

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): June 17, 2008

THE TORO COMPANY

(Exact name of registrant as specified in its charter)

Delaware
(State of Incorporation)

1-8649
(Commission File Number)

41-0580470
(I.R.S. Employer Identification Number)

8111 Lyndale Avenue South
Bloomington, Minnesota
(Address of principal executive offices)

55420
(Zip Code)

Registrant's telephone number, including area code: **(952) 888-8801**

Not Applicable
(Former name or former address, if changed since last report.)

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

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

Section 5 — Corporate Governance and Management

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

On June 16, 2008, the rights agreement between The Toro Company and Wells Fargo Bank, NA (f/k/a Norwest Bank of Minnesota) dated as of May 20, 1998, as amended, and the related rights to purchase Series B Junior Participating Voting Preferred Stock, expired by their terms. Accordingly, on June 17, 2008, our Board of Directors adopted (i) a resolution to eliminate the Series B Junior Participating Voting Preferred Stock from our Certificate of Incorporation, and (ii) a Restated Certificate of Incorporation to reflect the elimination of the Series B Junior Participating Voting Preferred Stock. A copy of the Restated Certificate of Incorporation is filed as Exhibit 3.1 to this Form 8-K and is incorporated by reference into this Item 5.03.

Also on June 17, 2008, our Board of Directors adopted amendments to our Bylaws to increase the notice period and expand the information required to be provided by a shareholder who submits a nomination for election to our Board of Directors or other proposal for business to be brought before a meeting of shareholders. The amendments increase the standard advance notice period for shareholder nominations or proposals to not less than 90 days and not more than 120 days prior to the first anniversary of the preceding year's annual meeting of shareholders, as compared to the prior advance notice period of not less than 45 days and not more than 90 days. In addition, the amendments require a shareholder who submits a nomination or other proposal to disclose, among other things, information about the proposed nominee and his or her relationships with the shareholder submitting the nomination, information about any agreements, arrangements or understandings the shareholder may have with the proposed nominee or other parties relating to the nomination or other proposal, and information about the interests that the shareholder has related to Toro and our shares, including as a result of, among other things, derivative securities, voting arrangements, short positions or other interests. A shareholder who submits a nomination or proposal is required to update the information previously disclosed as of the record date for the meeting of shareholders and as of the date that is eight business days prior to the date of the meeting of shareholders. A copy of our Amended and Restated Bylaws is attached as Exhibit 3.2 to this Form 8-K and is incorporated by reference into this Item 5.03.

As described in our proxy statement for our 2008 Annual Meeting of Shareholders, which was filed with the SEC on January 31, 2008, our 2009 Annual Meeting of Shareholders is expected to be held on March 18, 2009. If a shareholder wishes to make a proposal to be included in our proxy statement for our 2009 Annual Meeting, our Vice President, Secretary and General Counsel must receive the proposal no later than the close of business on December 11, 2008, unless the date of our 2009 Annual Meeting is delayed by more than 30 calendar days, and the proposal must satisfy the requirements of the proxy rules promulgated by the SEC.

Under our Amended and Restated Bylaws, if a shareholder wishes to nominate a candidate for election to our Board of Directors at our 2009 Annual Meeting or to propose any other business to be brought before our 2009 Annual Meeting, the shareholder must give complete and timely written notice to our Vice President, Secretary and General Counsel not later than December 11, 2008 nor earlier than November 11, 2008. If the date of our 2009 Annual Meeting is advanced by more than 30 days or delayed by more than 60 days from the anniversary date of our 2008 Annual Meeting, a shareholder's notice must be delivered not earlier than the 120th day nor later than the 90th day prior to our rescheduled meeting, or the tenth day following the day on which we first make public announcement of our rescheduled meeting. A shareholder's notice must contain specific information required by our Amended and Restated Bylaws. Copies of our Amended and Restated Bylaws are available upon request to our Assistant General Counsel and Assistant Secretary at 8111 Lyndale Avenue South, Bloomington, Minnesota, 55420-1196, by telephone at 888/237-3054, or by email to invest@toro.com, or may be obtained through the SEC's website at www.sec.gov. If a shareholder's nomination or proposal is not timely and properly made in accordance with the procedures set forth in our Amended and Restated Bylaws, it may not be brought before our 2009 Annual Meeting. If the nomination or proposal is nonetheless brought before our 2009 Annual Meeting and the Chair of the meeting does not exercise the power and duty to declare that such non-complying nomination or proposal shall be disregarded, the persons named in the proxy may use their discretionary voting with respect to the nomination or proposal.

The summary information set forth in this Form 8-K regarding our Restated Certificate of Incorporation and our Amended and Restated Bylaws is qualified in its entirety by reference to the full text of those documents, copies of which are filed as Exhibits 3.1 and 3.2 to this Form 8-K and are incorporated herein by reference.

Section 9 — Financial Statements and Exhibits

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
3.1	The Toro Company Restated Certificate of Incorporation
3.2	The Toro Company Amended and Restated Bylaws

SIGNATURES

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

THE TORO COMPANY
(Registrant)

Date: June 17, 2008

By: /s/ Timothy P. Dordell
Timothy P. Dordell
Vice President, Secretary and General Counsel

EXHIBIT INDEX

EXHIBIT NO.

3.1
3.2

DESCRIPTION

The Toro Company Restated Certificate of Incorporation
The Toro Company Amended and Restated Bylaws

RESTATED CERTIFICATE OF INCORPORATION

OF

THE TORO COMPANY

The Toro Company (hereinafter called the "corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify:

FIRST: The present name of the corporation is The Toro Company, which is the name under which the corporation was originally incorporated, and the date of filing the original Certificate of Incorporation of the corporation with the Secretary of State of the State of Delaware was November 7, 1983.

SECOND: This Restated Certificate of Incorporation was duly adopted by and in accordance with the provisions of Section 245 of the General Corporation Law of the State of Delaware as set forth in Title 8 of the Delaware Code.

THIRD: This Restated Certificate of Incorporation only restates and integrates the provisions of the corporation's Certificate of Incorporation as heretofore amended or supplemented, and there is no discrepancy between those provisions and the provisions of this Restated Certificate of Incorporation.

FOURTH: The text of the Certificate of Incorporation of the corporation is hereby and restated to read in its entirety as follows:

ARTICLE I.

