003 to 2006, he served as Executive Vice President of Commercial and Technical Operations for InterMune, Inc., a biopharmaceutical company focused on therapies in hepatology and pulmonology. Mr. Hawley has also served as a member of the board of directors of Cypress Bioscience (2007-2010) and Targeted Genetics (2006-2010), both previously publicly-traded pharmaceutical companies, as well as Alios BioPharma, Inc., a biopharmaceutical company that was acquired by Johnson & Johnson in 2014. Prior to joining Daré Operations, Mr. Hawley also co-founded Zogenix, Inc., a pharmaceutical company that develops and commercializes therapies for central nervous system disorders, where he has been a member of the board of directors since August 2006 and served as Chief Executive Officer from August 2006 to April 2015. Mr. Hawley also served as member of the board of directors of Alveo Technologies Inc., an early stage biologics company creating screening and diagnostic devices, from 2014 until the end of 2016. The Board of Directors believes that Mr. Hawley is qualified to serve as a member of the Company's Board of Directors due to his experience in the biotechnology industry, his broad leadership experience with several public and private biotechnology companies and his experience with financial matters.

Susan L. Kelley, M.D. Dr. Kelley has served as a member of the Company's Board of Directors since October 2014. Dr. Kelley has been developing drugs in oncology and immunology for over 25 years. She served as Chief Medical Officer of the Multiple Myeloma Research Consortium and its sister organization, the Multiple Myeloma Research Foundation from, 2008 to 2011. Previously, Dr. Kelley held positions of increasing responsibility at Bayer Healthcare Pharmaceuticals and Bayer-Schering Pharma, including Vice President, Global Clinical Development and Therapeutic Area Head—Oncology, where she led the Bayer team responsible for the development and worldwide regulatory approval of Nexavar® (sorafenib), including a renal cell carcinoma indication. Prior to joining Bayer, she worked at Bristol-Myers Squibb in Oncology and Immunology drug development where she held positions of increasing responsibility, ultimately serving as Executive Director, Oncology Clinical Research, at the Bristol-Myers Squibb Pharmaceutical Research Institute. She was a Fellow in Medical Oncology and Clinical Fellow in Medicine at Dana-Farber Cancer Institute, Harvard Medical School, and a Fellow in Medical Oncology and Pharmacology at Yale University School of Medicine, where she also served as a Clinical Assistant Professor of Medicine. Dr. Kelley served on the board of directors of Alchemia Pty Ltd, a publicly traded biopharmaceutical company, from 2013 to 2015. Dr. Kelley currently serves as a member of the board of directors of ArQule, Inc., an oncology-focused biotechnology company, and Immune Design Corp., an immunotherapy company. Dr. Kelley received her M.D. from Duke University School of Medicine. The Board of Directors believes that Dr. Kelley is qualified to serve on the Company's Board of Directors due to her experience in life sciences and clinical development and her experience as a director of life sciences companies.

William H. Rastetter, Ph.D. Dr. Rastetter has served as a member of the Company's Board of Directors since January 2014 and as lead independent director since April 2014. He is a Co-Founder of Receptos, Inc., a biopharmaceutical company, where he previously held the roles of Acting Chief Executive Officer from 2009 to 2010, and Director and Chairman of the board of directors from 2009 to 2015. Dr. Rastetter also served on the board of Illumina, Inc., a public genomic technology company, from 1998 until January 2016, serving as chairman and a member of the compensation committee during his tenure. Dr. Rastetter also served as a Partner at the venture capital firm of Venrock Associates from 2006 to 2013. Prior to his tenure with Venrock, Dr. Rastetter was Executive Chairman of Biogen Idec Inc. He was previously Chairman and Chief Executive Officer of Idec Pharmaceuticals, and prior to Idec, he was Director of Corporate Ventures at Genentech, Inc. and served as well in a scientific capacity at Genentech. Dr. Rastetter also serves as the Chairman of the board of directors of publicly traded life sciences companies, Neurocrine Biosciences, Inc., and Fate Therapeutics, Inc. and as a member of the board of directors of Regulus Therapeutics, Inc. and Grail, Inc. Dr. Rastetter has held various faculty positions at the Massachusetts Institute of Technology and Harvard University and is an Alfred P. Sloan Fellow. Dr. Rastetter holds a B.S. from the Massachusetts Institute of Technology and received his M.A. and Ph.D. from Harvard University. The Board of Directors believes that Dr. Rastetter is qualified to serve on the Company's board of directors due to his extensive experience in the biotechnology industry, his broad leadership experience with several public and private biotechnology companies, and his experience with financial matters.

Robin Steele, J.D., LL.M. Ms. Steele served as an advisor to Daré Operations since its inception in 2015. Ms. Steele previously served as Senior Vice President, General Counsel and Secretary of InterMune, Inc., a publicly traded biopharmaceutical company, from 2004 to 2014. Prior to her tenure with InterMune, Ms. Steele served as Vice President of Legal Affairs for North America for Elan Pharmaceuticals, a publicly traded pharmaceutical company, from 1998 to 2003. Ms. Steele currently serves on the board of directors of Alveo Technologies Inc., a privately held medical diagnostics company. Ms. Steele has previously served as a member of the board of directors of Alios Biopharma and Targanta Therapeutics, both of which were biotechnology companies focused on the research and development of therapeutic compounds prior to their respective acquisitions. Ms. Steele received a B.A. from the University of

Colorado, a J.D. from the University of California, Hastings College of the Law, and an LL.M. in Taxation from New York University School of Law. The Board of Directors believes that Ms. Steele is qualified to serve on the Company's Board of Directors due to her expertise in legal matters, her prior experience as general counsel of a public company and her involvement with a number of private biotechnology companies.

Executive Officers

In accordance with the Daré Stock Purchase Agreement, on July 19, 2017, Christopher D.T. Guiffre, J.D., M.B.A. resigned his position as President and Chief Executive Officer of the Company and Gregg Beloff, J.D., M.B.A. resigned his position as Interim Chief Financial Officer of the Company. In accordance with the Daré Stock Purchase Agreement, effective immediately after the Closing, on July 19, 2017, the Company's Board of Directors appointed: Sabrina Martucci Johnson as President, Chief Executive Officer and Secretary and Lisa Walters-Hoffert as Chief Financial Officer.

These executive officers received the following Company securities in connection with the Closing:

- Ms. Johnson is a trustee of the Vincent S. Johnson and Sabrina M. Johnson Family Trust Dated February 4, 2005, which in its capacity as a holder of common stock of Daré Operations, received 962,062 shares of the Company's common stock in exchange of its shares of Daré Operations common stock; and
- Ms. Walters-Hoffert is trustee of the Lisa Walters-Hoffert Survivor's Trust dated October 31, 2002, which in its capacity as a holder of common stock of Daré Operations, received 443,512 shares of the Company's common stock in exchange of its shares of Daré Operations common stock.

The information required by Item 5.02 of Form 8-K for Mesdames Johnson and Walters-Hoffert is incorporated herein by reference to the relevant sections of the Company's Proxy Statement. The disclosure in Item 2.01 of this Current Report is incorporated herein by reference.

