
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

FORM 10-Q

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

For the quarterly period ended June 30, 2013

OR

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

Commission File Number 001-32563

Orchids Paper Products Company

(Exact name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

23-2956944
(I.R.S. Employer
Identification No.)

4826 Hunt Street
Pryor, Oklahoma 74361
(Address of Principal Executive Offices and Zip Code)

(918) 825-0616
(Registrant's Telephone Number, Including Area Code)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months. Yes No

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

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

Number of shares outstanding of the issuer's Common Stock, par value \$.001 per share, as of July 26, 2013: 7,949,225 shares.

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PART I. FINANCIAL INFORMATION

ITEM 1. Financial Statements

**ORCHIDS PAPER PRODUCTS COMPANY
BALANCE SHEETS
(Dollars in thousands, except share data)**

	<u>June 30, 2013</u>	<u>December 31, 2012</u>
	(Unaudited)	
ASSETS		
Current assets:		
Cash	\$ 2,565	\$ 5,734
Accounts receivable, net of allowance of \$120 in 2013 and \$125 in 2012	8,916	5,406
Inventories, net	11,291	10,275
Income taxes receivable	805	607
Short-term investments	5,031	5,027
Prepaid expenses	1,030	637
Other current assets	—	44
Deferred income taxes	319	393
Total current assets	<u>29,957</u>	<u>28,123</u>
Property, plant and equipment	131,132	125,579
Accumulated depreciation	(38,166)	(34,391)
Net property, plant and equipment	<u>92,966</u>	<u>91,188</u>
Deferred debt issuance costs, net of accumulated amortization of \$14 in 2013 and \$11 in 2012	44	47
Total assets	<u>\$ 122,967</u>	<u>\$ 119,358</u>

LIABILITIES AND STOCKHOLDERS' EQUITY			
Current liabilities:			
Accounts payable		\$ 3,734	\$ 3,685
Accrued liabilities		3,256	2,832
Current portion of long-term debt		1,152	1,152
Total current liabilities		8,142	7,669
Long-term debt, less current portion		14,503	15,079
Deferred income taxes		19,530	19,432
Stockholders' equity:			
Common stock, \$.001 par value, 25,000,000 shares authorized, 7,881,475 and 7,642,475 shares issued and outstanding in 2013 and 2012, respectively		8	8
Additional paid-in capital		43,700	41,238
Retained earnings		37,084	35,932
Total stockholders' equity		80,792	77,178
Total liabilities and stockholders' equity		\$ 122,967	\$ 119,358

See notes to unaudited interim financial statements.

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ORCHIDS PAPER PRODUCTS COMPANY
STATEMENTS OF INCOME
(Dollars in thousands, except share and per share data)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2013 (unaudited)	2012 (unaudited)	2013 (unaudited)	2012 (unaudited)
Net sales	\$ 29,232	\$ 25,279	\$ 55,841	\$ 51,006
Cost of sales	22,236	19,675	42,318	39,269
Gross profit	6,996	5,604	13,523	11,737
Selling, general and administrative expenses	2,517	2,112	4,790	4,399
Operating income	4,479	3,492	8,733	7,338
Interest expense	95	102	188	209
Other (income) expense	(7)	323	(12)	316
Income before income taxes	4,391	3,067	8,557	6,813
Provision for income taxes:				
Current	1,144	613	2,149	2,039
Deferred	104	217	172	15
	1,248	830	2,321	2,054
Net income	\$ 3,143	\$ 2,237	\$ 6,236	\$ 4,759
Net income per common share:				
Basic	\$ 0.40	\$ 0.30	\$ 0.80	\$ 0.63
Diluted	\$ 0.39	\$ 0.29	\$ 0.78	\$ 0.61
Shares used in calculating net income per common share:				
Basic	7,799,496	7,546,901	7,737,269	7,539,798
Diluted	7,983,808	7,843,707	7,914,189	7,842,598
Dividends per share	\$ 0.35	\$ 0.20	\$ 0.65	\$ 0.40

See notes to unaudited interim financial statements.

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ORCHIDS PAPER PRODUCTS COMPANY
STATEMENTS OF CASH FLOWS
(Dollars in thousands)

	Six Months Ended June 30, 2013 (unaudited)	Six Months Ended June 30, 2012 (unaudited)
Cash Flows From Operating Activities		
Net income	\$ 6,236	\$ 4,759
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	3,778	3,651
Provision for doubtful accounts	(5)	(20)
Deferred income taxes	172	15
Stock compensation expense	333	291
Loss on disposal of property, plant and equipment	—	336
Changes in cash due to changes in operating assets and liabilities:		
Accounts receivable	(3,505)	(718)
Inventories	(1,016)	(1,490)
Income taxes receivable	(198)	285
Prepaid expenses	(393)	31
Other current assets	44	338
Accounts payable	49	(15)
Accrued liabilities	424	455
Net cash provided by operating activities	<u>5,919</u>	<u>7,918</u>
Cash Flows From Investing Activities		
Purchases of property, plant and equipment	(5,553)	(3,147)
Purchases of short-term investments	(4)	(3,003)
Net cash used in investing activities	<u>(5,557)</u>	<u>(6,150)</u>
Cash Flows From Financing Activities		
Principal payments on long-term debt	(576)	(576)
Dividends paid to stockholders	(5,083)	(3,018)
Proceeds from the exercise of stock options	1,649	289
Excess tax benefit of stock options exercised	479	5
Net cash used in financing activities	<u>(3,531)</u>	<u>(3,300)</u>
Net decrease in cash	\$ (3,169)	\$ (1,532)
Cash, beginning	5,734	4,297
Cash, ending	<u>\$ 2,565</u>	<u>\$ 2,765</u>
Supplemental Disclosure:		
Interest paid	\$ 187	\$ 208
Income taxes paid	\$ 1,869	\$ 1,660
Tax benefits realized from stock options exercised	<u>\$ 183</u>	<u>\$ 11</u>

See notes to unaudited interim financial statements.

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ORCHIDS PAPER PRODUCTS COMPANY
NOTES TO UNAUDITED INTERIM FINANCIAL STATEMENTS

Note 1 — Basis of Presentation

Orchids Paper Products Company (“Orchids” or the “Company”) was formed in 1998 to acquire and operate the paper manufacturing facility, built in 1976, in Pryor, Oklahoma. Orchids Acquisition Group, Inc. (“Orchids Acquisition”) was established in November 2003, for the purpose of acquiring the common stock of Orchids. The sale of equity and debt securities closed in March 2004 and Orchids Acquisition Group, Inc. acquired Orchids for a price of \$21.6 million. Orchids Acquisition was subsequently merged into Orchids. In July 2005, the Company completed its initial public offering of its common stock. The Company’s stock trades on the NYSE MKT under the ticker symbol “TIS.”

The accompanying financial statements have been prepared without an audit, pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”). Certain information and footnote disclosures normally included in annual financial statements prepared in accordance with accounting principles generally accepted (“GAAP”) in the United States have been condensed or omitted pursuant to the rules and regulations. However, the Company believes that the disclosures made are adequate to make the information presented not misleading when read in conjunction with the audited financial statements and the notes in the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2012, filed with the SEC on March 11, 2013. Management believes that the financial statements contain all adjustments necessary for a fair presentation of the results for the interim periods presented. All adjustments were of a normal,

recurring nature. The results of operations for the interim period are not necessarily indicative of the results for the entire fiscal year.

Note 2 — Fair Value Measurements

The Company does not report any assets or liabilities at fair value in the financial statements. However, the estimated fair value of the Company's short-term investments, which consist of commercial deposits, was \$5,031,000 and \$5,027,000 at June 30, 2013 and December 31, 2012, respectively. These short-term investments are considered Level 1 measurements in the fair value valuation hierarchy. The fair value of the Company's long-term debt is estimated by management to approximate the carrying value of \$15,655,000 and \$16,231,000 at June 30, 2013 and December 31, 2012, respectively. Management's estimates are based on periodic comparisons of the characteristics of the Company's obligations, including floating interest rate, credit rating, maturity and collateral, to current market conditions as stated by an independent third-party financial institution. Such valuation inputs are considered a Level 2 measurement in the fair value valuation hierarchy.

There were no transfers among Level 1, Level 2 or Level 3 assets or liabilities during the first six months in 2013 or 2012.

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ORCHIDS PAPER PRODUCTS COMPANY NOTES TO UNAUDITED INTERIM FINANCIAL STATEMENTS (continued)

Note 3 — Commitments and Contingencies

The Company may be involved from time to time in litigation arising from the normal course of business. In management's opinion, as of the date of this report, the Company is not engaged in legal proceedings which individually or in the aggregate are expected to have a materially adverse effect on the Company's results of operations or financial condition.

In October 2008, the Company entered into a contract to purchase 334,000 MMBTU per year of natural gas. This contract has been extended through December 2016 and provides for approximately 60% to 70% of the Company's natural gas requirements through December 31, 2016 as follows:

Period	MMBTUs	Price per MMBTU	Management fee per MMBTU
April 2011 - March 2012	334,207	\$ 6.50	\$ 0.07
April 2012 - March 2013	334,207	\$ 5.50	\$ 0.07
April 2013 - December 2014	556,886	\$ 4.905	\$ 0.07
April 2013 - September 2013	additional 5,000/month	\$ 4.70	\$ 0.07
October 2013 - March 2014	additional 5,000/month	\$ 4.75	\$ 0.07
April 2014 - December 2014	additional 5,000/month	\$ 4.70	\$ 0.07
January 2015 - March 2015	95,900	\$ 4.50	\$ 0.07
April 2015 - June 2015	93,600	\$ 4.30	\$ 0.07
July 2015 - September 2015	92,300	\$ 4.35	\$ 0.07
October 2015 - December 2015	91,900	\$ 4.50	\$ 0.07
January 2016 - March 2016	95,900	\$ 4.53	\$ 0.07
April 2016 - June 2016	93,600	\$ 4.17	\$ 0.07
July 2016 - September 2016	92,300	\$ 4.26	\$ 0.07
October 2016 - December 2016	91,900	\$ 4.42	\$ 0.07

Purchases under the gas contract were \$0.5 million and \$0.4 million for the three months ended June 30, 2013 and 2012, respectively, and \$1.0 million for each of the six-month periods ended June 30, 2013 and 2012, respectively. If the Company is unable to purchase the contracted amounts and the market price at that time is less than the contracted price, the Company would be obligated under the terms of the agreement to reimburse an amount equal to the difference between the contracted amount and the amount actually purchased, multiplied by the difference between the contract price and current spot price.

Note 4 — Inventories

Inventories at June 30, 2013 and December 31, 2012 were as follows:

	June 30, 2013	December 31, 2012
	(in thousands)	
Raw materials	\$ 3,784	\$ 2,879
Bulk paper rolls	1,780	2,111
Converted finished goods	5,858	5,463
Inventory valuation reserve	(131)	(178)
	<u>\$ 11,291</u>	<u>\$ 10,275</u>

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ORCHIDS PAPER PRODUCTS COMPANY
NOTES TO UNAUDITED INTERIM FINANCIAL STATEMENTS (continued)

Note 5 — Income Taxes

As of June 30, 2013, our annual effective income tax rate is estimated to be 29.7%. For the quarter ended June 30, 2013, our effective income tax rate was 28.4%. For the six months ended June 30, 2013, our effective income tax rate was 27.1%. This rate differs from the annual effective income tax rate due to recognition of \$222,000 of an Indian employment tax credit (“IEC”) for 2012 during the first quarter of 2013. Recognition of the IEC for 2012 was deferred until the first quarter of 2013 as the American Taxpayer Relief Act of 2012, which extended the IEC, was not signed into law by the President of the United States until 2013. For the quarter and six months ended June 30, 2012, our effective income tax rate was 27.1% and 30.1%, respectively. The estimated annual effective tax rate for 2013 and 2012 is lower than the statutory rate because of manufacturing tax credits, IECs and Oklahoma Investment Tax Credits primarily associated with our investments in a new paper machine in 2006 and new converting warehouse and new converting line that were completed in 2010.

Note 6 — Earnings per Share

During the first quarter of 2013, the Company granted restricted stock to certain employees. These awards include a nonforfeitable right to receive dividends and therefore are considered to participate in undistributed earnings with common shareholders. Therefore, the Company calculates basic and diluted earnings per common share using the two-class method, under which net earnings are allocated to each class of common stock and participating security. We expect all of the restricted stock will ultimately vest, and therefore, we have not estimated any forfeitures of restricted stock.

The computation of basic and diluted net income per common share for the three-month and six-month periods ended June 30, 2013 and 2012 is as shown in the following table. The presentation of 2012 net income per share has been conformed to presentation under the two-class method.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2013	2012	2013	2012
Net income - (\$ thousands)	\$ 3,143	\$ 2,237	\$ 6,236	\$ 4,759
Less: distributed earnings allocable to participating securities	(6)	—	(10)	—
Less: undistributed earnings allocable to participating securities	(1)	—	(2)	—
Distributed and undistributed earnings allocable to common shareholders	<u>\$ 3,136</u>	<u>\$ 2,237</u>	<u>\$ 6,224</u>	<u>\$ 4,759</u>
Weighted average shares outstanding	7,799,496	7,546,901	7,737,269	7,539,798
Dilutive effect of stock options	<u>184,312</u>	<u>296,806</u>	<u>176,920</u>	<u>302,800</u>
Weighted average shares outstanding - assuming dilution	<u>7,983,808</u>	<u>7,843,707</u>	<u>7,914,189</u>	<u>7,842,598</u>
Net income per common share:				
Basic	\$ 0.40	\$ 0.30	\$ 0.80	\$ 0.63
Diluted	\$ 0.39	\$ 0.29	\$ 0.78	\$ 0.61
Stock options not considered above because they were anti-dilutive	—	106,750	—	37,000

Note 7 — Stock Incentive Plan

In April 2005, the board of directors and the stockholders approved the 2005 Stock Incentive Plan (the “Plan”). The Plan provides for the granting of stock options and other stock based awards to employees and board members selected by the board’s compensation committee. The Plan is authorized to distribute up to 1,097,500 shares.

The Company uses the Black-Scholes option valuation model to estimate the grant date fair value of its options. Option valuation models require the input of highly subjective assumptions including the expected stock price volatility. The following table details the options granted to certain members of the board of directors and management during the six months ended June 30, 2013 and 2012.

Grant Date	Number of Shares	Exercise Price	Grant Date Fair Value	Risk-Free Interest Rate	Estimated Volatility	Dividend Yield	Expected Life
May-13	40,000	\$ 22.95	\$ 5.28	1.87%	43%	5.88%	5 years
February-13	3,750	\$ 21.695	\$ 5.68	2.02%	43%	4.61%	5 years
May-12	38,500	\$ 17.845	\$ 4.78	1.70%	44%	4.48%	5 years
Jan-12	27,000	\$ 18.77	\$ 5.42	1.97%	45%	4.26%	5 - 6 years

The Company expenses the cost of options granted over the vesting period of the option based on the grant-date fair value of the award. The Company recognized expense of \$236,000 and \$215,000 for the three months ended June 30, 2013 and 2012, respectively, and \$285,000 and \$291,000 for the six months ended June 30, 2013 and 2012, respectively, related to options granted under the Plan.

