

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 2023

OR

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

FOR THE TRANSITION PERIOD FROM _____ TO _____

Commission file number: 001-35479

MRC GLOBAL INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or Other Jurisdiction of
Incorporation or Organization)

20-5956993

(I.R.S. Employer
Identification No.)

1301 McKinney Street, Suite 2300

Houston, Texas

(Address of Principal Executive Offices)

77010

(Zip Code)

(877) 294-7574

(Registrant's Telephone Number, including Area Code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.01	MRC	New York Stock Exchange

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 requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

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

Large Accelerated Filer Accelerated Filer Non-Accelerated Filer Smaller Reporting Company Emerging Growth Company

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

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

There were 84,301,902 shares of the registrant's common stock (excluding 142,304 unvested restricted shares), par value \$0.01 per share, issued and outstanding as of November 1, 2023.

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CONDENSED CONSOLIDATED BALANCE SHEETS (UNAUDITED)

MRC GLOBAL INC.

(in millions, except per share amounts)

	September 30, 2023	December 31, 2022
Assets		
Current assets:		
Cash	\$ 52	\$ 32
Accounts receivable, net	518	501
Inventories, net	620	578
Other current assets	35	31
Total current assets	1,225	1,142
Long-term assets:		
Operating lease assets	206	202
Property, plant and equipment, net	77	82
Other assets	18	22
Intangible assets:		
Goodwill, net	264	264
Other intangible assets, net	168	183
	\$ 1,958	\$ 1,895
Liabilities and stockholders' equity		
Current liabilities:		
Trade accounts payable	\$ 438	\$ 410
Accrued expenses and other current liabilities	111	115
Operating lease liabilities	38	36
Current portion of long-term debt	3	3
Total current liabilities	590	564
Long-term liabilities:		
Long-term debt, net	300	337
Operating lease liabilities	184	182
Deferred income taxes	46	49
Other liabilities	20	22
Commitments and contingencies		
6.5% Series A Convertible Perpetual Preferred Stock, \$0.01 par value; authorized 363,000 shares; 363,000 shares issued and outstanding	355	355
Stockholders' equity:		
Common stock, \$0.01 par value per share: 500 million shares authorized, 108,512,938 and 107,864,421 issued, respectively	1	1
Additional paid-in capital	1,764	1,758
Retained deficit	(693)	(768)
Less: Treasury stock at cost: 24,216,330 shares	(375)	(375)
Accumulated other comprehensive loss	(234)	(230)
	463	386
	\$ 1,958	\$ 1,895

See notes to condensed consolidated financial statements.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)

MRC GLOBAL INC.

(in millions, except per share amounts)

	Three Months Ended		Nine Months Ended	
	September 30, 2023	September 30, 2022	September 30, 2023	September 30, 2022
Sales	\$ 888	\$ 904	\$ 2,644	\$ 2,494
Cost of sales	705	739	2,107	2,042
Gross profit	183	165	537	452
Selling, general and administrative expenses	126	120	378	347
Operating income	57	45	159	105
Other (expense) income:				
Interest expense	(9)	(6)	(26)	(17)
Other, net	1	(5)	(3)	(11)
Income before income taxes	49	34	130	77
Income tax expense	14	10	37	23
Net income	35	24	93	54
Series A preferred stock dividends	6	6	18	18
Net income attributable to common stockholders	\$ 29	\$ 18	\$ 75	\$ 36
Basic earnings per common share	\$ 0.34	\$ 0.22	\$ 0.89	\$ 0.43
Diluted earnings per common share	\$ 0.33	\$ 0.21	\$ 0.88	\$ 0.42
Weighted-average common shares, basic	84.3	83.6	84.2	83.5
Weighted-average common shares, diluted	105.9	85.0	105.8	84.8

See notes to condensed consolidated financial statements.

CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (UNAUDITED)

MRC GLOBAL INC.

(in millions)

	Three Months Ended		Nine Months Ended	
	September 30, 2023	September 30, 2022	September 30, 2023	September 30, 2022
Net income	\$ 35	\$ 24	\$ 93	\$ 54
Other comprehensive income (loss)				
Foreign currency translation adjustments	(4)	(5)	(4)	(9)
Hedge accounting adjustments, net of tax	—	—	—	6
Total other comprehensive loss, net of tax	(4)	(5)	(4)	(3)
Comprehensive income	<u>\$ 31</u>	<u>\$ 19</u>	<u>\$ 89</u>	<u>\$ 51</u>

See notes to condensed consolidated financial statements.

CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (UNAUDITED)

MRC GLOBAL INC.

(in millions)

	Common Stock		Additional Paid-in Capital	Retained Deficit	Treasury Stock		Accumulated Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount			Shares	Amount		
Balance at December 31, 2022	108	\$ 1	\$ 1,758	\$ (768)	(24)	\$ (375)	\$ (230)	\$ 386
Net income	-	-	-	34	-	-	-	34
Foreign currency translation	-	-	-	-	-	-	(1)	(1)
Shares withheld for taxes	-	-	(4)	-	-	-	-	(4)
Equity-based compensation expense	-	-	3	-	-	-	-	3
Dividends declared on preferred stock	-	-	-	(6)	-	-	-	(6)
Balance at March 31, 2023	<u>108</u>	<u>\$ 1</u>	<u>\$ 1,757</u>	<u>\$ (740)</u>	<u>(24)</u>	<u>\$ (375)</u>	<u>\$ (231)</u>	<u>\$ 412</u>
Net income	-	-	-	24	-	-	-	24
Foreign currency translation	-	-	-	-	-	-	1	1
Equity-based compensation expense	-	-	4	-	-	-	-	4
Dividends declared on preferred stock	-	-	-	(6)	-	-	-	(6)
Balance at June 30, 2023	<u>108</u>	<u>\$ 1</u>	<u>\$ 1,761</u>	<u>\$ (722)</u>	<u>(24)</u>	<u>\$ (375)</u>	<u>\$ (230)</u>	<u>\$ 435</u>
Net income	-	-	-	35	-	-	-	35
Foreign currency translation	-	-	-	-	-	-	(4)	(4)
Equity-based compensation expense	-	-	3	-	-	-	-	3
Dividends declared on preferred stock	-	-	-	(6)	-	-	-	(6)
Balance at September 30, 2023	<u>108</u>	<u>\$ 1</u>	<u>\$ 1,764</u>	<u>\$ (693)</u>	<u>(24)</u>	<u>\$ (375)</u>	<u>\$ (234)</u>	<u>\$ 463</u>

	Common Stock		Additional Paid-in Capital	Retained (Deficit)	Treasury Stock		Accumulated Other Comprehensive Loss	Total Stockholders' Equity
	Shares	Amount			Shares	Amount		
Balance at December 31, 2021	106	\$ 1	\$ 1,747	\$ (819)	(24)	\$ (375)	\$ (231)	\$ 323
Net income	-	-	-	16	-	-	-	16
Foreign currency translation	-	-	-	-	-	-	2	2
Hedge accounting adjustments	-	-	-	-	-	-	3	3
Shares withheld for taxes	-	-	(2)	-	-	-	-	(2)
Vesting of stock awards	2	-	-	-	-	-	-	-
Equity-based compensation expense	-	-	3	-	-	-	-	3
Dividends declared on preferred stock	-	-	-	(6)	-	-	-	(6)
Balance at March 31, 2022	<u>108</u>	<u>\$ 1</u>	<u>\$ 1,748</u>	<u>\$ (809)</u>	<u>(24)</u>	<u>\$ (375)</u>	<u>\$ (226)</u>	<u>\$ 339</u>
Net income	-	-	-	14	-	-	-	14
Foreign currency translation	-	-	-	-	-	-	(6)	(6)
Hedge accounting adjustments	-	-	-	-	-	-	3	3
Equity-based compensation expense	-	-	3	-	-	-	-	3
Dividends declared on preferred stock	-	-	-	(6)	-	-	-	(6)
Balance at June 30, 2022	<u>108</u>	<u>\$ 1</u>	<u>\$ 1,751</u>	<u>\$ (801)</u>	<u>(24)</u>	<u>\$ (375)</u>	<u>\$ (229)</u>	<u>\$ 347</u>
Net income	-	-	-	24	-	-	-	24
Foreign currency translation	-	-	-	-	-	-	(5)	(5)
Equity-based compensation expense	-	-	3	-	-	-	-	3
Dividends declared on preferred stock	-	-	-	(6)	-	-	-	(6)

preferred stock									
Balance at September 30, 2022	<u>108</u>	<u>\$ 1</u>	<u>\$ 1,754</u>	<u>\$ (783)</u>	<u>(24)</u>	<u>\$ (375)</u>	<u>\$ (234)</u>	<u>\$</u>	<u>363</u>

See notes to condensed consolidated financial statements.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)

MRC GLOBAL INC.

(in millions)

	Nine Months Ended	
	September 30, 2023	September 30, 2022
Operating activities		
Net income	\$ 93	\$ 54
Adjustments to reconcile net income to net cash provided by (used in) operations:		
Depreciation and amortization	15	14
Amortization of intangibles	15	15
Equity-based compensation expense	10	9
Deferred income tax benefit	(3)	(1)
(Decrease) increase in LIFO reserve	(3)	50
Other, net	12	13
Changes in operating assets and liabilities:		
Accounts receivable	(20)	(159)
Inventories	(45)	(197)
Other current assets	(4)	(11)
Accounts payable	27	165
Accrued expenses and other current liabilities	(5)	18
Net cash provided by (used in) operations	<u>92</u>	<u>(30)</u>
Investing activities		
Purchases of property, plant and equipment	(10)	(8)
Other investing activities	(2)	(2)
Net cash used in investing activities	<u>(12)</u>	<u>(10)</u>
Financing activities		
Payments on revolving credit facilities	(776)	(523)
Proceeds from revolving credit facilities	743	569
Payments on long-term obligations	(2)	(2)
Debt issuance costs paid	(1)	-
Dividends paid on preferred stock	(18)	(18)
Repurchases of shares to satisfy tax withholdings	(4)	(2)
Net cash (used in) provided by financing activities	<u>(58)</u>	<u>24</u>
Increase (decrease) in cash	22	(16)
Effect of foreign exchange rate on cash	(2)	(3)
Cash -- beginning of period	32	48
Cash -- end of period	<u>\$ 52</u>	<u>\$ 29</u>
Supplemental disclosures of cash flow information:		
Cash paid for interest	\$ 25	\$ 16
Cash paid for income taxes	\$ 44	\$ 25

See notes to condensed consolidated financial statements.

NOTE 1 – BACKGROUND AND BASIS OF PRESENTATION

Business Operations: MRC Global Inc. is a holding company headquartered in Houston, Texas. Our wholly owned subsidiaries are global distributors of pipe, valves, fittings (“PVF”) and infrastructure products and services across each of the following sectors:

- Gas Utilities (storage and distribution of natural gas)
- Downstream, Industrial and Energy Transition (crude oil refining, petrochemical and chemical processing, general industrials and energy transition projects)
- Production and Transmission Infrastructure (exploration, production and extraction, gathering, processing and transmission of oil and gas)

We have service centers in industrial, chemical, gas distribution and hydrocarbon producing and refining areas throughout the United States, Canada, Europe, Asia, Australasia and the Middle East. We obtain products from a broad range of suppliers.

Basis of Presentation: We have prepared our unaudited condensed consolidated financial statements in accordance with Rule 10-01 of Regulation S-X for interim financial statements. These statements do not include all information and footnotes that generally accepted accounting principles (“GAAP”) require for complete annual financial statements. However, the information in these statements reflects all normal recurring adjustments that are, in our opinion, necessary for a fair presentation of the results for the interim periods. The results of operations for the three and nine months ended September 30, 2023, are not necessarily indicative of the results that will be realized for the fiscal year ending December 31, 2023. We have derived our condensed consolidated balance sheet as of December 31, 2022, from the audited consolidated financial statements for the year ended December 31, 2022. You should read these condensed consolidated financial statements in conjunction with the audited consolidated financial statements and notes thereto for the year ended December 31, 2022. Certain prior year amounts have been reclassified to conform to the current year presentation.

The condensed consolidated financial statements include the accounts of MRC Global Inc. and its wholly owned and majority owned subsidiaries (collectively referred to as the “Company” or by terms such as “we”, “our” or “us”). All material intercompany balances and transactions have been eliminated in consolidation.

Adoption of New Accounting Standards: In the fourth quarter of 2022, we early adopted Accounting Standards Update (“ASU”) No. 2020-04, *Reference Rate Reform (Topic 848)*, which provides optional expedients and exceptions for applying U.S. GAAP to contracts, hedging relationships, and other transactions that the discontinuation of certain reference rates, including the London Interbank Offered Rate (“LIBOR”), impacts. The adoption of this ASU did not have a material impact on our condensed consolidated financial statements.

NOTE 2 – REVENUE RECOGNITION

We recognize revenue when we transfer control of promised goods or services to our customers in an amount that reflects the consideration to which we expect to be entitled in exchange for those goods or services. We recognize substantially all of our revenue when products are shipped or delivered to our customers, and payment is due from our customers at the time of billing with a majority of our customers having 30-day terms. We estimate and record returns as a reduction of revenue. Amounts received in advance of shipment are deferred and recognized when the performance obligations are satisfied. Sales taxes collected from customers and remitted to governmental authorities are accounted for on a net basis and, therefore, we exclude these taxes from sales in the accompanying condensed consolidated statements of operations. Cost of sales includes the cost of inventory sold and related items, such as vendor rebates, inventory allowances and reserves and shipping and handling costs associated with inbound and outbound freight, as well as depreciation and amortization of intangible assets. In some cases, particularly with third-party pipe shipments, we consider shipping and handling costs to be separate performance obligations, and as such, we record the revenue and cost of sales when the performance obligation is fulfilled.

Our contracts with customers ordinarily involve performance obligations that are one year or less. Therefore, we have applied the optional exemption that permits the omission of information about our unfulfilled performance obligations as of the balance sheet dates.

Contract Balances: Variations in the timing of revenue recognition, invoicing and receipt of payment result in categories of assets and liabilities that include invoiced accounts receivable, uninvoiced accounts receivable, contract assets and deferred revenue (contract liabilities) on the condensed consolidated balance sheets.

Generally, revenue recognition and invoicing occur simultaneously as we transfer control of promised goods or services to our customers. We consider contract assets to be accounts receivable when we have an unconditional right to consideration and only the passage of time is required before payment is due. In certain cases, particularly those involving customer-specific documentation requirements, we delay invoicing until we are able to meet the documentation requirements. In these cases, we recognize a contract asset separate from accounts receivable until those requirements are met, and we are able to invoice the customer. Our contract asset balance associated with these requirements as of September 30, 2023, and December 31, 2022, was \$12 million and \$24 million, respectively. These contract asset balances are included within accounts receivable in the accompanying condensed consolidated balance sheets.

We record contract liabilities, or deferred revenue, when we receive cash payments from customers in advance of our performance, including amounts that are refundable. The deferred revenue balance at September 30, 2023 and December 31, 2022 was \$6 million and \$9 million, respectively. During the three and nine months ended September 30, 2023, we recognized \$3 million and \$8 million of revenue that was deferred as of December 31, 2022. During the three and nine months ended September 30, 2022, we recognized \$0 million and \$3 million of revenue that was deferred as of December 31, 2021. Deferred revenue balances are included within accrued expenses and other current liabilities in the accompanying condensed consolidated balance sheets.

Disaggregated Revenue:

In the first quarter of 2023, the Company combined the sectors formerly known as Upstream Production and Midstream Pipeline into one sector, Production and Transmission Infrastructure. The similarity of market drivers, the overlap of customers and the combined management structure of both sectors was the primary basis for the change.

Our disaggregated revenue represents our business of selling PVF to energy and industrial end users across each of the Gas Utilities (storage and distribution of natural gas), Downstream, Industrial and Energy Transition (crude oil refining, petrochemical and chemical processing, general industrials and energy transition projects), and Production and Transmission Infrastructure (exploration, production and extraction, gathering, processing and transmission of oil and gas) sectors, in each of our reportable segments. Varying factors, including macroeconomic environment, commodity prices, maintenance and capital spending and exploration and production activity influence each of our end market sectors and geographical reportable segments. As such, we believe that this information is important in depicting the nature, amount, timing and uncertainty of our contracts with customers.