Sabrina Martucci Johnson. Ms. Johnson founded Daré Operations and has served as its President, Chief Executive Officer, Secretary and a member of the Board of Directors since its inception. Ms. Johnson is a life sciences executive committed to advancing improvements in women's healthcare. Prior to founding Daré Operations, Ms. Johnson was President of WomanCare Global Trading, a specialty pharmaceutical company in female reproductive healthcare with commercial product distribution in over 100 countries, from October of 2014 to May of 2015. Before serving as President of WomanCare Global Trading, Ms. Johnson provided financial consulting services to the WomanCare Global family of companies, including the for-profit Trading division as well as the United Kingdom-based non-profit division, from November of 2012 to July of 2013, when she joined full time as WomanCare's Chief Financial Officer and Chief Operating Officer until becoming President of the Trading division. In addition, Ms. Johnson served as Chief Operating Officer and Chief Financial Officer of Cypress Bioscience, Inc. until its sale in 2010. Ms. Johnson also held marketing and sales positions with Advanced Tissue Sciences and Clonetics Corporation. She began her career in the biotechnology industry as a research scientist with Baxter Healthcare, Hyland Division, working on their recombinant factor VIII program.

Ms. Johnson currently serves on the YWCA of San Diego County Board of Directors as Past President, PPPSW Board of Directors, Athena San Diego Board of Directors as Vice Chair, Tulane University School of Science & Engineering Board of Advisors, University of California San Diego (UCSD) Librarian's Advisory Board as Chair and Project Concern International Audit Committee. Ms. Johnson is also Immediate Past Co-President of Women Give San Diego, which funds non-profit organizations serving women and girls in San Diego.

Ms. Johnson has a Masters of International Management degree with honors from the American Graduate School of International Management (Thunderbird), a MSc. in Biochemical Engineering from the University of London, University College London and a BSc. in Biomedical Engineering from Tulane University, where she graduated magna cum laude. The Board of Directors believes that Ms. Johnson is qualified to serve as the Company's Chief Executive Officer and as a member of the Company's Board of Directors due to her leadership experience in life sciences, women's reproductive healthcare, development and commercial distribution of healthcare products, capital raises, and her experience as an officer in life sciences and women's reproductive healthcare non-profit and for profit companies, including publicly traded companies.

Lisa Walters-Hoffert. Ms. Walters-Hoffert has served as Chief Business Officer of Daré Operations since its inception in 2015, and currently serves as Chief Financial Officer, a role she has served since March of 2017. During the 25 years prior to joining the team, Ms. Walters-Hoffert was an investment banker focused primarily on raising equity capital for, and providing advisory services to, small-cap public companies. Ms. Walters-Hoffert worked for Roth Capital Partners, an investment banking firm focused on providing investment banking services to such companies, from 2003 until January of 2015, where she most recently served as Managing Director in the Investment Banking Division, overseeing the firm's San Diego office and its activities with respect to medical device, diagnostic and specialty pharma companies. At Roth Capital Partners, Ms. Walters-Hoffert trained and managed transaction deal teams and was responsible for the oversight of all aspects of transactions, including due diligence, internal communications with sales

forces and external communications with institutional investors, among others. Ms. Walters-Hoffert has held various positions in the corporate finance and investment banking divisions of Citicorp Securities in San José, Costa Rica and Oppenheimer & Co, Inc. in New York City, New York.

Ms. Walters-Hoffert has served as a member of the Board of Directors of the San Diego Venture Group, as Past Chair of the UCSD Librarian's Advisory Board and as Immediate Past Chair of the Board of Planned Parenthood of the Pacific Southwest. Ms. Walters-Hoffert graduated from Duke University with a BS in Management Sciences, magna cum laude.

Daré Operations entered into employment offer letters with Mesdames Johnson and Walters-Hoffert and Mark Walters, the Vice President of Operations of Daré Operations, on May 31, 2017, or the Offer Letters. Since inception, the Daré Operations management team elected to keep executive compensation low in order to conserve cash for investment in the business. As a result, the Offer Letters provide for a salary of $41,600 per year and employment "at-will", and such employment may be terminated at any time by Daré Operations or the employee. The Offer Letters further provide that the employees may be eligible to participate in any future benefit plans established by Daré Operations.

Although no decision has been made as to the compensation packages Mesdames Johnson and Walters-Hoffert and Mr. Walters will receive, it is expected that the Compensation Committee of the Company's Board of Directors will adjust these compensation levels to be in line with industry practices taking into account market surveys of cash and equity compensation of comparable executive positions.

Indemnification Agreements

In addition, effective as of July 19, 2017, the Company entered into indemnification agreements with each of its new directors and executive officers, Sabrina Martucci Johnson, Roger L. Hawley, Robin J. Steele and Lisa Walters-Hoffert. The Indemnification Agreements are substantially identical to the form of indemnification agreement that the Company has entered into with its other directors and provides that the Company will indemnify the directors and officers for certain expenses, including attorneys' fees, judgments, fines and settlement amounts incurred by such director or officer in any action or proceeding arising out of their service as a director and/or officer.

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

The disclosure in Item 3.03 of this Current Report is incorporated herein by reference.

In addition, at the effective time of the Name Change, the Company amended and restated its Amended and Restated By-laws to reflect the change of the name of the Company to "Daré Bioscience, Inc."

Item 5.07 Submission of Matters to a Vote of Security Holders.

The following proposals were voted on by the Company's stockholders at a special meeting of the stockholders of the Company, or the Special Meeting, held on July 19, 2017. At the Special Meeting, a total of 2,282,848 shares, or 78.6%, of the Company's common stock issued and outstanding as of the record date for the Special Meeting, were represented in person or by proxy. Set forth below is a brief description of each matter voted upon at the Special Meeting and the voting results with respect to each matter. Each proposal is described in further detail in the Proxy Statement. The share amounts reported above and below reflect the Reverse Stock Split.

(i) The Company's stockholders approved the sale of the Company's Platform pursuant to the terms of the Novartis Asset Purchase Agreement.

Votes For	Votes Against	Votes Abstained	Broker Non-Votes
1,541,476	47,265	4,454	689,653

(ii) The Company's stockholders approved the issuance of shares of the Company's common stock pursuant to the terms of the Daré Stock Purchase Agreement.

Votes For	Votes Against	Votes Abstained	Broker Non-Votes
1,534,407	53,094	5,693	689,653

(iii) The Company's stockholders approved and adopted an amendment to the Company's Restated Certificate of Incorporation to effect a reverse stock split of the Company's common stock, at a ratio ranging from 1:10 to 1:20, as determined by the Company's Board of Directors, which split may be effected at any time within six months of the date of the Special Meeting.

Votes For	Votes Against	Votes Abstained	Broker Non-Votes
2,075,767	180,833	26,247	0

(iv) The Company's stockholders approved a proposal to adjourn the Special Meeting to solicit additional proxies if there were not sufficient votes in favor of the proposals referred to in clauses (i) through (iii) above.

Votes For	Votes Against	Votes Abstained	Broker Non-Votes
2,118,753	125,909	38,186	0

Item 9.01 Financial Statements and Exhibits.

(a) Financial Statements of business acquired.

As permitted by Item 9.01(a)(4) of Form 8-K, the financial statements required by Item 9.01(a) of Form 8-K will be filed by the Company by an amendment to this Current Report on Form 8-K not later than 71 days after the date upon which this Current Report on Form 8-K must be filed.