Name

The name of this corporation shall be The Toro Company.

ARTICLE II.

Registered Office

The address of the registered office of the corporation in the State of Delaware is 160 Greentree Drive, Suite 101, City of Dover, County of Kent, and the name of its registered agent at that address is National Registered Agents, Inc.

ARTICLE III.

Purpose

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

ARTICLE IV.

Capital Stock

The corporation shall be authorized to issue three classes of shares of capital stock to be designated, respectively, "Common Stock", "Voting Preferred Stock" and "Non-Voting Preferred Stock". The total number of shares of capital stock which the corporation shall have authority to issue is one hundred one million eight hundred fifty thousand (101,850,000); the total number of shares of Common Stock shall be one hundred

million (100,000,000) and each such share shall have a par value of \$1.00; the total number of shares of Voting Preferred Stock shall be one million (1,000,000), and each such share shall have a par value of \$1.00; and the total number of shares of Non-Voting Preferred Stock shall be eight hundred and fifty thousand (850,000), and each such share shall have a par value of \$1.00.

Except as herein provided or as otherwise provided by law or by the resolution or resolutions adopted by the Board designating the rights, powers and preferences of any series of Preferred Stock, the Common Stock shall have the exclusive right to vote for the election of directors and for all other purposes, each holder of the Common Stock being entitled to one vote for each share held; and Voting Preferred Stock and Non-Voting Preferred Stock shall have only such voting rights, if any, as fixed by the Board of Directors and as required by law as to matters affecting such Voting Preferred Stock and Non-Voting Preferred Stock. Whenever this Restated Certificate of Incorporation or the Bylaws of the corporation shall require the affirmative vote of the holders of at least 80% of the voting power of the then outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors (such capital stock is hereinafter referred to in this Restated Certificate of Incorporation as "Voting Stock"), voting together as a single class, for the taking of corporate action: (A) such affirmative vote shall be in addition to any other affirmative vote required by law or by the resolution or resolutions designating the rights, powers and preferences of any outstanding series of Preferred Stock; and (B) each outstanding share of Common Stock shall be entitled to one vote and each outstanding share of each series of Voting Preferred Stock shall be entitled to the number of votes to which it is generally entitled, pursuant to the resolution or resolutions designating the rights, powers and preferences of such series of Preferred Stock, in the election of directors.

The Board of Directors is authorized to establish more than one series or class of Common Stock, Voting Preferred Stock and Non-Voting Preferred Stock and to fix the relative rights and preferences of any such class or series, which rights and preferences need not be equal.

There shall be no cumulative voting of the shares of this corporation and the holders of shares of any class of this corporation shall not have preemptive rights to subscribe for any shares or securities convertible into shares of this corporation.

ARTICLE V.

Bylaws

In furtherance and not in limitation of the powers conferred by law, the Board is expressly authorized to make, repeal, alter, amend and rescind the Bylaws of the corporation by a majority vote of the entire Board at any regular or special meeting of the Board; provided however, that, notwithstanding anything contained in this Restated Certificate of Incorporation or the Bylaws of the corporation to the contrary, the affirmative vote of the holders of at least 80% of the voting power of the then outstanding shares of Voting Stock, voting together as a single class, shall be required to (1) alter, amend or repeal any provision of the Bylaws which is substantially identical to or implements the last sentence of Article IV, or Articles VI, VII or VIII, of this Restated Certificate of Incorporation or (2) alter, amend or repeal any provision of this proviso to Article V.

ARTICLE VI.

Board of Directors

Section 1. *Number, Election and Terms.* The business and affairs of the corporation shall be managed under the direction of a Board of Directors which, subject to any right of the holders of any series of Preferred Stock then outstanding to elect additional directors under specified circumstances, shall consist of not less than eight nor more than twelve persons. The exact number of directors within the minimum and maximum limitations specified in the preceding sentence shall be fixed from time to time by the Board pursuant to a resolution adopted by a majority of the entire Board. The directors shall be divided into three classes, designated Classes

A, B and C, as nearly equal in number as possible, with the term of office of each class to expire at the third succeeding Annual Meeting of Stockholders after its election at an Annual Meeting of Stockholders.

Section 2. *Newly Created Directorships and Vacancies.* Subject to the rights of the holders of any series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board resulting from death, resignation, retirement, disqualification, removal from office or other cause shall be filled only by a majority vote of the directors then in office, and directors so chosen shall hold office for a term expiring at the Annual Meeting of Stockholders at which the term of the class to which they have been elected expires. No decrease in the number of directors constituting the Board shall shorten the term of any incumbent director.

Section 3. *Removal.* Subject to the rights of the holders of any series of Preferred Stock then outstanding, any director, or the entire Board, may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of at least 80% of the voting power of the then outstanding shares of the Voting Stock, voting together as a single class.

Section 4. *Amendment, Repeal, etc.* Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 80% of the voting power of the then outstanding shares of Voting Stock, voting together as a single class, shall be required to alter, amend or repeal this Article VI.

ARTICLE VII.

Actions by Stockholders

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 may not be effected by any consent in writing by such stockholders. Special meetings of stockholders of the corporation may be called only by the Board pursuant to a resolution approved by a majority of the entire Board. Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 80% of the voting power of the then outstanding shares of Voting Stock, voting together as a single class, shall be required to alter, amend or repeal this Article VII.

ARTICLE VIII.

Certain Business Combinations

Section 1. *Vote Required for Certain Business Combinations.*

A. *Higher Vote for Certain Business Combinations.* Except as otherwise expressly provided in Section 2 of this Article VIII,

- (i) any merger or consolidation of the corporation or any Subsidiary (as hereinafter defined) with (a) any Interested Stockholder (as hereinafter defined) or (b) any other corporation (whether or not itself an Interested Stockholder) which is, or after such merger or consolidation would be, an Affiliate (as hereinafter defined) of an Interested Stockholder; or

 - (ii) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with any Interested Stockholder or any Affiliate of any Interested Stockholder of any assets of the corporation or any Subsidiary having an aggregate Fair Market Value (as hereinafter defined) of \$1,000,000 or more; or
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- (iii) the issuance or transfer by the corporation or any Subsidiary (in one transaction or a series of transactions) of any securities of the corporation or any Subsidiary to any Interested Stockholder or any Affiliate of any Interested Stockholder or any Affiliate of any Interested Stockholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate Fair Market Value of \$1,000,000 or more; or