The following table presents our revenue disaggregated by revenue source (in millions):

**Three Months Ended
September 30,**

	U.S.	Canada	International	Total
2023:				
Gas Utilities	\$ 311	\$ 2	\$ 1	\$ 314
Downstream, Industrial & Energy Transition	210	7	62	279
Production & Transmission Infrastructure	224	29	42	295
	<u>\$ 745</u>	<u>\$ 38</u>	<u>\$ 105</u>	<u>\$ 888</u>
2022:				
Gas Utilities	\$ 355	\$ 3	\$ 1	\$ 359
Downstream, Industrial & Energy Transition	209	6	61	276
Production & Transmission Infrastructure	204	28	37	269
	<u>\$ 768</u>	<u>\$ 37</u>	<u>\$ 99</u>	<u>\$ 904</u>

**Nine Months Ended
September 30,**

	U.S.	Canada	International	Total
2023:				
Gas Utilities	\$ 938	\$ 4	\$ 2	\$ 944
Downstream, Industrial & Energy Transition	599	16	187	802
Production & Transmission Infrastructure	675	98	125	898
	<u>\$ 2,212</u>	<u>\$ 118</u>	<u>\$ 314</u>	<u>\$ 2,644</u>
2022:				
Gas Utilities	\$ 934	\$ 9	\$ 1	\$ 944
Downstream, Industrial & Energy Transition	576	20	165	761
Production & Transmission Infrastructure	593	91	105	789
	<u>\$ 2,103</u>	<u>\$ 120</u>	<u>\$ 271</u>	<u>\$ 2,494</u>

NOTE 3 – INVENTORIES

The composition of our inventory is as follows (in millions):

	September 30, 2023	December 31, 2022
Finished goods inventory at average cost:		
Valves, automation, measurement and instrumentation	\$ 287	\$ 271
Carbon steel pipe, fittings and flanges	210	201
Gas products	278	257
All other products	144	147
	<u>919</u>	<u>876</u>
Less: Excess of average cost over LIFO cost (LIFO reserve)	(276)	(279)
Less: Other inventory reserves	(23)	(19)
	<u>\$ 620</u>	<u>\$ 578</u>

The Company uses the last-in, first-out (“LIFO”) method of valuing U.S. inventories. The use of the LIFO method has the effect of reducing net income during periods of rising inventory costs (inflationary periods) and increasing net income during periods of falling inventory costs (deflationary periods). Valuation of inventory under the LIFO method can be made only at the end of each year based on the inventory levels and costs at that time. Accordingly, we base interim LIFO calculations on management’s estimates of expected year-end inventory levels and costs and these estimates are subject to the final year-end LIFO inventory determination.

NOTE 4 – LEASES

We lease certain distribution centers, warehouses, office space, land and equipment. Substantially all of these leases are classified as operating leases. We recognize lease expense on a straight-line basis over the lease term. Leases with an initial term of 12 months or less are not recorded on the balance sheet.

Many of our facility leases include one or more options to renew, with renewal terms that can extend the lease term from one year to 15 years with a maximum lease term of 30 years, including renewals. The exercise of lease renewal options is at our sole discretion; therefore, renewals to extend the terms of most leases are not included in our right of use (“ROU”) assets and lease liabilities as they are not reasonably certain of exercise. In the case of our regional distribution centers and certain corporate offices, where the renewal is reasonably certain of exercise, we include the renewal period in our lease term. Leases with escalation adjustments based on an index, such as the consumer price index, are expensed based on current rates. Leases with specified escalation steps are expensed based on the total lease obligation ratably over the life of the lease. Leasehold improvements are depreciated over the expected lease term. Non-lease components, such as payment of real estate taxes, maintenance, insurance and other operating expenses, have been excluded from the determination of our lease liability.

As most of our leases do not provide an implicit rate, we use an incremental borrowing rate based on the information available at the commencement date in determining the present value of the lease payments using a portfolio approach. Our lease agreements do not contain any material residual value guarantees or material restrictive covenants.

Expense associated with our operating leases was \$11 million and \$31 million for the three and nine months ended September 30, 2023, and \$10 million and \$30 million for the three and nine months ended September 30, 2022, which we have classified in selling, general and administrative expenses. Cash paid for leases recognized as liabilities was \$10 million and \$30 million for the three and nine months ended September 30, 2023, and \$10 million and \$31 million for the three and nine months ended September 30, 2022.

The maturity of lease liabilities is as follows (in millions):

Maturity of Operating Lease Liabilities

Remainder of 2023	\$ 11
2024	43
2025	36
2026	30
2027	27
After 2027	<u>184</u>
Total lease payments	331
Less: Interest	(109)
Present value of lease liabilities	<u>\$ 222</u>

The term and discount rate associated with leases are as follows:

	September 30, 2023
Operating Lease Term and Discount Rate	
Weighted-average remaining lease term (years)	12
Weighted-average discount rate	6.6%

Amounts maturing after 2027 include expected renewals for leases of regional distribution centers and certain corporate offices through dates up to 2048. Excluding these optional renewals, our weighted-average remaining lease term is 6 years.

NOTE 5 – LONG-TERM DEBT

The components of our long-term debt are as follows (in millions):

	September 30, 2023	December 31, 2022
Senior Secured Term Loan B, net of discount and issuance costs of \$1	\$ 293	\$ 295
Global ABL Facility	10	45
	<u>303</u>	<u>340</u>
Less: current portion	3	3
	<u>\$ 300</u>	<u>\$ 337</u>

Senior Secured Term Loan B: We have a Senior Secured Term Loan B (the “Term Loan”) with an original principal amount of \$400 million, which amortizes in equal quarterly installments of 1% per year with the balance payable in September 2024, when the facility matures. In accordance with ASC 470, we have classified the Term Loan as a non-current liability as of September 30, 2023, as the Company has the intent and ability to refinance the Term Loan with its Global ABL Facility on a long-term basis. The Term Loan has an applicable interest rate margin of 300 basis points in the case of loans incurring interest based on LIBOR, and 200 basis points in the case of loans incurring interest based on the base rate. Beginning July 1, 2023, the LIBOR interest rate is now calculated as the aggregate Chicago Mercantile Exchange (“CME”) Term SOFR plus the International Swaps and Derivatives Association (ISDA) credit adjustment spread. “Term SOFR” is the forward-looking, per annum secured overnight financing rate administered by CME Group Benchmark Administration Limited and published on the applicable Thompson Reuters Corporation website page for each of 1-month, 3-month, and 6-month maturities. The Term Loan allows for incremental increases in facility size by up to an aggregate of \$200 million, plus an additional amount such that the Company’s first lien leverage ratio (as defined under the Term Loan) would not exceed 4.00 to 1.00. MRC Global (US) Inc. is the borrower under this facility, which MRC Global Inc. as well as all of its wholly owned U.S. subsidiaries guarantees. In addition, the Term Loan is secured by a second lien on the assets securing our Global ABL Facility, defined below (which includes accounts receivable and inventory) and a first lien on substantially all of the other assets of MRC Global Inc. and those of its U.S. subsidiaries as well as a pledge of all of the capital stock of our domestic subsidiaries and 65% of the capital stock of first tier, non-U.S. subsidiaries. In addition, the Term Loan contains a number of customary restrictive covenants. We are required to repay the Term Loan with the proceeds from certain asset sales and certain insurance proceeds. In addition, on an annual basis, we are required to repay an amount equal to 50% of excess cash flow, as defined in the Term Loan, reducing to 25% if our first lien leverage ratio is no more than 2.75 to 1.00. No payment of excess cash flow is required if the first lien leverage ratio is less than or equal 2.50 to 1.00. The amount of cash used in the determination of the senior secured leverage ratio is limited to \$75 million.

Global ABL Facility: The Company is a party to a multi-currency, global asset-based lending facility (the “Global ABL Facility”), including certain of its subsidiaries, its lenders and Bank of America, N.A. as administrative agent, security trustee and collateral agent. The Global ABL Facility is a revolving credit facility of \$750 million, which matures in September 2026. The Global ABL Facility is comprised of \$705 million in revolver commitments in the United States, which includes a \$30 million sub-limit for Canada, \$12 million in Norway, \$10 million in Australia, \$10.5 million in the Netherlands, \$7.5 million in the United Kingdom and \$5 million in Belgium. The Global ABL Facility contains an accordion feature that allows us to increase the principal amount of the facility by up to \$250 million, subject to securing additional lender commitments. MRC Global Inc. and each of its current and future wholly owned material U.S. subsidiaries guarantee the obligations of our borrower subsidiaries under the Global ABL Facility. Additionally, each of our non-U.S. borrower subsidiaries guarantees the obligations of our other non-U.S. borrower subsidiaries under the Global ABL Facility. Outstanding obligations are generally secured by a first priority security interest in accounts receivable, inventory and related assets. In December 2022, the Company and Administrative Agent entered into an amendment to the Global ABL Facility to replace the London Interbank Offered Rate with a new prevailing benchmark interest rate known as Term SOFR for all U.S. dollar borrowings. U.S. borrowings under the amended facility bear interest at the Term SOFR plus a margin varying between 1.25% and 1.75% based on our fixed charge coverage ratio. Canadian borrowings under the facility bear interest at the Canadian Dollar Bankers' Acceptances Rate (“BA Rate”) plus a margin varying between 1.25% and 1.75% based on our fixed charge coverage ratio. Borrowings under our foreign borrower subsidiaries bear interest at a benchmark rate, which varies based on the currency in which such borrowings are made, plus a margin varying between 1.25% and 1.75% based on our fixed charge coverage ratio. Availability is dependent on a borrowing base comprised of a percentage of eligible accounts receivable and inventory, which is subject to redetermination from time to time. Excess Availability, as defined under our Global ABL Facility, was \$696 million as of September 30, 2023.

Interest on Borrowings: The interest rates on our outstanding borrowings at September 30, 2023, including a floating to fixed interest rate swap at December 31, 2022, which expired in March 2023, are set forth below:

	September 30, 2023	December 31, 2022
Senior Secured Term Loan B	8.86%	6.05%
Global ABL Facility	6.35%	5.20%
Weighted average interest rate	8.78%	5.94%

NOTE 6 – REDEEMABLE PREFERRED STOCK**Preferred Stock Issuance**

In June 2015, we issued 363,000 shares of Series A Convertible Perpetual Preferred Stock (the “Preferred Stock”) and received gross proceeds of \$363 million. The Preferred Stock ranks senior to our common stock with respect to dividend rights and rights on liquidation, winding-up and dissolution. The Preferred Stock has a stated value of \$1,000 per share, and holders of Preferred Stock are entitled to cumulative dividends payable quarterly in cash at a rate of 6.50% per annum. In June 2018, the holders of Preferred Stock designated one member to our board of directors. If we fail to declare and pay the quarterly dividend for an amount equal to six or more dividend periods, the holders of the Preferred Stock would be entitled to designate an additional member to our board of directors. Holders of Preferred Stock are entitled to vote together with the holders of the common stock as a single class, in each case, on an as-converted basis, except where law requires a separate class vote of the common stockholders. Holders of Preferred Stock have certain limited special approval rights, including with respect to the issuance of pari passu or senior equity securities of the Company.

The Preferred Stock is convertible at the option of the holders into shares of common stock at an initial conversion rate of 55.9284 shares of common stock for each share of Preferred Stock, which represents an initial conversion price of \$17.88 per share of common stock, subject to adjustment. The Company currently has the option to redeem, in whole but not in part, all the outstanding shares of Preferred Stock at par value, subject to certain redemption price adjustments. We may elect to convert the Preferred Stock, in whole but not in part, into the relevant number of shares of common stock if the last reported sale price of the common stock has been at least 150% of the conversion price then in effect for a specified period. The conversion rate is subject to customary anti-dilution and other adjustments.

Holders of the Preferred Stock may, at their option, require the Company to repurchase their shares in the event of a fundamental change, as defined in the agreement. The repurchase price is based on the original \$1,000 per share purchase price except in the case of a liquidation, in which case the holders would receive the greater of \$1,000 per share and the amount that would be received if they held common stock converted at the conversion rate in effect at the time of the fundamental change. Because this feature could require redemption as a result of the occurrence of an event not solely within the control of the Company, the Preferred Stock is classified as temporary equity on our balance sheet.

MRC Global Inc. may not enter into any new, or amend, or modify any existing agreement or arrangement that by its terms restricts, limits, prohibits or prevents the Company from paying dividends on the Preferred Stock, redeeming or repurchasing the Preferred Stock or effecting the conversion of the Preferred Stock. Any such agreement, amendment or modification would require the consent of the holder of the Preferred Stock.

NOTE 7 – STOCKHOLDERS’ EQUITY**Equity Compensation Plans**

The Company’s Omnibus Incentive Plan permits the issuance of stock options, stock appreciation rights, restricted stock, restricted stock units, performance shares, performance units and other stock-based and cash-based awards. Since the adoption of the Plan, the Company’s board of directors has periodically granted stock options, restricted stock awards, restricted stock units and performance share units to directors and employees, but no other types of awards have been granted under the plan. Options and stock appreciation rights may not be granted at prices less than the fair market value of our common stock on the date of the grant, nor for a term exceeding ten years. For employees, vesting generally occurs over a three-year period on the anniversaries of the date specified in the employees’ respective agreements, subject to accelerated vesting under certain circumstances set forth in the agreements, and in any event, no less than one year. Vesting for directors generally occurs on the one-year anniversary of the grant date. A Black-Scholes option-pricing model is used to estimate the fair value of the stock options. A Monte Carlo simulation is completed to estimate the fair value of performance share unit awards with a stock price performance component. We expense the fair value of all equity grants, including performance share unit awards, on a straight-line basis over the vesting period. In 2023, 335,959 performance share unit awards, 135,019 restricted stock awards, and 745,039 shares of restricted stock units have been granted to executive management, members of our Board of Directors and employees.

Accumulated Other Comprehensive Loss

Accumulated other comprehensive loss in the accompanying condensed consolidated balance sheets consists of the following (in millions):

	September 30, 2023	December 31, 2022
Currency translation adjustments	\$ (234)	\$ (230)
Hedge accounting adjustments	1	1
Other adjustments	(1)	(1)
Accumulated other comprehensive loss	<u>\$ (234)</u>	<u>\$ (230)</u>

Earnings per Share

Earnings per share are calculated in the table below (in millions, except per share amounts):

	Three Months Ended		Nine Months Ended	
	September 30, 2023	September 30, 2022	September 30, 2023	September 30, 2022
Net income	\$ 35	\$ 24	\$ 93	\$ 54
Less: Dividends on Series A Preferred Stock	6	6	18	18
Net income attributable to common stockholders	\$ 29	\$ 18	\$ 75	\$ 36
Weighted average basic shares outstanding	84.3	83.6	84.2	83.5
Effect of dilutive securities	21.6	1.4	21.6	1.3
Weighted average diluted shares outstanding	105.9	85.0	105.8	84.8
Net income per share:				
Basic	\$ 0.34	\$ 0.22	\$ 0.89	\$ 0.43
Diluted	\$ 0.33	\$ 0.21	\$ 0.88	\$ 0.42

Equity awards and shares of Preferred Stock are disregarded in the calculation of diluted earnings per share if they are determined to be anti-dilutive. For the three and nine months ended September 30, 2023, all of the shares of the Preferred Stock were dilutive. For the three and nine months ended September 30, 2022, all of the shares of the Preferred Stock were anti-dilutive. For the three and nine months ended September 30, 2023, we had approximately 1.2 million and 1.3 million dilutive stock options, restricted stock units, and performance units. For the three and nine months ended September 30, 2022, we had approximately 1.4 million and 1.3 million dilutive stock options, restricted stock units, and performance units.

NOTE 8 – SEGMENT INFORMATION

Our business is comprised of three operating and reportable segments: U.S., Canada and International. Our International segment consists of our operations outside of the U.S. and Canada. These segments represent our business of selling PVF to the energy sector across each of the Gas Utilities, Downstream, Industrial and Energy Transition, and Production and Transmission Infrastructure sectors.

The following table presents financial information for each reportable segment (in millions):

	Three Months Ended		Nine Months Ended	
	September 30, 2023	September 30, 2022	September 30, 2023	September 30, 2022
Sales				
U.S.	\$ 745	\$ 768	\$ 2,212	\$ 2,103
Canada	38	37	118	120
International	105	99	314	271
Consolidated sales	\$ 888	\$ 904	\$ 2,644	\$ 2,494
Operating income (loss)				
U.S.	\$ 54	\$ 40	\$ 149	\$ 99
Canada	(2)	-	(6)	(1)
International	5	5	16	7
Total operating income	57	45	159	105
Interest expense	(9)	(6)	(26)	(17)
Other, net	1	(5)	(3)	(11)
Income before income taxes	\$ 49	\$ 34	\$ 130	\$ 77
			September 30, 2023	December 31, 2022
Total assets				
U.S.			\$ 1,579	\$ 1,518
Canada			98	101
International			281	276
Total assets			\$ 1,958	\$ 1,895

Our sales by product line are as follows (in millions):

Type	Three Months Ended		Nine Months Ended	
	September 30, 2023	September 30, 2022	September 30, 2023	September 30, 2022
Line Pipe	\$ 164	\$ 173	\$ 433	\$ 417
Carbon Fittings and Flanges	117	119	353	335
Total Carbon Pipe, Fittings and Flanges	281	292	786	752
Valves, Automation, Measurement and Instrumentation	306	290	920	821
Gas Products	191	205	612	587
Stainless Steel and Alloy Pipe and Fittings	40	53	108	147
General Products	70	64	218	187
	<u>\$ 888</u>	<u>\$ 904</u>	<u>\$ 2,644</u>	<u>\$ 2,494</u>

NOTE 9 – FAIR VALUE MEASUREMENTS

From time to time, we use derivative financial instruments to help manage our exposure to interest rate risk and fluctuations in foreign currencies.

Interest Rate Swap: In March 2018, we entered into a five-year interest rate swap that became effective on March 31, 2018, with a notional amount of \$250 million from which the Company received payments at 1-month LIBOR and made monthly payments at a fixed rate of 2.7145% with settlement and reset dates on or near the last business day of each month until maturity. The fair value of the swap at inception was zero.

We designated the interest rate swap as an effective cash flow hedge utilizing the guidance under ASU 2017-12. As such, the valuation of the interest rate swap was recorded as an asset or liability, and the gain or loss on the derivative was recorded as a component of other comprehensive income (loss). Interest rate swap agreements are reported on the accompanying balance sheets at fair value utilizing observable Level 2 inputs such as yield curves and other market-based factors. We obtain dealer quotations to value our interest rate swap agreements. The fair value of our interest rate swap was estimated based on the present value of the difference between expected cash flows calculated at the contracted interest rates and the expected cash flows at current market interest rates. The fair value of the interest rate swap was an asset of \$1 million as of December 31, 2022.