(b) Pro forma financial information.

As permitted by Item 9.01(b)(2) of Form 8-K, the pro forma financial information required by Item 9.01(b) of Form 8-K will be filed by the Company by an amendment to this Current Report on Form 8-K not later than 71 days after the date upon which this Current Report on Form 8-K must be filed.

(d) Exhibits.

Exhibit Number	Description
2.1	Stock Purchase Agreement dated as of March 19, 2017, entered into by and among Cerulean Pharma Inc. (which name was changed to Daré Bioscience, Inc. on July 20, 2017), Daré Bioscience, Inc. (which name was changed to Daré Bioscience Operations, Inc. on July 17, 2017) and the equity holders of Daré Bioscience, Inc. named therein, filed as Exhibit 2.1 to the Cerulean Pharma Inc. Form 8-K filed March 20, 2017.
2.2	Asset Purchase Agreement dated March 19, 2017, entered into by and among Cerulean Pharma Inc. (which name was changed to Daré Bioscience, Inc. on July 20, 2017) and Novartis Institutes for BioMedical Research, Inc., filed as Exhibit 2.2 to the Cerulean Pharma Inc. Form 8-K filed March 20, 2017.
3.1	Certificate of Amendment to Amended and Restated Certificate of Incorporation of the Company, filed July 19, 2017, to effect a 1-for-10 reverse stock split, effective on July 20, 2017.
3.2	Certificate of Amendment to Amended and Restated Certificate of Incorporation of the Company, filed July 19, 2017 stating the name change, effective July 20, 2017.
3.3	Second Amended and Restated By-laws, effective July 20, 2017.

SIGNATURES

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

DARÉ BIOSCIENCE, INC.

Dated: July 20, 2017

By: /s/ Sabrina Martucci Johnson
Name: Sabrina Martucci Johnson
Title: President and Chief Executive Officer

CERTIFICATE OF AMENDMENT OF THE RESTATED
CERTIFICATE OF INCORPORATION OF CERULEAN PHARMA INC.

(Pursuant to Section 242 of the
General Corporation Law of the State of Delaware)

Cerulean Pharma Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"),

DOES HEREBY CERTIFY:

1. That the name of this corporation is Cerulean Pharma Inc. (the "Corporation"), and that the Corporation was originally incorporated pursuant to the General Corporation Law on November 28, 2005 under the name Tempo Pharmaceuticals, Inc. The original Certificate of Incorporation of the Corporation was amended on each of December 1, 2005, October 20, 2006, December 22, 2006, May 8, 2007, December 6, 2007, October 14, 2008, July 9, 2009, July 13, 2009, May 26, 2010, November 12, 2010, December 2, 2011, November 29, 2012, January 11, 2013, February 19, 2013, August 14, 2013, January 30, 2014, February 10, 2014, March 21, 2014, March 28, 2014, March 31, 2014 and March 31, 2014, and amended and restated on April 15, 2014.

2. A resolution was duly adopted by the Board of Directors of the Corporation pursuant to Section 242 of the General Corporation Law proposing this Amendment of the Corporation's Restated Certificate of Incorporation and declaring the advisability of this Amendment of the Restated Certificate of Incorporation and authorizing the appropriate officers of the Corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment is as follows:

RESOLVED, that the first paragraph of Article FOURTH of the Restated Certificate of Incorporation of the Corporation, as amended, be and hereby is deleted in its entirety and the following paragraphs are inserted in lieu thereof:

"FOURTH. Effective as of 12:01 a.m. on July 20, 2017 (the "Effective Time"), a one-for-ten reverse stock split of the Corporation's common stock, par value $0.0001 per share (the "Common Stock"), shall become effective, pursuant to which each ten shares of Common Stock outstanding and held of record by each stockholder of the Corporation (including treasury shares) immediately prior to the Effective Time shall be reclassified and combined into one validly issued, fully paid and nonassessable share of Common Stock automatically and without any action by the holder thereof upon the Effective Time and shall represent one share of Common Stock from and after the Effective Time (such reclassification and combination of shares, the "Reverse Stock Split"). The par value of the Common Stock following the Reverse Stock Split shall remain at $0.0001 per share. No fractional shares of Common Stock shall be issued as a result of the Reverse Stock Split and, in lieu thereof, upon surrender after the Effective Time of a certificate which formerly represented shares of Common Stock that were issued and outstanding immediately prior to the Effective Time, any person who would otherwise be entitled to a fractional share of Common Stock as a result of the Reverse Stock Split, following the Effective Time, shall be entitled to receive a cash payment equal to the fraction of a share of Common Stock to which such holder would otherwise be entitled multiplied by the fair value per share of the Common Stock immediately prior to the Effective Time as determined by the Board of Directors of the Corporation.

Each stock certificate that, immediately prior to the Effective Time, represented shares of Common Stock that were issued and outstanding immediately prior to the Effective Time shall, from and after the Effective Time, automatically and without the necessity of presenting the same for exchange, represent that number of whole shares of Common Stock after the Effective Time into which the shares formerly represented by such certificate have been reclassified (as well as the right to receive cash in lieu of fractional shares of Common Stock after the Effective Time); provided, however, that each person of record holding a certificate that represented shares of Common Stock that were issued and outstanding immediately prior to the Effective Time shall receive, upon surrender of such certificate, a new certificate evidencing and representing the number of whole shares of Common Stock after the Effective Time into which the shares of Common Stock formerly represented by such certificate shall have been reclassified.

The total number of shares of all classes of stock which the Corporation shall have authority to issue is 125,000,000 shares, consisting of (i) 120,000,000 shares of Common Stock, $.0001 par value per share ("Common Stock"), and (ii) 5,000,000 shares of Preferred Stock, $.01 par value per share ("Preferred Stock")."

3. This Certificate of Amendment of the Restated Certificate of Incorporation has been duly adopted by the stockholders of the Corporation in accordance with the provisions of Section 242 of the General Corporation Law.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, this Corporation has caused this Certificate of Amendment of the Restated Certificate of Incorporation to be signed by its President and Chief Executive Officer this 19th day of July, 2017.

/s/ Christopher D. T. Guiffre

Christopher D. T. Guiffre
President and Chief Executive Officer

Signature Page to Certificate of Amendment of the Restated Certificate of Incorporation of Cerulean Pharma Inc.

CERTIFICATE OF AMENDMENT OF THE RESTATED
CERTIFICATE OF INCORPORATION OF CERULEAN PHARMA INC.

(Pursuant to Section 242 of the
General Corporation Law of the State of Delaware)

Cerulean Pharma Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "General Corporation Law"),

DOES HEREBY CERTIFY:

1. That the name of this corporation is Cerulean Pharma Inc. (the "Corporation"), and that the Corporation was originally incorporated pursuant to the General Corporation Law on November 28, 2005 under the name Tempo Pharmaceuticals, Inc. The original Certificate of Incorporation of the Corporation was amended on each of December 1, 2005, October 20, 2006, December 22, 2006, May 8, 2007, December 6, 2007, October 14, 2008, July 9, 2009, July 13, 2009, May 26, 2010, November 12, 2010, December 2, 2011, November 29, 2012, January 11, 2013, February 19, 2013, August 14, 2013, January 30, 2014, February 10, 2014, March 21, 2014, March 28, 2014, March 31, 2014 and March 31, 2014, and amended and restated on April 15, 2014.