ORCHIDS PAPER PRODUCTS COMPANY
NOTES TO UNAUDITED INTERIM FINANCIAL STATEMENTS (continued)

During the six months ended June 30, 2013, the Company granted 16,000 shares of restricted stock to certain employees under the Plan. These awards were valued at the arithmetic mean of the high and low market price of the Company's stock on the grant date, which was \$21.695 per share, and vest ratably over a 3 year period beginning on the first anniversary of the grant date. The Company expenses the cost of restricted stock granted over the vesting period of the shares based on the grant-date fair value of the award. The Company recognized expense of \$29,000 and \$48,000 for the three and six month periods ended June 30, 2013, respectively, related to the shares granted under the Plan.

Note 8 — Major Customers and Concentration of Credit Risk

The Company sells its paper production in the form of parent rolls and converted products. Revenues from converted product sales and parent roll sales in the three months and six months ended June 30, 2013 and 2012 were:

	<u>Three Months Ended June 30,</u>		<u>Six Months Ended June 30,</u>	
	<u>2013</u>	<u>2012</u>	<u>2013</u>	<u>2012</u>
	(in thousands)		(in thousands)	
Converted product net sales	\$ 27,803	\$ 22,330	\$ 52,411	\$ 45,935
Parent roll net sales	1,429	2,949	3,430	5,071
Net sales	<u>\$ 29,232</u>	<u>\$ 25,279</u>	<u>\$ 55,841</u>	<u>\$ 51,006</u>

Credit risk for the Company in the three months and six months ended June 30, 2013 and 2012 was concentrated in the following customers who each comprised more than 10% of the Company's total net sales:

	<u>Three Months Ended June 30,</u>		<u>Six Months Ended June 30,</u>	
	<u>2013</u>	<u>2012</u>	<u>2013</u>	<u>2012</u>
Converted product customer 1	52%	41%	52%	43%
Converted product customer 2	11%	15%	10%	14%
Converted product customer 3	*	11%	*	11%
Parent roll customer 1	*	11%	*	*
Total percent of net sales	<u>63%</u>	<u>78%</u>	<u>62%</u>	<u>68%</u>

* Customer did not account for more than 10% of sales during the period indicated

At June 30, 2013 and December 31, 2012 the four significant customers accounted for the following amounts of the Company's accounts receivable (in thousands):

	<u>June 30,</u>		<u>December 31,</u>	
	<u>2013</u>		<u>2012</u>	
Converted product customer 1	\$ 4,654	52%	\$ 1,318	24%
Converted product customer 2	\$ 1,439	16%	\$ 1,601	30%
Converted product customer 3	*	*	\$ 589	11%
Total of accounts receivable	<u>\$ 6,093</u>	<u>68%</u>	<u>\$ 3,508</u>	<u>65%</u>

* Customer did not account for more than 10% of sales during the period indicated

Note 9 — New Accounting Pronouncements

The Financial Accounting Standards Board ("FASB") periodically issues new accounting standards in a continuing effort to improve standards of financial accounting and reporting. We have reviewed the recently issued pronouncements and concluded that there are no recently issued accounting pronouncements that the Company has yet to adopt that are expected to have a material effect on the Company's financial position, results of operations or cash flows.

The following Management's Discussion and Analysis of Financial Condition and Results of Operations contains forward-looking statements. These statements relate to, among other things:

- our business strategy;
- the market opportunity for our products, including expected demand for our products;
- our estimates regarding our capital requirements; and
- any of our other plans, objectives, and intentions contained in this report that are not historical facts.

These statements relate to future events or future financial performance, and involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to be materially different from any future results, levels of activity, performance or achievements expressed or implied by such forward-looking statements. In some cases, you can identify forward-looking statements by terminology such as "may," "should," "could," "expects," "plans," "intends," "anticipates," "believes," "estimates," "predicts," "potential" or "continue" or the negative of such terms or other comparable terminology. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. These statements are only predictions.

You should not place undue reliance on forward-looking statements because they involve known and unknown risks, uncertainties, and other factors that are, in some cases, beyond our control and that could materially affect actual results, levels of activity, performance or achievements. Factors that could materially affect our actual results, levels of activity, performance or achievements include, without limitation, those detailed under the caption "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2012, as filed with the SEC on March 11, 2013, and include the following items:

- intense competition in our markets and aggressive pricing by our competitors could force us to decrease our prices and reduce our profitability;
- a substantial percentage of our converted product revenues are attributable to a small number of customers who may decrease or cease purchases at any time;
- disruption in our supply or increase in the cost of fiber;
- increased competition in our region;
- changes in our retail trade customers' policies and increased dependence on key retailers in developed markets;
- excess supply in the market may reduce our prices;
- the availability of and prices for energy;
- failure to purchase the contracted quantity of natural gas may result in financial exposure;
- our exposure to variable interest rates;
- the loss of key personnel;
- labor interruption;
- natural disaster or other disruption to our facilities;
- ability to finance the capital requirements of our business;
- cost to comply with existing and new laws and regulations;
- failure to maintain an effective system of internal controls necessary to accurately report our financial results and prevent fraud;
- the parent roll market is a commodity market and subject to fluctuations in demand and pricing;
- indebtedness limits our free cash flow and subjects us to restrictive covenants relating to the operation of our business;
- an inability to continue to implement our business strategies; and
- inability to sell the capacity generated from our converting lines.

If any of these risks or uncertainties materialize, or if our underlying assumptions prove to be incorrect, actual results may vary significantly from what we projected. Any forward-looking statement you read in the following Management's Discussion and Analysis of Financial Condition and Results of Operations reflects our current views with respect to future events and is subject to the risks listed above and other risks, uncertainties, and assumptions relating to our operations, results of operations, growth strategy, and liquidity. We assume no obligation to publicly update or revise these forward-looking statements for any reason, whether as a result of new information, future events, or otherwise.

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Overview

We are an integrated manufacturer of tissue products serving the private label segment of the "at-home" market. We produce bulk tissue paper, known as parent rolls, and convert parent rolls into finished products, including paper towels, bathroom tissue and paper napkins. We sell any remaining parent rolls to other converters. Our core customer base consists of dollar stores and other discount retailers. By dollar stores, we mean retailers that offer a limited selection across a broad range of products at everyday low prices in a smaller store format. We have focused on the dollar stores (which are also referred to as discount retailers) and the broader discount retail market because of their overall market growth, consistent order patterns and low number of stock keeping units ("SKUs"). The at-home tissue market consists of several quality levels, including a value tier, mid-tier and premium tier. Our historical business strategy has focused on the value tier market, primarily due to the dollar stores' concentration of product offerings in that market and, to some extent, limitations of certain manufacturing equipment. As part of our growth strategy, we began to systematically invest in manufacturing assets to improve quality, expand our product offerings and strengthen our position as a low cost manufacturer. This began with the investment in a new paper machine in 2006 which provided the opportunity to produce parent rolls for value tier, mid-tier and premium tier converted products and improved our cost structure. Further, we undertook an expansion project that included the purchase and installation of a new converting line and the construction of a new converted product warehouse in mid-2010. This project had three main objectives: increase the capacity of our converting operation, provide the capability to produce higher-quality mid-tier and premium tier converted products

and reduce warehousing costs by centralizing all warehousing and shipping. While we have customers located throughout the United States, most of our products are distributed within an approximate 900-mile radius of our Oklahoma facility. However, our sales efforts are focused on an area within approximately 500 miles of our facility in northeast Oklahoma, which includes Texas, Oklahoma, Kansas, Missouri, Arkansas, Nebraska and Iowa, as we believe this radius maximizes our freight cost advantage over our competitors. Because we are one of the few tissue paper manufacturers in this area, we typically have lower freight costs to our customers' distribution centers located in our target region. At-home tissue market growth has historically been closely correlated to population growth and as such, performs well in a variety of economic conditions. Our target region has experienced strong population growth in the past ten years relative to the national average, and these trends are expected to continue.

Our products are sold primarily under our customers' private labels and, to a lesser extent, under our brand names such as Colortex®, My Size®, Velvet®, Big Mopper®, Soft & Fluffy®, Tackle®, Noble® and Linen Soft®. All of our converted product revenue is derived through truck load purchase orders from our customers. Parent roll revenue is derived from purchase orders that generally cover a one-month time period. We do not have supply contracts with any of our customers, which is normal practice within our industry. Because our product is a daily consumable item, the order stream from our customer base is fairly consistent with no significant seasonal fluctuations. Changes in the national economy, in general, do not materially affect the market for our converted products.

Our profitability depends on several key factors, including:

- the market price of our product;
- the cost of fiber used in producing paper;
- the efficiency of operations in both our paper mill and converting facility; and
- the cost of energy.

The private label market of the tissue industry is highly competitive, and discount retail customers are extremely price sensitive. As a result, it is difficult to affect price increases. We expect these competitive conditions to continue.

Background

Since June 2006, when we began operations of a new paper machine, our paper-making capacity of approximately 57,000 tons per year has exceeded the demand requirements of our converting operations. We sell the excess supply into the market in the form of parent rolls. We adjust our paper making production based on our internal converting needs for parent rolls and the open market demand for parent rolls. Parent rolls are a commodity product and thus are subject to market pricing. We plan to continue to sell any excess parent roll capacity on the open market as long as market pricing is profitable. When converting production requirements exceed paper mill capacity, we will purchase bulk rolls in the open market to meet those converting requirements.

Our parent rolls are converted into paper towels, bathroom tissue and napkins in our adjacent converting facility. Our eleven converting lines currently have a total annual estimated capacity of approximately 11.5 million cases of finished tissue products, depending upon the mix of converted products produced, including the product configurations. Our strategy is to sell all of our parent roll capacity as converted products, which generally carry higher margins than parent rolls. To help achieve that goal, we are placing significant focus on improving our sales efforts to sell all of our converting capacity. In addition, we continue to focus considerable efforts to improve our converting efficiencies.

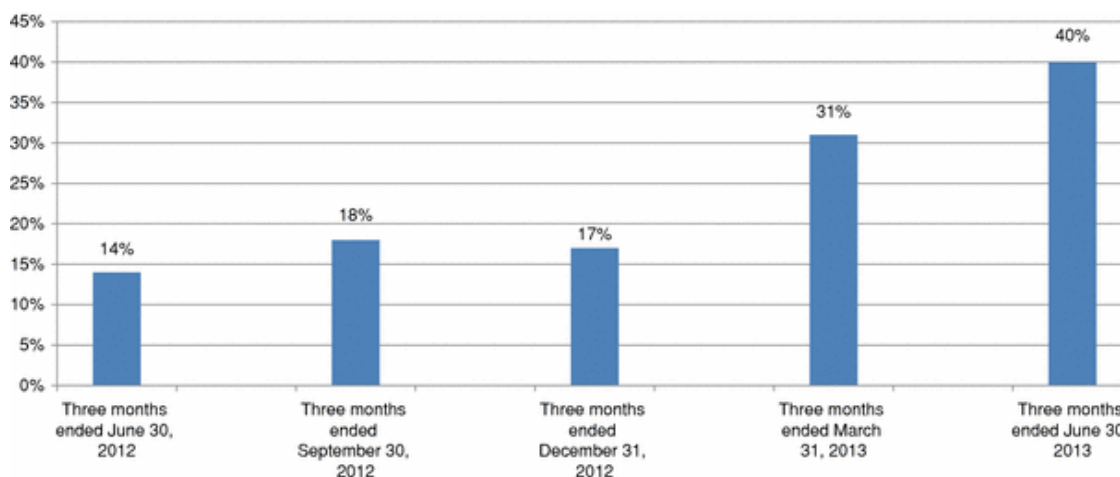
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Our strategy is to expand our position as a low cost provider of high-quality private label tissue products to the growing discount retail channel while leveraging our competitive advantages to increase our presence in the mid-tier and premium tier markets with the discount retail channel as well as other retail channels. This will be accomplished through the expansion of our product offerings through new product development, our continued high service levels and increased total manufacturing capacity.

We are implementing this strategy through our key initiatives set forth below:

- maintain and strengthen our core customer relationships;
- improve the product quality of our higher tier offerings to meet and or exceed customers' required attributes;
- increase our flexibility to meet a wider array of customer needs;
- further expand our customer base in other retail channels; and
- continue to improve operating efficiencies and reduce manufacturing costs.

We continue to focus our efforts on growth of our converted product sales and expansion of our product offerings through development of mid-tier and premium tier products. The following graph shows shipments of our mid-tier and premium tier products as a percentage of total cases shipped:



Since our inception in 1998, we have strategically expanded capacity and capability in both paper manufacturing and finished product converting to meet market demand and customers' quality requirements. In 2010, we increased our annual converting capacity with the installation of a new converting line, which, along with other strategic investments, increased our annual converting capacity to 11.5 million cases per year, depending upon the mix of converted products produced, including the product configurations. This additional converting capacity will enable us to both increase sales of existing products and to provide the flexibility to manufacture higher tier products for sales to our core customer base and into new retail channels.

Although we have an annual estimated converting capacity of approximately 11.5 million cases, our in-house supply of parent rolls provides enough to convert approximately 9.5 million cases. In order to convert at an annual capacity above approximately 9.5 million cases, we would have to supplement our supplies by purchasing parent rolls in the open market, which we believe would have an unfavorable impact on our gross profit margin.

Comparative Three-Month Periods Ended June 30, 2013 and 2012

Net Sales

	<u>Three Months Ended June 30,</u>	
	<u>2013</u>	<u>2012</u>
(in thousands, except tons)		
Converted product net sales	\$ 27,803	\$ 22,330
Parent roll net sales	1,429	2,949
Net sales	<u>\$ 29,232</u>	<u>\$ 25,279</u>
Converted product tons shipped	13,354	10,901
Parent roll tons shipped	1,364	3,014
Total tons shipped	14,718	13,915

Net sales in the quarter ended June 30, 2013, increased 16% to \$29.2 million, compared to \$25.3 million in the same period of 2012. Net sales figures represent the gross selling price, including freight, less discounts and pricing allowances. The increase in net sales is due to a \$5.5 million increase in net sales of converted product which was partially offset by a \$1.5 million decrease in parent roll net sales.

Net sales of converted product increased in the quarter ended June 30, 2013, by \$5.5 million, or 25%, to \$27.8 million compared to \$22.3 million in the same period last year. The increase in net sales of converted product is primarily the result of a 23% increase in the tonnage shipped and a 2% increase in the net selling price per ton. The increase in converted product tonnage shipped is primarily due to increased sales of our mid and premium tier product lines to both existing and new customers. The increase in net selling price per ton is primarily due to a change in product mix towards the mid and premium tier markets.

Net sales of parent rolls decreased \$1.5 million, or 52%, to \$1.4 million in the quarter ended June 30, 2013, compared to \$2.9 million in the same period last year. Net sales of parent rolls decreased due to the higher requirements by our converting operation resulting in less excess paper available to sell in parent roll form. The higher converting requirements are due to the increased sales of converted product. Tonnage shipments decreased 55%, which was somewhat offset by a 7% increase in the net selling price per ton of parent rolls. The improvement in parent roll net selling prices is due to the stronger parent roll market and market reaction to higher virgin fiber prices.