- (iv) the adoption of any plan or proposal for the liquidation or dissolution of the corporation proposed by or on behalf of an Interested Stockholder or any Affiliate of any Interested Stockholder; or

- (v) any reclassification of securities (including any reverse stock split), or recapitalization of the corporation, or any merger or consolidation of the corporation with any of its Subsidiaries or any other transaction (whether or not with or into or otherwise involving an Interested Stockholder) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of the corporation or any Subsidiary which is directly or indirectly owned by any Interested Stockholder or any Affiliate of any Interested Stockholder;

shall require the affirmative vote of the holders of at least 80% of the voting power of the then outstanding shares of Voting Stock, voting together as a single class and any necessary vote of the outstanding shares of Preferred Stock. Such affirmative vote shall be required notwithstanding the fact that no vote may be required or that a lesser percentage may be specified, by law or in any agreement with any national securities exchange or otherwise.

B. *Definition of "Business Combination."* The term "Business Combination" as used in this Article VIII shall mean any transaction which is referred to in any one or more of clauses (i) through (v) of paragraph A of this Section 1.

Section 2. *When Higher Vote is Not Required.* The provisions of Section 1 of this Article VIII shall not be applicable to any particular Business Combination, and such Business Combination shall require only such affirmative vote as is required by law, this Restated Certificate of Incorporation and any resolution or resolutions designating the rights, powers and preferences of any outstanding series of Preferred Stock, if all of the conditions specified in either of the following paragraphs (A) and (B) are met (it being intended that in the case of a Business Combination not involving any cash or consideration other than cash to be received by the holders of each class or series of outstanding Voting Stock (other than Institutional Voting Stock, as hereinafter defined), the provisions of such Section 1 shall not be applicable only if the condition specified in the following paragraph (A) is met):

- A. *Approval by Continuing Directors.* The Business Combination shall have been approved by a majority of the Continuing Directors (as hereinafter defined).
- B. *Price and Procedure Requirements.* All of the following conditions shall have been met.
 - (i) The aggregate amount of the cash and the Fair Market Value (as hereinafter defined) as of the date of the consummation of the Business Combination of consideration other than cash to be received per share by holders of Common Stock in such Business Combination shall be at least equal to the highest of the following:

- (a) (if applicable) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Stockholder for any shares of Common Stock acquired by it (1) within the two-year period immediately prior to the first public announcement of the proposal of the Business Combination (the "Announcement Date") or (2) in the transaction in which it became an Interested Stockholder, whichever is higher;

 - (b) the Fair Market Value per share of Common Stock on the Announcement Date or on the date on which the Interested Stockholder became an Interested Stockholder (such latter date is referred to in this Article VIII as the "Determination Date"), whichever is higher; and

 - (c) (if applicable) the price per share equal to the Fair Market Value per share of Common Stock on the Announcement Date or the Determination Date, whichever is higher, multiplied by the ratio of (1) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Stockholder for any shares of Common Stock acquired by it within the two-year period immediately prior to the Announcement Date to (2) the Fair Market Value per share of Common Stock on the first day in such two-year period upon which the Interested Stockholder acquired any shares of Common Stock.
- (ii) The aggregate amount of the cash and the Fair Market Value as of the date of the consummation of the Business Combination of consideration other than cash to be received per share by holders of shares of any other series of outstanding Voting Stock (other than Institutional Voting Stock, as hereinafter defined) shall be at least equal to the highest of the following (it being intended that the requirements of this paragraph (B)(ii) shall be required to be met with respect to every series of outstanding Voting Stock (other than Institutional Voting Stock), whether or not the Interested Stockholder has previously acquired any shares of a particular series of Voting Stock):
- (a) (if applicable) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Stockholder for any shares of such series of Voting Stock acquired by it (1) within the two-year period immediately prior to the Announcement Date or (2) in the transaction in which it became an Interested Stockholder, whichever is higher;

 - (b) (if applicable) the highest preferential amount per share to which the holders of shares of such series of Voting Stock are entitled in the event of any voluntary or involuntary liquidation, dissolution or winding up of the corporation;

 - (c) the Fair Market Value per share of such series of Voting Stock on the Announcement Date or on the Determination Date, whichever is higher; and

 - (d) (if applicable) the price per share equal to the Fair Market Value per share of such series of Voting Stock on the Announcement Date or the Determination Date, whichever is higher, multiplied by the ratio of (1) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested
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Stockholder for any shares of such series of Voting Stock acquired by it within the two-year period immediately prior to the Announcement Date to (2) the Fair Market Value per share of such series of Voting Stock on the first day in such two-year period upon which the Interested Stockholder acquired any shares of such series of Voting Stock.

- (iii) The consideration to be received by holders of a particular class (in the case of Common Stock) or series (in the case of Preferred Stock) of the outstanding Voting Stock shall be in cash or in the same form as the Interested Stockholder has previously paid for shares of any class or series of Voting Stock. If the Interested Stockholder has paid for shares of any class or series of Voting Stock with varying forms of consideration, the form of consideration for such class or series of Voting Stock shall be either cash or the form used to acquire the largest number of shares of such class or series of Voting Stock previously acquired by it.
- (iv) After such Interested Stockholder has become an Interested Stockholder and prior to the consummation of such Business Combination: (a) except as approved by a majority of the Continuing Directors, there shall have been no failure to declare and pay at the regular date therefor any full quarterly dividends (whether or not cumulative) on the outstanding Preferred Stock; (b) there shall have been (1) no reduction in the annual rate of dividends paid on the Common Stock (except as necessary to reflect any subdivision of the Common Stock), except as approved by a majority of the Continuing Directors, and (2) an increase in such annual rate of dividends as necessary to reflect any reclassification (including any reverse stock split), recapitalization, reorganization or any similar transaction which has the effect of reducing the number of outstanding shares of Common Stock, unless the failure so to increase such annual rate is approved by a majority of the Continuing Directors; and (c) such Interested Stockholder shall have not become the beneficial owner of any additional shares of Voting Stock except as part of the transaction which results in such Interested Stockholder becoming an Interested Stockholder.
- (v) After such Interested Stockholder has become an Interested Stockholder, such Interested Stockholder shall not have received the benefit, directly or indirectly (except proportionately as a stockholder), of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by the corporation, whether in anticipation of or in connection with such Business Combination or otherwise.
- (vi) A proxy or information statement describing the proposed Business Combination and complying with the requirements of the Securities and Exchange Act of 1934 and the rules and regulations thereunder (or any subsequent provisions replacing such Act, rules or regulations) shall be mailed to public stockholders of the corporation at least 30 days prior to the consummation of such Business Combination (whether or not such proxy or information statement is required to be mailed pursuant to such Act or subsequent provisions).