On March 31, 2023, the interest rate swap agreement expired and was not extended with any new agreements or amendments. An immaterial net gain recorded as a component of other comprehensive loss was reclassified to interest expense as of March 31, 2023.

Foreign Exchange Forward Contracts:

Foreign exchange forward contracts are reported at fair value utilizing Level 2 inputs, as the fair value is based on broker quotes for the same or similar derivative instruments. Our foreign exchange derivative instruments are freestanding, and we have not designated them as hedges; accordingly, we have recorded changes in their fair market value in earnings. There were no outstanding forward foreign exchange contracts as of September 30, 2023. The total notional amount of our forward foreign exchange contracts and options was approximately \$3 million at December 31, 2022. We had approximately \$0 million recorded as liabilities on our condensed consolidated balance sheets as December 31, 2022.

With the exception of long-term debt, the fair values of our financial instruments, including cash and cash equivalents, accounts receivable, trade accounts payable and accrued liabilities, approximate carrying value. The carrying value of our debt was \$303 million and \$340 million at September 30, 2023 and December 31, 2022, respectively. We estimate the fair value of the Term Loan using Level 2 inputs or quoted market prices. The fair value of our debt was \$301 million and \$337 million at September 30, 2023 and December 31, 2022, respectively.

NOTE 10 – COMMITMENTS AND CONTINGENCIES

Litigation

Asbestos Claims. We are one of many defendants in lawsuits that plaintiffs have brought seeking damages for personal injuries that exposure to asbestos allegedly caused. Plaintiffs and their family members have brought these lawsuits against a large volume of defendant entities as a result of the defendants' manufacture, distribution, supply or other involvement with asbestos, asbestos containing-products or equipment or activities that allegedly caused plaintiffs to be exposed to asbestos. These plaintiffs typically assert exposure to asbestos as a consequence of third-party manufactured products that our MRC Global (US) Inc. subsidiary purportedly distributed. As of September 30, 2023, we are named a defendant in approximately 548 lawsuits involving approximately 1,113 claims. No asbestos lawsuit has resulted in a judgment against us to date, with a majority being settled, dismissed or otherwise resolved. Applicable third-party insurance has substantially covered these claims, and insurance should continue to cover a substantial majority of existing and anticipated future claims. Accordingly, we have recorded a liability for our estimate of the most likely settlement of asserted claims and a related receivable from insurers for our estimated recovery, to the extent we believe that the amounts of recovery are probable. It is not possible to predict the outcome of these claims and proceedings. However, in our opinion, the likelihood that the ultimate disposition of any of these claims and legal proceedings will have a material adverse effect on our condensed consolidated financial statements is remote.

Other Legal Claims and Proceedings. From time to time, we have been subject to various claims and involved in legal proceedings incidental to the nature of our businesses. We maintain insurance coverage to reduce financial risk associated with certain of these claims and proceedings. It is not possible to predict the outcome of these claims and proceedings. However, in our opinion, the likelihood that the ultimate disposition of any of these claims and legal proceedings will have a material adverse effect on our condensed consolidated financial statements is remote.

Product Claims. From time to time, in the ordinary course of our business, our customers may claim that the products that we distribute are either defective or require repair or replacement under warranties that either we or the manufacturer may provide to the customer. These proceedings are, in the opinion of management, ordinary and routine matters incidental to our normal business. Our purchase orders with our suppliers generally require the manufacturer to indemnify us against any product liability claims, leaving the manufacturer ultimately responsible for these claims. In many cases, state, provincial or foreign law provides protection to distributors for these sorts of claims, shifting the responsibility to the manufacturer. In some cases, we could be required to repair or replace the products for the benefit of our customer and seek our recovery from the manufacturer for our expense. In our opinion, the likelihood that the ultimate disposition of any of these claims and legal proceedings will have a material adverse effect on our condensed consolidated financial statements is remote.

Customer Contracts

We have contracts and agreements with many of our customers that dictate certain terms of our sales arrangements (pricing, deliverables, etc.). While we make every effort to abide by the terms of these contracts, certain provisions are complex and often subject to varying interpretations. Under the terms of these contracts, our customers have the right to audit our adherence to the contract terms. Historically, any settlements that have resulted from these customer audits have not been material to our condensed consolidated financial statements.

Purchase Commitments

We have purchase obligations consisting primarily of inventory purchases made in the normal course of business to meet operating needs. While our vendors often allow us to cancel these purchase orders without penalty, in certain cases, cancellations may subject us to cancellation fees or penalties.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following discussion and analysis of our financial condition and results of operations in conjunction with our financial statements and related notes included elsewhere in this report. This discussion and analysis contains forward-looking statements that involve risks, uncertainties and assumptions. As used in this Form 10-Q, unless otherwise indicated or the context otherwise requires, all references to the "Company," "MRC Global," "we," "our" or "us" refer to MRC Global Inc. and its consolidated subsidiaries.

Cautionary Note Regarding Forward-Looking Statements

Management's Discussion and Analysis of Financial Condition and Results of Operations (as well as other sections of this Quarterly Report on Form 10-Q) contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Forward-looking statements include those preceded by, followed by or including the words "will," "expect," "intended," "anticipated," "believe," "project," "forecast," "propose," "plan," "estimate," "enable" and similar expressions, including, for example, statements about our business strategy, our industry, our future profitability, growth in the industry sectors we serve, our expectations, beliefs, plans, strategies, objectives, prospects and assumptions, and estimates and projections of future activity and trends in the oil and natural gas industry. These forward-looking statements are not guarantees of future performance. These statements are based on management's expectations that involve a number of business risks and uncertainties, any of which could cause actual results to differ materially from those expressed in or implied by the forward-looking statements. These statements involve known and unknown risks, uncertainties and other factors, most of which are difficult to predict and many of which are beyond our control, including the factors described under "Risk Factors," that may cause our actual results and performance to be materially different from any future results or performance expressed or implied by these forward-looking statements. Such risks and uncertainties include, among other things:

- decreases in capital and other expenditure levels in the industries that we serve;
- U.S. and international general economic conditions;
- global geopolitical events;
- decreases in oil and natural gas prices;
- unexpected supply shortages;
- loss of third-party transportation providers;
- cost increases by our suppliers and transportation providers;
- increases in steel prices, which we may be unable to pass along to our customers which could significantly lower our profit;
- our lack of long-term contracts with most of our suppliers;
- suppliers' price reductions of products that we sell, which could cause the value of our inventory to decline;
- decreases in steel prices, which could significantly lower our profit;
- a decline in demand for certain of the products we distribute if tariffs and duties on these products are imposed or lifted;
- holding more inventory than can be sold in a commercial time frame;
- significant substitution of renewables and low-carbon fuels for oil and gas, impacting demand for our products;
- risks related to adverse weather events or natural disasters;
- environmental, health and safety laws and regulations and the interpretation or implementation thereof;
- changes in our customer and product mix;
- the risk that manufacturers of the products we distribute will sell a substantial amount of goods directly to end users in the industry sectors we serve;
- failure to operate our business in an efficient or optimized manner;
- our ability to compete successfully with other companies in our industry;
- our lack of long-term contracts with many of our customers and our lack of contracts with customers that require minimum purchase volumes;

- inability to attract and retain our employees or the potential loss of key personnel;
- adverse health events, such as a pandemic;
- interruption in the proper functioning of our information systems;
- the occurrence of cybersecurity incidents;
- risks related to our customers' creditworthiness;
- the success of our acquisition strategies;
- the potential adverse effects associated with integrating acquisitions into our business and whether these acquisitions will yield their intended benefits;
- impairment of our goodwill or other intangible assets;
- adverse changes in political or economic conditions in the countries in which we operate;
- our significant indebtedness;
- the dependence on our subsidiaries for cash to meet our parent company's obligations;
- changes in our credit profile;
- potential inability to obtain necessary capital;
- the sufficiency of our insurance policies to cover losses, including liabilities arising from litigation;
- product liability claims against us;
- pending or future asbestos-related claims against us;
- exposure to U.S. and international laws and regulations, regulating corruption, limiting imports or exports or imposing economic sanctions;
- risks relating to ongoing evaluations of internal controls required by Section 404 of the Sarbanes-Oxley Act;
- risks related to changing laws and regulations, including trade policies and tariffs; and
- the potential share price volatility and costs incurred in response to any shareholder activism campaigns.

Undue reliance should not be placed on our forward-looking statements. Although forward-looking statements reflect our good faith beliefs, reliance should not be placed on forward-looking statements because they involve known and unknown risks, uncertainties and other factors, which may cause our actual results, performance or achievements to differ materially from anticipated future results, performance or achievements expressed or implied by such forward-looking statements. We undertake no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future events, changed circumstances or otherwise, except to the extent law requires.

Overview

We are the leading global distributor of pipe, valves, fittings ("PVF") and other infrastructure products and services to diversified energy, industrial and gas utility end-markets. We provide innovative supply chain solutions, technical product expertise and a robust digital platform to customers globally through our leading position across each of our diversified end-markets including the following sectors:

- Gas Utilities (storage and distribution of natural gas)
- Downstream, Industrial and Energy Transition (crude oil refining, petrochemical and chemical processing, general industrials and energy transition projects)
- Production and Transmission Infrastructure (exploration, production and extraction, gathering, processing and transmission of oil and gas)

We offer over 250,000 SKUs, including an extensive array of PVF, oilfield supply, valve automation and modification, measurement, instrumentation and other general and specialty products from our global network of over 9,000 suppliers. With over 100 years of experience, our approximately 2,900 employees serve approximately 10,000 customers through 218 service locations including regional distribution centers, service centers, corporate offices and third-party pipe yards, where we often deploy pipe near customer locations.

Key Drivers of Our Business

We derive our revenue predominantly from the sale of PVF and other supplies to energy, industrial and gas utility customers globally. Our business is dependent upon both the current conditions and future prospects in these industries and, in particular, our customers' maintenance and expansionary operating and capital expenditures. The outlook for PVF spending is influenced by numerous factors, including the following:

- *Gas Utility and Energy Infrastructure Integrity and Modernization.* Ongoing maintenance and upgrading of existing energy facilities, pipelines and other infrastructure equipment is a meaningful driver for business across the sectors we serve. This is particularly true for Gas Utilities, which is currently our largest sector by sales. Activity with customers in this sector is driven by upgrades and replacement of existing infrastructure as well as new residential and commercial development. Continual maintenance of an aging network of pipelines and local distribution networks is a critical requirement for these customers irrespective of broader economic conditions. As a result, this business tends to be more stable over time than our traditional oilfield-dependent businesses and moves independently of commodity prices.
- *Oil and Natural Gas Demand and Prices.* Sales of PVF and infrastructure products to the oil and natural gas industry constitute a significant portion of our sales. As a result, we depend upon the maintenance and capital expenditures of oil and natural gas companies to explore for, produce and process oil, natural gas and refined products. Demand for oil and natural gas, current and projected commodity prices and the costs necessary to produce oil and gas impact customer capital spending, additions to and maintenance of pipelines, refinery utilization and petrochemical processing activity. Additionally, as these participants rebalance their capital investment away from traditional, carbon-based energy toward alternative sources, we expect to continue to supply them and enhance our product and service offerings to support their changing requirements, including in areas such as carbon capture utilization and storage, biofuels, offshore wind and hydrogen processing.
- *Economic Conditions.* Changes in the general economy or in the energy sector (domestically or internationally) can cause demand for fuels, feedstocks and petroleum-derived products to vary, thereby causing demand for the products we distribute to materially change.
- *Manufacturer and Distributor Inventory Levels of PVF and Related Products.* Manufacturer and distributor inventory levels of PVF and related products can change significantly from period to period. Increased inventory levels by manufacturers or other distributors can cause an oversupply of PVF and related products in the industry sectors we serve and reduce the prices that we are able to charge for the products we distribute. Reduced prices, in turn, would likely reduce our profitability. Conversely, decreased manufacturer inventory levels may ultimately lead to increased demand for our products and often result in increased revenue, higher PVF pricing and improved profitability.
- *Steel Prices, Availability and Supply and Demand.* Fluctuations in steel prices can lead to volatility in the pricing of the products we distribute, especially carbon steel line pipe products, which can influence the buying patterns of our customers. A majority of the products we distribute contain various types of steel. The worldwide supply and demand for these products and other steel products that we do not supply, impact the pricing and availability of our products and, ultimately, our sales and operating profitability. Additionally, supply chain disruptions with key manufacturers or in markets in which we source products can impact the availability of inventory we require to support our customers. Furthermore, logistical challenges, including inflation and availability of freight providers and containers for shipping can also significantly impact our profitability and inventory lead-times. These constraints can also present an opportunity, as our supply chain expertise allows us to meet customer expectations when the competition may not.

Recent Trends and Outlook

During the three months ended September 30, 2023, revenue increased 2% sequentially from the three months ended June 30, 2023, and decreased 2% from the three months ended September 30, 2022. We are now projecting lower growth for the remainder of 2023 for our U.S. segment than we previously anticipated primarily due to reduced activity in our Gas Utilities sector sales.

Gas Utilities

Our Gas Utility business continues to be our largest sector, making up 36% of our total company revenue for the first nine months of 2023. Sales for the nine months ended September 30, 2023, were flat compared to the nine months ended September 30, 2022. Although the long-term growth fundamentals of this sector remain intact, several key gas utilities customers are currently focused on reducing their own product inventory levels due to more certainty in the supply chain and associated lead times. Higher interest rates and inflation in construction costs are also causing customers to delay project activity. Although we have experienced lower sales activity in this sector over the last few quarters, the long-term market drivers remain positive due to distribution integrity upgrade programs as well as new home construction in certain U.S. states. The majority of the work we perform with our gas utility customers are multi-year programs where they continually evaluate, monitor and implement measures to improve their pipeline distribution networks, ensuring the safety and the integrity of their system. As of 2022, which is the most recently available information, the U.S. Pipeline and Hazardous Materials Safety Administration (PHMSA) estimates approximately 35% of the gas distribution main and service line miles are over 40 years old or of unknown origin. This infrastructure requires continuous replacement and maintenance as these gas distribution networks continue to age. We supply many of the replacement products including valves, line pipe, smart meters, risers and other gas products. A large percentage of the line pipe we sell is sold to our gas utilities customers for line replacement and new sections of their distribution network. Additionally, as our gas utility customers connect new homes and businesses to their gas distribution network, the growth in the housing market creates new revenue opportunities for our business to supply the related infrastructure products. While new housing market starts have declined with interest rate increases, we do not anticipate this to have a significant impact, as customers will generally reallocate their budgets towards integrity upgrade projects. The compound annual growth rate since 2016 for this sector is 12% and based on market fundamentals and new market share opportunities, we expect this area of our business to continue to have steady growth. Additionally, this sector has proven historically to be less sensitive to a scenario of economic slowdown due to its reduced dependency on energy demand and commodity prices.

Downstream, Industrial and Energy Transition (DIET)

DIET generated 30% of our total company revenue and grew 5% from the first nine months of 2022. Although lower than our original expectations, we continue to expect this sector to deliver strong growth in 2023 driven by increased customer activity levels related to new energy transition related projects, liquified natural gas ("LNG") projects, maintenance, repair and operations ("MRO") activities, and project turnaround activity in refineries and chemical plants. This sector has a significant amount of project activity, which can create substantial variability between quarters.

The energy transition portion of our business is growing rapidly, particularly for biofuel refinery projects. The outlook for energy transition projects in the coming years is robust as pressure to decarbonize the economy rises and government incentives and policy such as those in the Inflation Reduction Act of 2022 begin to support the development of carbon energy alternatives. Also, many of our customers have made commitments to net zero emissions to address climate change. Our customer base represents many of the primary leaders in the energy transition movement and is positioned to lead the effort to decarbonize through nearer-term efforts such as renewable or biodiesel refineries and offshore wind power generation as well as longer-term efforts such as carbon capture and storage and hydrogen. These types of projects require similar products that we currently provide today to these customers. We also sell low-emission valves, which represent 96% of the valves we currently sell. Low-emission valves restrict the release of methane and other greenhouse gases into the environment. We are well positioned to grow our energy transition business as we supply products for these projects through our long-standing customer relationships and our product and global supply chain expertise.

Production and Transmission Infrastructure (PTI)

The PTI sector of our business is the most cyclical, and in the first nine months of 2023 this sector represented 34% of our company revenues with a 14% increase from the nine months ended September 30, 2022. During the first nine months of 2023, Brent crude oil price averaged approximately \$82 per barrel and West Texas Intermediate ("WTI") oil prices averaged approximately \$77 per barrel. Recent OPEC+ production cuts have maintained prices at levels that support continued growth in drilling and completion activity by our customers. Natural gas prices also drive customer activity and have experienced recent volatility and declines, which if this remains sustainably low, could negatively impact our business. Additionally, the war between Israel and Hamas that began on October 7, 2023, may result in volatility in oil and gas prices.

To the extent completion activity and related production increases, this could improve our revenue opportunities in our PTI sector. New well completions and higher production levels drive the need for additional surface equipment and gathering and processing infrastructure, benefitting this sector's revenue. The majority of the revenue in this sector is driven by large independents and major exploration and production companies, which are expected to strongly influence the increase in capital spending this year and the coming years for this sector. This group of customers make up the majority of our sales within the PTI sector.