Cost of Sales

	<u>Three Months Ended June 30,</u>	
	<u>2013</u>	<u>2012</u>
(in thousands, except gross profit margin % and paper cost per ton consumed)		

Cost of paper	\$	10,691	\$	10,664
Non-paper materials, labor, supplies, etc.		9,664		7,178
Sub-total		20,355		17,842
Depreciation		1,881		1,833
Cost of sales	\$	22,236	\$	19,675
Gross profit	\$	6,996	\$	5,604
Gross profit margin %		23.9%		22.2%
Total paper cost per ton consumed	\$	771	\$	769

The major components of cost of sales are the cost of internally produced paper, raw materials, direct labor and benefits, freight costs of products shipped to customers, insurance, repairs and maintenance, energy, utilities and depreciation.

Cost of sales increased 13% to \$22.2 million, compared to \$19.7 million in the same period of 2012, due to the previously discussed higher net sales amounts. Outside warehousing expense and increased fiber costs due to mix were offset by reduced paper production costs. As a percentage of net sales, cost of sales decreased to 76.1% in the 2013 quarter from 77.8% in the 2012 quarter. Cost of sales as a percentage of net sales for the second quarter of 2013 was favorable to the prior year quarter due to a higher percentage of converted product sales, lower paper production costs and lower recycled fiber costs being partially offset by external warehousing costs.

Our overall cost of paper in the second quarter of 2013 was \$771 per ton, an increase of \$2 per ton compared to the same period in 2012. Paper production costs increased primarily due to a higher percentage of virgin fiber utilized to meet the quality characteristics of our mid and premium tier products which was partially offset by lower maintenance and repair costs and the effects of favorable production rates on fixed cost absorption. Average recycled fiber prices decreased approximately 8% in the second quarter of 2013 compared to the same quarter in 2012, thereby decreasing our cost of sales by approximately \$251,000 in the quarter-over-quarter comparison. Virgin fibers represented approximately 18% of our fiber consumption in the 2013 quarter compared with approximately 1% in the prior year quarter. Maintenance and repair costs in the paper mill were approximately \$246,000 lower in the 2013 quarter than in the prior year quarter.

Excluding the effects of depreciation and external warehousing costs, converting production costs on a per unit basis were flat in the 2013 quarter compared to the 2012 quarter. The Company incurred \$448,000 of outside warehousing expense during the 2013 quarter; costs that were not incurred during the 2012 quarter. As previously discussed, the percentage of our parent roll production sold as converted products increased in the second quarter of 2013 compared to the same quarter last year, which had a positive effect on our gross margin percentage as converted product sales generally generate a higher margin than the sale of parent rolls.

Gross Profit

Gross profit in the quarter ended June 30, 2013, increased \$1.4 million, or 25%, to \$7.0 million compared to \$5.6 million in the same period last year. Gross profit as a percentage of net sales in the 2013 quarter was 23.9% compared to 22.2% in the 2012 quarter. The gross profit increase as a percent of net sales was primarily the result of a higher percentage of converted product sales, lower paper production costs, and lower recycled fiber costs.

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Selling, General and Administrative Expenses

	Three Months Ended June 30,	
	2013	2012
(in thousands, except SG&A as a % of net sales)		
Commission expense	\$ 492	\$ 339
Other S,G&A expenses	2,025	1,773
Selling, General & Adm exp	\$ 2,517	\$ 2,112
SG&A as a % of net sales	8.6%	8.4%

Selling, general and administrative expenses include salaries, commissions to brokers and other miscellaneous expenses. Selling, general and administrative expenses increased \$405,000, or 19%, in the quarter ended June 30, 2013 as compared to the same period in 2012 primarily due to: (i) higher commission expense due to the improved level of converted product sales, (ii) higher artwork and packaging related expenditures, (iii) higher director related fees and expenses, including higher stock option expense resulting from increased options issued and a higher market price of the Company's stock and (iv) higher recruitment and relocation expenses, which were partially offset by lower professional fees. As a percentage of net sales, selling, general and administrative expenses increased to 8.6% in the second quarter of 2013 compared to 8.4% in the same period of 2012.

Operating Income

As a result of the foregoing factors, operating income for the quarter ended June 30, 2013, was \$4.5 million compared to operating income of \$3.5 million for the same period of 2012.

Interest Expense and Other Income

	2013		2012	
	(in thousands)			
Interest expense	\$	95	\$	102
Other (income) expense, net	\$	(7)	\$	323
Income before income taxes	\$	4,391	\$	3,067

Interest expense includes interest on all debt and amortization of deferred debt issuance costs. Interest expense decreased \$7,000 to \$95,000 in the quarter ended June 30, 2013, compared to \$102,000 in the quarter ended June 30, 2012. The decrease in interest expense resulted from lower average borrowing levels. Other expense for the quarter ended June 30, 2012 included a loss of approximately \$336,000 due to the disposal of several pieces of converting equipment, including a wrapper and two case packers, following the completion of three capital expenditure projects totaling \$2.1 million during the quarter.

Income Before Income Taxes

As a result of the foregoing factors, income before income taxes increased \$1.3 million to \$4.4 million in the quarter ended June 30, 2013, compared to \$3.1 million in the same period in 2012.

Income Tax Provision

As of June 30, 2013, we estimate our annual effective income tax rate to be 29.7%. This compares to the 31.1% we estimated as of the end of the first quarter of 2013. As a result, for the quarter ended June 30, 2013, our effective income tax rate was 28.4%, while our effective income tax rate was 27.1% for the quarter ended June 30, 2012. These rates are lower than the statutory rate because of manufacturing tax credits, Indian employment tax credits ("IECs") and Oklahoma Investment Tax Credits primarily associated with our investments in a new paper machine in 2006 and new converting warehouse and new converting line that were completed in 2010.

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Comparative Six-Month Periods Ended June 30, 2013 and 2012

Net Sales

	Six Months Ended June 30,	
	2013	2012
	(in thousands, except tons)	
Converted product net sales	\$ 52,411	\$ 45,935
Parent roll net sales	3,430	5,071
Net sales	<u>\$ 55,841</u>	<u>\$ 51,006</u>
Converted product tons shipped	25,276	22,188
Parent roll tons shipped	3,305	5,196
Total tons shipped	<u>28,581</u>	<u>27,384</u>

Net sales increased 9% to \$55.8 million in the six months ended June 30, 2013, compared to \$51.0 million in the same period of 2012. Net sales figures represent gross selling price, including freight, less discounts and pricing allowances. The increase in net sales is due to a \$6.5 million increase in the sales of converted products being partially offset by a \$1.6 million decrease in the net sales of parent rolls.

Net sales of converted product increased for the six months ended June 30, 2013, by \$6.5 million, or 14%, to \$52.4 million compared to \$45.9 million in the same period last year. The increase in net sales of converted products is the result of a 14% increase in the tons of product shipped. Net selling price remained flat when compared to the same period last year. Sales of new mid and premium tier products to both existing and new customers and increased demand for existing products from current customers were the primary reasons for the increased shipments.

Net sales of parent rolls decreased \$1.6 million, or 32%, to \$3.4 million in the six months ended June 30, 2013, compared to \$5.1 million in the same period last year. Net sales of parent rolls decreased due to a 36% decrease in parent roll tonnage shipped offset by a 6% increase in net selling prices. Higher converting requirements due to increased sales were the primary reason for the decreased parent roll sales, while net selling prices increased for the same reasons cited in the quarterly discussion.

Cost of Sales

	Six Months Ended June 30,	
	2013	2012
	(in thousands, except gross profit margin % and paper cost per ton consumed)	
Cost of paper	\$ 21,211	\$ 20,914
Non-paper materials, labor, supplies, etc.	17,333	14,706
Sub-total	38,544	35,620
Depreciation	3,774	3,649
Cost of sales	<u>\$ 42,318</u>	<u>\$ 39,269</u>

Gross profit	\$	13,523	\$	11,737
Gross profit margin %		24.2%		23.0%
Total paper cost per ton consumed	\$	751	\$	750

The major components of cost of sales are the cost of internally produced paper, raw materials, direct labor and benefits, freight costs of products shipped to customers, insurance, repairs and maintenance, energy, utilities and depreciation.

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Cost of sales increased approximately \$3.0 million, or 8%, to \$42.3 million for the six months ended June 30, 2013, compared to \$39.3 million in the same period of 2012, due to higher net sales levels. As a percentage of net sales, cost of sales decreased to 75.8% of net sales in the six-month period ended June 30, 2013, compared to 77.0% of net sales in the six-month period ended June 30, 2012. The decrease in cost of sales as a percentage of net sales in the six months ended June 30, 2013, was primarily attributed to a higher percentage of converted product shipments and lower paper manufacturing costs.

In the six months ended June 30, 2013, our overall cost of paper was \$751 per ton, which was flat when compared to the same period in 2012. Our cost per ton increased due to higher percentage of virgin fiber utilized due to mix shift to mid and premium tier products, which was offset by lower maintenance and repair costs and lower utility costs. Average recycled fiber prices decreased 11% from the 2012 period to the 2013 period, which reduced the cost of our recycled fiber by approximately \$601,000 in the first six months of 2013 compared to the same period of 2012. Maintenance and repair costs decreased by approximately \$363,000 in the 2013 period compared to the prior year period.

Converting production costs on a per unit basis, excluding depreciation and external warehousing costs, remained flat during the first six months of 2013 compared to the same period in 2012. The Company incurred \$623,000 of outside warehousing expense during 2013, which was not incurred during the prior year period. However, the previously discussed decrease in the percentage of our parent roll production sold as parent rolls positively affected our gross margin percentage.

Gross Profit

Gross profit in the six months ended June 30, 2013, increased \$1.8 million, or 15%, to \$13.5 million compared to \$11.7 million in the same period last year. Gross profit as a percentage of net sales in the six-month period ended June 30, 2013, was 24.2% compared to 23.0% in the same period in 2012. The increase in gross profit as a percent of net sales was primarily due to a higher percentage of converted product sales and lower paper production costs.

Selling, General and Administrative Expenses

	Six Months Ended June 30,	
	2013	2012
	(in thousands, except SG&A as a % of net sales)	
Commission expense	\$ 913	\$ 704
Other S,G&A expenses	3,877	3,695
Selling, General & Adm exp	\$ 4,790	\$ 4,399
SG&A as a % of net sales	8.6%	8.6%

Selling, general and administrative expenses include salaries, commissions to brokers and other miscellaneous expenses. Selling, general and administrative expenses increased \$391,000, or 9%, to \$4.8 million in the six months ended June 30, 2013 compared to \$4.4 million in the comparable 2012 period, mainly as a result of higher commission expense due to the higher level of converted product sales, higher artwork and packaging related expenditures and higher director related fees and expenses, including stock option expense, which were partially offset by lower professional fees. As a percentage of net sales, selling, general and administrative expenses remained flat at 8.6% in the six months ended June 30, 2013 compared to the same period of 2012.

Operating Income

As a result of the foregoing factors, operating income for the six months ended June 30, 2013 was \$8.7 million compared to operating income of \$7.3 million for the same period of 2012.

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Interest Expense and Other Income

	Six Months Ended June 30,	
	2013	2012
	(in thousands)	
Interest expense	\$ 188	\$ 209

Other (income) expense, net	\$	(12)	\$	316
Income before income taxes	\$	8,557	\$	6,813

Interest expense decreased by \$21,000 to \$188,000 in the six months ended June 30, 2013, compared to \$209,000 in the same period in the prior year. The decrease was primarily attributable to lower balances of outstanding debt during 2013 due to regular principal payments made in accordance with our credit agreement. Other expense for the six months ended June 30, 2012 included the previously discussed \$336,000 loss related to equipment disposals.

Income Before Income Taxes

As a result of the foregoing factors, income before income taxes increased \$1.7 million to \$8.6 million in the six months ended June 30, 2013, compared to \$6.8 million in the same period in 2012.

Income Tax Provision

As of June 30, 2013, our annual effective income tax rate is estimated to be 29.7%. For the six months ended June 30, 2013, our effective income tax rate was 27.1%. This rate differs from the annual effective income tax rate due to recognition of \$222,000 of an IEC for 2012 during the first quarter of 2013. Recognition of the IEC for 2012 was deferred until the first quarter of 2013 as the American Taxpayer Relief Act of 2012, which extended the IEC, was not signed into law by the President of the United States until 2013. For the six months ended June 30, 2012, our effective income tax rate was 30.1%. The effective income tax rates for 2013 and 2012 are lower than the statutory rate because of manufacturing credits, IECs and Oklahoma Investment Tax Credits associated with our investments in a new paper machine in 2006, and a new converting warehouse and new converting line completed in 2010.

Liquidity and Capital Resources

Liquidity refers to the liquid financial assets available to fund our business operations and pay for near-term obligations. These liquid financial assets consist of cash and short-term investments as well as unused borrowing capacity under our revolving credit facility. Our cash requirements have historically been satisfied through a combination of cash flows from operations and debt financings.

During the six months ended June 30, 2013, cash decreased \$3.2 million to \$2.6 million at June 30, 2013. During the 2013 period, we incurred \$5.6 million of capital expenditures and paid \$5.1 million in dividends to stockholders.

As of June 30, 2013, total debt outstanding was \$15.7 million. Cash and short-term investments as of June 30, 2013, totaled \$7.6 million, resulting in a net debt level of \$8.1 million. This compares to \$16.2 million in total debt and \$10.8 million in total cash and short-term investments as of December 31, 2012, resulting in a Net Debt level of \$5.5 million. There are no amounts outstanding under our \$18.0 million revolving line of credit.

The following table summarizes key cash flow information for the six-month periods ended June 30, 2013 and 2012:

	<u>Six Months Ended June 30,</u>	
	<u>2013</u>	<u>2012</u>
	(in thousands)	
Cash flows provided by (used in):		
Operating activities	\$ 5,919	\$ 7,918
Investing activities	\$ (5,557)	\$ (6,150)
Financing activities	\$ (3,531)	\$ (3,300)

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Cash flows provided by operating activities was \$5.9 million in the six-month period ended June 30, 2013, which primarily resulted from earnings before non-cash charges, which were partially offset by increases in accounts receivable and inventories. The increase in accounts receivable is primarily related to the timing of sales and related cash receipts. The increase in inventories is primarily related to a change in product mix toward mid and premium tier products, which resulted in higher inventories of kraft fiber and the related increased valuation of finished goods inventories.

Cash flows used in investing activities was \$5.6 million in the first six months of 2013 as a result of \$5.6 million in expenditures on capital projects.

Cash flows used in financing activities was \$3.5 million in the six-month period ended June 30, 2013, primarily as a result of \$5.1 million of cash dividends paid to stockholders, which were partially offset by \$2.1 million of proceeds and excess tax benefits from the exercise of stock options. While we expect to continue to declare quarterly dividends, the payment of future dividends is at the discretion of the Board of Directors and the timing and amount of any future dividends will depend upon earnings, cash requirements and financial condition of the Company.

Cash flows provided by operating activities was \$7.9 million in the six-month period ended June 30, 2012, which primarily resulted from

earnings before non-cash charges, collection of other receivables and a decrease in accrued liabilities, partially offset by increases in accounts receivable and inventories. The increase in accounts receivable is primarily related to the timing of sales. The increase in inventories is primarily related to a change in product mix toward mid-tier products and lower than anticipated sales levels in June. The increase in accrued liabilities is primarily due to timing.