2. A resolution was duly adopted by the Board of Directors of the Corporation pursuant to Section 242 of the General Corporation Law approving this Amendment of the Corporation's Restated Certificate of Incorporation, which resolution setting forth the proposed amendment is as follows:

RESOLVED, that Article FIRST of the Restated Certificate of Incorporation of the Corporation, as amended, be and hereby is deleted in its entirety and the following is inserted in lieu thereof:

"FIRST: Effective as of 12:01 a.m. on July 20, 2017, the name of the Corporation is Daré Bioscience, Inc."

3. This Certificate of Amendment of the Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Section 242 of the General Corporation Law.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, this Corporation has caused this Certificate of Amendment of the Restated Certificate of Incorporation to be signed by its President and Chief Executive Officer this 19th day of July, 2017.

/s/ Christopher D. T. Guiffre

Christopher D. T. Guiffre
President and Chief Executive Officer

Signature Page to Certificate of Amendment of the Restated Certificate of Incorporation of Cerulean Pharma Inc.

SECOND AMENDED AND RESTATED BY-LAWS

OF

DARÉ BIOSCIENCE, INC.

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ARTICLE I

STOCKHOLDERS

1.1 Place of Meetings. All meetings of stockholders shall be held at such place as may be designated from time to time by the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President or, if not so designated, at the principal office of the corporation.

1.2 Annual Meeting. The annual meeting of stockholders for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly be brought before the meeting shall be held on a date and at a time designated by the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President (which date shall not be a legal holiday in the place where the meeting is to be held).

1.3 Special Meetings. Special meetings of stockholders for any purpose or purposes may be called at any time by only the Board of Directors, the Chairman of the Board or the Chief Executive Officer, and may not be called by any other person or persons. The Board of Directors may postpone or reschedule any previously scheduled special meeting of stockholders. Business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

1.4 Notice of Meetings. Except as otherwise provided by law, notice of each meeting of stockholders, whether annual or special, shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. Without limiting the manner by which notice otherwise may be given to stockholders, any notice shall be effective if given by a form of electronic transmission consented to (in a manner consistent with the General Corporation Law of the State of Delaware) by the stockholder to whom the notice is given. The notices of all meetings shall state the place, date and time of the meeting and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting. The notice of a special meeting shall state, in addition, the purpose or purposes for which the meeting is called. If notice is given by mail, such notice shall be deemed given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation. If notice is given by electronic transmission, such notice shall be deemed given at the time specified in Section 232 of the General Corporation Law of the State of Delaware.

1.5 Voting List. The Secretary shall prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least 10 days prior to the meeting: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the corporation. 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. The list shall presumptively determine the

identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

1.6 Quorum. Except as otherwise provided by law, the Certificate of Incorporation or these By-laws, the holders of a majority in voting power of the shares of the capital stock of the corporation issued and outstanding and entitled to vote at the meeting, present in person, present by means of remote communication in a manner, if any, authorized by the Board of Directors in its sole discretion, or represented by proxy, shall constitute a quorum for the transaction of business; provided, however, that where a separate vote by a class or classes or series of capital stock is required by law or the Certificate of Incorporation, the holders of a majority in voting power of the shares of such class or classes or series of the capital stock of the corporation issued and outstanding and entitled to vote on such matter, present in person, present by means of remote communication in a manner, if any, authorized by the Board of Directors in its sole discretion, or represented by proxy, shall constitute a quorum entitled to take action with respect to the vote on such matter. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum.

1.7 Adjournments. Any meeting of stockholders may be adjourned from time to time to any other time and to any other place at which a meeting of stockholders may be held under these By-laws by the chairman of the meeting or by the stockholders present or represented at the meeting and entitled to vote, although less than a quorum. It shall not be necessary to notify any stockholder of any adjournment of less than 30 days if the time and place of the adjourned meeting, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting, are announced at the meeting at which adjournment is taken, unless after the adjournment a new record date is fixed for the adjourned meeting. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting.

1.8 Voting and Proxies. Each stockholder shall have one vote for each share of stock entitled to vote held of record by such stockholder and a proportionate vote for each fractional share so held, unless otherwise provided by law or the Certificate of Incorporation. Each stockholder of record entitled to vote at a meeting of stockholders may vote in person (including by means of remote communications, if any, by which stockholders may be deemed to be present in person and vote at such meeting) or may authorize another person or persons to vote for such stockholder by a proxy executed or transmitted in a manner permitted by the General Corporation Law of the State of Delaware by the stockholder or such stockholder's authorized agent and delivered (including by electronic transmission) to the Secretary of the corporation. No such proxy shall be voted upon after three years from the date of its execution, unless the proxy expressly provides for a longer period.

1.9 Action at Meeting. When a quorum is present at any meeting, any matter other than the election of directors to be voted upon by the stockholders at such meeting shall be decided by the vote of the holders of shares of stock having a majority in voting power of the votes cast by the holders of all of the shares of stock present or represented at the meeting and voting affirmatively or negatively on such matter (or if there are two or more classes or series of stock entitled to vote as separate classes, then in the case of each such class or series, the holders of a majority in voting power of the shares of stock of that class or series present or represented

at the meeting and voting affirmatively or negatively on such matter), except when a different vote is required by law, the Certificate of Incorporation or these By-laws. When a quorum is present at any meeting, any election by stockholders of directors shall be determined by a plurality of the votes cast by the stockholders entitled to vote on the election.

1.10 Nomination of Directors.

(a) Except for (1) any directors entitled to be elected by the holders of preferred stock, (2) any directors elected in accordance with Section 2.9 hereof by the Board of Directors to fill a vacancy or newly-created directorship or (3) as otherwise required by applicable law or stock exchange regulation, at any meeting of stockholders, only persons who are nominated in accordance with the procedures in this Section 1.10 shall be eligible for election as directors. Nomination for election to the Board of Directors at a meeting of stockholders may be made (i) by or at the direction of the Board of Directors or (ii) by any stockholder of the corporation who (x) timely complies with the notice procedures in Section 1.10 (b), (y) is a stockholder of record on the date of the giving of such notice and on the record date for the determination of stockholders entitled to vote at such meeting and (z) is entitled to vote at such meeting.

(b) To be timely, a stockholder's notice must be received in writing by the Secretary at the principal executive offices of the corporation as follows: (i) in the case of an election of directors at an annual meeting of stockholders, not less than 90 days nor more than 120 days prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced by more than 20 days, or delayed by more than 60 days, from the first anniversary of the preceding year's annual meeting, a stockholder's notice must be so received not earlier than the 120th day prior to such annual meeting and not later than the close of business on the later of (A) the 90th day prior to such annual meeting and (B) the tenth day following the day on which notice of the date of such annual meeting was mailed or public disclosure of the date of such annual meeting was made, whichever first occurs; or (ii) in the case of an election of directors at a special meeting of stockholders, provided that the Board of Directors, the Chairman of the Board or the Chief Executive Officer has determined, in accordance with Section 1.3, that directors shall be elected at such special meeting and provided further that the nomination made by the stockholder is for one of the director positions that the Board of Directors, the Chairman of the Board or the Chief Executive Officer, as the case may be, has determined will be filled at such special meeting, not earlier than the 120th day prior to such special meeting and not later than the close of business on the later of (x) the 90th day prior to such special meeting and (y) the tenth day following the day on which notice of the date of such special meeting was mailed or public disclosure of the date of such special meeting was made, whichever first occurs. In no event shall the adjournment or postponement of a meeting (or the public disclosure thereof) commence a new time period (or extend any time period) for the giving of a stockholder's notice.