Russia-Ukraine War

On February 24, 2022, Russia invaded Ukraine, which has had several consequences to the broader economy, global attitudes toward energy security and the pace of the energy transition. Government actions to reduce dependency on Russian fuels through embargoes and encourage an end to the conflict through sanctions on Russia have spurred a commodity price spike, supply constraints and various policy changes to address energy security. While we have no operations or sales in Ukraine, Belarus or Russia, the conflict has impacted several macro energy trends.

As Europe looks to replace Russian natural gas with more stable sources, LNG with its related infrastructure, is being considered as an alternative to Russian gas supplies, with new projects being considered in the U.S. and Europe. To the extent new LNG infrastructure is built, our PTI and DIET sectors are well-positioned to benefit from this growth.

Supply Chain and Labor

Our strong inventory position has allowed us to navigate supply chain disruptions caused by the COVID-19 pandemic. For the majority of our products, lead times have returned to pre-pandemic levels. Transportation costs are also generally in-line with pre-pandemic rates.

Inflation for the majority of our products has eased and we do not expect to see significant increases for the rest of the year. To the extent further pricing fluctuations impact our products, the impact on our revenue and cost of goods sold, which is determined using the last-in, first-out ("LIFO") inventory costing methodology, remains subject to uncertainty and volatility. However, our supply chain expertise, relationships with our key suppliers and inventory position has allowed us to manage the supply chain for both inflationary and deflationary pressures. In addition, our contracts with customers generally allow us to pass price increases along to customers within a reasonable time after they occur.

Many customers are focused on reducing their own product inventory levels due to more certainty in the supply chain and associated lead times. We have also been able to reduce our inventory levels from the peak in early second quarter 2023, due to this normalization in supply chain.

There has been little impact to our supply chain directly from the conflict in Ukraine. However, despite the relaxed COVID-19 restrictions in China, recent geopolitical conflicts could have the potential to further constrain the global supply chain and impact the availability of component parts, particularly for valves and meters.

Globally, we are being impacted by labor constraints as the post-pandemic recovery has lowered unemployment rates and created increased competition among companies to attract and retain personnel, which has increased our selling, general and administrative expense. We proactively monitor market trends in the areas where we have operations and, due to our efficient sourcing practices, have experienced little to no disruption supporting our customers.

Backlog

We determine backlog by the amount of unshipped customer orders, which the customer may revise or cancel in certain instances. The table below details our backlog by segment (in millions):

	September 30, 2023	December 31, 2022	September 30, 2022
U.S.	\$ 473	\$ 539	\$ 576
Canada	31	45	47
International	214	158	150
	<u>\$ 718</u>	<u>\$ 742</u>	<u>\$ 773</u>

There can be no assurance that the backlog amounts will ultimately be realized as revenue or that we will earn a profit on the backlog of orders, but we expect that substantially all of the sales in our backlog will be realized within twelve months.

Key Industry Indicators

The following table shows key industry indicators for the three and nine months ended September 30, 2023 and 2022:

	Three Months Ended		Nine Months Ended	
	September 30, 2023	September 30, 2022	September 30, 2023	September 30, 2022
<i>Average Rig Count (1):</i>				
United States	649	761	709	706
Canada	188	199	175	170
Total North America	837	960	884	876
International	951	857	942	832
Total	<u>1,788</u>	<u>1,817</u>	<u>1,826</u>	<u>1,708</u>
<i>Average Commodity Prices (2):</i>				
WTI crude oil (per barrel)	\$ 82.25	\$ 93.06	\$ 77.27	\$ 98.96
Brent crude oil (per barrel)	\$ 86.65	\$ 100.71	\$ 81.99	\$ 105.00
Henry Hub natural gas (\$/MMBtu)	\$ 2.59	\$ 8.03	\$ 2.46	\$ 6.74
<i>Average Monthly U.S. Well Permits (3)</i>				
	2,380	3,605	2,963	3,336
<i>U.S. Wells Completed (2)</i>				
	2,850	3,095	9,267	8,383
<i>3:2:1 Crack Spread (4)</i>				
	\$ 35.43	\$ 37.17	\$ 34.54	\$ 37.54

(1) Source-Baker Hughes (www.bakerhughes.com) (Total rig count includes oil, natural gas and other rigs.)

(2) Source-Department of Energy, EIA (www.eia.gov) (As revised)

(3) Source-Evercore ISI Research

(4) Source-Bloomberg

Results of Operations

Three Months Ended September 30, 2023 Compared to the Three Months Ended September 30, 2022

The breakdown of our sales by sector for the three months ended September 30, 2023 and 2022 was as follows (in millions):

	Three Months Ended			
	September 30, 2023		September 30, 2022	
Gas Utilities	\$ 314	35%	\$ 359	40%
Downstream, Industrial and Energy Transition	279	32%	276	31%
Production & Transmission Infrastructure	295	33%	269	29%
	<u>\$ 888</u>	<u>100%</u>	<u>\$ 904</u>	<u>100%</u>

For the three months ended September 30, 2023 and 2022, the following table summarizes our results of operations (in millions):

	Three Months Ended		\$ Change	% Change
	September 30, 2023	September 30, 2022		
<i>Sales:</i>				
U.S.	\$ 745	\$ 768	\$ (23)	(3)%
Canada	38	37	1	3%
International	105	99	6	6%
Consolidated	<u>\$ 888</u>	<u>\$ 904</u>	<u>\$ (16)</u>	<u>(2)%</u>
<i>Operating income (loss):</i>				
U.S.	\$ 54	\$ 40	\$ 14	35%
Canada	(2)	-	(2)	N/M
International	5	5	-	N/M
Consolidated	<u>57</u>	<u>45</u>	<u>12</u>	<u>27%</u>
Interest expense	(9)	(6)	(3)	50%
Other, net	1	(5)	6	N/M
Income tax expense	(14)	(10)	(4)	40%
Net income	35	24	11	46%
Series A preferred stock dividends	6	6	-	N/M
Net income attributable to common stockholders	<u>\$ 29</u>	<u>\$ 18</u>	<u>\$ 11</u>	<u>61%</u>
Gross profit	<u>\$ 183</u>	<u>\$ 165</u>	<u>\$ 18</u>	<u>11%</u>
Adjusted Gross Profit (1)	<u>\$ 189</u>	<u>\$ 198</u>	<u>\$ (9)</u>	<u>(5)%</u>
Adjusted EBITDA (1)	<u>\$ 70</u>	<u>\$ 82</u>	<u>\$ (12)</u>	<u>(15)%</u>

(1) Adjusted Gross Profit and Adjusted EBITDA are non-GAAP financial measures. For a reconciliation of these measures to an equivalent GAAP measure, see pages 23-24 herein.

Sales. Our sales were \$888 million for the three months ended September 30, 2023, as compared to \$904 million for the three months ended September 30, 2022, a decrease of \$16 million, or 2%.

U.S. Segment—Our U.S. sales decreased to \$745 million for the three months ended September 30, 2023, from \$768 million for the three months ended September 30, 2022. This \$23 million, or 3%, decrease reflected a decline in the Gas Utilities sector of \$44 million driven by decreased customer spending for modernization and replacement activity and delayed customer projects. PTI sales increased \$20 million due to increased customer facility infrastructure activity. DIET sales increased \$1 million.

Canada Segment—Our Canada sales increased to \$38 million for the three months ended September 30, 2023, from \$37 million for the three months ended September 30, 2022 as a result of improvement in the DIET and PTI sectors offset by a decline in the Gas Utilities sector. The weakening of the Canadian dollar relative to the U.S. dollar unfavorably impacted sales by \$1 million, or 3%.

International Segment—Our International sales increased to \$105 million for the three months ended September 30, 2023, from \$99 million for the same period in 2022. Excluding the impact of foreign exchange, sales increased \$3 million and was primarily driven by the PTI sector followed by the DIET sector. The strengthening of foreign currencies in areas where we operate relative to the U.S. dollar, favorably impacted sales by \$3 million, or 3%.

Gross Profit. Our gross profit was \$183 million (20.6% of sales) for the three months ended September 30, 2023, as compared to \$165 million (18.3% of sales) for the three months ended September 30, 2022, an increase of \$18 million. As compared to average cost, our LIFO inventory costing methodology decreased cost of sales by \$4 million for the third quarter of 2023 compared to a \$24 million increase in cost of sales in the three months ended September 30, 2022.

Adjusted Gross Profit. Adjusted Gross Profit decreased to \$189 million (21.3% of sales) for the three months ended September 30, 2023, from \$198 million (21.9% of sales) for the three months ended September 30, 2022, a decrease of \$9 million. Adjusted Gross Profit is a non-GAAP financial measure. We define Adjusted Gross Profit as sales, less cost of sales, plus depreciation and amortization, plus amortization of intangibles, plus inventory-related charges incremental to normal operations and plus or minus the impact of our LIFO inventory costing methodology. We present Adjusted Gross Profit because we believe it is a useful indicator of our operating performance without regard to items, such as amortization of intangibles that can vary substantially from company to company depending upon the nature and extent of acquisitions. Similarly, the impact of the LIFO inventory costing method can cause results to vary substantially from company to company depending upon whether they elect to utilize LIFO and depending upon which method they may elect. We use Adjusted Gross Profit as a key performance indicator in managing our business. We believe that gross profit is the financial measure calculated and presented in accordance with U.S. generally accepted accounting principles that is most directly comparable to Adjusted Gross Profit.

The following table reconciles Adjusted Gross Profit, a non-GAAP financial measure, with gross profit, as derived from our financial statements (in millions):

	Three Months Ended			
	September 30, 2023	Percentage of Revenue	September 30, 2022	Percentage of Revenue*
Gross profit, as reported	\$ 183	20.6%	\$ 165	18.3%
Depreciation and amortization	5	0.6%	5	0.6%
Amortization of intangibles	5	0.6%	4	0.4%
(Decrease) increase in LIFO reserve	(4)	(0.5)%	24	2.7%
Adjusted Gross Profit	\$ 189	21.3%	\$ 198	21.9%

*Does not foot due to rounding

Selling, General and Administrative (“SG&A”) Expenses. Our SG&A expenses were \$126 million (14.2% of sales) for the three months ended September 30, 2023, as compared to \$120 million (13.3% of sales) for the three months ended September 30, 2022. The \$6 million increase in SG&A was driven by higher employee-related costs. SG&A also included a \$3 million expense related to a customer settlement during the quarter offset by a \$4 million favorable adjustment for asbestos insurance.

Operating Income. Operating income was \$57 million for the three months ended September 30, 2023, as compared to operating income of \$45 million for the three months ended September 30, 2022, an increase of \$12 million.

U.S. Segment—Operating income for our U.S. segment was \$54 million for the three months ended September 30, 2023, compared to operating income of \$40 million for the three months ended September 30, 2022, a \$14 million increase. The \$14 million increase was primarily attributable to LIFO income for the three months ended September 30, 2023, compared to LIFO expense for the three months ended September 30, 2022.

Canada Segment—Operating loss for our Canada segment was \$2 million for the three months ended September 30, 2023, as compared to an operating loss of \$0 million for the three months ended September 30, 2022, primarily due to reduced margins.

International Segment—Operating income for our International segment was \$5 million for the three months ended September 30, 2023, as compared to operating income of \$5 million for the three months ended September 30, 2022.

Interest Expense. Our interest expense was \$9 million and \$6 million for the three months ended September 30, 2023 and 2022, respectively. The increase of \$3 million was primarily due to higher benchmark interest rates.

Other, net. Other, net was \$1 million income for the three months ended September 30, 2023 compared to \$5 million expense for the three months ended September 30, 2022. The decrease in other expense was primarily related to reduced foreign exchange impacts following the completion of an intercompany debt restructuring project.

Income Tax Expense. Our income tax expense was \$14 million for the three months ended September 30, 2023, as compared to \$10 million expense for the three months ended September 30, 2022, primarily due to increased profitability. Our effective tax rates were 29% for the three months ended September 30, 2023 and 2022. Our rates differ from the U.S. federal statutory rate of 21% as a result of state income taxes, non-deductible expenses and differing foreign income tax rates. In addition, the effective tax rate for the three months ended September 30, 2023 was higher than the U.S. federal statutory rate due to foreign losses with no tax benefit.

Net Income. Our net income was \$35 million for the three months ended September 30, 2023, as compared to net income of \$24 million for the three months ended September 30, 2022.

Adjusted EBITDA. Adjusted EBITDA, a non-GAAP financial measure, was \$70 million (7.9% of sales) for the three months ended September 30, 2023, as compared to \$82 million (9.1% of sales) for the three months ended September 30, 2022.

We define Adjusted EBITDA as net income plus interest, income taxes, depreciation and amortization, amortization of intangibles and certain other expenses, including non-cash expenses such as equity-based compensation, severance and restructuring, changes in the fair value of derivative instruments, long-lived asset impairments (including goodwill and intangible assets), inventory-related charges incremental to normal operations and plus or minus the impact of our LIFO inventory costing methodology.

We believe Adjusted EBITDA provides investors a helpful measure for comparing our operating performance with the performance of other companies that may have different financing and capital structures or tax rates. We believe it is a useful indicator of our operating performance without regard to items, such as amortization of intangibles, which can vary substantially from company to company depending upon the nature and extent of acquisitions. Similarly, the impact of the LIFO inventory costing method can cause results to vary substantially from company to company depending upon whether they elect to utilize LIFO and depending upon which method they may elect. We use Adjusted EBITDA as a key performance indicator in managing our business. We believe that net income is the financial measure calculated and presented in accordance with U.S. generally accepted accounting principles that is most directly comparable to Adjusted EBITDA.

The following table reconciles Adjusted EBITDA, a non-GAAP financial measure, with net income, as derived from our financial statements (in millions):

	Three Months Ended	
	September 30, 2023	September 30, 2022
Net income	\$ 35	\$ 24
Income tax expense	14	10
Interest expense	9	6
Depreciation and amortization	5	5
Amortization of intangibles	5	4
(Decrease) increase in LIFO reserve	(4)	24
Equity-based compensation expense	3	3
Customer settlement	3	-
Foreign currency losses	-	6
Adjusted EBITDA	<u>\$ 70</u>	<u>\$ 82</u>

Nine Months Ended September 30, 2023 Compared to the Nine Months Ended September 30, 2022

The breakdown of our sales by sector for the nine months ended September 30, 2023 and 2022 was as follows (in millions):

	Nine Months Ended			
	September 30, 2023		September 30, 2022	
Gas Utilities	\$ 944	36%	\$ 944	38%
Downstream, Industrial and Energy Transition	802	30%	761	30%
Production & Transmission Infrastructure	898	34%	789	32%
	<u>\$ 2,644</u>	<u>100%</u>	<u>\$ 2,494</u>	<u>100%</u>

For the nine months ended September 30, 2023 and 2022, the following table summarizes our results of operations (in millions):

	Nine Months Ended		\$ Change	% Change
	September 30, 2023	September 30, 2022		
Sales:				
U.S.	\$ 2,212	\$ 2,103	\$ 109	5%
Canada	118	120	(2)	(2)%
International	314	271	43	16%
Consolidated	<u>\$ 2,644</u>	<u>\$ 2,494</u>	<u>\$ 150</u>	<u>6%</u>
Operating income (loss):				
U.S.	\$ 149	\$ 99	\$ 50	51%
Canada	(6)	(1)	(5)	N/M
International	16	7	9	N/M
Consolidated	<u>159</u>	<u>105</u>	<u>54</u>	<u>51%</u>
Interest expense	(26)	(17)	(9)	53%
Other, net	(3)	(11)	8	(73)%
Income tax expense	(37)	(23)	(14)	61%
Net income	<u>93</u>	<u>54</u>	<u>39</u>	<u>72%</u>
Series A preferred stock dividends	18	18	-	N/M
Net income attributable to common stockholders	<u>\$ 75</u>	<u>\$ 36</u>	<u>\$ 39</u>	<u>N/M</u>
Gross profit	<u>\$ 537</u>	<u>\$ 452</u>	<u>\$ 85</u>	<u>19%</u>
Adjusted Gross Profit (1)	<u>\$ 564</u>	<u>\$ 531</u>	<u>\$ 33</u>	<u>6%</u>
Adjusted EBITDA (1)	<u>\$ 202</u>	<u>\$ 195</u>	<u>\$ 7</u>	<u>4%</u>

(1) Adjusted Gross Profit and Adjusted EBITDA are non-GAAP financial measures. For a reconciliation of these measures to an equivalent GAAP measure, see pages 26-27 herein.

Sales. Our sales were \$2,644 million for the nine months ended September 30, 2023, as compared to \$2,494 million for the nine months ended September 30, 2022, an increase of \$150 million, or 6%.

U.S. Segment—Our U.S. sales increased to \$2,212 million for the nine months ended September 30, 2023, from \$2,103 million for the nine months ended September 30, 2022. This \$109 million, or 5%, increase reflected an improvement in the PTI sector of \$82 million primarily due to increased customer facility infrastructure and pipeline activity. DIET sales increased \$23 million from LNG projects, increased turnaround and maintenance spending for refining, chemicals and mining customers. Gas Utilities sales improved \$4 million driven by increased activity levels related to our customers' integrity upgrade and smart meter replacement programs.

Canada Segment—Our Canada sales decreased to \$118 million for the nine months ended September 30, 2023, from \$120 million for the nine months ended September 30, 2022. Excluding the impact of foreign exchange, sales increased \$4 million and was primarily driven by an improvement in the PTI sector offset by declines in the DIET and Gas Utilities sectors. The weakening of the Canadian dollar relative to the U.S. dollar unfavorably impacted sales by \$6 million, or 5%.