Cash flows used in investing activities was \$6.1 million in the first six months of 2012 as the result of \$3.1 million in expenditures on capital projects and the purchase of \$3.0 million of short-term investments.

Cash flows used in financing activities was \$3.3 million in the six-month period ended June 30, 2012, primarily as the result of \$3.0 million of cash dividends paid to stockholders.

Critical Accounting Policies and Estimates

The preparation of our financial statements and related disclosures in conformity with GAAP in the United States requires management to make estimates and judgments that affect our reported amounts of assets and liabilities, revenue and expense, and related disclosures of contingent assets and liabilities. On an ongoing basis, we evaluate our estimates and assumptions based upon historical experience and various other factors and circumstances. Management believes that our estimates and assumptions are reasonable under the circumstances; however, actual results may vary from these estimates and assumptions under different future circumstances. We have identified the following critical accounting policies that affect the more significant judgments and estimates used in the preparation of our financial statements:

Accounts Receivable. Accounts receivable consist of amounts due to us from normal business activities. Our management must make estimates of accounts receivable that will not be collected. We perform ongoing credit evaluations of our customers and adjust credit limits based upon payment history and the customer's creditworthiness as determined by our review of their current credit information. We continuously monitor collections and payments from our customers and maintain an allowance for estimated losses based on historical experience and specific customer collection issues that we have identified. Trade receivables are written-off when all reasonable collection efforts have been exhausted, including, but not limited to, external third-party collection efforts and litigation. While such credit losses have historically been within management's expectations and the provisions established, there can be no assurance that we will continue to experience the same credit loss rates as in the past. During the six-month period ended June 30, 2013, \$35,000 of accounts receivable not expected to be collected were written off against the allowance for doubtful accounts, while the provision was increased \$30,000 based on historical experience and an evaluation of the quality of existing accounts receivable, resulting in a net decrease of \$5,000 in the provision. During the six-month period ended June 30, 2012, no amounts were written off against the allowance for doubtful accounts and the provision was decreased by \$20,000 based on historical experience and an evaluation of the quality of existing accounts receivable, resulting in a net decrease of \$20,000 in the provision. There were no recoveries credited during the first six months of 2013 or 2012.

Inventory. Our inventory consists of converted finished goods, bulk paper rolls and raw materials and is stated at the lower of cost or market. Our management regularly reviews inventory quantities on hand and records a provision for excess and obsolete inventory based on the age of the inventory and forecasts of product demand. A significant decrease in demand could result in an increase in the amount of excess inventory quantities on hand. During the first six months of 2013, the inventory allowance was increased \$2,000 based on a specific review of estimated slow moving or obsolete inventory items and was decreased \$49,000 due to actual write-offs of obsolete inventory items, resulting in a net decrease in the allowance of \$47,000. During the first six months of 2012, the inventory allowance was increased \$36,000 based on a specific review of estimated slow moving or obsolete inventory items and was decreased \$40,000 due to actual write-offs of obsolete inventory items, resulting in a net decrease in the allowance of \$4,000.

Property, plant and equipment. Significant capital expenditures are required to establish and maintain a paper mill and converting facility. Our property, plant and equipment consists of land, buildings and improvements, machinery and equipment, vehicles, parts and spares and construction-in-process, which are stated at cost, net of accumulated depreciation. Depreciation of property, plant and equipment is calculated using the straight-line method over the estimated useful lives of the assets. Our management regularly reviews estimated useful lives to determine whether any changes are necessary to reflect the related assets' actual productive lives. The lives of our property, plant and equipment currently range from 2.5 to 40 years.

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New Accounting Pronouncements

Refer to the discussion of recently adopted/issued accounting pronouncements under Part I, Notes to Unaudited Interim Financial Statements Note 9 — New Accounting Pronouncements.

Non-GAAP Discussion

In addition to our GAAP results, we also consider non-GAAP measures of our performance for a number of purposes.

We use EBITDA as a supplemental measure of our performance that is not required by, or presented in accordance with GAAP. EBITDA should not be considered as an alternative to net income, operating income or any other performance measure derived in accordance with GAAP, or as an alternative to cash flows from operating activities or a measure of our liquidity.

EBITDA represents net income before net interest expense, income tax expense, depreciation and amortization. Amortization of deferred debt issuance costs is included in net interest expense. We believe EBITDA facilitates operating performance comparisons from period

to period and company to company by eliminating potential differences caused by variations in capital structures (affecting relative interest expense), tax positions (such as the impact on periods or companies of changes in effective tax rates or net operating losses) and the age and book depreciation of facilities and equipment (affecting relative depreciation expense).

EBITDA has limitations as an analytical tool, and you should not consider it in isolation, or as a substitute for any of our results as reported under GAAP. Some of these limitations are:

- it does not reflect our cash expenditures for capital assets;
- it does not reflect changes in, or cash requirements for, our working capital requirements;
- it does not reflect cash requirements for cash dividend payments;
- it does not reflect the interest expense, or the cash requirements necessary to service interest or principal payments on our indebtedness;
- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will often have to be replaced in the future, and EBITDA does not reflect cash requirements for such replacements; and
- other companies, including other companies in our industry, may calculate these measures differently than we do, limiting their usefulness as a comparative measure.

Because of these limitations, EBITDA should not be considered as a measure of discretionary cash available to us to invest in the growth of our business or to reduce our indebtedness. We compensate for these limitations by relying primarily on our GAAP results and using EBITDA on a supplemental basis.

The following table reconciles EBITDA to net income for the three months ended June 30, 2013 and 2012:

	Three Months Ended June 30,	
	2013	2012
	(in thousands, except % of net sales)	
Net income	\$ 3,143	\$ 2,237
Plus: Interest expense, net	95	102
Plus: Income tax expense	1,248	830
Plus: Depreciation	1,881	1,833
EBITDA	\$ 6,367	\$ 5,002
% of net sales	21.8%	19.8%

EBITDA increased \$1.4 million to \$6.4 million in the quarter ended June 30, 2013, compared to \$5.0 million in the same period in 2012. EBITDA as a percent of net sales increased to 21.8% in the second quarter of 2013 from 19.8% in the second quarter of 2012. The foregoing factors discussed in the net sales, cost of sales and selling, general and administrative expenses sections are the reasons for the increase.

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The following table reconciles EBITDA to net income for the six months ended June 30, 2013 and 2012:

	Six Months Ended June 30,	
	2013	2012
	(in thousands, except % of net sales)	
Net income	\$ 6,236	\$ 4,759
Plus: Interest expense, net	188	209
Plus: Income tax expense	2,321	2,054
Plus: Depreciation	3,774	3,649
EBITDA	\$ 12,519	\$ 10,671
% of net sales	22.4%	20.9%

EBITDA increased \$1.8 million to \$12.5 million in the six months ended June 30, 2013, compared to \$10.7 million in the same period of 2012. EBITDA as a percent of net sales increased to 22.4% in the current six-month period from 20.9% in the prior year six-month period. The foregoing factors discussed in the net sales, cost of sales and selling, general and administrative sections are the reasons for these changes.

We use Net Debt as a supplemental measure of our leverage that is not required by, or presented in accordance with GAAP. Net Debt should not be considered as an alternative to total debt, total liabilities or any other performance measure derived in accordance with GAAP. Net Debt represents total debt reduced by cash and short-term investments. We use this figure as a means to evaluate our ability to repay our indebtedness and to measure the risk of our financial structure.

Net Debt represents the amount that cash and short-term investments is less than total debt of the Company. The amounts included in the Net Debt calculation are derived from amounts included in the historical Balance Sheets. We have reported Net Debt because we regularly review Net Debt as a measure of the Company's leverage. However, the Net Debt measure presented in this document may not be comparable to similarly titled measures reported by other companies due to differences in the components of the calculation.

Net Debt increased from \$5.5 million on December 31, 2012, to \$8.1 million on June 30, 2013, as a result of a decrease in total debt being more than offset by a decrease in our total cash and short-term investments. The decrease in total debt is due to the required principal

payments of our debt. The decrease in the total cash and short-term investment balances is due to cash received from operating activities being more than offset by capital expenditures and dividends paid to stockholders.

The following table presents Net Debt as of June 30, 2013, and December 31, 2012:

	As of	
	June 30, 2013	December 31, 2012
	(in thousands)	
Current portion long-term debt	\$ 1,152	\$ 1,152
Long-term debt	14,503	15,079
Total debt	15,655	16,231
Less: Cash	(2,565)	(5,734)
Less: Short-term investments	(5,031)	(5,027)
Net debt	<u>\$ 8,059</u>	<u>\$ 5,470</u>

ITEM 3. Quantitative and Qualitative Disclosures about Market Risk

There has been no material change in the information provided in response to Item 7A of the Company's Form 10-K for the year ended December 31, 2012.

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ITEM 4. Controls and Procedures

Our management, under the supervision and with the participation of our chief executive officer and our chief financial officer, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended), as of the end of the period covered by this Quarterly Report on Form 10-Q. Any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives.

Based on such evaluation, our chief executive officer and our chief financial officer have concluded that our disclosure controls and procedures were effective as of June 30, 2013.

There were no changes in the Company's internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) during the quarter ended June 30, 2013, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. Legal Proceedings

In management's opinion, as of the date of this report, the Company is not engaged in legal proceedings which individually or in the aggregate are expected to have a materially adverse effect on the Company's results of operations or financial condition. Further, management is not aware that any such proceedings are being contemplated or threatened.

ITEM 1A. Risk Factors

As of the date of this filing, there have been no material changes from the risk factors disclosed in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2012 as filed with the SEC on March 11, 2013. We operate in a changing environment that involves numerous known and unknown risks and uncertainties that could materially affect our operations. The risks, uncertainties and other factors set forth in our Annual Report on Form 10-K may cause our actual results, performances and achievements to be materially different from those expressed or implied by our forward-looking statements. If any of these risks or events occur, our business, financial condition or results of operations may be adversely affected.

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

(a) Unregistered Sales of Equity Securities

None.

(b) Initial Public Offering and Use of Proceeds from the Sale of Registered Securities

None.

(c) Repurchases of Equity Securities

We do not have any programs to repurchase shares of our common stock and no such repurchases were made during the three or six months ended June 30, 2013.

ITEM 3. Defaults Upon Senior Securities

None.

ITEM 4. Mine Safety Disclosures

Not applicable.

ITEM 5. Other Information

None.

ITEM 6. Exhibits

See the Exhibit Index following the signature page to this Form 10-Q, which Exhibit Index is hereby incorporated by reference herein.

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SIGNATURES

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

ORCHIDS PAPER PRODUCTS COMPANY

Date: July 31, 2013

By: /s/ Keith R. Schroeder
Keith R. Schroeder
Chief Financial Officer
(On behalf of the registrant and as Chief Accounting Officer)

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Exhibit Index

<u>Exhibit</u>	<u>Description</u>
3.1	As amended copy of Amended and Restated Certificate of Incorporation of the Registrant dated April 14, 2005, incorporated by reference to Exhibit 3.1 to the Registrant's Registration Statement on Form S-1 (SEC Accession No. 0000950137-05-004608) filed with the SEC on April 19, 2005, which was amended by that Certificate of Amendment to Amended and Restated Certificate of Incorporation of the Registrant dated June 19, 2007, incorporated by reference to Exhibit 3.1.1. to the Registrant's Form 10-Q (SEC Accession No. 0000950137-07-012340) filed with the SEC on August 14, 2007; and which was further amended by that Certificate of Amendment to Amended and Restated Certificate of Incorporation of the Registrant dated May 17, 2013, incorporated by reference to Exhibit 3.1 to the Registrant's Form 8-K (SEC Accession No. 0001144204-13-030242) filed with the SEC on May 17, 2013.
3.2	As amended copy of Amended and Restated Bylaws of the Registrant effective April 14, 2005, incorporated by reference to Exhibit 3.2 to the Registrant's Registration Statement on Form S-1 (SEC Accession No. 0000950137-05-004608) filed with the SEC on April 19, 2005, which was amended by that Amendment to Amended and Restated Bylaws of the Registrant, incorporated by reference to Exhibit 3.2 to the Registrant's Form 8-K (SEC Accession No. 0001144204-13-030242) filed with the SEC on May 17, 2013.
31.1	Certification of Chief Executive Officer Pursuant to Section 302.
31.2	Certification of Chief Financial Officer Pursuant to Section 302.
32.1	Certification of Chief Executive Officer Pursuant to Section 906.
32.2	Certification of Chief Financial Officer Pursuant to Section 906.
101	The following financial information from Orchids Paper Products Company's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2013, formatted in XBRL (eXtensible Business Reporting Language): (i) Statements of Income for the three months ended June 30, 2013 and 2012 and the six months ended June 30, 2013 and 2012, (ii) Balance Sheets as of June 30, 2013 and December 31, 2012, (iii) Statements of Cash Flows for the six months ended June 30, 2013 and 2012, and (iv) Notes to Unaudited Interim Financial Statements.

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AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
ORCHIDS PAPER PRODUCTS COMPANY
AS AMENDED

ARTICLE FIRST

The name of the Corporation is Orchids Paper Products Company.

ARTICLE SECOND

The address of the registered office of the Corporation in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, Delaware, New Castle County, 19808. The name and address of its registered agent is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware, New Castle County, 19808.

ARTICLE THIRD

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

ARTICLE FOURTH

1. AUTHORIZED STOCK. The total number of shares of all classes of stock which the Corporation shall have authority to issue is 25,000,000 shares of Common Stock, par value \$.001 per share (the "Common Stock").

2. COMMON STOCK. The powers, preferences and rights, and the qualifications, limitations and restrictions, of the Common Stock are as follows:

(a) NO CUMULATIVE VOTING. The holders of shares of Common Stock shall not have cumulative voting rights.

(b) DIVIDENDS; STOCK SPLITS. Subject to any other provisions of this Amended and Restated Certificate of Incorporation, as it may be amended from time to time, the holders of Common Stock shall be entitled to receive such dividends and other distributions in cash, stock or property of the Corporation when, as and if declared thereon by the Board of Directors from time to time out of assets or funds of the Corporation legally available therefor.

(c) LIQUIDATION, DISSOLUTION, ETC. In the event of any liquidation, dissolution or winding up (either voluntary or involuntary) of the Corporation, the holders of shares of Common Stock shall be entitled to receive the assets and funds of the Corporation available for distribution after payments to creditors in proportion to the number of shares held by them. For purposes of this paragraph 2(c), the voluntary sale, conveyance, lease, exchange or transfer (for cash, shares of stock, securities, or other consideration) of all or substantially all of the assets of the Corporation or a consolidation or merger of the Corporation with one or more other corporations or other persons (whether or not the Corporation is the corporation surviving

such consolidation or merger) shall not be deemed to be a liquidation, dissolution or winding up, voluntary or involuntary.

(d) MERGER, ETC. In the event of a merger or consolidation of the Corporation with or into another entity (whether or not the Corporation is the surviving entity), the holders of each share of Common Stock shall be entitled to receive the same per share consideration on a per share basis.