The stockholder's notice to the Secretary shall set forth: (A) as to each proposed nominee (1) such person's name, age, business address and, if known, residence address, (2) such person's principal occupation or employment, (3) the class and series and number of shares of stock of the corporation that are, directly or indirectly, owned, beneficially or of record, by such person, (4) a description of all direct and indirect compensation and other material

monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among (x) the stockholder, the beneficial owner, if any, on whose behalf the nomination is being made and the respective affiliates and associates of, or others acting in concert with, such stockholder and such beneficial owner, on the one hand, and (y) each proposed nominee, and his or her respective affiliates and associates, or others acting in concert with such nominee(s), on the other hand, including all information that would be required to be disclosed pursuant to Item 404 of Regulation S-K if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made or any affiliate or associate thereof or person acting in concert therewith were the "registrant" for purposes of such Item and the proposed nominee were a director or executive officer of such registrant, and (5) any other information concerning such person that must be disclosed as to nominees in proxy solicitations pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"); and (B) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is being made (1) the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner, (2) the class and series and number of shares of stock of the corporation that are, directly or indirectly, owned, beneficially or of record, by such stockholder and such beneficial owner, (3) a description of any agreement, arrangement or understanding between or among such stockholder and/or such beneficial owner and each proposed nominee and any other person or persons (including their names) pursuant to which the nomination(s) are being made or who may participate in the solicitation of proxies in favor of electing such nominee(s), (4) a description of any agreement, arrangement or understanding (including any derivative or short positions, swaps, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) that has been entered into by, or on behalf of, such stockholder or such beneficial owner, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner with respect to shares of stock of the corporation, (5) any other information relating to such stockholder and such beneficial owner that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder, (6) a representation that such stockholder intends to appear in person or by proxy at the meeting to nominate the person(s) named in its notice and (7) a representation whether such stockholder and/or such beneficial owner intends or is part of a group which intends (x) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the corporation's outstanding capital stock reasonably believed by such stockholder or such beneficial owner to be sufficient to elect the nominee (and such representation shall be included in any such proxy statement and form of proxy) and/or (y) otherwise to solicit proxies from stockholders in support of such nomination (and such representation shall be included in any such solicitation materials). Not later than 10 days after the record date for the meeting, the information required by Items (A)(1)-(5) and (B)(1)-(5) of the prior sentence shall be supplemented by the stockholder giving the notice to provide updated information as of the record date. In addition, to be effective, the stockholder's notice must be accompanied by the written consent of the proposed nominee to serve as a director if elected. The corporation may require any proposed nominee to furnish such other information as the corporation may reasonably require to determine the eligibility of such proposed nominee to serve as a director of

the corporation or whether such nominee would be independent under applicable Securities and Exchange Commission and stock exchange rules and the corporation's publicly disclosed corporate governance guidelines. A stockholder shall not have complied with this Section 1.10(b) if the stockholder (or beneficial owner, if any, on whose behalf the nomination is made) solicits or does not solicit, as the case may be, proxies in support of such stockholder's nominee in contravention of the representations with respect thereto required by this Section 1.10.

(c) The chairman of any meeting shall have the power and duty to determine whether a nomination was made in accordance with the provisions of this Section 1.10 (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee in compliance with the representations with respect thereto required by this Section 1.10), and if the chairman should determine that a nomination was not made in accordance with the provisions of this Section 1.10, the chairman shall so declare to the meeting and such nomination shall not be brought before the meeting.

(d) Except as otherwise required by law, nothing in this Section 1.10 shall obligate the corporation or the Board of Directors to include in any proxy statement or other stockholder communication distributed on behalf of the corporation or the Board of Directors information with respect to any nominee for director submitted by a stockholder.

(e) Notwithstanding the foregoing provisions of this Section 1.10, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the meeting to present a nomination, such nomination shall not be brought before the meeting, notwithstanding that proxies in respect of such nominee may have been received by the corporation. For purposes of this Section 1.10, to be considered a "qualified representative of the stockholder", a person must be authorized by a written instrument executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such written instrument or electronic transmission, or a reliable reproduction of the written instrument or electronic transmission, at the meeting of stockholders.

(f) For purposes of this Section 1.10, "public disclosure" shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

1.11 Notice of Business at Annual Meetings.

(a) At any annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (1) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (2) otherwise properly brought before the meeting by or at the direction of the Board of Directors, or (3) properly brought before the meeting by a stockholder. For business to be properly brought before an annual meeting by a stockholder, (i) if such business relates to the nomination of a person for election as a director of the corporation, the procedures in Section 1.10 must be complied with

and (ii) if such business relates to any other matter, the business must constitute a proper matter under Delaware law for stockholder action and the stockholder must (x) have given timely notice thereof in writing to the Secretary in accordance with the procedures in Section 1.11(b), (y) be a stockholder of record on the date of the giving of such notice and on the record date for the determination of stockholders entitled to vote at such annual meeting and (z) be entitled to vote at such annual meeting.

(b) To be timely, a stockholder's notice must be received in writing by the Secretary at the principal executive offices of the corporation not less than 90 days nor more than 120 days prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced by more than 20 days, or delayed by more than 60 days, from the first anniversary of the preceding year's annual meeting, a stockholder's notice must be so received not earlier than the 120th day prior to such annual meeting and not later than the close of business on the later of (A) the 90th day prior to such annual meeting and (B) the tenth day following the day on which notice of the date of such annual meeting was mailed or public disclosure of the date of such annual meeting was made, whichever first occurs. In no event shall the adjournment or postponement of an annual meeting (or the public disclosure thereof) commence a new time period (or extend any time period) for the giving of a stockholder's notice.

The stockholder's notice to the Secretary shall set forth: (A) as to each matter the stockholder proposes to bring before the annual meeting (1) a brief description of the business desired to be brought before the annual meeting, (2) the text of the proposal (including the exact text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend the By-laws, the exact text of the proposed amendment), and (3) the reasons for conducting such business at the annual meeting, and (B) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the proposal is being made (1) the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner, (2) the class and series and number of shares of stock of the corporation that are, directly or indirectly, owned, beneficially or of record, by such stockholder and such beneficial owner, (3) a description of any material interest of such stockholder or such beneficial owner and the respective affiliates and associates of, or others acting in concert with, such stockholder or such beneficial owner in such business, (4) a description of any agreement, arrangement or understanding between or among such stockholder and/or such beneficial owner and any other person or persons (including their names) in connection with the proposal of such business or who may participate in the solicitation of proxies in favor of such proposal, (5) a description of any agreement, arrangement or understanding (including any derivative or short positions, swaps, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) that has been entered into by, or on behalf of, such stockholder or such beneficial owner, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner with respect to shares of stock of the corporation, (6) any other information relating to such stockholder and such beneficial owner that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the business proposed pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder, (7) a representation that such stockholder intends to appear in person or by proxy at the annual meeting to bring such