International Segment—Our International sales increased to \$314 million for the nine months ended September 30, 2023, from \$271 million for the same period in 2022. Excluding the impact of foreign exchange, sales increased \$51 million and was primarily driven by the DIET sector followed by the PTI sector. The increase was offset by the weakening of foreign currencies in areas where we operate relative to the U.S. dollar, unfavorably impacting sales by \$8 million, or 3%.

Gross Profit. Our gross profit was \$537 million (20.3% of sales) for the nine months ended September 30, 2023, as compared to \$452 million (18.1% of sales) for the nine months ended September 30, 2022, an increase of \$85 million. As compared to average cost, our LIFO inventory costing methodology decreased cost of sales by \$3 million for the first nine months of 2023 compared to a \$50 million increase in cost of sales in the nine months ended September 30, 2022.

Adjusted Gross Profit. Adjusted Gross Profit increased to \$564 million (21.3% of sales) for the nine months ended September 30, 2023, from \$531 million (21.3% of sales) for the nine months ended September 30, 2022, an increase of \$33 million. Adjusted Gross Profit is a non-GAAP financial measure. We define Adjusted Gross Profit as sales, less cost of sales, plus depreciation and amortization, plus amortization of intangibles, plus inventory-related charges incremental to normal operations and plus or minus the impact of our LIFO inventory costing methodology. We present Adjusted Gross Profit because we believe it is a useful indicator of our operating performance without regard to items, such as amortization of intangibles that can vary substantially from company to company depending upon the nature and extent of acquisitions. Similarly, the impact of the LIFO inventory costing method can cause results to vary substantially from company to company depending upon whether they elect to utilize LIFO and depending upon which method they may elect. We use Adjusted Gross Profit as a key performance indicator in managing our business. We believe that gross profit is the financial measure calculated and presented in accordance with U.S. generally accepted accounting principles that is most directly comparable to Adjusted Gross Profit.

The following table reconciles Adjusted Gross Profit, a non-GAAP financial measure, with gross profit, as derived from our financial statements (in millions):

	Nine Months Ended			
	September 30, 2023	Percentage of Revenue*	September 30, 2022	Percentage of Revenue
Gross profit, as reported	\$ 537	20.3%	\$ 452	18.1%
Depreciation and amortization	15	0.6%	14	0.6%
Amortization of intangibles	15	0.6%	15	0.6%
(Decrease) increase in LIFO reserve	(3)	(0.1)%	50	2.0%
Adjusted Gross Profit	<u>\$ 564</u>	<u>21.3%</u>	<u>\$ 531</u>	<u>21.3%</u>

*Does not foot due to rounding

Selling, General and Administrative (“SG&A”) Expenses. Our SG&A expenses were \$378 million (14.3% of sales) for the nine months ended September 30, 2023, as compared to \$347 million (13.9% of sales) for the nine months ended September 30, 2022. The \$31 million increase in SG&A was driven by higher employee-related costs resulting from an overall improvement in business activity, as well as hiring additional resources to support the growth in our business. We also incurred \$1 million related to non-recurring IT-related professional fees and \$3 million related to a customer settlement in our U.S. segment offset by a \$4 million favorable adjustment for asbestos insurance.

Operating Income. Operating income was \$159 million for the nine months ended September 30, 2023, as compared to operating income of \$105 million for the nine months ended September 30, 2022, an increase of \$54 million.

U.S. Segment—Operating income for our U.S. segment was \$149 million for the nine months ended September 30, 2023, compared to operating income of \$99 million for the nine months ended September 30, 2022. The \$50 million increase was primarily attributable to higher revenues and lower LIFO expense.

Canada Segment—Operating loss for our Canada segment was \$6 million for the nine months ended September 30, 2023, as compared to \$1 million operating loss for the nine months ended September 30, 2022, primarily due to reduced margins.

International Segment—Operating income for our International segment was \$16 million for the nine months ended September 30, 2023, as compared to operating income of \$7 million for the nine months ended September 30, 2022. The \$9 million increase was primarily due to higher revenues.

Interest Expense. Our interest expense was \$26 million and \$17 million for the nine months ended September 30, 2023 and 2022, respectively. The increase of \$9 million was primarily due to higher benchmark interest rates.

Other, net. Other, net was \$3 million expense for the nine months ended September 30, 2023 compared to \$11 million expense for the nine months ended September 30, 2022. The decrease in other expense was primarily due to reduced foreign exchange rate impacts, partly related to the completion of an intercompany debt restructuring project.

Income Tax Expense. Our income tax expense was \$37 million for the nine months ended September 30, 2023, as compared to \$23 million expense for the nine months ended September 30, 2022, primarily due to increased profitability. Our effective tax rates were 28% and 30% for the nine months ended September 30, 2023 and 2022, respectively. Our rates differ from the U.S. federal statutory rate of 21% as a result of state income taxes, non-deductible expenses and differing foreign income tax rates. In addition, the effective tax rate for the nine months ended September 30, 2023 was higher than the U.S. federal statutory rate due to foreign losses with no tax benefit.

Net Income. Our net income was \$93 million for the nine months ended September 30, 2023, as compared to a net income of \$54 million for the nine months ended September 30, 2022.

Adjusted EBITDA. Adjusted EBITDA, a non-GAAP financial measure, was \$202 million (7.6% of sales) for the nine months ended September 30, 2023, as compared to \$195 million (7.8% of sales) for the nine months ended September 30, 2022.

We define Adjusted EBITDA as net income plus interest, income taxes, depreciation and amortization, amortization of intangibles and certain other expenses, including non-cash expenses such as equity-based compensation, severance and restructuring, changes in the fair value of derivative instruments, long-lived asset impairments (including goodwill and intangible assets), inventory-related charges incremental to normal operations and plus or minus the impact of our LIFO inventory costing methodology.

We believe Adjusted EBITDA provides investors a helpful measure for comparing our operating performance with the performance of other companies that may have different financing and capital structures or tax rates. We believe it is a useful indicator of our operating performance without regard to items, such as amortization of intangibles, which can vary substantially from company to company depending upon the nature and extent of acquisitions. Similarly, the impact of the LIFO inventory costing method can cause results to vary substantially from company to company depending upon whether they elect to utilize LIFO and depending upon which method they may elect. We use Adjusted EBITDA as a key performance indicator in managing our business. We believe that net income is the financial measure calculated and presented in accordance with U.S. generally accepted accounting principles that is most directly comparable to Adjusted EBITDA.

The following table reconciles Adjusted EBITDA, a non-GAAP financial measure, with net income, as derived from our financial statements (in millions):

	Nine Months Ended	
	September 30, 2023	September 30, 2022
Net income	\$ 93	\$ 54
Income tax expense	37	23
Interest expense	26	17
Depreciation and amortization	15	14
Amortization of intangibles	15	15
Non-recurring IT related professional fees	1	-
(Decrease) increase in LIFO reserve	(3)	50
Equity-based compensation expense	10	9
Customer Settlement	3	-
Asset disposal	1	-
Foreign currency losses	4	13
Adjusted EBITDA	<u>\$ 202</u>	<u>\$ 195</u>

Liquidity and Capital Resources

Our primary credit facilities consist of a Term Loan maturing in September 2024 with an original principal amount of \$400 million and a \$750 million Global ABL Facility.

As of September 30, 2023, the outstanding balance on our Term Loan, net of original issue discount and issuance costs, was \$293 million. On an annual basis, we are required to repay an amount equal to 50% of excess cash flow, as defined in the Term Loan agreement, reducing to 25% if the Company's senior secured leverage ratio is no more than 2.75 to 1.00. No payment of excess cash flow is required if the Company's senior secured leverage ratio is less than or equal to 2.50 to 1.00. Under the terms of the Term Loan, the amount of cash used in the determination of the senior secured leverage ratio is limited to \$75 million. Based on our senior secured leverage ratio at the end of 2022, we are not required to make an excess cash flow payment for 2022 in 2023. The Term Loan has an applicable interest rate margin of 300 basis points in the case of loans incurring interest based on LIBOR, and 200 basis points in the case of loans incurring interest based on the base rate. Beginning July 1, 2023, the LIBOR interest rate is now calculated as the aggregate Chicago Mercantile Exchange ("CME") Term SOFR plus the International Swaps and Derivatives Association (ISDA) credit adjustment spread.

Our Global ABL Facility matures in September 2026 and provides \$705 million in revolver commitments in the United States (with a \$30 million sublimit in Canada), \$12 million in Norway, \$10 million in Australia, \$10.5 million in the Netherlands, \$7.5 million in the United Kingdom and \$5 million in Belgium. The Global ABL Facility contains an accordion feature that allows us to increase the principal amount of the facility by up to \$250 million, subject to securing additional lender commitments. On December 6, 2022, the Company amended the Global ABL Facility to replace LIBOR with a new prevailing benchmark interest rate known as Term SOFR for all U.S. dollar borrowings. U.S. borrowings now bear interest at Term SOFR plus a margin varying between 1.25% and 1.75% based on our fixed charge coverage ratio. Canadian borrowings under the facility bear interest at the Canadian Dollar Bankers' Acceptances Rate ("BA Rate") plus a margin varying between 1.25% and 1.75% based on our fixed charge coverage ratio. Borrowings under our foreign borrower subsidiaries bear interest at a benchmark rate, which varies based on the currency in which such borrowings are made, plus a margin varying between 1.25% and 1.75% based on our fixed charge coverage ratio. Availability is dependent on a borrowing base comprised of a percentage of eligible accounts receivable and inventory which is subject to redetermination from time to time. As of September 30, 2023, we had \$10 million borrowings outstanding and \$696 million of Excess Availability, as defined under our Global ABL Facility.

In April 2023, we began a process to refinance the Term Loan long before its maturity to take advantage of relatively favorable market conditions at that time. The holder of the Preferred Stock filed a lawsuit with the Delaware Court of Chancery to obtain a temporary restraining order to prevent this refinancing. The holder claimed that the holder has a right to consent to the terms of the refinancing transaction. Pursuant to an amendment that the holder filed on its Schedule 13D, the holder suggested that "a resolution [with the Company] could ... involve the [Company] repurchasing the preferred stock." Although we were prepared to defend the lawsuit, the lawsuit complicated the execution of the refinancing on favorable terms. Therefore, we postponed the refinancing efforts before their conclusion, and the lawsuit was dismissed without prejudice. The holder of the Preferred Stock is controlled by Henry Cornell, one of the Company's directors that the holder of the Preferred Stock has designated as a director pursuant the terms of the Preferred Stock transaction.

We anticipate higher interest expense resulting from recent debt market volatility and rate increases by the Federal Reserve, that has negatively impacted interest rates. Additionally, we anticipate repaying or refinancing our Term Loan before its maturity in September 2024. Should we determine not to refinance the Term Loan we will repay using the Global ABL Facility. Should we determine to amend and restate the existing Term Loan or enter into a new term loan, we would expect financing terms that are less favorable than our current credit agreement, which could result in a higher cost of capital to the Company.

Our primary sources of liquidity consist of cash generated from our operating activities, existing cash balances and borrowings under our Global ABL Facility. Our ability to generate sufficient cash flows from our operating activities will continue to be primarily dependent on our sales of products and services to our customers at margins sufficient to cover our fixed and variable expenses. At September 30, 2023, our total liquidity, consisting of cash on hand and amounts available under our Global ABL Facility, was \$748 million. As of September 30, 2023 and December 31, 2022, we had cash of \$52 million and \$32 million, respectively, a significant portion of which was maintained in the accounts of our various foreign subsidiaries and, if transferred among countries or repatriated to the U.S., may be subject to additional tax liabilities, which would be recognized in our financial statements in the period during which the transfer decision was made.

Our credit ratings are below "investment grade" and, as such, could impact both our ability to raise new funds as well as the interest rates on our future borrowings. In the first quarter of 2023, our Moody's Investor Services corporate family rating was B2 with a stable outlook. On September 21, 2023, Standard & Poor's (S&P) Global Ratings downgraded our issuer credit rating from B to B-, with a developing outlook. Our existing obligations restrict our ability to incur additional debt. We were in compliance with the covenants contained in our various credit facilities as of and during the nine months ended September 30, 2023, and based on our current forecasts, we expect to remain in compliance.

We believe our sources of liquidity will be sufficient to satisfy the anticipated cash requirements associated with our existing operations for the foreseeable future. However, our future cash requirements could be higher than we currently expect as a result of various factors. Additionally, our ability to generate sufficient cash from our operating activities depends on our future performance, which is subject to general economic, political, financial, competitive and other factors beyond our control. We may, from time to time, seek to raise additional debt or equity financing or re-price or refinance existing debt in the public or private markets, based on market conditions. Any such capital markets activities would be subject to market conditions, reaching final agreement with lenders or investors, and other factors, and there can be no assurance that we would successfully consummate any such transactions.

Cash Flows

The following table sets forth our cash flows for the periods indicated below (in millions):

	Nine Months Ended	
	September 30, 2023	September 30, 2022
Net cash provided by (used in):		
Operating activities	\$ 92	\$ (30)
Investing activities	(12)	(10)
Financing activities	(58)	24
Net increase (decrease) in cash and cash equivalents	<u>\$ 22</u>	<u>\$ (16)</u>

Operating Activities

Net cash provided by operating activities was \$92 million during the nine months ended September 30, 2023, compared to \$30 million used during the nine months ended September 30, 2022. The change in operating cash flows was primarily the result of a more efficient use of our working capital and improved profitability.

Investing Activities

Net cash used in investing activities comprised of capital expenditures totaling \$10 and \$8 million for the nine months ended September 30, 2023 and 2022, respectively.

Financing Activities

Net cash used in financing activities was \$58 million for the nine months ended September 30, 2023, compared to \$24 million provided by financing activities for the nine months ended September 30, 2022, primarily due to net payments on revolving credit facilities of \$33 million in the first nine months of 2023 compared to \$46 million net proceeds from revolving credit facilities in the first nine months of 2022. We used \$18 million to pay dividends on preferred stock for the nine months ended September 30, 2023 and 2022, respectively.

Critical Accounting Policies

The preparation of financial statements, in conformity with accounting principles generally accepted in the United States of America, requires management to make judgments, estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expense in the financial statements. Management bases its estimates on historical experience and other assumptions, which it believes are reasonable. If actual amounts are ultimately different from these estimates, the revisions are included in our results of operations for the period in which the actual amounts become known.

Accounting policies are considered critical when they require management to make assumptions about matters that are highly uncertain at the time the estimates are made and when there are different estimates that management reasonably could have made, which would have a material impact on the presentation of our financial condition, changes in our financial condition or results of operations. For a description of our critical accounting policies, see “Item 7: Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are primarily exposed to the market risk associated with unfavorable movements in interest rates, foreign currencies and steel price volatility. There have been no material changes to our market risk policies or our market risk sensitive instruments and positions as described in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of disclosure controls and procedures.

As of September 30, 2023, we have reviewed, under the direction of our Chief Executive Officer and Chief Financial Officer, the Company's disclosure controls and procedures, as defined in Exchange Act Rule 13a-15(e). Based upon and as of the date of that review, the Company's Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures were effective to ensure that information required to be disclosed in the reports that the Company files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to the Company's management, including the Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosures.

Changes in internal control over financial reporting.

There were no changes in our internal control over financial reporting that occurred during the third quarter of 2023 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

From time to time, we have been subject to various claims and involved in legal proceedings incidental to the nature of our businesses. We maintain insurance coverage to reduce financial risk associated with certain of these claims and proceedings. It is not possible to predict the outcome of these claims and proceedings. However, in our opinion, there are no pending legal proceedings that are likely to have a material effect on our business, financial condition, results of operations or cash flows, although it is possible that the resolution of certain actual, threatened or anticipated claims or proceedings could have a material adverse effect on our results of operations in the period of resolution.

Also, from time to time, in the ordinary course of our business, our customers may claim that the products that we distribute are either defective or require repair or replacement under warranties that either we or the manufacturer may provide to the customer. These proceedings are, in the opinion of management, ordinary and routine matters incidental to our normal business. Our purchase orders with our suppliers generally require the manufacturer to indemnify us against any product liability claims, leaving the manufacturer ultimately responsible for these claims. In many cases, state, provincial or foreign law provides protection to distributors for these sorts of claims, shifting the responsibility to the manufacturer. In some cases, we could be required to repair or replace the products for the benefit of our customer and seek recovery from the manufacturer for our expense. In the opinion of management, the ultimate disposition of these claims and proceedings is not expected to have a material adverse effect on our financial condition, results of operations or cash flows.

For information regarding asbestos cases in which we are a defendant and other claims and proceedings, see “Note 10-Commitments and Contingencies” to our unaudited condensed consolidated financial statements.

In April 2023, the holder of the Company’s Preferred Stock brought a proceeding to obtain a temporary restraining order to prevent the Company from refinancing its Term Loan. This proceeding was dismissed without prejudice. For more information see “Management’s Discussion and Analysis of Financial Condition and Results of Operations – Liquidity and Capital Resources”.

ITEM 1A. RISK FACTORS

We are affected by risks specific to us as well as factors that affect all businesses operating in a global market. The significant factors known to us that could materially adversely affect our business, financial condition or operating results are described in Part I, Item 2 of this Quarterly Report on Form 10-Q and in Part I, Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2022 under “Risk Factors”.

In addition to the risk factors listed in Part I, Item IA of our Annual Report on Form 10-K for the year ended December 31, 2022, note also the following risk factor:

Our business and operations could be negatively affected by shareholder activism, which could cause us to incur significant expenses, hinder execution of our business strategy and impact our share price.