Section 3. *Certain Definitions.* For the purposes of this Article VIII:

- A. A "person" shall mean any individual, firm, corporation or other entity.
 - B. "Interested Stockholder" shall mean any person (other than the corporation or any Subsidiary) who or which:
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- (i) is the beneficial owner, directly or indirectly, of more than 10% of the voting power of the outstanding Voting Stock; or
- (ii) is an Affiliate of the corporation and at any time within the two-year period immediately prior to the date in question was the beneficial owner, directly or indirectly, of 10% or more of the voting power of the then outstanding Voting Stock; or
- (iii) is an assignee of or has otherwise succeeded to any shares of Voting Stock which were at any time within the two-year period immediately prior to the date in question beneficially owned by an Interested Stockholder, if such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933.

C. A person shall be a "beneficial owner" of any Voting Stock:

- (i) which such person or any of its Affiliates or Associates (as hereinafter defined) beneficially owns, directly or indirectly; or
- (ii) which such person or any of its Affiliates or Associates has (a) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (b) the right to vote pursuant to any agreement, arrangement or understanding; or
- (iii) which are beneficially owned, directly or indirectly, by any other person with which such person or any of its Affiliates or Associates has any agreement, or arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of Voting Stock.

D. For the purpose of determining whether a person is an Interested Stockholder pursuant to paragraph (B) of this Section 3, the number of shares of Voting Stock deemed to be outstanding shall include shares deemed owned through application of paragraph (C) of this Section 3 but shall not include any other shares of Voting Stock which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

E. "Affiliate" or "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on October 3, 1983.

F. "Subsidiary" means any corporation of which a majority of any class of equity security is owned, directly or indirectly, by the corporation; provided, however, that for the purposes of the definition of Interested Stockholder set forth in paragraph (B) of this Section 3, the term "Subsidiary" shall mean only a corporation of which a majority of each class of equity security is owned, directly or indirectly, by the corporation.

G. "Continuing Director" means any member of the Board who is unaffiliated with the Interested Stockholder and was a member of the Board prior to the time that the Interested Stockholder became an Interested Stockholder, and any successor of a Continuing Director who is unaffiliated with the Interested Stockholder and is recommended to succeed a Continuing Director by a majority of Continuing Directors then on the Board.

H. "Fair Market Value" means: (i) in the case of stock, the highest closing sale price during the 30-day period immediately preceding the date in question of a share of such stock on the Composite Tape for New York Stock Exchange—Listed Stocks, or, if such stock is not quoted on the Composite Tape, on the New York Stock Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which such stock is listed, or, if such stock is not listed on any such exchange, the highest closing bid quotation with respect to a share of such stock during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use, or if no such quotations are available, the fair market value on the date in question of a share of such stock as determined by the Board in good faith; and (ii) in the case of property other than cash or stock, the fair market value of such property on the date in question as determined by the Board in good faith.

I. "Institutional Voting Stock" shall mean any series of Voting Stock which was issued to and continues to be held solely by one or more insurance companies, pension funds, commercial banks, savings banks or similar financial institutions or institutional investors.

J. In the event of any Business Combination in which the corporation survives, the phrase "consideration other than cash to be received" as used in Section 2 of this Article VIII shall include the shares of Common Stock or the shares of any series of outstanding Voting Stock retained by the holders of such shares.

Section 4. *Powers of the Board of Directors.* A majority of the directors of the corporation shall have the power and duty to determine for the purposes of this Article VIII, on the basis of information known to them after reasonable inquiry, (A) whether a person is an Interested Stockholder, (B) the number of shares of Voting Stock beneficially owned by any person, (C) whether a person is an Affiliate or Associate of another, (D) whether a series of Voting Stock is Institutional Voting Stock and (E) whether the assets which are the subject of any Business Combination have, or the consideration to be received for the issuance or transfer of securities by the corporation or any Subsidiary in any Business Combination has, an aggregate Fair Market Value of \$1,000,000 or more.

Section 5. *No Effect on Fiduciary Obligations of Interested Stockholders.* Nothing contained in this Article VIII shall be construed to relieve any Interested Stockholder from any fiduciary obligation imposed by law.

Section 6. *Amendment, Repeal, etc.* Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 80% of the voting power of the then outstanding shares of the Voting Stock, voting together as a single class, shall be required to alter, amend or repeal this Article VIII.

ARTICLE IX.

Amendment of Restated Certificate of Incorporation

The corporation reserves the right to amend, alter, change or repeal any provision contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred on stockholders herein are granted subject to this reservation. Notwithstanding the foregoing, the provisions set forth in the last sentence of Article IV, and in Articles VI, VII and VIII, may not be altered, amended or repealed in any respect unless such alteration, amendment or repeal is approved as specified in each thereof.

ARTICLE X.

Indemnity

Section 1. *Elimination of Certain Liability of Directors.*

A director of the corporation shall not be personally liable to the corporation or its stockholders for monetary

damages for breach of fiduciary duty as a director, except for liability (A) for any breach of the director's duty of loyalty to the corporation or its stockholders, (B) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (C) under Section 174 of the Delaware General Corporation Law, or (D) for any transaction from which the director derived an improper personal benefit.

Section 2. *Indemnification and Insurance.*

A. *Right to Indemnification.* Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a director or officer, of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the corporation to provide broader indemnification rights than said law permitted the corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except as provided in paragraph (B) hereof, the corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors of the corporation. The right to indemnification conferred in this Section 2 shall be a contract right, which may, by action of the Board of Directors of the corporation and at its option, be expressed in a separate written instrument, and shall include the right to be paid by the corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that, if the Delaware General Corporation Law requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Section 2 or otherwise. The corporation may, by action of its Board of Directors, provide indemnification to employees and agents of the corporation with the same scope and effect as the foregoing indemnification of directors and officers.