(e) VOTING. At every meeting of the stockholders of the Corporation in connection with the election of directors and all other matters submitted to a vote of stockholders, every holder of Common Stock is entitled to one vote in person or by proxy for each share of Common Stock registered in the name of the holder on the transfer books of the Corporation. Except as otherwise required by law, the holders of Common Stock shall vote together as a single class on all matters submitted to a vote of stockholders of the Corporation.

(f) NO PREEMPTIVE OR SUBSCRIPTION RIGHTS. No holder of shares of Common Stock shall be entitled to preemptive or subscription rights.

3. POWER TO SELL AND PURCHASE SHARES. Subject to the requirements of applicable law, the Corporation shall have the power to issue and sell all or any part of any shares of any class of stock hereon or hereafter authorized to such persons, and for such consideration, as the Board of Directors shall from time to time, in its discretion, determine, whether or not greater consideration could be received upon the issue or sale of the same number of shares of another class, and as otherwise permitted by law. Subject to the requirements of applicable law, the Corporation shall have the power to purchase any shares of any class of stock herein or hereafter authorized from such persons, and for such consideration, as the Board of Directors shall from time to time, in its discretion, determine, whether or not less consideration could be paid upon the purchase of the same number of shares of another class, and as otherwise permitted by law.

ARTICLE FIFTH

For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation and regulation of the powers of the Corporation, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

1. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed by the Board of Directors in the manner provided in the Bylaws.
2. A director shall hold office until the annual meeting for the year in which his or her term expires or until his or her successor shall be elected and shall qualify, subject, however, to prior death, resignation, retirement, disqualification or removal from office.
3. Subject to applicable law, any vacancy on the Board of Directors that results from an increase in the number of directors or resulting from the death, resignation, removal from

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office or any other cause may be filled by a majority of the Board of Directors then in office, although less than a quorum, or by a sole remaining director, and not by the stockholders. Any director elected to fill a vacancy shall have the same remaining term as that of his predecessor. Subject to applicable law, any or all of the directors of the Corporation may be removed from office at any time by the stockholders only for cause and only by the affirmative vote of a majority of the voting power of all of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors. A director may not be removed by the stockholders at a meeting unless the notice of the meeting states that the purpose, or one of the purposes, of the meeting is the removal of the director.

4. The Board of Directors may from time to time adopt, amend or repeal Bylaws; provided, however, that the stockholders may amend or repeal any Bylaw or Bylaws adopted by the Board of Directors, or adopt a new Bylaw or Bylaws, in either case by the affirmative vote of the holders of at least sixty six and two thirds percent (66 2/3%) of the voting power of all of the then outstanding shares of the capital stock of the Corporation, voting together as a single class; and, provided, further, however, that in the case of any such stockholder action at a special meeting of stockholders, notice of the proposed adoption, amendment or repeal of the new Bylaw or Bylaws must be contained in the notice of such special meeting.

5. The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.

6. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws of the Corporation.

7. In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the Delaware General Corporation Law, this Amended and Restated Certificate of Incorporation, and any Bylaws adopted by the stockholders; provided, however, that no Bylaws hereafter adopted by the stockholders shall invalidate any prior act of the directors which would have been valid if such Bylaws had not been adopted.

ARTICLE SIXTH

1. **LIMITATION OF LIABILITY.** To the fullest extent permitted by the General Corporation Law of the State of Delaware as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

2. **INDEMNIFICATION.** The Corporation may indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action, suit or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that such person or his or her testator or intestate is or was a director, officer, employee or agent of the Corporation, or any predecessor of the Corporation, or serves or served at any other

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enterprise as a director, officer, employee or agent at the request of the Corporation or any predecessor to the Corporation.

3. **AMENDMENTS.** Neither any amendment nor repeal of this Article Sixth, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article Sixth, shall eliminate or reduce the effect of this Article Sixth, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article Sixth, would accrue or arise, prior to such amendment, repeal, or adoption of an inconsistent provision.

ARTICLE SEVENTH

Special meeting of the stockholders may be called for any purpose or purposes (i) by the Board of Directors, the Chairman of the

Board of Directors, the Chief Executive Officer or President of the Corporation or (ii) upon written request from holders of record of at least 25% of the voting power of the outstanding capital stock of the Corporation entitled to vote on the matter or matters to be brought before the proposed special meeting, filed with the Secretary of the Corporation and otherwise in accordance with the Bylaws, and may not be called by any other person or persons.

ARTICLE EIGHTH

Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation, and the ability of the stockholders to consent in writing to the taking of any action is hereby specifically denied.

ARTICLE NINTH

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

ARTICLE TENTH

The Corporation is to have perpetual existence.

ARTICLE ELEVENTH

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by this Amended and Restated Certificate of Incorporation, the Corporation's Bylaws or by statute, and all rights conferred upon the stockholders herein are granted subject to this right; provided, however, that notwithstanding any other provision of this Amended and Restated Certificate of Incorporation (and in addition to any other vote that may be required by law), the affirmative vote of the holders of at least sixty six and two thirds percent (66 2/3%) of the voting power of all of the then outstanding shares of the capital stock of the

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Corporation, voting together as a single class, shall be required to amend, alter, change or repeal, or to adopt any provisions as part of this Amended and Restated Certificate of Incorporation inconsistent with the purposes and intent of Article Fifth, Article Sixth, Article Seventh, Article Eighth and this Article Eleventh.

Effective as of April 14, 2005,
Amended June 19th, 2007,
Amended May 17th, 2013

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**AMENDED AND RESTATED
BYLAWS
OF
ORCHIDS PAPER PRODUCTS COMPANY
AS AMENDED**

1. MEETINGS OF STOCKHOLDERS.

1.1 Annual Meeting. The annual meeting of stockholders of Orchids Paper Products Company (the “corporation”) shall be held on such date and at such time fixed from time to time by the board of directors of the corporation (the “Board”). The business to be transacted at the meeting shall be the election of directors and any other proper business as may be brought before the meeting.

Any previously scheduled annual meeting of the stockholders may be postponed by resolution of the Board upon public notice given on or prior to the date previously scheduled for such annual meeting of stockholders.

1.2 Special Meetings.

(i) Special meetings of stockholders may be called by the Board of Directors, the Chairman of the Board, the chief executive officer of the corporation, president of the corporation or by the stockholders in accordance with Section 1.2(ii) and as elsewhere provided herein.

(ii) A special meeting of stockholders shall be called by the secretary of the corporation at the written request or requests (each, a “Special Meeting Request” and, collectively, the “Special Meeting Requests”) of holders of record of at least twenty-five percent (25%) of the voting power of the issued and outstanding capital stock entitled to vote on the matter or matters to be brought before the proposed special meeting (the “Requisite Percentage”). A Special Meeting Request must be submitted to the secretary, shall be signed and dated by each stockholder of record (or a duly authorized agent of such stockholder) requesting the special meeting (each, a “Requesting Stockholder”), shall comply with Section 1.2 and Section 1.10, and shall include.

(a) a statement of the specific purpose or purposes of the special meeting and a description of any material interest of each stockholder requesting the meeting in the specific purpose or purposes of the meeting;

(b) the information required by Section 1.12;

(c) an acknowledgement by the Requesting Stockholders that a disposition of shares of the corporation’s capital stock owned of record or beneficially as of the date on which the Special Meeting Request in respect of such shares is delivered to the secretary that is made at any time prior to the special meeting shall constitute a revocation of such Special Meeting Request with respect to such disposed shares; and

(d) a representation (I) that the Requesting Stockholders shall continue to hold the Requisite Percentage for the period beginning on the date the Special Meeting Request is submitted to the secretary up to and through the special meeting; (II) that each Requesting Stockholder and its agents acknowledge that any disposition of the corporation’s common stock by the Requesting Stockholders during the period beginning on the date the Special Meeting Request is submitted to the secretary up to and through the special meeting, shall constitute a revocation of such request with respect to such shares, and further (III) that each Requesting Stockholder and its agents acknowledge that if the Requesting Stockholders do not hold the Requisite Percentage for the period beginning on the date the Special Meeting Request is submitted to the secretary up to and through the special meeting, the Board of Directors may, in its discretion, cancel the special meeting.

(iii) Notwithstanding the foregoing provisions of this Section 1.2, a special meeting requested by stockholders shall not be called if:

(a) the Special Meeting Request does not comply with this Section 1.2,

(b) the Special Meeting Request relates to an item of business that is not a proper subject for stockholder action under applicable law,

(c) the Special Meeting Request is received by the corporation during the period commencing ninety (90) days prior to the first anniversary of the date of the immediately preceding annual meeting and ending on the date of the next annual meeting,

(d) an annual or special meeting of stockholders that included an identical or substantially similar item of business (“Similar Business”) was held within 120 days prior to the valid Special Meeting Request being received by the secretary,

- (e) the Board of Directors, the Chairman of the Board, the Chief Executive Officer or President has called or calls for an annual or special meeting of stockholders to be held within ninety (90) days after the Special Meeting Request is received by the secretary and

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the business to be conducted at such meeting includes the Similar Business, or

- (f) the Special Meeting Request was made in a manner that involved a violation of Regulation 14A under the Securities Exchange Act of 1934 or other applicable law. The Board of Directors shall determine in good faith whether the requirements set forth in this Section 1.2(iii) and related provisions of these Bylaws have been satisfied.
- (iv) In determining whether a special meeting of stockholders has been requested by the record holders of shares representing in the aggregate at least the Requisite Percentage, multiple Special Meeting Requests delivered to the secretary will be considered together only if (A) each Special Meeting Request identifies substantially the same purpose or purposes of the special meeting and substantially the same matters proposed to be acted on at the special meeting (in each case as determined in good faith by the Board of Directors), and (B) such Special Meeting Requests have been dated and delivered to the secretary within ten (10) days of the earliest dated Special Meeting Request. A Requesting Stockholder may revoke a Special Meeting Request at any time by written revocation delivered to the secretary and if, following such revocation, there are outstanding un-revoked requests from Requesting Stockholders holding less than the Requisite Percentage, the Board of Directors may, in its discretion, cancel the special meeting. If none of the Requesting Stockholders appears or sends a duly authorized agent to present the business to be presented for consideration that was specified in the Special Meeting Request, the corporation need not present such business for a vote at such special meeting.
- (v) Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the corporation's notice of meeting pursuant to Section 1.4 of this Article 1. Nothing contained herein shall prohibit the Board of Directors from submitting matters to the stockholders at any special meeting requested by stockholders.
- (vi) Special meetings shall be held at such date and time as may be fixed by the Board of Directors in accordance with these bylaws; provided, however, that in the case of a special meeting requested by stockholders, the date of any such special meeting shall not be more than ninety (90) days after a Special Meeting Request that satisfies the requirements of this Section 1.02 is received by the secretary. Special meetings shall be held at such place within or without the State of Delaware as is specified in the notice of meeting fixed by the Secretary.

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1.3 Place and Time of Meetings. Meetings of the stockholders may be held in or outside Delaware at the place and time specified by the Board; provided that the Board may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the General Corporation Law of the State of Delaware (or any successor thereto) (the "General Corporation Law of Delaware").

1.4 Notice of Meeting; Waiver of Notice.

- (a) Written or printed notice of each meeting of stockholders shall be given by or at the direction of the secretary or the chief executive officer of the corporation to each stockholder entitled to vote at the meeting, except that (i) it shall not be necessary to give notice to any stockholder who properly waives notice before or after the meeting, whether in writing or by electronic transmission or otherwise, and (ii) no notice of an adjourned meeting need be given except when required under Section 1.6 of these Bylaws or by law. Each notice of a meeting shall be given, personally or by mail or, as provided below, by means of electronic transmission, not less than ten (10) nor more than sixty (60) days before the meeting and shall state the time and place of the meeting, or if held by remote communications, the means of remote communication by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and unless it is the annual meeting, shall state at whose direction or request the meeting is called and the purposes for which it is called. The attendance of any stockholder at a meeting, without protesting at the beginning of the meeting that the meeting is not lawfully called or convened, shall constitute a waiver of notice by him or her. Any previously scheduled meeting of stockholders may be postponed, and (unless the Certificate of Incorporation otherwise provides) any special meeting of stockholders may be canceled, by resolution of the Board upon public disclosure (as defined in Section 1.13(a)) given on or prior to the date previously scheduled for such meeting of stockholders.
- (b) Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to a stockholder may be given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any such consent shall be deemed revoked (i) if the corporation is unable to deliver by electronic transmission

two consecutive notices given by the corporation in accordance with such consent and (ii) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. For purposes of these Bylaws, "electronic transmission" means any form of communication, not directly

involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

- (c) Notice shall be deemed given, if mailed, when deposited in the United States mail with postage prepaid, if addressed to a stockholder at his or her address on the corporation's records. Notice given by electronic transmission shall be deemed given: (i) if by facsimile, when directed to a number at which the stockholder has consented to receive notice; (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (iii) if by posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (iv) by any other form of electronic transmission, when directed to the stockholder.
- (d) An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given, whether by a form of electronic transmission or otherwise, shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

1.5 Quorum; Voting; Validation of Meeting.

- (a) The holders of a majority in voting power of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the Certificate of Incorporation.

If, however, such quorum is not present or represented at any meeting of the stockholders, then either (i) the person presiding over the meeting or (ii) the stockholders by the vote of the holders of a majority of the stock, present in person or represented by proxy shall have power to adjourn the meeting in accordance with Section 1.6 of these Bylaws.
- (b) When a quorum is present at any meeting, a plurality of the votes present in person or represented by proxy and entitled to vote on the election of a director shall be sufficient to elect directors. On all other matters, the vote of the holders of a majority of the stock entitled to vote on the subject matter present in person or duly represented by proxy shall decide any question brought before such meeting, unless the question is one upon which, by express provision of the laws of the State of Delaware or of the Certificate of Incorporation or these Bylaws, a vote of a greater number or voting by classes is required, in which case such express provision shall govern and control the decision of the question.

- (c) If a quorum is initially present, the stockholders may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum, if any action taken is approved by a majority of the stockholders initially constituting the quorum.
- (d) The transactions of any meeting of stockholders, either annual or special, however called and noticed, and wherever held, shall be as valid as though they had been taken at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy.

1.6 Adjourned Meeting; Notice.

- (a) Any stockholders' meeting, annual or special, whether or not a quorum is present, may be adjourned from time to time by the vote of the majority of the voting power of the shares represented at that meeting, either in person or by proxy. In the absence of a quorum, no other business may be transacted at that meeting except as provided in Section 1.5 of these Bylaws.
- (b) When any meeting of stockholders, either annual or special, is adjourned to another time or place or means of remote communication, notice need not be given of the adjourned meeting if the time and place, if any, thereof, 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 the adjournment is taken.

However, if a new record date for the adjourned meeting is fixed or if the adjournment is for more than thirty (30) days from the date set for the original meeting, then notice of the adjourned meeting shall be given. Notice

of any such adjourned meeting shall be given to each stockholder of record entitled to vote at the adjourned meeting in accordance with the provisions of Section 1.4 of these Bylaws. At any adjourned meeting the corporation may transact any business that might have been transacted at the original meeting.

1.7 Voting.

- (a) The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 1.8 of these Bylaws, subject to the provisions of Sections 217 and 218 of the General Corporation Law of Delaware (relating to voting rights of fiduciaries, pledgors and joint owners, and to voting trusts and other voting agreements).