We value constructive input from investors and regularly engage in dialogue with our shareholders regarding strategy and performance. In recent years, shareholder activism involving corporate governance, fiduciary duties of directors and officers, strategic direction and operations has become increasingly prevalent.

In October, 2023, it was publicly reported in the press that Engine Capital LP (“Engine”) had privately published a letter to its investors communicating its opinions regarding actions that it believes we should take. While our board of directors (our “Board”) and management team welcome Engine’s views and opinions with the goal of enhancing value for all shareholders, we may be subject to actions or proposals from Engine or other activist shareholders that may not align with our business strategies or the best interests of all of our shareholders.

In the event of such shareholder activism - particularly with respect to matters that our Board, in exercising its fiduciary duties, disagrees with, or has determined not to pursue - our business could be adversely affected because responding to activist shareholders actions can be costly and time-consuming, disruptive to our operations and divert the attention of management, our Board and our employees. Our ability to execute our strategic plan could also be impaired as a result. Such an activist campaign could require us to incur substantial legal, public relations and other advisory fees and proxy solicitation expenses. Further, we may become subject to, or we may initiate, litigation as a result of proposals by activist shareholders or matters relating thereto, which could be a further distraction to our Board and management and could require us to incur significant additional costs. In addition, perceived uncertainties as to our future direction, strategy or leadership created as a consequence of activist shareholders may result in the loss of potential business opportunities, harm our ability to attract new or retain existing investors, lenders, customers, directors, employees, collaborators or other partners, and the market price of our ordinary shares could also experience periods of increased volatility as a result.

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

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINING SAFETY DISCLOSURES

None.

ITEM 5. OTHER INFORMATION

ITEM 5.03 AMENDMENTS TO ARTICLES OF INCORPORATION OR BYLAWS.

On November 3, 2023, our Board approved and adopted amended and restated bylaws (the “Amended and Restated Bylaws”), which became effective the same day. Among other things, the amendments effected by the Amended and Restated Bylaws:

- address the universal proxy rules adopted by the U.S. Securities and Exchange Commission (the “SEC”), by clarifying that no person may solicit proxies in support of a director nominee other than the Board’s nominees unless such person has complied with Rule 14a-19 under the Exchange Act, including applicable notice and solicitation requirements;
- require that a stockholder directly or indirectly soliciting proxies from other stockholders use a proxy card color other than white, which shall be reserved for exclusive use by the Board; and
- enhance procedural mechanics and disclosure requirements in connection with stockholder nominations of directors and submissions of proposals regarding other business at stockholder meetings, including requiring additional background information and disclosures regarding proposing stockholders, proposed nominees and business, and other persons related to a stockholder’s solicitation of proxies, such as additional information about the ownership of securities and material litigation, relationships and interests in material agreements with or involving the Company.

The Amended and Restated Bylaws also include certain technical, modernizing and clarifying changes.

The foregoing description of the Amended and Restated Bylaws does not purport to be complete and is qualified in its entirety by reference to the full text of the Amended and Restated Bylaws attached hereto as Exhibit 3.1, which is incorporated herein by reference.

ITEM 6. EXHIBITS

Number	Description
3.1	Amended and Restated Certificate of Incorporation of MRC Global Inc. dated April 11, 2012. (Incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K of MRC Global Inc. filed with the SEC on April 17, 2012, File No. 001-35479).
3.2*	Amended and Restated Bylaws of MRC Global Inc. dated November 3, 2023.
3.3	Certificate of Designations, Preferences, Rights and Limitations of Series A Convertible Perpetual Preferred Stock of MRC Global Inc. (Incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K of MRC Global Inc. filed with the SEC on June 11, 2015, File No. 001-35479).
10.1 †*	Executive Compensation Clawback Policy, dated as of November 1, 2023.
31.1*	Certification of the Chief Executive Officer pursuant to Rules 13a-14(a) and 15d-14(a) promulgated under the Securities Exchange Act of 1934, as amended, and Item 601(b)(31) of Regulation S-K, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of the Chief Financial Officer pursuant to Rules 13a-14(a) and 15d-14(a) promulgated under the Securities Exchange Act of 1934, as amended, and Item 601(b)(31) of Regulation S-K, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32**	Certification of the Chief Executive Officer and the Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101*	The following financial information from MRC Global Inc.'s Quarterly Report on Form 10-Q for the period ended September 30, 2023, formatted in Inline Extensible Business Reporting Language (iXBRL): (i) the Condensed Consolidated Balance Sheets at September 30, 2023 and December 31, 2022, (ii) the Condensed Consolidated Statements of Operations for the three and nine months ended September 30, 2023 and 2022, (iii) the Condensed Consolidated Statements of Comprehensive Income for the three and nine months ended September 30, 2023 and 2022, (iv) the Condensed Statements of Stockholders' Equity for the nine months ended September 30, 2023 and 2022, (v) the Condensed Consolidated Statements of Cash Flows for the nine months ended September 30, 2023 and 2022 and (vi) Notes to Condensed Consolidated Financial Statements.
104*	The cover page from the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2023 formatted in Inline XBRL.

†Management contract or compensatory plan or arrangement required to be posted as an exhibit to this report.

* Filed herewith.

** Furnished herewith.

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.

Date: November 8, 2023

MRC GLOBAL INC.

By: /s/ Kelly Youngblood
Kelly Youngblood
Executive Vice President and Chief
Financial Officer

AMENDED AND RESTATED**BY-LAWS****OF****MRC GLOBAL INC.***Effective as of November 3, 2023*

ARTICLE I

Offices

SECTION 1. Registered Office. The registered office of the Corporation within the State of Delaware shall be as set forth in the Corporation's Amended and Restated Certificate of Incorporation (the "Restated Certificate of Incorporation"), which at the time of adoption of these By-Laws is: The Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

SECTION 2. Other Offices. The Corporation may also have an office or offices other than the registered office at such place or places, either within or without the State of Delaware, as the Board of Directors shall from time to time determine or the business of the Corporation may require.

SECTION 3. Books. The Corporation may keep its books within or without the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II

Meetings of Stockholders

SECTION 1. Place of Meetings. (a) All meetings of the stockholders that are to be held at a physical location for the election of directors or for any other purpose shall be held at any such physical location, either within or without the State of Delaware, as the Board of Directors shall from time to time designate and state in the notice of the meeting unless a stockholder duly executes a waiver of the notice.

(b) The Board of Directors, acting in its sole discretion, may establish guidelines and procedures in accordance with applicable provisions of the Delaware General Corporation Law (the "DGCL") and any other applicable law for the participation by stockholders and proxyholders in a meeting of stockholders by means of remote communications and may determine that any meeting of stockholders will not be held at any physical location but will be held solely by means of remote communication. Stockholders and proxyholders complying with those procedures and guidelines and otherwise entitled to vote at a meeting of stockholders shall be deemed present in person and entitled to vote at a meeting of stockholders, whether the meeting is to be held at a designated place or solely by means of remote communication.

SECTION 2. Annual Meeting. The annual meeting of stockholders shall be held at such date and time as the Board of Directors designates from time to time and states in the notice of meeting.

SECTION 3. Special Meetings. Special meetings of stockholders may be called at any time only by the Board of Directors pursuant to a resolution adopted by the affirmative vote of a majority of the Board of Directors then in office or by the Chairman of the Board of Directors.

SECTION 4. Notice of Meetings. The Corporation shall give written notice of each annual and special meeting of stockholders, not less than ten nor more than 60 days before the date of the meeting, except as the DGCL or the Restated Certificate of Incorporation requires from time to time, to each stockholder of record entitled to vote at the meeting (as of the record date for determining the stockholders entitled to notice of the meeting) at such address as appears on the records of the Corporation stating the following:

(a) the date, place, if any, and time of the meeting;

(b) the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at the meeting;

(c) the record date for purposes of determining the stockholders entitled to vote at the meeting (if the date is different from the record date for determining the stockholders entitled to notice of the meeting); and

(d) in the case of a special meeting, the purpose or purposes for which the meeting is called.

Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice. If the meeting of stockholders is to be held solely by means of remote communication, the notice of meeting must provide the information required to access the stockholder list referred to in Section 5 of this Article II during the meeting.

SECTION 5. List of Stockholders. A complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order (for each class of stock), showing the address of and the number of shares registered in the name of each stockholder shall be open to the examination of any such stockholder for a period of at least ten days prior to the meeting in the manner provided by law; *provided* that if the record date for determining the stockholders entitled to vote at the meeting is less than ten days before the date of the meeting, the list shall initially reflect the stockholders entitled to vote as of the tenth day before the meeting date (and shall be updated to reflect the stockholders entitled to vote as of the record date promptly after the record date). Any stockholder may examine the list during the whole time of the meeting as law provides. This list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares that each of them holds.

SECTION 6. Quorum, Adjournments.

(a) Stockholders holding a majority of the voting power of all of the shares of the Corporation entitled to vote, present in person or by proxy, shall constitute a quorum for the transaction of business at all meetings of stockholders, except as statute, the Restated Certificate of Incorporation or these By-Laws otherwise provide. Where a separate vote by a class or classes or series is required, a majority of the voting power of the shares of the class or classes or series present in person or represented by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter. Abstentions and broker votes and broker nonvotes are considered present and entitled to vote for purposes of establishing a quorum for the transaction of business at a meeting of stockholders. A “broker vote” occurs when a broker votes the shares on any matter pursuant to either:

- (i) the voting instructions and authority a broker received from its client who is the beneficial owner of the shares; or
- (ii) the broker’s discretionary authority to vote the shares under the applicable rules and regulations of the New York Stock Exchange, Inc. (the “NYSE”) or other national securities exchange governing the voting authority of brokers.

A “broker nonvote” occurs when a broker has not received voting instructions from its client who is the beneficial owner of the shares, and the applicable rules and regulations of the NYSE or other securities exchange governing the voting authority of brokers bars the broker from exercising its discretionary authority to vote the shares.

(b) If a quorum is not present at any meeting of stockholders, the chairman of the meeting or a majority in interest of stockholders entitled to vote at the meeting, present in person or by proxy, shall have the power to adjourn the meeting from time to time, without notice, *provided* that if the adjournment is for more than 30 days, the Corporation shall give a notice of the reconvened meeting to each stockholder of record entitled to vote at the meeting.

SECTION 7. Organization. At each meeting of stockholders, the Chairman of the Board of Directors, or such person as the Chairman of the Board of Directors may have designated, or, in his or her absence, the Chief Executive Officer or, in his or her absence, such person as the Board of Directors may have designated shall act as chairman of the meeting. The Secretary or, in his absence or inability to act, the person whom the chairman of the meeting shall appoint secretary of the meeting shall act as secretary of the meeting and keep the minutes of the meeting.

SECTION 8. Conduct of Business. The chairman of any meeting of stockholders shall determine the order of business and the rules, regulations and procedures of the meeting. These rules, regulations or procedures may include, without limitation, the following:

- (a) regulation of the manner of voting;
- (b) the establishment of an agenda or order of business for the meeting;

(c) rules and procedures for maintaining order at the meeting and the safety of those present;

(d) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairman shall determine;

(e) restrictions on entry to the meeting after the time fixed for the commencement of the meeting; and

(f) limitations on the time allotted to questions or comments by participants.

The chairman shall have the power to adjourn the meeting to another place, if any, date and time. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting.

SECTION 9. Voting.

(a) Except as statute or the Restated Certificate of Incorporation otherwise provide, at all meetings of the stockholders, each stockholder entitled to vote under the Restated Certificate of Incorporation and these By-Laws shall be entitled to one vote, in person or by proxy, for each share of voting stock that the stockholder of record on the record date owns for purposes of determining the stockholders entitled to vote at the meeting. Each stockholder entitled to vote at any meeting of stockholders may authorize another person or persons to act for him by a proxy that is in writing or transmitted as law permits, including, without limitation, by means of electronic transmission that the stockholder or the stockholder's attorney-in-fact executes or authorizes, but no proxy shall be voted after three years from its date, unless the proxy provides for a longer period. Any such proxy shall be delivered to the secretary of the meeting at or until the time designated in the order of business for so delivering such proxies. Any proxy transmitted electronically shall set forth information from which it can be determined by the secretary of the meeting that the stockholder authorized the electronic transmission.

(b) Subject to the immediately succeeding sentence, when a quorum is present at any meeting, the vote of the holders of a majority of the voting power of the issued and outstanding stock of the Corporation entitled to vote on a question brought before the meeting, present and voting, in person or represented by proxy, shall decide the question, unless the question is one upon which an express provision of statute, the Restated Certificate of Incorporation, these By-Laws or the applicable rules and regulations of the NYSE requires a different vote, in which case the express provision shall govern and control the decision of the question. Subject to the rights of the holders of any series of preferred stock to elect additional directors under specific circumstances, at any meeting of stockholders to, inter alia, elect directors for which notice was sent to stockholders pursuant to Section 4 of this Article II, directors shall be elected by a plurality of the votes cast at a meeting of stockholders.

For the avoidance of doubt, abstentions and broker non-votes will not be counted as votes cast. Unless statute requires, or the chairman of the meeting determines it to be advisable, the vote on any question need not be by ballot. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by his proxy, if there be a proxy, and shall state the number of shares voted and the number of votes to which each share is entitled.

SECTION 10. Notice of Stockholder Business and Nominations.

(a) Annual Meetings of Stockholders.

(i) Nominations of persons for election to the Board of Directors and the proposal of other business that the stockholders should consider may be made at an annual meeting of stockholders:

- (A) pursuant to the Corporation's proxy materials with respect to the meeting;
- (B) by or at the direction of the Board of Directors; or
- (C) by any stockholder of the Corporation who:
 - (x) was a stockholder of record at the time of giving of notice provided for in this Section 10(a) of this Article II;
 - (y) at the time of the annual meeting, is entitled to vote at the meeting; and
 - (z) complies with the notice procedures set forth in this Section 10(a) of this Article II as to such business or nomination.

Section 10(a)(i)(C) of this Article II shall be the exclusive means for a stockholder to make nominations or submit other business (other than matters properly brought under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and included in the Corporation's proxy materials) before an annual meeting of stockholders. Notwithstanding anything else contained in these By-Laws, any notice sent to the Corporation by a stockholder that nominates a greater number of persons for election to the Board of Directors than are eligible for election at the applicable annual meeting shall be deemed not to comply with the requirements set forth in these By-Laws and any nominations set forth therein shall be deemed not to have been made.

(ii) Without qualification, for a stockholder to properly bring any nominations or business before an annual meeting pursuant to Section 10(a)(i)(C) of this Article II,

- (A) the stockholder must have given timely notice of those nominations or business in writing to the Secretary;

- (B) such other business must otherwise be a proper matter for stockholder action;
- (C) the record stockholder and the beneficial owner, if any, on whose behalf the proposal or nomination is made, must have acted in accordance with the representations set forth in the Solicitation Statement (as defined below) that these By-Laws require;
- (D) the record stockholder or the beneficial owner must have complied in all respects with the requirements of Regulation 14A under the Exchange Act, including, without limitation, the requirements of Rule 14a-19 under the Exchange Act (as such rule and regulations may be amended from time to time by the Securities and Exchange Commission (“SEC”), including any corresponding provision, or successor rule and SEC Staff interpretations relating thereto) (“Rule 14a-19”); and
- (E) the Board of Directors or a committee of the Board of Directors or an executive officer of the Corporation designated by the Board of Directors shall determine that the stockholder has satisfied the requirements of this Section 10(a)(ii).

To be timely, a stockholder must deliver the stockholder’s notice to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the 120th day and not later than the close of business of the 90th day prior to the first anniversary of the preceding year’s annual meeting; *provided*, subject to the last sentence of this Section 10(a)(ii) of this Article II, that:

- (1) if the date of the annual meeting is more than 30 days before or more than 60 days after the anniversary date, the stockholder must deliver the stockholder’s notice not earlier than the close of business on the 120th day prior to the date of the annual meeting and not later than the close of business on the later of the 90th day prior to the date of the annual meeting; or
- (2) if the first public announcement of the date of the annual meeting is less than 100 days prior to the date of the annual meeting, the 10th day following the date on which the Corporation first makes public announcement of the date of the meeting.

In no event shall any adjournment or postponement of an annual meeting or the announcement of the adjournment or postponement commence a new time period for the giving of a stockholder’s notice as described above.