business before the meeting and (8) a representation whether such stockholder and/or such beneficial owner intends or is part of a group which intends (x) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the corporation's outstanding capital stock required to approve or adopt the proposal (and such representation shall be included in any such proxy statement and form of proxy) and/or (y) otherwise to solicit proxies from stockholders in support of such proposal (and such representation shall be included in any such solicitation materials). Not later than 10 days after the record date for the meeting, the information required by Items (A) (3) and (B)(1)-(6) of the prior sentence shall be supplemented by the stockholder giving the notice to provide updated information as of the record date. Notwithstanding anything in these By-laws to the contrary, no business shall be conducted at any annual meeting of stockholders except in accordance with the procedures in this Section 1.11; provided that any stockholder proposal which complies with Rule 14a-8 of the proxy rules (or any successor provision) promulgated under the Exchange Act and is to be included in the corporation's proxy statement for an annual meeting of stockholders shall be deemed to comply with the notice requirements of this Section 1.11. A stockholder shall not have complied with this Section 1.11(b) if the stockholder (or beneficial owner, if any, on whose behalf the proposal is made) solicits or does not solicit, as the case may be, proxies in support of such stockholder's proposal in contravention of the representations with respect thereto required by this Section 1.11.

(c) The chairman of any annual meeting shall have the power and duty to determine whether business was properly brought before the annual meeting in accordance with the provisions of this Section 1.11 (including whether the stockholder or beneficial owner, if any, on whose behalf the proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's proposal in compliance with the representation with respect thereto required by this Section 1.11), and if the chairman should determine that business was not properly brought before the annual meeting in accordance with the provisions of this Section 1.11, the chairman shall so declare to the meeting and such business shall not be brought before the annual meeting.

(d) Except as otherwise required by law, nothing in this Section 1.11 shall obligate the corporation or the Board of Directors to include in any proxy statement or other stockholder communication distributed on behalf of the corporation or the Board of Directors information with respect to any proposal submitted by a stockholder.

(e) Notwithstanding the foregoing provisions of this Section 1.11, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting to present business, such business shall not be considered, notwithstanding that proxies in respect of such business may have been received by the corporation.

(f) For purposes of this Section 1.11, the terms "qualified representative of the stockholder" and "public disclosure" shall have the same meaning as in Section 1.10.

1.12 Conduct of Meetings.

(a) Meetings of stockholders shall be presided over by the Chairman of the Board, if any, or in the Chairman's absence by the Vice Chairman of the Board, if any, or in the Vice Chairman's absence by the Chief Executive Officer, or in the Chief Executive Officer's absence, by the President, or in the President's absence by a Vice President, or in the absence of all of the foregoing persons by a chairman designated by the Board of Directors. The Secretary shall act as secretary of the meeting, but in the Secretary's absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

(b) The Board of Directors may adopt by resolution such rules, regulations and procedures for the conduct of any meeting of stockholders of the corporation as it shall deem appropriate including, without limitation, such guidelines and procedures as it may deem appropriate regarding the participation by means of remote communication of stockholders and proxyholders not physically present at a meeting. Except to the extent inconsistent with such rules, regulations and procedures as adopted by the Board of Directors, the chairman of any meeting of stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the corporation, their duly authorized and constituted proxies or such other persons as shall be determined; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

(c) The chairman of the meeting shall announce at the meeting when the polls for each matter to be voted upon at the meeting will be opened and closed. After the polls close, no ballots, proxies or votes or any revocations or changes thereto may be accepted.

(d) In advance of any meeting of stockholders, the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the President shall appoint one or more inspectors of election to act at the meeting and make a written report thereof. One or more other persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is present, ready and willing to act at a meeting of stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Unless otherwise required by law, inspectors may be officers, employees or agents of the corporation. Each inspector, before entering upon the discharge of such inspector's duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. The inspector shall have the duties prescribed by law and shall take charge of the polls and, when the vote is completed, shall make a certificate of the result of the vote taken and of such other facts as may be required by law. Every vote taken by ballots shall be counted by a duly appointed inspector or duly appointed inspectors.

1.13 No Action by Consent in Lieu of a Meeting. Stockholders of the corporation may not take any action by written consent in lieu of a meeting.

ARTICLE II

DIRECTORS

2.1 General Powers. The business and affairs of the corporation shall be managed by or under the direction of a Board of Directors, who may exercise all of the powers of the corporation except as otherwise provided by law or the Certificate of Incorporation.

2.2 Number, Election and Qualification. Subject to the rights of holders of any series of Preferred Stock to elect directors, the number of directors of the corporation shall be established by the Board of Directors. Election of directors need not be by written ballot. Directors need not be stockholders of the corporation.

2.3 Chairman of the Board; Vice Chairman of the Board. The Board of Directors may appoint from its members a Chairman of the Board and a Vice Chairman of the Board, neither of whom need be an employee or officer of the corporation. If the Board of Directors appoints a Chairman of the Board, such Chairman shall perform such duties and possess such powers as are assigned by the Board of Directors and, if the Chairman of the Board is also designated as the corporation's Chief Executive Officer, shall have the powers and duties of the Chief Executive Officer prescribed in Section 3.7 of these By-laws. If the Board of Directors appoints a Vice Chairman of the Board, such Vice Chairman shall perform such duties and possess such powers as are assigned by the Board of Directors. Unless otherwise provided by the Board of Directors, the Chairman of the Board or, in the Chairman's absence, the Vice Chairman of the Board, if any, shall preside at all meetings of the Board of Directors.

2.4 Classes of Directors. Subject to the rights of holders of any series of Preferred Stock to elect directors, the Board of Directors shall be and is divided into three classes: Class I, Class II and Class III. Each class shall consist, as nearly as may be possible, of one-third of the total number of directors constituting the entire Board of Directors. The allocation of directors among classes shall be determined by resolution of the Board of Directors.

2.5 Terms of Office. Subject to the rights of holders of any series of Preferred Stock to elect directors, each director shall serve for a term ending on the date of the third annual meeting of stockholders following the annual meeting of stockholders at which such director was elected; provided that each director initially assigned to Class I shall serve for a term expiring at the corporation's first annual meeting of stockholders held after the effectiveness of these By-laws; each director initially assigned to Class II shall serve for a term expiring at the corporation's second annual meeting of stockholders held after the effectiveness of these By-laws; and each director initially assigned to Class III shall serve for a term expiring at the corporation's third annual meeting of stockholders held after the effectiveness of these By-laws; provided further, that the term of each director shall continue until the election and qualification of his or her successor and be subject to his or her earlier death, resignation or removal.

2.6 Quorum. The greater of (a) a majority of the directors at any time in office and (b) one-third of the number of directors established by the Board of Directors pursuant to Section 2.2 of these By-laws shall constitute a quorum of the Board of Directors. If at any meeting of the Board of Directors there shall be less than such a quorum, a majority of the directors present may adjourn the meeting from time to time without further notice other than announcement at the meeting, until a quorum shall be present.

2.7 Action at Meeting. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board of Directors, unless a greater number is required by law or by the Certificate of Incorporation.

2.8 Removal. Subject to the rights of holders of any series of Preferred Stock, directors of the corporation may be removed only for cause and only by the affirmative vote of the holders of at least 75% of the votes which all the stockholders would be entitled to cast in any annual election of directors or class of directors.