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- (b) by these Bylaws or as required by law, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder which has voting power upon the matter in question.
- (c) Any stockholder entitled to vote on any matter may vote part of the shares in favor of the proposal and refrain from voting the remaining shares or, except when the matter is the election of directors, may vote the remaining shares against the proposal; but if the stockholder fails to specify the number of shares which the stockholder is voting affirmatively or otherwise indicates how the number of shares to be voted affirmatively is to be determined, it will be conclusively presumed that the stockholder's approving vote is with respect to all shares which the stockholder is entitled to vote.
- (d) Voting need not be by ballot unless requested by a stockholder at the meeting or ordered by the chairman of the meeting; however, all elections of directors shall be by written ballot, unless otherwise provided in the Certificate of Incorporation; provided, that if authorized by the Board, a written ballot may be submitted by electronic transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder or proxyholder.

1.8 Record Date for Stockholder Notice.

- (a) For purposes of determining the stockholders entitled to notice of any meeting or to vote thereat, the Board may fix, in advance, a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than sixty (60) days nor less than ten (10) days before the date of any such meeting, and in such event only stockholders of record on the date so fixed are entitled to notice and to vote, notwithstanding any transfer of any shares on the books of the corporation after the record date, except as otherwise provided in the Certificate of Incorporation, by these Bylaws, by agreement or by applicable law.
- (b) If the Board does not so fix a record date, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.
- (c) A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting unless the Board fixes a new record date for the adjourned meeting, but the Board shall fix a new record date if the meeting is adjourned for more than thirty (30) days from the date set for the original meeting.

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- (d) The record date for any other lawful purpose shall be as provided in Section 5.8 of these Bylaws.

1.9 Proxies. Every person entitled to vote for directors, or on any other matter, shall have the right to do so either in person or by one or more agents authorized by a written proxy filed with the secretary of the corporation. A written proxy may be in the form of a telegram, cablegram, or other means of electronic transmission which sets forth or is submitted with information from which it can be determined that the telegram, cablegram, or other means of electronic transmission was authorized by the person. No such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power.

The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212(e) of the General Corporation Law of Delaware. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or by filing another duly executed proxy bearing a later date with the secretary of the corporation.

A proxy is not revoked by the death or incapacity of the maker unless, before the vote is counted, written notice of such

death or incapacity is received by the secretary of the corporation.

- 1.10** **List of Stockholders.** Not less than 10 days prior to the date of any meeting of stockholders, the secretary of the corporation shall prepare a complete list of 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 such stockholder; provided, that the corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. For a period of not less than 10 days prior to the meeting, the list shall be available during ordinary business hours for inspection by any stockholder for any purpose germane to the meeting.

During this period, the list shall be kept either (1) 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 (2) during ordinary business hours, at the principal place of business of the corporation. If the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of

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the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

- 1.11** **Notice of Stockholder Nominee.** Only persons who are nominated in accordance with the procedures set forth in this paragraph shall be eligible for election by the stockholders as directors of the corporation. Nominations of persons for election to the Board may be made at a meeting of stockholders (a) by or at the direction of the Board, or (b) provided that the Board has determined that directors shall be elected at such meeting, by any stockholder of the corporation entitled to vote for the election of directors at such meeting who complies with the procedures set forth in this paragraph. Such nominations by any stockholder shall be made pursuant to timely notice in proper written form to the secretary of the corporation in accordance with this paragraph. To be timely, a stockholder's notice must be delivered to or mailed to and received by the secretary at the principal executive offices of the corporation not less than 90 days nor more than 120 days in advance of the first anniversary of the preceding year's annual meeting; provided, however, that in the event that (i) no annual meeting was held in the previous year or (ii) the date of the annual meeting has been changed by more than 30 days from the date of the previous year's meeting, or in the event of a special meeting of stockholders called for the purpose of electing directors, not later than the close of business on the tenth day following the day on which notice of the date of the meeting was mailed or public disclosure of the date of the meeting was made, whichever occurs first. In no event shall the public disclosure of an adjournment or postponement of a stockholders meeting commence a new time period for the giving of a stockholders notice as described above. To be in proper written form, such stockholders' notice to the secretary shall set forth in writing (a) as to each person whom such stockholder proposes to nominate for election or re-election as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (or any successor thereto) (the "Exchange Act"), including, without limitation, such person's written consent to being named in the proxy statement as a nominee and to serving as director if elected as well as (i) such person's name, age, business address and residence address, (ii) his or her principal occupation or employment, (iii) the class and number of shares of the corporation that are beneficially owned by such person, and (iv) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder; and (b) as to such stockholder (i) the name and address, as they appear on the corporation's books, of such stockholder and the beneficial owner, if any, on whose behalf the nomination is made, and (ii) the class and number of shares of the corporation which are beneficially owned by such stockholder and the beneficial owner, if any, on whose behalf the nomination is made, and any material interest of such stockholder and owner. At the request of the Board, any person nominated by the Board for election as a director shall furnish to the secretary of the corporation that information required to be set forth in a stockholder's notice of nomination which pertains to the nominee. No person

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shall be eligible for election by the stockholders as a director unless nominated in accordance with the procedures set forth in the Bylaws of the corporation. The chairman of the meeting shall, if the facts warrant, determine and declare at the meeting that a nomination was not made in accordance with the procedures prescribed by the Bylaws of the corporation, and if he or she shall so determine, he or she shall so declare at the meeting that the defective nomination shall be disregarded.

- 1.12** **Stockholder Proposals.** At any special meeting of the stockholders, only such business shall be conducted as shall have been brought before the meeting (i) by or at the direction of the Board or (ii) in accordance with Section 1.2. At any annual meeting of the stockholders, only such business shall be conducted as shall have been brought before the meeting (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board, (b) otherwise properly brought before the meeting by or at the direction of the Board, or (c) by any stockholder who complies with the procedures set forth in this paragraph. For business properly to be brought before an annual meeting by a stockholder, the

stockholder must have given timely notice thereof in proper written form to the secretary of the corporation and such other business must otherwise be a proper matter for stockholder action. To be timely, a stockholder's notice must be delivered to or mailed to and received by the secretary at the principal executive offices of the corporation not less than 90 days nor more than 120 days in advance of the first anniversary of the preceding year's annual meeting; provided, however, that in the event that (1) no annual meeting was held in the previous year or (2) the date of the annual meeting has been changed by more than 30 days before or after the date of the previous year's meeting, not later than the close of business on the tenth day following the day on which notice of the date of the meeting was mailed or public disclosure of the date of the meeting was made, whichever occurs first. In no event shall the public disclosure of an adjournment or postponement of a stockholders meeting commence a new time period for the giving of a stockholders notice as described above. To be in proper written form, such stockholder's notice to the secretary shall set forth in writing as to each matter such stockholder proposed to bring before the annual meeting (a) a brief description of the business desired to be brought before the meeting, (b) the name and address, as they appear on the corporation's books, of the stockholder proposing such business, and the beneficial owner, if any, on whose behalf the nomination or proposal is made, (c) the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws of the corporation, the language of the proposed amendment) and the reasons for conducting such business at the meeting, (d) the class and number of shares of the corporation which are owned beneficially by such stockholder and the beneficial owner, if any, on whose behalf the proposal is made, (e) any material interest in such business of the stockholder or the beneficial owner, if any, on whose behalf the proposal is made, (f) any other information that is required to be provided by the stockholder pursuant to Regulation 14A under the Exchange Act in such stockholder's capacity as a proponent of a stockholder proposal, (g) a

representation that the stockholder is a holder of record of stock of the corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business, and (h) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (1) 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 or (2) otherwise to solicit proxies from stockholders in support of such proposal. The foregoing notice requirements shall be deemed satisfied by a stockholder if the stockholder has notified the corporation of his or her intention to present a proposal at an annual meeting in compliance with Rule 14a-8 (or any successor thereof) promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the corporation to solicit proxies for such annual meeting. Notwithstanding anything in the Bylaws to the contrary, no business shall be conducted at an annual meeting except in accordance with the procedures set forth in this paragraph. The chairman of an annual meeting shall, if the facts warrant, determine and declare at the meeting that business was not properly brought before the meeting in accordance with the provisions of this paragraph, and, if he or she should so determine, he or she shall so declare at the meeting that any such business not properly brought before the meeting shall not be transacted.

1.13 Public Disclosure; Conduct of Nominations and Proposals by Stockholders.

- (a) For purposes of Sections 1.4(a), 1.11 and 1.12 hereof, "public disclosure" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press, Reuters or comparable national news service or in a document publicly filed or furnished by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.
- (b) Notwithstanding the foregoing provisions of Section 1.11 and Section 1.12, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting or special meeting of stockholders of the corporation to present a nomination or business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the corporation.
- (c) Notwithstanding the foregoing provisions of Sections 1.11 and 1.12, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in Sections 1.11 and 1.12.

Nothing in Sections 1.11 and 1.12 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

1.14 Meeting Required. Whenever the vote of stockholders at a meeting thereof is required or permitted to be taken for or in connection with any corporate action, such vote may only be taken at an annual or special meeting with prior notice, except as provided in the Certificate of Incorporation.

1.15 Organization.

- (a) Meetings of stockholders shall be presided over by the chairman of the Board, if any, or in his or her absence by the vice chairman of the Board, if any, or in his or her absence, by the chief executive officer, if any, or in his or

her absence by a chairman of the meeting, which chairman must be an officer or director of the corporation and must be designated as chairman of the meeting by the Board. The secretary, or in his or her absence an assistant secretary, or in his or her absence a person whom the person presiding over the meeting shall appoint, shall act as secretary of the meeting and keep a record of the proceedings thereof.

- (b) The Board shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem appropriate. Subject to such rules and regulations of the Board, if any, the person presiding over the meeting shall have the right and authority to convene and adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of the person presiding over the meeting, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the person presiding over the meeting shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting and matters which are to be voted on by ballot. The person presiding over the meeting, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if the person presiding over the meeting should so determine and declare, any such matter or business shall not be transacted or considered. Unless and to the extent determined by the Board or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

1.16 Inspectors of Election. Before any meeting of stockholders, the Board may, and shall if required by law, appoint one or more inspectors of election, who may be employees of the corporation, to act at the meeting or its adjournment and to make a written report thereof. If any person appointed as inspector fails to appear or fails or refuses to act, then the person presiding over the meeting may, and upon the request of any stockholder or a stockholder's proxy, shall appoint a person to fill that vacancy.

Such inspectors shall:

- (a) determine the number of shares outstanding and the voting power of each, the number of shares represented at the meeting, the existence of a quorum, and the authenticity, validity and effect of proxies and ballots;
- (b) receive votes and ballots, including, if applicable, votes and ballots submitted by means of electronic transmission;
- (c) hear and determine all challenges and questions in any way arising in connection with the right to vote;
- (d) determine when the polls shall close;
- (e) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspector or inspectors;
- (f) certify their determination of the number of shares of the corporation represented at the meeting and such inspectors' count of all votes and ballots, which certification and report shall specify such other information as may be required by law; and
- (g) do any other acts that may be proper to conduct the election or vote with fairness to all stockholders.

Each inspector of election shall perform his or her duties impartially, in good faith, to the best of his or her ability and as expeditiously as is practical, and before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector of election with strict impartiality and according to the best of his or her ability. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the corporation, the inspectors may consider such information as is permitted by applicable law. If there are three (3) or more inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all. Any report or certificate made by the inspectors of election is prima facie evidence of the facts stated therein.

2. BOARD OF DIRECTORS.

2.1 Number, Qualification, Election and Term of Directors. The business and affairs of the corporation shall be managed by or under the direction of the Board, which may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute, the Certificate of Incorporation or these Bylaws directed or required to be exercised or done exclusively by the stockholders. The number of directors may be fixed or changed from time to time by resolution

of a majority of the entire Board; provided that the number shall be no less than three (3) and no more than eleven (11), and the initial number of directors upon effectiveness of these Amended and Restated Bylaws shall be five (5). No reduction in the number of directors shall have the effect of shortening the term of any incumbent director, and when so fixed, such number shall continue to be the authorized number of directors until changed by the Board by vote as aforesaid. The term of office of each director shall be until the first annual meeting following his or her election and until the election and qualification of his or her successor. As used in these Bylaws, the term "entire Board" means the total number of directors which the corporation would have if there were no vacancies on the Board.

2.2 Quorum and Manner of Acting.

- (a) A majority of the entire Board shall constitute a quorum for the transaction of business at any meeting, except as provided in Section 2.10 of these Bylaws. In the absence of a quorum a majority of the directors present may adjourn any meeting from time to time until a quorum is present. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board, subject to the provisions of the Certificate of Incorporation and applicable law.
- (b) A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

2.3 Place of Meetings. Meetings of the Board may be held in or outside Delaware.

2.4 Annual and Regular Meetings. Annual meetings of the Board for the election of officers and consideration of other matters shall be held either (a) without notice immediately after the annual meeting of stockholders and at the same place, or (b) as soon as practicable after the annual meeting of stockholders, on notice as provided in Section 2.6 of these Bylaws. Regular meetings of the Board may be held without notice and, unless otherwise specified by the Board, shall be held in accordance with a schedule and at such locations as determined from time to time by the Board, provided no less than four (4) such meetings shall be held each year. If the day fixed for a regular meeting is a legal holiday, the meeting shall be held on the next business day.

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2.5 Special Meetings. Special meetings of the Board may be called by the chairman of the board, the chief executive officer, the president or by a majority of the directors in office.

2.6 Notice of Meetings; Waiver of Notice. Notice of the time and place of each special meeting of the Board, and of each annual meeting not held immediately after the annual meeting of stockholders and at the same place, shall be given to each director in advance of the time set for such meeting as provided herein; provided, that if the meeting is to be held at the principal executive offices of the corporation, the notice need not specify the place of the meeting. Except for amendments to the Bylaws, as provided under Section 6.9, notice of a special meeting need not state the purpose or purposes for which the meeting is called and, unless indicated in the notice thereof, any and all business may be transacted at a special meeting. Notice need not be given to any director who submits a signed waiver of notice before or after the meeting or who attends the meeting without protesting at the beginning of the meeting the transaction of any business because the meeting was not lawfully called or convened. Notice of any adjourned meeting need not be given, other than by announcement at the meeting at which the adjournment is taken unless the meeting is adjourned for more than twenty-four (24) hours. If the meeting is adjourned for more than twenty-four (24) hours, then notice of the time and place of the adjourned meeting shall be given before the adjourned meeting takes place, in the manner specified herein to the directors who were not present at the time of adjournment. Notice of a special meeting may be given by any one or more of the following methods and the method used need not be the same for each director being notified:

- (a) written notice sent by mail at least three (3) days prior to the meeting;
- (b) personal service at least twenty-four (24) hours prior to the time of the meeting;
- (c) telegraphic notice at least twenty-four (24) hours prior to the time of the meeting, said notice to be sent as a straight full-rate telegram;
- (d) telephonic notice at least twenty-four (24) hours prior to the time of the meeting; or
- (e) facsimile or other means of electronic transmission at least twenty-four (24) hours prior to the time of the meeting.

Any oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director.