B. *Right of Claimant to Bring Suit.* If a claim under paragraph (A) of this Section 2 is not paid in full by the corporation within thirty days after a written claim has been received by the corporation, the claimant may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition whether the required undertaking, if any is required, has been tendered to the corporation) that the claimant has not met the standards of conduct which make it permissible under the Delaware General Corporation Law for the corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the corporation. Neither the failure of the corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he 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 of Directors,

independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

C. *Non-Exclusivity of Rights.* The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Section 2 shall not be exclusive of any other right which any persons may have or hereafter acquire under any statute, provision of the Restated Certificate of Incorporation, bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

D. *Insurance.* The corporation may 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 such expense, liability or loss, whether or not the corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

IN WITNESS WHEREOF, the corporation has caused this Restated Certificate of Incorporation to be executed this 17th day of June, 2008, in its name and on its behalf by its Vice President, Secretary and General Counsel pursuant to Section 103 of the General Corporation Law of the State of Delaware.

/s/ Timothy P. Dordell
Timothy P. Dordell
Vice President, Secretary and General Counsel

**AMENDED AND RESTATED
BYLAWS
OF
THE TORO COMPANY
(A Delaware Corporation)**

ARTICLE I

Offices, Corporate Seal, and Records

Section 1.1. The registered office of the Corporation shall be established and maintained in the City of Dover, in the County of Kent, in the State of Delaware, and the Corporation may have other offices, either within or without the State of Delaware, at such place or places as the Board of Directors may from time to time determine. Unless otherwise determined by the Board of Directors, the principal executive office of the Corporation shall be at 8111 Lyndale Avenue South, in the City of Bloomington, County of Hennepin, State of Minnesota.

Section 1.2. The Corporation may have a corporate seal in such form as determined by the Board of Directors, which may be altered at its pleasure, and the seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

Section 1.3. The Corporation shall at all times keep at its principal executive office, or at such other place or places as the Board of Directors may determine, a share register giving the names and addresses of the stockholders, the number and classes of shares held by each, and the dates on which the certificates therefor were issued, or, in the case of uncertificated shares, the date the electronic entry evidencing the ownership of the shares was made in the Corporation's records.

Section 1.4. The Corporation shall at all times keep at its principal executive office the following records:

- (a) The original or copies of records of all proceedings of stockholders and directors, of its Bylaws and all amendments thereto, and of reports made to stockholders or any of them within the next pr
- (b) A statement of names and usual business addresses of its directors and principal officers;
- (c) Appropriate financial statements.

Section 1.5. Subject to law and any order of the Court of Chancery, any stockholder of record shall have the right to inspect and make copies or extracts therefrom, upon proper written demand under oath stating the purpose thereof, in person or by attorney or other agent, at any reasonable time or times, for any proper purpose, and at the principal executive offices of the corporation, the stock ledger, a list of stockholders, and other books and records, required financial statements, and the records of the proceedings of the stockholders and directors.

**ARTICLE II
Meeting of Stockholders**

Section 2.1. All meetings of the stockholders shall be held at such place within or without the State of Delaware as may be designated by the Board of Directors in the notice of the meeting.

Section 2.2. Annual meetings of the stockholders, if any, shall be held on the day or date and at the time and place as the Board of Directors may fix from time to time in its discretion, for the election of directors and the transaction of such other business as may come before the annual meeting; provided, however, that any previously scheduled annual meeting of the stockholders may be postponed by resolution of the Board of Directors upon public notice given prior to the date previously scheduled for such annual meeting of the stockholders; and provided, further, that no business with respect to which special notice is required by law shall be transacted at an annual meeting unless such notice shall have been given.

Section 2.3. Special meetings of the stockholders for any purpose or purposes may be called only by the Board of Directors, pursuant to a resolution approved by a majority of the entire Board of Directors; provided, however, that any previously scheduled special meeting of the stockholders may be postponed by resolution of the Board of Directors upon public notice given prior to the date previously scheduled for such special meeting of the stockholders. Business transacted at a special meeting shall be confined to the purposes stated in the call and notice thereof.

Section 2.4. Notice of each annual and special meeting of stockholders stating the date, time and place thereof, and the general nature of the business to be considered thereat, shall be given at least ten days and not more than sixty days before the date of the meeting to each stockholder entitled to vote thereat. Such notice shall be deemed delivered when deposited in the United States mail with postage thereon prepaid, addressed to the stockholder at his address as it appears on the stock transfer books of the Corporation.

Section 2.5. Each stockholder who is entitled to vote pursuant to the terms of the Certificate of Incorporation and these Bylaws, or who is entitled to vote pursuant to the laws of the State of Delaware, shall be entitled to vote in person or by proxy, but no proxy shall be voted after three years from its date unless such proxy provides for a longer period. Any nominee for director in an uncontested election as to whom a majority of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors are designated to be "withheld" from, or are voted "against", that director's election shall tender his or her resignation for consideration by the Nominating and Governance Committee. The Nominating and Governance Committee shall evaluate the best interests of the Corporation and its stockholders and shall recommend to the Board the action to be taken with respect to such tendered resignation. All other questions shall be decided by the affirmative vote of a majority of the shares present in person or represented by proxy at the meeting and entitled to vote on such question.

A complete list of the stockholders entitled to vote at any meeting of stockholders at which directors are to be elected, arranged in alphabetical order, with the address of each, and the number of shares held by each, shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

The Board of Directors by resolution shall appoint one or more inspectors, which inspector or inspectors may include individuals who serve the Corporation in other capacities, including without limitation as officers, employees, agents or representatives of the Corporation, to act at the meeting and make a written report thereof. One or more persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate inspector has been appointed to act or is able to act at a meeting of stockholders, the Chair of the meeting shall appoint one or more inspectors to act at the meeting.

Each inspector, before discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall have the duties prescribed by law.

The Chair of the meeting shall fix and announce at the meeting the date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at the meeting.