2.9 Vacancies. Subject to the rights of holders of any series of Preferred Stock, any vacancy or newly-created directorship on the Board of Directors, however occurring, shall be filled only by vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director and shall not be filled by the stockholders. A director elected to fill a vacancy shall hold office until the next election of the class for which such director shall have been chosen, subject to the election and qualification of a successor or until such director's earlier death, resignation or removal.

2.10 Resignation. Any director may resign by delivering a resignation in writing or by electronic transmission to the corporation at its principal office or to the Chairman of the Board, the Chief Executive Officer, the President or the Secretary. Such resignation shall be effective upon delivery unless it is specified to be effective at some later time or upon the happening of some later event.

2.11 Regular Meetings. Regular meetings of the Board of Directors may be held without notice at such time and place as shall be determined from time to time by the Board of Directors; provided that any director who is absent when such a determination is made shall be given notice of the determination. A regular meeting of the Board of Directors may be held without notice immediately after and at the same place as the annual meeting of stockholders.

2.12 Special Meetings. Special meetings of the Board of Directors may be held at any time and place designated in a call by the Chairman of the Board, the Chief Executive Officer, the President, two or more directors, or by one director in the event that there is only a single director in office.

2.13 Notice of Special Meetings. Notice of the date, place and time of any special meeting of directors shall be given to each director by the Secretary or by the officer or one of the directors calling the meeting. Notice shall be duly given to each director (a) in person or by telephone at least 24 hours in advance of the meeting, (b) by sending written notice by reputable overnight courier, telecopy, facsimile or electronic transmission, or delivering written notice by

hand, to such director's last known business, home or electronic transmission address at least 48 hours in advance of the meeting, or (c) by sending written notice by first-class mail to such director's last known business or home address at least 72 hours in advance of the meeting. A notice or waiver of notice of a meeting of the Board of Directors need not specify the purposes of the meeting.

2.14 Meetings by Conference Communications Equipment. Directors may participate in meetings of the Board of Directors or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation by such means shall constitute presence in person at such meeting.

2.15 Action by Consent. 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 of Directors or committee, as the case may be, consent to the action in writing or by electronic transmission, and the written consents or electronic transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

2.16 Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the corporation with such lawfully delegable powers and duties as the Board of Directors thereby confers, to serve at the pleasure of the Board of Directors. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members of the committee present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors and subject to the provisions of law, 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. Each such committee shall keep minutes and make such reports as the Board of Directors may from time to time request. Except as the Board of Directors may otherwise determine, any committee may make rules for the conduct of its business, but unless otherwise provided by the directors or in such rules, its business shall be conducted as nearly as possible in the same manner as is provided in these By-laws for the Board of Directors. Except as otherwise provided in the Certificate of Incorporation, these By-laws, or the resolution of the Board of Directors designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

2.17 Compensation of Directors. Directors may be paid such compensation for their services and such reimbursement for expenses of attendance at meetings as the Board of Directors may from time to time determine. No such payment shall preclude any director from

serving the corporation or any of its parent or subsidiary entities in any other capacity and receiving compensation for such service.

ARTICLE III

OFFICERS

3.1 Titles. The officers of the corporation shall consist of a Chief Executive Officer, a President, a Secretary, a Treasurer and such other officers with such other titles as the Board of Directors shall determine, including one or more Vice Presidents, Assistant Treasurers and Assistant Secretaries. The Board of Directors may appoint such other officers as it may deem appropriate.

3.2 Election. The Chief Executive Officer, President, Treasurer and Secretary shall be elected annually by the Board of Directors at its first meeting following the annual meeting of stockholders. Other officers may be appointed by the Board of Directors at such meeting or at any other meeting.

3.3 Qualification. No officer need be a stockholder. Any two or more offices may be held by the same person.

3.4 Tenure. Except as otherwise provided by law, by the Certificate of Incorporation or by these By-laws, each officer shall hold office until such officer's successor is elected and qualified, unless a different term is specified in the resolution electing or appointing such officer, or until such officer's earlier death, resignation or removal.

3.5 Resignation and Removal. Any officer may resign by delivering a written resignation to the corporation at its principal office or to the Chief Executive Officer, the President or the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some later time or upon the happening of some later event. Any officer may be removed at any time, with or without cause, by vote of a majority of the directors then in office. Except as the Board of Directors may otherwise determine, no officer who resigns or is removed shall have any right to any compensation as an officer for any period following such officer's resignation or removal, or any right to damages on account of such removal, whether such officer's compensation be by the month or by the year or otherwise, unless such compensation is expressly provided for in a duly authorized written agreement with the corporation.

3.6 Vacancies. The Board of Directors may fill any vacancy occurring in any office for any reason and may, in its discretion, leave unfilled for such period as it may determine any offices other than those of Chief Executive Officer, President, Treasurer and Secretary. Each such successor shall hold office for the unexpired term of such officer's predecessor and until a successor is elected and qualified, or until such officer's earlier death, resignation or removal.

3.7 President; Chief Executive Officer. Unless the Board of Directors has designated another person as the corporation's Chief Executive Officer, the President shall be the Chief Executive Officer of the corporation. The Chief Executive Officer shall have general charge and supervision of the business of the corporation subject to the direction of the Board of Directors, and shall perform all duties and have all powers that are commonly incident to the office of chief

executive or that are delegated to such officer by the Board of Directors. The President shall perform such other duties and shall have such other powers as the Board of Directors or the Chief Executive Officer (if the President is not the Chief Executive Officer) may from time to time prescribe. In the event of the absence, inability or refusal to act of the Chief Executive Officer or the President (if the President is not the Chief Executive Officer), the Vice President (or if there shall be more than one, the Vice Presidents in the order determined by the Board of Directors) shall perform the duties of the Chief Executive Officer and when so performing such duties shall have all the powers of and be subject to all the restrictions upon the Chief Executive Officer.

3.8 Vice Presidents. Each Vice President shall perform such duties and possess such powers as the Board of Directors or the Chief Executive Officer may from time to time prescribe. The Board of Directors may assign to any Vice President the title of Executive Vice President, Senior Vice President or any other title selected by the Board of Directors.

3.9 Secretary and Assistant Secretaries. The Secretary shall perform such duties and shall have such powers as the Board of Directors or the Chief Executive Officer may from time to time prescribe. In addition, the Secretary shall perform such duties and have such powers as are incident to the office of the secretary, including without limitation the duty and power to give notices of all meetings of stockholders and special meetings of the Board of Directors, to attend all meetings of stockholders and the Board of Directors and keep a record of the proceedings, to maintain a stock ledger and prepare lists of stockholders and their addresses as required, to be custodian of corporate records and the corporate seal and to affix and attest to the same on documents.

Any Assistant Secretary shall perform such duties and possess such powers as the Board of Directors, the Chief Executive Officer or the Secretary may from time to time prescribe. In the event of the absence, inability or refusal to act of the Secretary, the Assistant Secretary (or if there shall be more than one, the Assistant Secretaries in the order determined by the Board of Directors) shall perform the duties and exercise the powers of the Secretary.

In the absence of the Secretary or any Assistant Secretary at any meeting of stockholders or directors, the chairman of the meeting shall designate a temporary secretary to keep a record of the meeting.