2.7 Board or Committee Action Without a Meeting. Any action required or permitted to be taken by the Board or by any committee of the Board may be taken without a meeting if all of the members of the Board or of the committee individually or collectively consent in writing or by electronic transmission to the

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adoption of a resolution authorizing the action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board.

The resolution and the written consents or electronic transmission or transmissions by the members of the Board or the committee shall be filed with the minutes of the proceeding of the Board or of the 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.

- 2.8 Participation in Board or Committee Meetings by Conference Telephone.** Any or all members of the Board or of any committee of the Board may participate in a meeting of the Board or of the committee by means of a conference telephone or other communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at the meeting.
- 2.9 Resignation and Removal of Directors.** Any director may resign at any time by delivering his or her resignation in writing, including by means of electronic transmission, to the president or secretary of the corporation, to take effect at the time specified in the resignation; the acceptance of a resignation, unless required by its terms, shall not be necessary to make it effective. Subject to the Certificate of Incorporation and applicable law, any or all of the directors of the corporation may be removed from office at any time by the stockholders only for cause and only by the affirmative vote of a majority of the voting power of all of the then outstanding shares of capital stock of the corporation entitled to vote generally in the election of directors. A director may not be removed by the stockholders at a meeting unless the notice of the meeting states that the purpose, or one of the purposes, of the meeting is the removal of the director.
- 2.10 Vacancies.** Subject to applicable law, any vacancy on the Board that results from an increase in the number of directors or resulting from the death, resignation, removal from office or any other cause may be filled by a majority of the Board then in office, although less than a quorum, or by a sole remaining director and not by the stockholders. Any director elected to fill a vacancy shall have the same remaining term as that of his predecessor.
- 2.11 Compensation.** The Board is authorized to fix such compensation for directors as it may determine, including a fee and reimbursement of expenses for attendance at any meeting of the directors or committees. A director may also be paid for serving the corporation, its affiliates or its subsidiaries in other capacities.
- 2.12 Notice to Members of the Board.** Each member of the Board shall file with the secretary of the corporation an address to which mail or telegraphic notices shall be sent, a telephone number to which a telephonic or facsimile notice may be transmitted and, at the sole discretion of a director, such electronic address to which other electronic transmissions may be sent. A notice mailed, telegraphed, telephoned or transmitted by facsimile or other means of electronic transmission

in accordance with the instructions provided by the director shall be deemed sufficient notice. Such address or telephone number may be changed at any time and from time to time by a director by giving written notice of such change to the secretary. Failure on the part of any director to keep an address and telephone number on file with the secretary (but not including an address for other electronic transmissions) shall automatically constitute a waiver of notice of any regular or special meeting of the Board which might be held during the period of time that such address and telephone number are not on file with the secretary. A notice shall be deemed to be mailed when deposited in the United States mail, postage prepaid. A notice shall be deemed to be telegraphed when the notice is delivered to the transmitter of the telegram and either payment or provision for payment is made by the corporation.

Notice shall be deemed to be given by telephone if the notice is transmitted over the telephone to some person (whether or not such person is the director) or message recording device answering the telephone at the number which the director has placed on file with the secretary. Notice shall be deemed to be given by facsimile or other means of electronic transmission when sent to the telephone number or other address which the director has placed on file with the secretary.

- 2.13 Organization.** Meetings of the Board shall be presided over by the chairman of the Board, if any, or in his or her absence by the vice chairman of the Board, if any, or in his or her absence by the chief executive officer, if any, or in his or her absence by the president, if any. In the absence of all such directors, a president pro tem chosen by a majority of the directors present shall preside at the meeting. The secretary shall act as secretary of the meeting, but in his or her absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

3. COMMITTEES.

- 3.1 Audit Committee.** The Board by resolution shall designate an Audit Committee consisting of three directors or such other number as may be specified by the Board, which shall review the internal financial controls of the corporation, and the integrity of its financial reporting, and have such other powers and duties as the Board determines. The Board shall adopt a charter, which may be amended from time to time, setting for the powers and duties of the Audit Committee. The members of the Audit Committee shall serve at the pleasure of the Board. All action of the Audit Committee shall be reported to the Board at its next meeting.

- 3.2 **Compensation Committee.** The Board by resolution shall designate a Compensation Committee consisting of three directors or such other number as may be specified by the Board, which shall administer the corporation's compensation plans and have such other powers and duties as the Board determines. The members of the Compensation Committee shall serve at the pleasure of the Board. All action of the Compensation Committee shall be reported to the Board at its next meeting. The Board shall adopt a charter, which

may be amended from time to time, setting forth the powers and duties of the Compensation Committee.

- 3.3 **Nominating and Corporate Governance Committee.** The Board by resolution shall designate a Nominating and Corporate Governance Committee consisting of three directors or such other number as may be specified by the Board, which shall nominate candidates for election to the Board, formulate corporate governance principles, and have such other powers and duties as the Board determines. The members of the Nominating and Corporate Governance Committee shall serve at the pleasure of the Board. All action of the Nominating and Corporate Governance Committee shall be reported to the Board at its next meeting. The Board shall adopt a charter, which may be amended from time to time, setting forth the powers and duties of the Nominating and Corporate Governance Committee.
- 3.4 **Other Committees.** The Board, by resolution adopted by a majority of the entire Board, may designate other committees of directors of one or more directors, which shall serve at the Board's pleasure and have such powers and duties as the Board determines.
- 3.5 **Meetings and Action of Committees.**

- (a) The Board may designate one or more directors as alternate members of any committee (other than the Audit Committee), who may replace any absent or disqualified member at any meeting of the committee. Each committee shall keep regular minutes of its meetings and report the same to the Board at its next meeting. Each committee may adopt rules of procedure and shall meet as provided by those rules or by resolutions of the Board.
- (b) Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of Article 2 of these Bylaws, including Section 2.2 (quorum and manner of acting), Section 2.3 (place of meetings), Section 2.4 (annual and regular meetings), Section 2.5 (special meetings), 2.6 (notice of meetings and waiver of notice), Section 2.7 (board or committee action without a meeting), Section 2.8 (participation in Board or committee meetings by conference telephone), Section 2.12 (notice to members of the Board), and Section 2.13 (organization), with such changes in the context of those Bylaws as are necessary to substitute the committee and its members for the Board and its members; provided, however, (i) that the time of regular meetings of committees may be determined either by resolution of the Board or by resolution of the committee, (ii) that special meetings of committees may also be called by resolution of the Board, (iii) that notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee; (iv) that a majority of the members of a committee shall constitute a quorum for the

transaction of business at any meeting; and (v) that the affirmative vote of a majority of the members of a committee shall be required to take action in respect of any matter presented to or requiring the approval of the committee.

- 3.6 **Election Pursuant to Section 141(c)(2).** By resolution of the Board, the corporation has elected pursuant to Section 141(c) of the General Corporation Law of Delaware to be governed by paragraph (2) of Section 141(c) in respect of committees of the Board.

4. **OFFICERS.**

- 4.1 **Number; Security.** The officers of the corporation shall consist of a chief executive officer, a president, one or more vice presidents (including executive vice president(s) and senior vice president(s) if the Board so determines), a secretary and a treasurer and a chief financial officer who shall be chosen by the Board and such other officers, including but not limited to a chairman of the Board, a vice chairman of the Board, as the Board shall deem expedient, who shall be chosen in such manner and hold their offices for such terms as the Board may prescribe. Any two or more offices may be held by the same person. The Board may from time to time designate the president or any executive vice president as the chief operating officer of the corporation. Any vice president, treasurer or assistant treasurer, or assistant secretary, respectively, may exercise any of the powers of the president, the chief financial officer, or the secretary, respectively, as directed by the Board and shall perform such other duties as are imposed upon such officer by the Bylaws or the Board. The Board may require any officer, agent or employee to give security for the faithful performance of his duties.
- 4.2 **Election; Term of Office; Salaries.** The term of office and salary of each of the officers of the corporation and the manner and time of the payment of such salaries shall be fixed and determined by the Board and may be altered by said Board from time to time at its pleasure, subject to the rights, if any, of said officers under any contract of employment;

provided, that the Board may designate such responsibilities to the Compensation Committee and may also authorize the chief executive officer or the president to establish the salaries of officers appointed pursuant to Section 4.3.

- 4.3 **Subordinate Officers.** The Board may appoint subordinate officers (including assistant secretaries and assistant treasurers), agents or employees, each of whom shall hold office for such period and have such powers and duties as the Board determines. The Board may delegate to any officer or to any committee the power to appoint and define the powers and duties of any subordinate officers, agents or employees.
- 4.4 **Resignation and Removal of Officers.** Any officer may resign at any time by delivering his resignation in writing to the chief executive officer, president or

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secretary of the corporation, to take effect at the time specified in the resignation; the acceptance of a resignation, unless required by its terms, shall not be necessary to make it effective. Any officer elected or appointed by the Board or appointed by an officer or by a committee may be removed by the Board either with or without cause, and in the case of an officer appointed by an officer or by a committee, by the officer or committee who appointed him or her or by the president.

- 4.5 **Vacancies.** A vacancy in any office may be filled for the unexpired term in the manner prescribed in Sections 4.2 and 4.3 of these Bylaws for election or appointment to the office.
- 4.6 **Chairman of the Board.** The chairman of the Board, if such an officer shall be chosen, shall have general supervision, direction and control of the corporation's business and its officers, and, if present, preside at meetings of the stockholders and the Board and exercise and perform such other powers and duties as may from time to time be assigned to him by the Board or as may be prescribed by these Bylaws. The chairman of the Board shall report to the Board.
- 4.7 **Vice Chairman of the Board.** The vice chairman of the Board, if there shall be one, shall, in the case of the absence, disability or death of the chairman of the Board, exercise all the powers and perform all the duties of the chairman of the Board. The vice chairman shall have such other powers and perform such other duties as may be granted or prescribed by the Board.
- 4.8 **Chief Executive Officer.** Subject to the control of the Board, the chief executive officer of the corporation shall have general supervision over the business of the corporation; the powers and duties of the chief executive officer shall be:
- (a) To affix the signature of the corporation to such deeds, conveyances, mortgages, leases, obligations, bonds, certificates and other papers and instruments in writing which have been authorized by the Board or which, in the judgment of the chief executive officer, should be executed on behalf of the corporation, and to sign certificates for shares of capital stock of the corporation.
 - (b) To have such other powers and be subject to such other duties as the Board may from time to time prescribe.
- 4.9 **President.** The powers and duties of the president are:
- (a) To affix the signature of the corporation to such deeds, conveyances, mortgages, leases, obligations, bonds, certificates and other papers and instruments in writing which have been authorized by the Board or which, in the judgment of the president, should be executed on behalf of the corporation, and to sign certificates for shares of capital stock of the corporation.

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- (b) To have such other powers and be subject to such other duties as the Board may from time to time prescribe.
- 4.10 **Vice President.**
- (a) In case of the absence, disability or death of the president, the elected vice president, or one of the elected vice presidents, shall exercise all the powers and perform all the duties of the president. If there is more than one elected vice president, the order in which the elected vice presidents shall succeed to the powers and duties of the president shall be as fixed by the Board. The elected vice president or elected vice presidents shall have such other powers and perform such other duties as may be granted or prescribed by the Board.
 - (b) Vice presidents appointed pursuant to Section 4.3 shall have such powers and duties as may be fixed by the chairman of the Board or president.
 - (c) Each vice president shall have such powers and duties as the Board or the president assigns to him or her.
- 4.11 **Secretary.** The powers and duties of the secretary are:

- (a) To keep a book of minutes at the principal office of the corporation, or such other place as the Board may order, of all meetings of its directors and stockholders with the time and place of holding, whether regular or special, and, if special, how authorized, the notice thereof given, the names of those present at directors' meetings, the number of shares present or represented at stockholders' meetings and the proceedings thereof.
- (b) To keep the seal of the corporation, if any, and affix the same, if any, to all instruments which may require it.
- (c) To keep or cause to be kept at the principal office of the corporation, or at the office of the transfer agent or agents, a share register, or duplicate share registers, showing the names of the stockholders and their addresses, the number of and classes of shares, and the number and date of cancellation of every certificate surrendered for cancellation.
- (d) To keep a supply of certificates for shares of the corporation, to fill in all certificates issued, and to make a proper record of each such issuance; provided, that so long as the corporation shall have one or more duly appointed and acting transfer agents of the shares, or any class or series of shares, of the corporation, such duties with respect to such shares shall be performed by such transfer agent or transfer agents.
- (e) To transfer upon the share books of the corporation any and all shares of the corporation; provided, that so long as the corporation shall have one or

more duly appointed and acting transfer agents of the shares, or any class or series of shares, of the corporation, such duties with respect to such shares shall be performed by such transfer agent or transfer agents, and the method of transfer of each certificate shall be subject to the reasonable regulations of the transfer agent to which the certificate is presented for transfer, and also, if the corporation then has one or more duly appointed and acting registrars, to the reasonable regulations of the registrar to which the new certificate is presented for registration; and provided, further that no certificate for shares of stock shall be issued or delivered or, if issued or delivered, shall have any validity whatsoever until and unless it has been signed or authenticated in the manner provided in Section 5.1 hereof.

- (f) To make service and publication of all notices that may be necessary or proper, and without command or direction from anyone. In case of the absence, disability, refusal, or neglect of the secretary to make service or publication of any notices, then such notices may be served and/or published by the president or a vice president, or by any person thereunto authorized by either of them or by the Board or by the holders of a majority of the outstanding shares of the corporation.
- (g) To sign certificates for shares of capital stock of the corporation.
- (h) Generally to do and perform all such duties as pertain to the office of secretary and as may be required by the Board.

4.12 Treasurer. The treasurer shall be or shall be under the direction of the chief financial officer of the corporation, and shall be in charge of the corporation's books and accounts. Subject to the control of the Board, he or she shall have such other powers and duties as the Board or the president assigns to him or her.

4.13 Chief Financial Officer. The powers and duties of the chief financial officer are:

- (a) To supervise the corporate-wide treasury functions and financial reporting to external bodies.
- (b) To have the custody of all funds, securities, evidence of indebtedness and other valuable documents of the corporation and, at the chief financial officer's discretion, to cause any or all thereof to be deposited for account of the corporation at such depository as may be designated from time to time by the Board.
- (c) To receive or cause to be received, and to give or cause to be given, receipts and acquittances for monies paid in for the account of the corporation.
- (d) To disburse, or cause to be disbursed, all funds of the corporation as may be directed by the Board, taking proper vouchers for such disbursements.

- (e) To render to the chairman of the board, chief executive officer and president, and to the Board, whenever they may require, accounts of all transactions and of the financial condition of the corporation.
- (f) Generally to do and perform all such duties as pertain to the office of chief financial officer and as may be required by the Board.

5. **SHARES.**

- 5.1 **Shares of the Corporation.** The shares of the corporation shall be represented by certificates, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Notwithstanding the adoption of such a resolution by the Board, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of the corporation by the chairman or vice chairman of the Board or by the president or a vice-president, and by the secretary or an assistant secretary, or the treasurer or an assistant treasurer, representing the number of shares registered in certificate form. The signatures of any such officers thereon may be facsimiles. The seal of the corporation shall be impressed, by original or by facsimile, printed or engraved, on all such certificates. The certificate shall also be signed by the transfer agent and a registrar and the signature of either the transfer agent or the registrar may also be facsimile, engraved or printed. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon any such certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may nevertheless be issued by the corporation with the same effect as if such officer, transfer agent, or registrar had not ceased to be such officer, transfer agent, or registrar at the date of its issue.
- 5.2 **Special Designation on Certificates.** If the corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights or 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 the certificate that the corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the corporation shall issue to represent such class or series of stock a statement that the corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the 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.