Section 2.6. Except as otherwise required by law, by the Certificate of Incorporation or by these Bylaws, the presence, in person or by proxy, of stockholders holding a majority of the voting power of the outstanding stock of the Corporation shall constitute a quorum at all meetings of the stockholders. The Chair of any annual or special meeting of the stockholders or a majority in interest of the stockholders entitled to vote thereat shall have the power to adjourn such meeting from time to time, without notice other than announcement at the meeting, whether or not there is such a quorum. No notice of the time and place of adjourned meetings need be given except as required by law; provided, however, that if such adjournment is for more than thirty days, or if after such adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at such adjourned meeting. At any such adjourned meeting at which the requisite amount of stock entitled to vote shall be represented, any business may be transacted which might have been transacted at the meeting as originally noticed; but only those stockholders entitled to vote at the meeting as originally noticed shall be entitled to vote at any adjournment or adjournments thereof unless the Board of Directors shall have fixed a new record date for such adjournment or adjournments pursuant to Section 2.7 of these Bylaws.

The stockholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

Section 2.7. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect to any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be less than ten nor more than sixty days before the date of such meeting, nor more than sixty days prior to any other action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment or adjournments of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 2.8. (A) (1) Nominations of persons for election to the Board of Directors of the Corporation and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders only (a) pursuant to the Corporation's notice of meeting, (b) by or at the direction of the Board of Directors or (c) by any stockholder of the Corporation who (i) was a stockholder of record (and, with respect to any beneficial owner, if different, on whose behalf any nomination or proposal is made, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time of giving of notice provided for in this Bylaw and at the time of the annual meeting, (ii) is entitled to vote at the annual meeting, and (iii) complied with the notice procedures set forth in this Bylaw as to such nominations or other business. Except for proposals properly made pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and included in the Corporation's notice of meeting, the foregoing clause (c) shall be the exclusive means for a stockholder to make nominations of persons for election to the Board of Directors of the Corporation or to propose other business to be considered by the stockholders at an annual meeting of stockholders.

(2) Without qualification, for any nominations of one or more persons for election to the Board of Directors of the Corporation or any other business to be properly brought before an annual meeting by a stockholder, in each case, pursuant to clause (c) of paragraph (A) (1) of this Bylaw, the stockholder must have given timely notice thereof in writing and in proper 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 shall be delivered to the Secretary at the principal executive offices of the Corporation not less than ninety days nor more than one hundred twenty days prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced by more than thirty days or delayed by more than sixty days from the first anniversary date of the preceding year's annual meeting, notice by the stockholder to be timely must be so delivered not earlier than the one hundred twentieth day prior to the date of such rescheduled annual meeting and not later than the close of business on the later of (x) the ninetieth day prior to the date of such rescheduled annual meeting or (y) the tenth day following the day on which public announcement of the date of such rescheduled annual meeting is first made. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above. For purposes of this Bylaw, the stockholder providing the notice of a proposed nomination or other business proposed to be brought before an annual meeting, the beneficial owner, if different, on whose behalf the proposed nomination or other business proposed to be brought before an annual meeting is made, and any affiliate or associate of such beneficial owner (as such terms are defined in Rule 12b-2 promulgated under the Exchange Act), are referred to as "Proposing Persons". To be in proper form, a stockholder's notice (whether given pursuant to this paragraph (A)(2) or paragraph (B) of these Bylaws) shall set forth, as of the date of such notice:

(a) As to each person, if any, whom the stockholder proposes to nominate for election or reelection as a director (i) all information relating to such proposed nominee that is required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 under Exchange Act and the regulations promulgated thereunder (including such proposed nominee's written consent to being named in the proxy statement as a nominee and to serving as a director if elected), and (ii) a reasonably detailed description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among any Proposing Person, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 promulgated under Regulation S-K if a Proposing Person, or any person acting in concert therewith, were the "registrant" for purposes of such rule and the proposed nominee were a director or executive officer of such registrant;

(b) As to any business other than nominations for election of one or more directors that the stockholder proposes to bring before the meeting, (i) a reasonably brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of each Proposing Person, and (ii) a reasonably detailed description of all agreements, arrangements and understandings between or among any Proposing Person and/or any other person or persons (including their names) in connection with the proposal of such business by such stockholder; and

(c) As to each Proposing Person, (i) the name and address of the stockholder providing the notice, as they appear on the Corporation's books, and of any other Proposing Persons,

(ii) the class and number of shares of the Corporation that are, directly or indirectly, owned of record or beneficially by such Proposing Person, (iii) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any shares of the Corporation or with a value derived in whole or in part from the value of any shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying capital stock (or any class or series thereof) of the Corporation or otherwise (a "Derivative Instrument"), directly or indirectly, owned of record or beneficially by such Proposing Person and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation, (iv) any proxy, contract, arrangement, understanding, or relationship pursuant to which such Proposing Person has a right to vote any shares of the Corporation, (v) any short interest in any security of the Corporation (for purposes of this Bylaw a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (vi) any rights to dividends on the shares of the Corporation owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation, (vii) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such Proposing Person is a general partner or, directly or indirectly, beneficially owns an interest in a general partner, and (viii) any performance related fees (other than an asset based fee) that such Proposing Person is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any.

A stockholder providing notice of a proposed nomination for election to the Board of Directors of the Corporation or other business proposed to be brought before a meeting (whether given pursuant to this paragraph (A)(2) or paragraph (B) of these Bylaws) shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice under this paragraph (A)(2) shall be true and correct as of the record date for the meeting and as of the date that is ten business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to the Secretary at the principal executive offices of the Corporation not later than five business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight business days prior to the date for the meeting or any adjournment or postponement thereof (in the case of the update and supplement required to be made as of ten business days prior to the meeting or any adjournment or postponement thereof). The Corporation may also require any proposed nominee for election to the Board of Directors of the Corporation to furnish such other information as may be reasonably required for the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee.

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

(B) Nominations of persons for election to the Board of Directors of the Corporation may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (a) by or at the direction of the Board of Directors or (b) if and only if the Board of Directors has determined that directors shall be elected at such special meeting, by any stockholder of the Corporation who is a stockholder of record (and, with respect to any beneficial owner, if different, on whose behalf any nomination or proposal is made, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time of giving of notice provided for in this Bylaw and at the time of the special meeting, who shall be entitled to vote at the special meeting and who complies with the notice procedures set forth in this Bylaw under paragraph (A)(2) with respect to nominations for election of directors at an annual meeting of stockholders. Stockholders shall not be permitted to propose other business to be considered by the stockholders at a special meeting. Without qualification, in the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any stockholder otherwise permitted in this Bylaw to nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, may nominate such person(s) for election to such position(s) if the stockholder's notice required by paragraph (A)(2) shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the one hundred twentieth day prior to such special meeting and not later than the close of business on the later of (x) the ninetieth day prior to such special meeting or (y) the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such special meeting. In no event shall any adjournment or postponement of a special meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

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

(2) Notwithstanding the foregoing provisions of this Bylaw, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Bylaw. This Bylaw is expressly intended to apply to any business proposed to be considered by the stockholders at a meeting, regardless of whether or not such proposal is made pursuant to Rule 14a-8 under the Exchange Act. In the case of proposals made pursuant to Rule 14a-8 under the Exchange Act, this Bylaw shall not 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.