3.10 Treasurer and Assistant Treasurers. The Treasurer shall perform such duties and shall have such powers as may from time to time be assigned by the Board of Directors or the Chief Executive Officer. In addition, the Treasurer shall perform such duties and have such powers as are incident to the office of treasurer, including without limitation the duty and power to keep and be responsible for all funds and securities of the corporation, to deposit funds of the corporation in depositories selected in accordance with these By-laws, to disburse such funds as ordered by the Board of Directors, to make proper accounts of such funds, and to render as required by the Board of Directors statements of all such transactions and of the financial condition of the corporation.

The Assistant Treasurers shall perform such duties and possess such powers as the Board of Directors, the Chief Executive Officer or the Treasurer may from time to time prescribe. In

the event of the absence, inability or refusal to act of the Treasurer, the Assistant Treasurer (or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors) shall perform the duties and exercise the powers of the Treasurer.

3.11 Salaries. Officers of the corporation shall be entitled to such salaries, compensation or reimbursement as shall be fixed or allowed from time to time by the Board of Directors.

3.12 Delegation of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

ARTICLE IV

CAPITAL STOCK

4.1 Issuance of Stock. Subject to the provisions of the Certificate of Incorporation, the whole or any part of any unissued balance of the authorized capital stock of the corporation or the whole or any part of any shares of the authorized capital stock of the corporation held in the corporation's treasury may be issued, sold, transferred or otherwise disposed of by vote of the Board of Directors in such manner, for such lawful consideration and on such terms as the Board of Directors may determine.

4.2 Stock Certificates; Uncertificated Shares. The shares of the corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the corporation's stock shall be uncertificated shares. Every holder of stock of the corporation represented by certificates shall be entitled to have a certificate, in such form as may be prescribed by law and by the Board of Directors, representing the number of shares held by such holder registered in certificate form. Each such certificate shall be signed in a manner that complies with Section 158 of the General Corporation Law of the State of Delaware.

Each certificate for shares of stock which are subject to any restriction on transfer pursuant to the Certificate of Incorporation, these By-laws, applicable securities laws or any agreement among any number of stockholders or among such holders and the corporation shall have conspicuously noted on the face or back of the certificate either the full text of the restriction or a statement of the existence of such restriction.

If the corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of each certificate representing shares of such class or series of stock, provided that in lieu of the foregoing requirements there may be set forth on the face or back of each certificate representing shares of such class or series of stock a statement that the corporation will furnish without charge to each stockholder who so requests a copy of the full text of the powers, designations, preferences and relative, participating, optional or other special rights of each class

of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to Sections 151, 202(a) or 218(a) of the General Corporation Law of the State of Delaware or, with respect to Section 151 of General Corporation Law of the State of Delaware, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

4.3 Transfers. Shares of stock of the corporation shall be transferable in the manner prescribed by law and in these By-laws. Transfers of shares of stock of the corporation shall be made only on the books of the corporation or by transfer agents designated to transfer shares of stock of the corporation. Subject to applicable law, shares of stock represented by certificates shall be transferred only on the books of the corporation by the surrender to the corporation or its transfer agent of the certificate representing such shares properly endorsed or accompanied by a written assignment or power of attorney properly executed, and with such proof of authority or the authenticity of signature as the corporation or its transfer agent may reasonably require. Except as may be otherwise required by law, by the Certificate of Incorporation or by these By-laws, the corporation shall be entitled to treat the record holder of stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect to such stock, regardless of any transfer, pledge or other disposition of such stock until the shares have been transferred on the books of the corporation in accordance with the requirements of these By-laws.

4.4 Lost, Stolen or Destroyed Certificates. The corporation may issue a new certificate of stock in place of any previously issued certificate alleged to have been lost, stolen or destroyed, upon such terms and conditions as the Board of Directors may prescribe, including the presentation of reasonable evidence of such loss, theft or destruction and the giving of such indemnity and posting of such bond as the Board of Directors may require for the protection of the corporation or any transfer agent or registrar.

4.5 Record Date. The Board of Directors may fix in advance a date as a record date for the determination of the stockholders entitled to notice of or to vote at any meeting of stockholders, or entitled to receive payment of any dividend or other distribution or allotment of any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action. Such record date shall not precede the date on which the resolution fixing the record date is adopted, and such record date shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other action to which such record date relates.

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 on the day before the day on which notice is given, or, if notice is waived, at the close of business on the day before the day on which the meeting is held. If no record date is fixed, 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 to such purpose.

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.

4.6 Regulations. The issue, transfer, conversion and registration of shares of stock of the corporation shall be governed by such other regulations as the Board of Directors may establish.

ARTICLE V

GENERAL PROVISIONS

5.1 Fiscal Year. Except as from time to time otherwise designated by the Board of Directors, the fiscal year of the corporation shall begin on the first day of January of each year and end on the last day of December in each year.

5.2 Corporate Seal. The corporate seal shall be in such form as shall be approved by the Board of Directors.

5.3 Waiver of Notice. Whenever notice is required to be given by law, by the Certificate of Incorporation or by these By-laws, a written waiver signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before, at or after the time of the event for which notice is to be given, shall be deemed equivalent to notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in any such waiver. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

5.4 Voting of Securities. Except as the Board of Directors may otherwise designate, the Chief Executive Officer, the President or the Treasurer may waive notice of, vote, or appoint any person or persons to vote, on behalf of the corporation at, and act as, or appoint any person or persons to act as, proxy or attorney-in-fact for this corporation (with or without power of substitution) at, any meeting of stockholders or securityholders of any other entity, the securities of which may be held by this corporation.

5.5 Evidence of Authority. A certificate by the Secretary, or an Assistant Secretary, or a temporary Secretary, as to any action taken by the stockholders, directors, a committee or any officer or representative of the corporation shall as to all persons who rely on the certificate in good faith be conclusive evidence of such action.

5.6 Certificate of Incorporation. All references in these By-laws to the Certificate of Incorporation shall be deemed to refer to the Certificate of Incorporation of the corporation, as amended and in effect from time to time.

5.7 Severability. Any determination that any provision of these By-laws is for any reason inapplicable, illegal or ineffective shall not affect or invalidate any other provision of these By-laws.

5.8 Pronouns. All pronouns used in these By-laws shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

5.9 Forum Selection By-law. Unless the corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for: (a) any derivative action or proceeding brought on behalf of the corporation, (b) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, other employee, agent or stockholder of the corporation to the corporation or the corporation's stockholders, including, without limitation, a claim alleging the aiding and abetting of such a breach of fiduciary duty, (c) any action asserting a claim arising pursuant to any provision of the General Corporation Law of the State of Delaware, the Certificate of Incorporation or these By-laws (as each may be amended from time to time) or as to which the General Corporation Law of the State of Delaware confers jurisdiction on the Court of Chancery of the State of Delaware, or (d) any action asserting a claim governed by the internal affairs doctrine or other "internal corporate claim" as that term is defined in Section 115 of the General Corporation Law of the State of Delaware. Any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the corporation shall be deemed to have notice of and consented to the provisions of this Section 5.9.

ARTICLE VI

AMENDMENTS

These By-laws may be altered, amended or repealed, in whole or in part, or new By-laws may be adopted by the Board of Directors or by the stockholders as provided in the Certificate of Incorporation.