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- 5.3 **Lost, Stolen, Destroyed and Mutilated Certificates.** The owner of any stock of the corporation shall immediately notify the corporation of any loss, theft, destruction or mutilation of any certificate therefor, and the corporation may issue uncertificated shares or a new certificate for stock in the place of any certificate theretofore issued by it and alleged to have been lost, stolen or destroyed, and the Board may, in its discretion, require the owner of the lost, stolen or destroyed certificate or his or her legal representatives to give the corporation a bond in such sum, limited or unlimited, and in such form and with such surety or sureties, as the Board shall in its uncontrolled discretion determine, to indemnify the corporation against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate, or the issuance of any such new certificate or uncertificated shares. The Board may, however, in its discretion refuse to issue any such new certificate or uncertificated shares except pursuant to legal proceedings under the laws of the State of Delaware in such case made and provided.
- 5.4 **Stock Records.** The corporation or a transfer agent shall keep stock books in which shall be recorded the number of shares issued, the names of the owners of the shares, the number owned by them respectively, whether such shares are represented by certificates or are uncertificated, and the transfer of such shares with the date of transfer.
- 5.5 **Transfers.** Transfers of stock shall be made only on the stock transfer record of the corporation upon surrender of the certificate or certificates being transferred which certificate shall be properly endorsed for transfer or accompanied by a duly executed stock power, except in the case of uncertificated shares, for which the transfer shall be made only upon receipt of transfer documentation reasonably acceptable to the corporation. Whenever a certificate is endorsed by or accompanied by a stock power executed by someone other than the person or persons named in the certificate, or the transfer documentation for the uncertificated shares is executed by someone other than the holder of record thereof, evidence of authority to transfer same shall also be submitted with the certificate or transfer documentation. All certificates surrendered to the corporation for transfer shall be canceled.
- 5.6 **Regulations Governing Issuance and Transfers of Shares.** The Board shall have the power and authority to make all such rules and regulations as it shall deem expedient concerning the issue, transfer and registration of shares of stock of the corporation.
- 5.7 **Transfer Agents and Registrars.** The Board may appoint, or authorize one or more officers to appoint, one or more transfer agents and one or more registrars.
- 5.8 **Record Date for Purposes Other than Notice and Voting.** For purposes of determining the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any other lawful action, the Board may fix a record date,

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which record date shall not precede the date upon which the resolution fixing the record date is adopted and which shall

not be more than sixty (60) days before any such action. In that case, only stockholders of record at the close of business on the date so fixed are entitled to receive the dividend, distribution or allotment of rights, or to exercise such rights, as the case may be, notwithstanding any transfer of any shares on the books of the corporation after the record date so fixed, except as otherwise provided in the Certificate of Incorporation, by these Bylaws, by agreement or by law. If the Board does not so fix a record date, then the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the applicable resolution.

6. MISCELLANEOUS.

6.1 **Seal.** The Board shall adopt a corporate seal, which shall be in the form of a circle and shall bear the corporation's name and the year and state in which it was incorporated.

6.2 **Fiscal Year.** The Board may determine the corporation's fiscal year.

Until changed by the Board, the corporation's fiscal year shall be the calendar year.

6.3 **Voting of Shares in Other Corporations.** Shares in other corporations which are held by the corporation may be represented and voted by the president or a vice president of this corporation or by proxy or proxies appointed by one of them. The Board may, however, appoint some other person to vote the shares.

6.4 **Checks; Drafts; Evidences of Indebtedness.** From time to time, the Board shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes or other evidences of indebtedness that are issued in the name of or payable to the corporation, and only the persons so authorized shall sign or endorse those instruments.

6.5 **Corporate Contracts and Instruments; How Executed.** The Board, except as otherwise provided in these Bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the corporation; such authority may be general or confined to specific instances.

6.6 **Construction; Definitions.** Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the General Corporation Law of Delaware shall govern the construction of these Bylaws.

Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, the term "person" includes both a corporation and a natural person, and the masculine gender includes the feminine gender and vice versa.

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6.7 **Provisions Additional to Provisions of Law.** All restrictions, limitations, requirements and other provisions of these Bylaws shall be construed, insofar as possible, as supplemental and additional to all provisions of law applicable to the subject matter thereof and shall be fully complied with in addition to the said provisions of law unless such compliance shall be illegal.

6.8 **Provisions Contrary to Provisions of Law.** Any article, section, subsection, subdivision, sentence, clause or phrase of these Bylaws which upon being construed in the manner provided in Section 6.7 hereof, shall be contrary to or inconsistent with any applicable provisions of law, shall not apply so long as said provisions of law shall remain in effect, but such result shall not affect the validity or applicability of any other portions of these Bylaws, it being hereby declared that these Bylaws would have been adopted and each article, section, subsection, subdivision, sentence, clause or phrase thereof, irrespective of the fact that any one or more articles, sections, subsections, subdivisions, sentences, clauses or phrases is or are illegal.

6.9 **Amendments.** The Board may from time to time adopt, amend or repeal the Bylaws; provided, however, that the stockholders may amend or repeal any Bylaw or Bylaws adopted by the Board, or adopt a new Bylaw or Bylaws, in either case by the affirmative vote of the holders of at least sixty six and two thirds percent (66 2/3%) of the voting power of all of the then outstanding shares of the capital stock of the corporation, voting together as a single class; and, provided, further, however, that in the case of any such stockholder action at a special meeting of stockholders, notice of the proposed adoption, amendment or repeal of the new Bylaw or Bylaws must be contained in the notice of such special meeting.

Whenever an amendment or new bylaw is adopted, it shall be copied in the book of bylaws with the original bylaws, in the appropriate place. If any bylaw is repealed, the fact of repeal with the date of the meeting at which the repeal was enacted or the filing of the operative written consent(s) shall be stated in said book.

6.10 **Indemnification and Insurance.**

(a) **Generally.**

(1) The corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was or has agreed to serve at the request of the

corporation as a director or officer of the corporation or any subsidiary of the corporation, or is or was serving or has agreed to serve at the request of the corporation as a director or officer (which, for purposes hereof, shall include a trustee or similar capacity) of

another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, or by reason of any action alleged to have been taken or omitted in such capacity.

- (2) The corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was or has agreed to serve at the request of the corporation as an employee or agent of the corporation or any subsidiary of the corporation, or is or was serving or has agreed to serve at the request of the corporation as an employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, or by reason of any action alleged to have been taken or omitted in such capacity.
- (3) The indemnification provided by this subsection (a) shall be from and against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the indemnitee or on his or her behalf in connection with such action, suit or proceeding and any appeal therefrom, but shall only be provided if the indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action, suit or proceeding, had no reasonable cause to believe his or her conduct was unlawful.
- (4) Notwithstanding the foregoing provisions of this subsection (a), in the case of an action or suit by or in the right of the corporation to procure a judgment in its favor (i) the indemnification provided by this subsection (a) shall be limited to expenses (including attorneys' fees) actually and reasonably incurred by such person in the defense or settlement of such action or suit, and (ii) no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless, and only to the extent that, the Delaware Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Delaware Court of Chancery or such other court shall deem proper.
- (5) The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she

reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(b) Good Faith.

- (1) For purposes of any determination under this Bylaw, a director or officer or, if applicable, employee or agent shall be deemed to have acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, to have had no reasonable cause to believe that his or her conduct was unlawful, if his or her action is based on information, opinions, reports and statements, including financial statements and other financial data, in each case prepared or presented by:
 - (i) one or more officers or employees of the corporation whom the director, officer, employee or agent reasonably believed to be reliable and competent in the matters presented;
 - (ii) counsel, independent accountants or other persons as to matters which the director, officer, employee or agent reasonably believed to be within such person's professional or expert competence; and
 - (iii) with respect to a director, a committee of the Board upon which such director does not serve, as to matters within such committee's designated authority, which committee the director reasonably believes to merit confidence;

so long as, in each case, the director acts without knowledge that would cause such reliance to be unwarranted.

- (2) The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal proceeding, that he or she had reasonable cause to believe that his or her conduct was unlawful.
- (3) The provisions of this paragraph (b) shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth by the Delaware General Corporation Law.

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- (c) Advancement of Expenses. The corporation shall advance, prior to the final disposition of any proceeding, promptly following request therefor, all expenses actually and reasonably incurred by any director or officer in connection with such proceeding upon receipt of an undertaking by or on behalf of such person to repay said amounts if it should be ultimately determined that such person is not entitled to be indemnified under this Bylaw or otherwise. Such expenses (including attorneys' fees) actually and reasonably incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board deems appropriate.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (d) of this Bylaw, no advance shall be made by the corporation if a determination is made (1) by the Board by a majority vote of a quorum consisting of directors who were not parties to the proceeding, or (2) if such quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) or by a panel of arbitrators, one of whom is selected by the corporation, another of whom is selected by an indemnitee and the last of whom is selected by the first two arbitrators so selected, that the facts known to the decision making party at the time such determination is made demonstrate that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

- (d) Enforcement. Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and officers under this Bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or officer. Any right to indemnification or advances granted by this Bylaw to a director or officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction in Delaware or Oklahoma if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. The claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting his or her claim. The corporation shall be entitled to raise as a defense to any such action that the claimant has not met the applicable standards of conduct that make it permissible for the corporation to indemnify the claimant for the amount claimed. Neither the failure of the corporation (including its Board, independent legal counsel or panel of arbitrators) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the corporation (including its Board, independent legal counsel or panel of arbitrators) that the claimant has not met such applicable standard of conduct, shall be a

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defense to the action or create a presumption that claimant has or has not met the applicable standard of conduct.

- (e) Exceptions. Any other provision herein to the contrary notwithstanding, the corporation shall not be obligated pursuant to the terms of this Bylaw:
 - (i) to indemnify or advance expenses to any person with respect to proceedings or claims initiated or brought voluntarily by such person and not by way of defense, except with respect to proceedings brought to establish or enforce a right to indemnification under this Bylaw or any other statute or law or otherwise as required under Section 145, but such indemnification or advancement of expenses may be provided by the corporation in specific cases if the Board finds it to be appropriate; or
 - (ii) to indemnify an indemnitee for any expenses incurred by any person with respect to any proceeding instituted by such person to enforce or interpret this Bylaw if the material assertions made by such person in such proceeding were not made in good faith or were frivolous; or
 - (iii) to indemnify any person under this Bylaw for any amounts paid in settlement of a proceeding effected without the corporation's written consent; or
 - (iv) to indemnify any person in connection with proceedings or claims involving the enforcement of non-compete and/or non-disclosure agreements or the non-compete and/or non-disclosure

provisions of employment, consulting or similar agreements the person may be a party to with the corporation, any subsidiary of the corporation or any other applicable foreign or domestic corporation, partnership, limited liability company, joint venture, trust or other enterprise, if any; or

- (v) to indemnify any person on account of any proceeding with respect to (A) remuneration paid to such person if it is determined by final judgment or other final adjudication that such remuneration was in violation of law, (B) which final judgment is rendered against such person for an accounting of profits made by the purchase or sale by such person of securities of the corporation pursuant to the provisions of Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of any federal, state or local statute, (C) which it is determined by final judgment or other final adjudication that such person's

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conduct was knowingly fraudulent or intentionally dishonest, or (D) which it is determined by final judgment or other final adjudication by a court having jurisdiction in the matter that such indemnification is not lawful; or

- (vi) to indemnify any person under this Bylaw for any amounts indemnified by the corporation other than pursuant to this Bylaw or amounts paid to or for the benefit of such person by available insurance.
- (f) Non-Exclusivity of Rights. The rights conferred on any person by this Bylaw shall not be exclusive of any other right which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the Delaware General Corporation Law.
- (g) Survival of Rights. The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director, officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.
- (h) Insurance. The corporation may, but shall not be obligated to, maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the corporation or another corporation, partnership, joint venture, trust or other enterprise against any loss indemnified pursuant to this Bylaw, regardless whether the corporation would have the power to indemnify such person against such loss indemnified pursuant to this Bylaw under the General Corporation Law of Delaware.
- (i) Amendments. Any repeal or modification of this Bylaw shall not reduce, terminate or otherwise adversely affect the right of any director or officer to obtain the indemnification or the advance of expenses with respect to any proceeding that arises out of any action or omission that occurred after this Bylaw was in effect.
- (j) Saving Clause. If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and officer to the full extent not prohibited by any applicable portion of this Bylaw that shall not have been invalidated, or by any other applicable law.

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- (k) Certain Definitions. For the purposes of this Bylaw, the following definitions shall apply:
 - (1) The term "proceeding" shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.
 - (2) The term "expenses" shall be broadly construed and shall include, without limitation, all direct and indirect costs of any type or nature whatsoever (including, without limitation, actual and reasonable attorneys' fees and related disbursements, other out-of-pocket costs and reasonable compensation for time spent by the indemnified party for which he or she is not otherwise compensated by the corporation or any third party, provided that the rate of compensation and estimated time involved is approved by the Board, which approval shall not be unreasonably withheld), actually and reasonably incurred by the indemnified party in connection with either the investigation, defense or appeal of a proceeding or establishing or enforcing a right to indemnification under this Bylaw, Section 145 or otherwise.

- (3) The term the “corporation” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Bylaw with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.
- (4) References to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the corporation” shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who

acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the corporation” as referred to in this Bylaw.

Effective April 14, 2005,
Amended May 17, 2013

Certification of Chief Executive Officer Pursuant to Section 302

I, Robert A. Snyder, certify that:

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

Date: July 31, 2013

/s/ Robert A. Snyder

Robert A. Snyder
Chief Executive Officer and President

Certification of Chief Financial Officer Pursuant to Section 302

I, Keith R. Schroeder, certify that:

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

Date: July 31, 2013

/s/ Keith R. Schroeder

Keith R. Schroeder
Chief Financial Officer

Certification of Chief Executive Officer Pursuant to Section 906

In connection with the quarterly report of Orchids Paper Products Company (the "Company") on Form 10-Q for the period ended June 30, 2013 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Robert A. Snyder, Chief Executive Officer and President of the Company, certify, to the best of my knowledge, pursuant to Rule 13a-14(b) and Section 1350 of Chapter 63 of Title 18 of the United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

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

/s/ Robert A. Snyder

Robert A. Snyder

Chief Executive Officer and President

July 31, 2013

Certification of Chief Financial Officer Pursuant to Section 906

In connection with the quarterly report of Orchids Paper Products Company (the "Company") on Form 10-Q for the period ended June 30, 2013 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Keith R. Schroeder, Chief Financial Officer of the Company, certify, to the best of my knowledge, pursuant to Rule 13a-14(b) and Section 1350 of Chapter 63 of Title 18 of the United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

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

/s/ Keith R. Schroeder

Keith R. Schroeder
Chief Financial Officer
July 31, 2013