(iii) To be in proper form, a stockholder’s notice (whether given pursuant to this Section 10(a) or Section 10(b) of this Article II) to the Secretary must:

(A) set forth, as to the record stockholder giving the notice and any Stockholder Associated Person (as defined below) of the record stockholder (each, a “Party”):

(w) the name and address of each Party (which name and address of any Party that is a record stockholder shall be the name and address for the record stockholder as they appear on the Corporation’s books);

(x) the following information:

(I) the class, series, and number of shares of the Corporation that the Party, directly or indirectly, owns beneficially or of record and a representation that the Party will notify the Company in writing of the class, series and number of such shares owned of record and beneficially as of the record date for the meeting by the Party;

(II) 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 class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, or any derivative or synthetic arrangement having the characteristics of a long position in any class or series of shares of the Corporation, or any contract, derivative, swap or other transaction or series of transactions designed to produce economic benefits and risks that correspond substantially to the ownership of any class or series of shares of the Corporation, including due to the fact that the value of such contract, derivative, swap or other transaction or series of transactions is determined by reference to the price, value or volatility of any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation, through the delivery of cash or other property, or otherwise, and without regard to whether the stockholder of record, the beneficial owner, if any, or any affiliates or associates or others acting in concert therewith, may have entered into transactions that hedge or mitigate the economic effect of such instrument, contract or right (any of the foregoing, a “Derivative Instrument”) that the Party, directly or indirectly, owns beneficially, and any other direct or indirect opportunity that the Party has to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation;

(III) to the extent not disclosed pursuant to clause (II) above, the principal amount of any indebtedness of the Corporation or any of its subsidiaries that the Party beneficially owns, together with the title of the instrument under which the indebtedness was issued and a description of any Derivative Instrument entered into by or on behalf of the Party relating to the value or payment of any indebtedness of the Corporation or any of its subsidiaries;

(IV) any proxy, contract, arrangement, understanding, or relationship pursuant to which the Party has a right to vote any shares of any security of the Corporation;

(V) any short interest in any security of the Corporation that the Party holds (for purposes of this By-Law, a person shall be deemed to have a short interest in a security if the 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) (a "Short Interest");

(VI) any rights to dividends on the shares of the Corporation that the Party owns beneficially 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 any Party is a general partner or, directly or indirectly, beneficially owns an interest in a general partner;

(VIII) any performance-related fees (other than an asset-based fee) that each such Party is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of the notice, including (without limitation) any such interests that members of each such Party's immediate family sharing the same household holds;

(IX) any significant equity interests or any Derivative Interests or Short Interests in any principal competitor of the Corporation held by the Party; and

(X) any direct or indirect interest of the Party in any contract with the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement);

(The required information set forth in this subsection (A)(x) shall further be updated and supplemented, if necessary, by each Party so that the information provided or required to be provided in such notice shall be true and correct

(1) as of the record date for the meeting and

(2) as of the date that is ten days prior to the meeting (or, following any adjournment or postponement of such meeting, the date of such reconvened meeting),

and such update and supplement shall be delivered to the Secretary at the principal executive offices of the Corporation

(A) 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

(B) not later than eight business days prior to the date of the meeting or, following any adjournment or postponement of such meeting, the date of such reconvened meeting in the case of the update and supplement required to be made as of ten business days prior to the meeting or, following any adjournment or postponement of such meeting, the date of such reconvened meeting;

for the avoidance of doubt, the obligation to update and supplement the required information set forth in this subsection (A)(x) or any other Section of these By-Laws shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines under these By-Laws or enable or be deemed to permit a stockholder who has previously submitted a notice under these By-Laws to amend or update any proposal or to submit any new proposal, including by changing or adding nominees, matters, business or resolutions proposed to be brought before a meeting of stockholders);

(y) any other information relating to each Party that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder;

- (z) in the case of a proposal, a statement whether or not each Party will deliver a proxy statement and form of proxy to holders of, at least the percentage of voting power of all of the shares of capital stock of the Corporation required under applicable law to carry the proposal; and
 - (aa) in the case of a nomination or nominations, a written undertaking by the shareholder giving notice that such shareholder will solicit holders of shares representing at least 67% of the voting power of the stock entitled to vote in the election of directors in accordance with Rule 14a-19 (the statement, a "Solicitation Statement");
- (B) if the notice relates to any business that the stockholder proposes to bring before the meeting, set forth:
- (x) a brief description of the business that the stockholder desires to bring before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and if the business includes a proposal to amend these By-Laws, the text of the proposed amendment), the reasons for conducting the business at the meeting and any material interest of each Party and each of their respective affiliates or associates or others acting in concert therewith, if any, in the business; and
 - (y) a description of all agreements, arrangements and understandings between each Party, and any other person or persons (including their names) in connection with the proposal of the business by the stockholder; and
- (C) set forth, as to each person, if any, whom the stockholder proposes to nominate for election or reelection to the Board of Directors (each such person, a "Proposed Nominee"):
- (x) the following information:
 - (I) the name, age, business address and residence address of the Proposed Nominee;
 - (II) the principal occupation or employment of such Proposed Nominee for the previous five years;
 - (III) the class or series and number of shares of the Company's capital stock owned of record or are directly or indirectly owned beneficially by the Proposed Nominee;

(IV) any Derivative Instrument directly or indirectly owned beneficially by such Proposed Nominee and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of the Company;

(V) a Proposed Nominee's written consent to being named in a proxy statement as a nominee and to serving as a director if elected; and

(VI) any other information relating to the Proposed Nominee that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors, pursuant to Section 14 of the Exchange Act, and the rules and regulations promulgated thereunder, including without limitation, Rule 14a-19.

(y) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among each Party, 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 Rule 404 promulgated under Regulation S-K if each Party was the "registrant" for purposes of the rule and the nominee were a director or executive officer of the registrant.

For purposes of these By-Laws, a "Stockholder Associated Person" of any stockholder means:

(1) any "affiliate" or "associate" (as those terms are defined in Rule 12b-2 under the Exchange Act) of the stockholder that owns beneficially or of record any capital stock or other securities of the Corporation and

(2) any person acting in concert with the stockholder or any affiliate or associate of the stockholder with respect to the capital stock or other securities of the Corporation.

(iv) Any proposed nominee shall:

(A) complete, sign and return to the Corporation a questionnaire, in a form the Corporation provides, relating to the background and qualification of the person and the background of any other person or entity on whose behalf the nomination being made; and

(B) sign and return a written representation and agreement, in a form the Corporation provides, that the person:

(x) is not and will not become a party to (I) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how the person, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (II) any Voting Commitment that could limit or interfere with the person's ability to comply, if elected as a director of the Corporation, with the person's fiduciary duties under applicable law;

(y) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed in the representation and agreement; and

(z) in the person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation.

In addition, the Corporation may require any proposed nominee to furnish other information as it may reasonably require to determine the eligibility of the proposed nominee to serve as a director of the Corporation. The Corporation may also require any proposed nominee to furnish to the Secretary of the Corporation within ten days after receipt of such request other information as the Corporation may reasonably require to (i) determine the eligibility of the 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 the nominee or (ii) facilitate disclosure to the stockholders of all material facts that, in the reasonable discretion of the Corporation, are relevant for stockholders to make an informed decision on the eligibility of the proposed nominee to serve as a director of the Corporation a, including information regarding any Stockholder Associated Person, and if such information is not furnished within such time period, the notice of such director's nomination shall not be considered to have been timely given for purposes of this Section 10.

In addition, a stockholder seeking to bring an item of business before the annual meeting shall promptly provide any other information the Corporation reasonably requests. A person shall not be eligible for election or re-election as a director at an annual meeting unless

- (1) a record stockholder nominates the person in accordance with Section 10(a)(i)(C) of this Article II or
- (2) the Board of Directors nominates or directs the nomination of the person. Only the business brought before the meeting in accordance with the procedures set forth in this section shall be conducted at an annual meeting of stockholders.
- (v) Notwithstanding anything in Section (10)(a)(ii) of this Article II to the contrary, if the number of directors to be elected to the Board of Directors at an annual meeting is increased and the Corporation does not make a public announcement naming the nominees for the additional directorships at least 100 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 10(a) of this Article II shall also be considered timely, but only with respect to nominees for the additional directorships, 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 the Corporation first makes the public announcement.
- (vi) In addition to the requirements of this Section 10(a) with respect to any nomination proposed to be made at a meeting, each stockholder providing notice as to nominations pursuant to this Section 10(a) shall comply with all applicable requirements of the Exchange Act with respect to any such nominations. Notwithstanding the foregoing provisions of this Section 10(a), unless otherwise required by law, (i) no such stockholder shall solicit proxies in support of director nominees other than the Corporation's nominees unless such stockholder has complied with Rule 14a-19 in connection with the solicitation of such proxies, including the provision to the Corporation of notices required thereunder in a timely manner and (ii) if such stockholder (1)(A) provides notice pursuant to Rule 14a-19(b) and (B) subsequently fails to comply with the requirements of Rule 14a-19(a)(2) and Rule 14a-19(a)(3), including the provision to the Corporation of notices required thereunder in a timely manner, or (2) notifies the Corporation that such stockholder no longer intends to solicit proxies in accordance with Rule 14a-19, then the Corporation shall disregard any proxies or votes solicited for such stockholder's director nominees. Upon request by the Corporation, if any such stockholder provides notice pursuant to Rule 14a-19(b), such stockholder shall deliver to the Corporation, no later than five business days prior to the applicable meeting, reasonable evidence that it has met the requirements of Rule 14a-19(a)(3).

(b) Special Meetings of Stockholders. All business to be conducted at a special meeting of stockholders must be brought before the meeting pursuant to the Corporation's notice of meeting. Stockholders may make nominations of persons for election to the Board of Directors at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting:

(i) by or at the direction of the Board of Directors; or

(ii) if the Board of Directors has determined that directors shall be elected at the meeting, by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section is delivered to the Secretary, who is entitled to vote at the meeting and at the election and who delivers a written notice to the Secretary setting forth the information set forth in Section 10(a)(iii) of this Article II.

If the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, the stockholder may nominate a person or persons (as the case may be) for election to the position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by the preceding sentence with respect to any nomination is timely. To be timely, the stockholder must deliver the notice to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the later of the 90th day prior to the date of the special meeting or, if the first public announcement of the date of the special meeting is less than 100 days prior to the date of the special meeting, the 10th 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 the meeting. In no event shall any adjournment or postponement of a special meeting or the announcement of any adjournment or postponement commence a new time period for the giving of a stockholder's notice as described above.

(c) General.

(i) Notwithstanding the foregoing provisions of this Section 10 of this Article II, a stockholder who seeks to have any proposal included in the Corporation's proxy materials must provide notice as required by and otherwise comply with the applicable requirements of the rules and regulations under the Exchange Act. Nothing in this Section 10 of this Article II shall be deemed to affect any rights

(A) of stockholders to request inclusion of proposals or nominations in the Corporation's proxy statement pursuant to applicable rules and regulations promulgated under the Exchange Act; or

(B) of the holders of any series of preferred stock to elect directors pursuant to any applicable provisions of the Restated Certificate of Incorporation.

(ii) The chairman of an annual meeting shall determine all matters relating to the conduct of the meeting, including, but not limited to, determining whether any nomination or item of business has been properly brought before the meeting in accordance with these By-Laws, and if the chairman should so determine and declare that any nomination or item of business has not been properly brought before an annual or special meeting, then the business shall not be transacted at the meeting and the nomination shall be disregarded.

(iii) Notwithstanding the foregoing provisions of this Section 10 of this Article II, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or item of business, the proposed business shall not be transacted and the nomination shall be disregarded, notwithstanding that the Corporation may have received proxies in respect of the vote. For purposes of this Section 10(c)(iii) of this Article II, to be considered a qualified representative of the stockholder, a person must:

(A) be a duly authorized officer, manager or partner of the stockholder; or

(B) be authorized by a writing executed by the stockholder or an electronic transmission delivered by the stockholder to act for the stockholder as proxy at the meeting of stockholders and produce the writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(iv) Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for the exclusive use by the Board of Directors.

SECTION 11. No Action by Written Consent. Any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken only upon the vote of the stockholders at an annual or special meeting duly called and may not be taken by written consent of the stockholders.

SECTION 12. Inspectors. The Board of Directors may, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting or any reconvened meeting. If any of the inspectors so appointed shall fail to appear or act, the chairman of the meeting may, or if inspectors shall not have been appointed, the chairman of the meeting may, appoint one or more inspectors. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath to faithfully execute the duties of inspector at the meeting with strict impartiality and according to the best of his ability. The inspectors shall determine the number of shares of capital stock of the Corporation outstanding and the voting power of each, the number of shares represented at the meeting, the existence of a quorum, and the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the results, certify those determinations and do those acts as are otherwise required by law or as are proper to conduct the election or vote with fairness to all stockholders. On request of the chairman of the meeting, the inspectors shall make a report in writing of any challenge, request or matter determined by them and shall execute a certificate of any fact found by them. Inspectors may, but do not need to, be individuals who serve the Corporation in other capacities, including as officers, employees, agents or representatives; *provided* that no director or candidate for the office of director shall act as an inspector of an election of directors. Inspectors need not be stockholders.

ARTICLE III

Board of Directors

SECTION 1. General Powers. The Board of Directors shall manage, or direct the management of, the business and affairs of the Corporation. The Board of Directors may exercise all such authority and powers of the Corporation and do all such lawful acts and things that are not directed or required by law or the Restated Certificate of Incorporation to be exercised or done by the stockholders.

SECTION 2. Number. The Board of Directors shall be not less than three (3) nor more than fifteen (15) directors, the exact number of which shall be fixed, from time to time, by resolution adopted by the affirmative vote of a majority of the entire Board of Directors then in office. Directors need not be stockholders.

SECTION 3. Election and Term.

(a) Except as statute, the Restated Certificate of Incorporation, or these By-Laws otherwise provide, all of the directors will be elected annually at the annual meeting of stockholders.

(b) Each director shall hold office until the director's successor shall have been elected and qualified, subject to the director's earlier death, resignation or removal, as provided in these By-Laws or the Restated Certificate of Incorporation.

SECTION 4. Resignations. Any director of the Corporation may resign at any time by giving written notice of his or her resignation to the Corporation. The resignation shall take effect at the time specified in the notice of resignation or, if the effective time of the resignation is not specified in the notice, immediately upon the Corporation's receipt of the notice. Unless otherwise specified in the notice, the acceptance of the notice of resignation shall not be necessary to make the resignation effective.

SECTION 5. Removal of Directors. Any director may be removed in the manner provided by law and in accordance with the Restated Certificate of Incorporation.

SECTION 6. Vacancies and Newly Created Directorships. Any vacancy or newly created directorship in the Board of Directors, however resulting, may be filled in the manner provided in and to the extent permitted under the Restated Certificate of Incorporation.

SECTION 7. Place of Meetings. The Board of Directors may meet at the place or places, within or without the State of Delaware, as the Board of Directors may from time to time determine or as shall be specified in the notice of any such meeting.

SECTION 8. Regular Meetings. The Board of Directors shall hold regular meetings at the time and place as the Board of Directors may fix or as may be specified in a notice of meeting. Notice of regular meetings of the Board of Directors need not be given except as otherwise required by statute or these By-Laws.

SECTION 9. Special Meetings. The Board of Directors may hold special meetings at any time if the meeting is called by:

- (a) the Chairman of the Board of Directors;
- (b) the Chief Executive Officer;
- (c) the Lead Director;
- (d) two or more directors of the Corporation; or
- (e) one director if there is only a single director in office.

SECTION 10. Notice of Meetings. Notice of regular meetings of the Board of Directors need not be given except as otherwise required by statute or these By-Laws. Notice of each special meeting of the Board of Directors (and of each regular meeting for which notice shall be required) shall be given at least 24 hours before each special meeting, in writing, by electronic transmission or orally (either in person or by telephone), including the time, date and place of the meeting. Any director may waive notice of any meeting in a signed writing or by an electronic transmission that is filed with the minutes or corporate records. Any director who is present at a meeting (in person or by telephone) shall be conclusively presumed to have waived notice of the meeting except when the director attends for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither notice of a meeting nor a waiver of a notice need specify the purposes of, or the business to be transacted at, the meeting.

SECTION 11. Quorum and Manner of Acting. A majority of the entire Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. For an action of the Board of Directors to be taken at a meeting to be valid, directors that constitute a quorum must be present at the time that the vote on the action is taken. In the absence of a quorum at any meeting of the Board of Directors, a majority of the directors present thereat may adjourn the meeting until a quorum is present, and no further notice of the reconvened meeting need be given other than by announcement at the meeting which shall be so adjourned. The vote of a majority of the total number of directors present at the meeting at which there is a quorum shall determine all matters, except as the Restated Certificate of Incorporation or these By-Laws otherwise provide or as law requires.

SECTION 12. Organization. At each meeting of the Board of Directors, the Chairman of the Board, if one has been elected, or, in the absence of the Chairman of the Board or if one shall not have been elected, the Chief Executive Officer (or, in his absence, another director chosen by a majority of the directors present) shall act as chairman of the meeting and preside at the meeting. The Secretary or, in his absence, any person appointed by the chairman, shall act as secretary of the meeting and keep the minutes of the meeting.

SECTION 13. Compensation. The Board of Directors shall have authority to fix or establish policies for the compensation, including fees and reimbursement of expenses, for services that the directors provide to the Corporation.

SECTION 14. Committees. The Board of Directors may designate one or more committees, including an executive committee, consisting of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Except to the extent restricted by statute or the Restated Certificate of Incorporation, each committee, to the extent permitted by Section 141(c)(2) of the DGCL and provided in the resolution creating it, shall have and may exercise all the powers and authority of the Board of Directors; but no committee shall have the power or authority to:

(a) approve, adopt or recommend to the stockholders any action or matter expressly required by Delaware law to be submitted to the stockholders for approval; or

(b) adopt, amend or repeal any By-Law of the Corporation.

SECTION 15. Action by Consent. Unless restricted by the Restated Certificate of Incorporation or these By-Laws, any action required or permitted to be taken by the Board of Directors or any committee of the Board of Directors may be taken without a meeting if all members of the Board of Directors or the committee, as the case may be, consent to the action in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions (or paper reproductions of them) are filed with the minutes of the proceedings of the Board of Directors or the committee, as the case may be. The 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.

SECTION 16. Telephonic Meeting. Any one or more members of the Board of Directors or any committee of the Board of Directors may participate in a meeting of the Board of Directors or the committee by means of a conference call or using any communications equipment by means of which all persons participating in the meeting can hear each other. Participation by such means shall constitute presence in person at a meeting.