(3) For purposes of this Bylaw, "public announcement" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act.

ARTICLE III Directors

Section 3.1. The business and affairs of the Corporation shall be managed under the direction of a

Board of Directors which, subject to any right of the holders of any series of Preferred Stock then outstanding to elect additional directors under specified circumstances, shall consist of not less than eight (8) nor more than twelve (12) persons. The exact number of directors within the minimum and maximum limitations specified in the preceding sentence shall be fixed from time to time by the Board pursuant to a resolution adopted by a majority of its members. The directors shall be divided into three classes, as nearly equal in number as possible, with the term of office of Class A to expire at the 1984 Annual Meeting of Stockholders, the term of office of Class B to expire at the 1985 Annual Meeting of Stockholders and the term of office of Class C to expire at the 1986 Annual Meeting of Stockholders. At each annual meeting of stockholders following such initial classification and election, directors elected to succeed those directors whose terms expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election.

Section 3.2. Subject to the rights of the holders of any series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board resulting from death, resignation, retirement, disqualification, removal from office or other cause shall be filled only by majority vote of the directors then in office, and directors so chosen shall hold office for a term expiring at the annual meeting of stockholders at which the term of the Class to which they have been elected expires. No decrease in the number of directors constituting the Board shall shorten the term of any incumbent director. Subject to the rights of the holders of any series of Preferred Stock then outstanding, any director, or the entire Board, may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of at least 80% of the voting power of the then outstanding Common Stock of the Corporation.

Section 3.3. Regular meetings of the Board shall be held at bi-monthly intervals during each fiscal year, or on such alternate intervals or dates as the Board may fix from time to time in its discretion, and at such time and place as the Chairman of the Board of Directors or, in his absence, the President shall determine, preferably at the principal executive office of the Corporation during the third week of the month. At least three (3) days' notice thereof shall be given by the Secretary to each director, either personally or by telephone, mail, electronic mail or facsimile transmission.

Section 3.4. Special meetings of the Board may be called by the Chief Executive Officer or by any two directors, and not less than twenty-four (24) hours' notice thereof shall be given by the Secretary to any director, either personally or by telephone, mail, telegram or facsimile transmission.

Section 3.5. Any action taken by the Board or any committee thereof at any meeting where all members are present shall be valid whether or not notice of such meeting was in fact given, except as provided by law. Any action which might be taken at a meeting of the Board, or at a meeting of any committee thereof as the case may be, may be taken without meeting as provided by law.

Section 3.6. At all meetings of the Board a majority of the directors shall be necessary and sufficient to constitute a quorum for the transaction of business, but if less than a quorum are present, those present may adjourn the meeting from time to time until a quorum shall be present.

Section 3.7. The Board may unanimously elect from among the directors an Executive Committee, a Compensation and Human Resources Committee, an Audit Committee, and a Nominating and Governance Committee, and such other committees as the Board may from time to time determine, to serve at the pleasure of the Board. The members of the Board of Directors and of said Committees shall have the role of monitoring the conduct of the business and affairs of the corporation on behalf of all of the constituencies of

the Corporation, including in particular, those who invest in the stock of the Corporation, in an environment of loyal but independent oversight. Each Committee shall maintain independent minutes of action, and with the exception of the Audit Committee, and resolutions of the Compensation and Human Resources Committee relating to matters governed by or within the scope of Section 16 of the Securities and Exchange Act of 1934 or Section 162(m) of the Internal Revenue Code of 1986, or its successor provision, such minutes shall be subject to approval by the Board.

Section 3.8. The Executive Committee shall consist of a minimum of three directors of the Corporation, including the Chairman of the Board of Directors, and one of the members shall be designated by the Board of Directors as its Chair. The Chair of the Executive Committee shall preside at all meetings of the Executive Committee and shall perform such other duties as may be prescribed by the Board of Directors. The underlying purpose of the Executive Committee is to exercise all of the powers and authority of the Board during intervals between meetings of the Board. The Committee shall have discretionary authority to undertake additional activities within the scope of its primary functions.

Section 3.9. The Audit Committee shall consist of a minimum of three directors of the Corporation, each of whom shall meet the independence and other requirements established by law, the rules and regulations of the Securities and Exchange Commission and the New York Stock Exchange listing standards, and one of the members shall be designated by the Board of Directors as its Chair. The Chair of the Audit Committee shall preside at all meetings of the Audit Committee and shall perform such other duties as may be prescribed by the Board of Directors. The purpose of the Audit Committee is to assist the Board of Directors in fulfilling the Board's responsibility to oversee the Corporation's financial reports and accounting and reporting practices and to perform its duties and responsibilities as outlined in the Audit Committee Charter. The manager of the Corporation's internal auditing function, when operative, shall have an indirect reporting relationship to the Audit Committee, and shall perform such duties as may be prescribed by the Board of Directors or by the Audit Committee. The Committee shall have discretionary authority to undertake additional activities within the scope of its primary functions.

Section 3.10. The Compensation and Human Resources Committee shall consist of a minimum of three directors of the Corporation, each of whom shall meet the independence and other requirements established by law, the rules and regulations of the Securities and Exchange Commission and the New York Stock Exchange listing standards, and one of the members shall be designated by the Board of Directors as its Chair. The Chair of the Compensation and Human Resources Committee shall preside at all meetings of the Compensation and Human Resources Committee and shall perform such other duties as may be prescribed by the Board of Directors. The purposes of the Compensation and Human Resources Committee include: to administer all employee benefit plans heretofore or hereafter established including the granting of stock options and incentive awards authorized under employee benefit plans governed by or within the scope of Section 16 of the Securities and Exchange Act of 1934 or Section 162(m) of the Internal Revenue Code of 1986, or its successor provision; to study and analyze specific and general matters of management compensation; to periodically review management compensation policies and practices; to make recommendations to the Board respecting incentive compensation awards; and to consider and approve officer salary adjustments of elected officers of the Corporation at the level of Vice President and above.

Section 3.11. The Nominating and Governance Committee shall consist of a minimum of three directors of the Corporation, each of whom shall meet the independence and other requirements established by law, the rules and regulations of the Securities and Exchange Commission and the New York Stock Exchange listing standards, and one of the members shall be designated by the Board of Directors as its Chair. The Chair of the Nominating and Governance Committee shall preside at all meetings of the

Nominating and Governance Committee and shall perform such other duties as may be prescribed by the Board of Directors. The primary functions of the Nominating and Governance Committee are to review with the Chief Executive Officer of the Corporation an appropriate size and makeup for the Board of Directors, including individuals having such background and business experience as are consistent with and compatible to the long-range interests and future direction of the Corporation; to consider the qualifications of persons identified as prospective Directors to either fill vacancies on the Board or enlarge its membership; to conduct research to identify and recommend nomination of suitable candidates who are willing to serve as members of the Board of Directors and who will make a substantial contribution to the Corporation based upon a careful review of their experience, background, interests, ability and availability to meet time commitments for board and committee responsibilities; and to determine whether any prospective or seated member of the Board has any economic or familial relationship with the Corporation which may negate his/her suitability for such service and to name a lead director to oversee the non-management executive sessions of the Board and to serve as an ongoing liaison between the directors and the employees. The Committee shall also monitor current members of the Board in light of the same guidelines used to select candidates, shall direct the activities of the Board and management in matters of corporate governance, and shall have general discretionary authority to undertake additional activities within the scope of its primary functions.

Section 3.12. Meetings of each committee shall be held from time to time as the Chair of such committee, the Chairman of the Board of Directors, or any two members of such committee shall determine, preferably at the principal executive office of the Corporation. All members of each committee shall be given written notice of any meeting by the Secretary, such notice to be mailed to each member at least three (3) days prior to the date thereof; provided, however, such written notice shall not be required as to any member who shall receive notice in person at least twenty-four (24) hours prior to the time of the meeting. Any member may in writing, before or after any meeting, waive notice thereof, and any member by his attendance at, and participation in, the action taken at any meeting shall be deemed to have waived notice thereof. A majority of the members of a committee shall constitute a quorum. Any action which might be taken at a meeting of a committee may be taken without meeting if evidenced by a resolution signed by all members. The Chair of each Board committee shall preside at all meetings of such committee and shall perform such other duties as may be prescribed by the Board of Directors or the Chairman thereof.

Section 3.13. All action taken by the Board committees shall be reported to the Board of Directors at its meeting next succeeding such action and shall be subject to revision by the Board of Directors provided that no acts or rights of third parties shall be prejudiced thereby. All such action shall also be recorded in the minute books of the Corporation in the same manner in which action taken by the Board of Directors is recorded. The affirmative vote of the majority of all members of each committee shall be necessary to its adoption of any resolution.

ARTICLE IV Officers

Section 4.1. The officers of this Corporation shall be elected by the Board from time to time as it deems appropriate, and shall include a Chairman of the Board of Directors, who shall serve as Chief Executive Officer, to be elected by the Board of Directors from among its members, a president, and one or more vice presidents one of whom shall perform the duties of the Chief Financial Officer, a secretary, a treasurer, and such other officers, including one or more group vice presidents or one or more executive vice presidents, and agents as may from time to time be elected by the Board of Directors. Any two offices except those of the President and Vice President may be held by the same person. All officers shall hold office at the

pleasure of the Board of Directors and be subject to dismissal by it, with or without cause.

Section 4.2. The salary and other compensation of the Chairman of the Board, the President and all elected Vice Presidents shall be fixed by the Board of Directors. If any vacancy shall occur among the elected officers, it shall be filled by the Board.

Section 4.3. The Chairman of the Board of Directors, or in his absence the Chair of the Compensation and Human Resources Committee, shall preside at all meetings of the Board of Directors. The Chairman of the Board has authority to appoint certain officers of the Corporation, including vice presidents and certain assistant officers whose responsibilities do not warrant election by the Board of Directors, and shall also perform such other duties as may be prescribed by the Board of Directors.

Section 4.4. The President shall be Chief Operating Officer of the Corporation and, as such, shall carry out the plans for the Corporation as approved by the Chairman of the Board and the Board of Directors. In the absence of the Chairman of the Board of Directors, he shall preside at all meetings of the stockholders and otherwise perform the Chief Executive Officer's duties as prescribed by the Board of Directors.

Section 4.5. Each Vice President shall perform such duties as may be prescribed by the Board of Directors. The Vice President of Finance shall be the Chief Financial Officer. In the absence or disability of the Chairman of the Board, the President shall succeed to his powers and duties, and in the absence of the President, the Chief Financial Officer shall first succeed to his powers and duties, then the Executive or Group Vice Presidents in order of seniority and in the event all are unable to serve for any reason, the Vice Presidents shall succeed to their power and duties in the order in which elected.

Section 4.6. The Secretary shall attend all meetings of the Board of Directors, Executive Committee, and of the stockholders, and record all votes and keep minutes of all proceedings. He shall give, or cause to be given, required notices of meetings of the Board of Directors, Executive Committee and of the stockholders. He shall keep in safe custody the seal of the Corporation and, when authorized by the Board, affix the same to any instrument requiring it, and shall perform such other duties as may be prescribed by the Board of Directors.

Section 4.7. The Treasurer shall maintain necessary relationships with banks and other financial institutions and provide for adequate lines of credit; shall plan for and maintain adequate funds in appropriate working and depository accounts to meeting outstanding and planned commitments; and shall be responsible for safe custody and control of all funds and securities of the Corporation. He shall establish policies and procedures in relation to, and supervise management of, the extension of credit, and the collection of receivables. He shall maintain appropriate bond and dividend records, provide for proper signature or endorsement on all financial documents of the Corporation, and shall perform such other duties as may be prescribed by the President.

Section 4.8. The assistant to any officer shall, in the absence or disability of that officer, perform his duties and shall perform such other duties as may be prescribed by the Board of Directors.