SECTION 17. Electronic Transmission. To the fullest extent permitted by law, any action permitted to be taken in writing pursuant to these By-Laws may also be taken by electronic transmission; *provided*, that for the avoidance of doubt, any action required to be taken by a stockholder or Stockholder Associated Person under Section 10 of Article II of these By-Laws may not be taken by electronic transmission.

ARTICLE IV

Officers

SECTION 1. Number and Qualifications. The Board of Directors shall elect the officers of the Corporation, which shall include a Chief Executive Officer, a President, one or more Vice Presidents, and a Secretary. The Board of Directors may also select other officers as it may deem to be necessary or appropriate, including a Chairman, a Chief Financial Officer, a Chief Accounting Officer, a General Counsel, a Treasurer, one or more Assistant Secretaries and one or more Assistant Treasurers. Any two or more offices may be held by the same person, and no officer except the Chairman of the Board need be a director. Each officer shall hold office until his successor shall have been duly elected, or until his death, or until he shall have resigned or have been removed, as hereinafter provided in these By-Laws.

SECTION 2. Resignations. Any officer of the Corporation may resign at any time by giving written notice of his resignation to the Corporation. The resignation shall take effect at the time specified in the notice of resignation or, if the effective time of the resignation is not specified in the notice, immediately upon the Corporation's receipt of the notice. Unless otherwise specified in the notice, the acceptance of the notice of resignation shall not be necessary to make the resignation effective.

SECTION 3. Removal. The Board of Directors may remove any officer of the Corporation, with or without cause, at any time.

SECTION 4. Chairman of the Board. The Chairman of the Board, if one is elected, shall preside at meetings of the Board of Directors or the stockholders. The Chairman shall have the powers and duties customarily and usually associated with the office of the Chairman of the Board of Directors and shall perform such other duties as the Board of Directors may from time to time assign to him or her. The same individual may serve as both Chairman of the Board and Chief Executive Officer.

SECTION 5. Chief Executive Officer. The Chief Executive Officer shall, in the absence of the Chairman of the Board, if available and present, preside at each meeting of the Board of Directors or the stockholders. The Chief Executive Officer shall have the powers and duties customarily and usually associated with the position of Chief Executive Officer and those other powers and duties as the Board of Directors may from time to time assign to him or her.

SECTION 6. President. The President shall have the powers and duties customarily and usually associated with the office of the President and those other powers and duties as the Board of Directors may from time to time assign to him or her. The Chairman of the Board, Chief Executive Officer and the President may be the same person.

SECTION 7. Vice-President. Each Vice-President shall have those powers and perform those duties as the Board of Directors may from time to time assign to him or her. The Board of Directors may name Executive Vice Presidents or Senior Vice Presidents or otherwise establish different categories of vice presidents.

SECTION 8. Secretary. The Secretary shall have the powers and duties as are customarily and usually associated with the position of Secretary or as the Board of Directors, the Chairman of the Board of Directors or the Chief Executive Officer may from time to time assign to him or her.

SECTION 9. General Counsel. The General Counsel shall have the powers and duties customarily and usually associated with the office of the General Counsel and the other powers and duties as the Board of Directors may from time to time be assigned to him or her.

SECTION 10. Other Officers. The Chief Operating Officer, Chief Financial Officer, Chief Administrative Officer, Chief Accounting Officer, Chief Information Officer, Chief Compliance Officer, Treasurer, Assistant Secretaries and Assistant Treasurers, if any, and any other officers shall perform the duties as the Board of Directors may from time to time assign.

SECTION 11. Delegation of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding any provision hereof.

ARTICLE V

Capital Stock

SECTION 1. Issuance of Stock. Unless otherwise voted by stockholders and subject to the provisions of the Restated Certificate of Incorporation and the DGCL, the whole or any part of any unissued balance of the authorized capital stock of the Corporation or the whole or any part of any unissued balance of the authorized capital stock of the Corporation held in its treasury may be issued, sold, transferred or otherwise disposed of by vote of the Board of Directors in the manner, for the consideration and on the terms as the Board of Directors may determine.

SECTION 2. Stock Certificates. Certificates shall represent the stock of the Corporation, *provided* that the Board of Directors of the Corporation 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 the certificate is surrendered to the Corporation. Every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of the Corporation by the Chairman of the Board, or the President or Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation.

SECTION 3. Facsimile Signatures. Any or all of the signatures on a certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be that officer, transfer agent or registrar before the certificate is issued, it may be issued by the Corporation with the same effect as if he were that officer, transfer agent or registrar at the date of issue.

SECTION 4. Lost Certificates. The Corporation shall not issue certificates for shares of stock in the Corporation in place of any certificate alleged to have been lost, stolen or destroyed, except upon production of such evidence of the loss, theft or destruction and, if the Board of Directors so requests, upon delivery to the Corporation of a bond of indemnity in the amount, upon the terms and secured by the surety, as the Board of Directors in its discretion may require.

SECTION 5. Transfers of Stock. Transfers of stock shall be made on the books of the Corporation by the holder of the shares in person or by the holder's attorney upon surrender and cancellation of certificates for a like number of shares, or as law otherwise provides with respect to uncertificated shares.

SECTION 6. Fixing the Record Date. In order that the Corporation may determine the stockholders entitled:

- (a) to notice of and to vote at any meeting of stockholders;
- (b) to express consent to corporate action in writing without a meeting (to the extent permitted by the Restated Certificate of Incorporation and By-Laws);
- (c) to receive payment of any dividend or other distribution or allotment of any rights;
- (d) to exercise any rights in respect of any change, conversion or exchange of stock; or
- (e) for the purpose of any other lawful action;

the Board of Directors may establish, in advance, a record date. Any record date to determine the stockholders entitled to notice of a meeting of stockholders shall not be more than 60 nor less than ten days before the date of the meeting and, if the Board of Directors so fixes such a date, that date shall also be the record date for determining the stockholders entitled to vote at that meeting unless the Board of Directors determines, at the time it fixes the record date, that a later date on or before the meeting shall be the date for making the determination. Any record date for purposes of any other action described above shall be fixed or determined in accordance with applicable law.

If no record date is fixed, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day before the day on which notice is given, or, if notice is waived, at the close of business on the day before the day on which the meeting is held. If no record date is fixed, the record date for determining stockholders for any other purpose shall be determined in accordance with applicable law.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided* that the Board of Directors may fix a new record date for the reconvened meeting.

SECTION 7. Registered Stockholders. The books of the Corporation shall include the names and addresses of the holders of record of the shares of stock of the Corporation's capital, together with the number of shares of each class and series held by each record holder and the date of issue of those shares. The Corporation shall be entitled to recognize the exclusive right of a person registered on its records as the owner of shares of stock as the person entitled to exercise the rights of a stockholder, including to receive dividends and to vote as the owner. The Corporation shall not be bound to recognize any equitable or other claim to or interest in the share or shares of stock on the part of any other person, whether or not it shall have express or other notice of the claim, except as the laws of Delaware otherwise provide.

SECTION 8. Dividends. Subject to applicable law and the Restated Certificate of Incorporation, the Board of Directors may, out of funds legally available for dividends at any regular or special meeting, declare dividends upon the capital stock of the Corporation as and when it deems expedient. Dividends may be paid in cash, in property or in shares of stock of the Corporation, unless statute or the Restated Certificate of Incorporation otherwise provide. Before declaring any dividend there may be set apart out of any funds of the Corporation available for dividends, a sum or sums as the directors from time to time in their discretion deem proper for working capital or as a reserve fund to meet contingencies or for equalizing dividends or for such other purposes as the directors shall deem conducive to the interests of the Corporation.

SECTION 9. Transfer Agents and Registrars. The Board of Directors may appoint, or authorize any officer or officers to appoint, one or more transfer agents and one or more registrars.

SECTION 10. Regulations. The Board of Directors may make additional rules and regulations, not inconsistent with these By-Laws, as it may deem expedient concerning the issue, transfer and registration of certificates for shares of stock or with respect to uncertificated shares of stock of the Corporation.

ARTICLE VI

Indemnification

SECTION 1. Right to Indemnification.

(a) Each person who was or is made a party or is threatened to be made a party to or is otherwise 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 is or was a director or an officer of the Corporation or is or was serving at the request of the Corporation as a director, officer or trustee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), whether the basis of the proceeding is alleged action in an official capacity as a director, officer or trustee or in any other capacity while serving as a director, officer or trustee, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that the amendment permits the Corporation to provide broader indemnification rights than the law permitted the Corporation to provide prior to the amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by the indemnitee in connection therewith; *provided that*, except as provided in Section 3 of this Article VI with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part of that proceeding) initiated by the indemnitee only if the proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. Any person serving as a director, officer or trustee of a corporation, partnership, joint venture, trust or other enterprise, at least 50% of whose equity interests are owned directly or indirectly by the Corporation, shall be conclusively presumed to be serving in that capacity at the request of the Corporation.

(b) Each person who was or is made a party or is threatened to be made a party to or is involved in any proceeding by reason of the fact that he or she (or a person for whom he or she is the legal representative) is or was licensed to practice law and an employee (including an employee who is or was an officer) of the Corporation or any of its direct or indirect wholly owned subsidiaries (“Counsel”) and, while acting in the course of that employment committed or is alleged to have committed any negligent acts, errors or omissions in rendering professional legal services at the request of the Corporation or pursuant to his or her employment (including, without limitation, rendering written or oral legal opinions to third parties) shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to that amendment) against all expenses, liability and loss (including attorneys’ fees, judgments, fines or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by Counsel in connection therewith; *provided* that to the extent any such expenses, liabilities or losses are covered by insurance, other than insurance maintained by the Corporation, the Corporation shall be required to indemnify and hold harmless the Counsel only to the extent that those expenses, liabilities or losses are not covered by such insurance.

SECTION 2. Right to Advancement of Expenses. In addition to the right to indemnification conferred in Section 1 of this Article VI, an indemnitee shall also have the right to be paid by the Corporation the expenses (including attorney’s fees) incurred in defending any such proceeding in advance of its final disposition (hereinafter an “advancement of expenses”); *provided* that, if the DGCL requires, an advancement of expenses incurred by an indemnitee in his or her capacity as a director, officer or Counsel (and not in any other capacity in which service was or is rendered by the indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an “undertaking”), by or on behalf of the indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a “final adjudication”) that the indemnitee is not entitled to be indemnified for expenses under this Section 2 of this Article VI or otherwise.

SECTION 3. Right of Indemnitee to Bring Suit. If a claim under Section 1 or 2 of this Article VI is not paid in full by the Corporation within 60 days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending the suit. In:

(a) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and

(b) any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover expenses upon a final adjudication that,

the indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its directors who are not parties to the action, a committee of those directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of the suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its directors who are not parties to the action, a committee of those directors, independent legal counsel, or its stockholders) that the indemnitee has not met the applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of a suit brought by the indemnitee, be a defense to that suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to advancement of expenses, under this Article VI or otherwise shall be on the Corporation.

SECTION 4. Non-Exclusivity of Rights.

(a) The rights to indemnification and to the advancement of expenses conferred in this Article VI shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, the Restated Certificate of Incorporation, these By-laws, agreement, vote of stockholders or directors or otherwise.

(b) As between the Corporation and any other person or entity (other than an entity directly or indirectly controlled by the Corporation) who provides indemnification to the indemnitees for their service to, or on behalf of, the Corporation (collectively, the “secondary indemnitors”) the Corporation:

- (i) shall be the full indemnitor of first resort in respect of indemnification or advancement of expenses in connection with any jointly indemnifiable claims (as defined below), pursuant to and in accordance with the terms of this Article VI, irrespective of any right of indemnification, advancement of expenses or other right of recovery any indemnitee may have from any secondary indemnitor or any right to insurance coverage that any indemnitee may have under any insurance policy issued to any secondary indemnitor (i.e., the Corporation’s obligations to those indemnitees are primary and any obligation of any secondary indemnitor, or any insurer of any secondary indemnitor, to advance expenses or to provide indemnification or insurance coverage for the same loss or liability incurred by those indemnitees is secondary to the Corporation’s obligations);

- (ii) shall be required to advance the full amount of expenses incurred by any such indemnitee and shall be liable for the full amount of all liability and loss suffered by the indemnitee (including, but not limited to, expenses (including, but not limited to, attorneys' fees and expenses), judgments, fines and amounts paid in settlement actually and reasonably incurred by the indemnitee in connection with the Proceeding), without regard to any rights any such indemnitee may have against any secondary indemnitor or against any insurance carrier providing insurance coverage to that indemnitee under any insurance policy issued to a secondary indemnitor; and
- (iii) irrevocably waives, relinquishes and releases each secondary indemnitor from any and all claims against that secondary indemnitor for contribution, subrogation or any other recovery of any kind in respect those claims.

The Corporation shall indemnify each secondary indemnitor directly for any amounts that the secondary indemnitor pays as indemnification or advancement on behalf of any such indemnitee and for which the indemnitee may be entitled to indemnification from the Corporation in connection with jointly indemnifiable claims. No right of indemnification, advancement of expenses or other right of recovery that an indemnitee may have from any secondary indemnitor shall reduce or otherwise alter the rights of the indemnitee or the obligations of the Corporation hereunder. No advancement or payment by any secondary indemnitor on behalf of any such indemnitee with respect to any claim for which the indemnitee has sought indemnification from the Corporation shall affect the foregoing and the secondary indemnitors shall be subrogated to the extent of that advancement or payment to all of the rights of recovery of the indemnitee against the Corporation. Each indemnitee shall execute all papers reasonably required and shall do all things that may be reasonably necessary to secure the rights of the indemnitee's secondary indemnitors under this Section 4(b) of this Article VI, including the execution of those documents as may be necessary to enable the secondary indemnitors effectively to bring suit to enforce those rights, including in the right of the Corporation. Each of the secondary indemnitors shall be third-party beneficiaries with respect to, and shall be entitled to enforce, this Section 4(b) of this Article VI. As used in this Section 4(b) of this Article VI, the term "jointly indemnifiable claims" shall be broadly construed and shall include, without limitation, any action, suit, proceeding or other matter for which an indemnitee shall be entitled to indemnification, reimbursement, advancement of expenses or insurance coverage from both a secondary indemnitor (or an insurance carrier providing insurance coverage to any secondary indemnitor) and the Corporation, whether pursuant to the DGCL (or other applicable law in the case of any secondary indemnitor), any agreement or certificate of incorporation, bylaws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or comparable organizational documents of the Corporation or the secondary indemnitors or any insurance policy providing insurance coverage to any secondary indemnitors, as applicable.

SECTION 5. 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 expense, liability or loss, whether or not the Corporation would have the power to indemnify that person against that expense, liability or loss under the DGCL.

SECTION 6. Indemnification of Employees and Agents of the Corporation. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article VI with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

SECTION 7. Constituent Corporations. For purposes of this Article VI, references to “the Corporation” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed into the Corporation in a consolidation or merger if the corporation would have been permitted (if its corporate existence had continued) under applicable law to indemnify its directors, officers, employees or agents, so that any person who is or was a director, officer, employee or agent of the constituent corporation, or is or was serving at the request of the constituent corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article VI with respect to the resulting or surviving corporation as the person would have with respect to the constituent corporation if its separate existence had continued.

SECTION 8. Nature of Rights. The rights conferred upon indemnitees in this Article VI shall be contract rights and those rights shall continue as to an indemnitee who has ceased to be a director, officer, trustee or Counsel and shall inure to the benefit of the indemnitee’s heirs, executors and administrators. Any amendment, alteration or repeal of this Article VI that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to the amendment or repeal.

ARTICLE VII

General Provisions

SECTION 1. Seal. The seal of the Corporation shall be in the form as shall be approved by the Board of Directors.

SECTION 2. Fiscal Year. The Board of Directors, by resolution, shall fix the fiscal year of the Corporation. Once fixed, the Board of Directors may change the fiscal year by resolution.

SECTION 3. Checks, Notes, Drafts, Etc. All checks, notes, drafts or other orders for the payment of money of the Corporation shall be signed, endorsed or accepted in the name of the Corporation by the officer, officers, person or persons as from time to time may be designated by the Board of Directors or by an officer or officers authorized by the Board of Directors to make that designation.

SECTION 4. Execution of Contracts. The Board of Directors may authorize any officer or officers, agent or agents, in the name and on behalf of the Corporation, to enter into or execute and deliver any and all deeds, bonds, mortgages, contracts and other obligations or instruments, and the authority may be general or confined to specific instances.

SECTION 5. Reliance upon Books, Reports and Records. Each director, each member of any committee designated by the Board of Directors and each officer shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books and records of the Corporation and upon the information, opinions, reports or statements presented to the Corporation by any of its officers, agents or employees, or committees of the Board of Directors so designated, or by any other person or entity as to matters which the director, committee member or officer reasonably believes are within the other person's or entity's professional or expert competence and that has been selected with reasonable care by or on behalf of the Corporation.

SECTION 6. Certificate of Incorporation. All references in these By-Laws to the Restated Certificate of Incorporation shall be deemed to refer to the Restated Certificate of Incorporation of the Corporation, as amended or restated and in effect from time to time.

SECTION 7. Evidence of Authority. A certificate by the Secretary or any Assistant Secretary as to any action taken by the stockholders, directors, a committee or any officer or representative of the Corporation shall, as to all persons who rely on the certificate in good faith, be conclusive evidence of that action.

SECTION 8. Severability and Inconsistency. Any determination that any provision of these By-Laws is for any reason inapplicable, illegal or ineffective shall not affect or invalidate any other provision of these By-Laws. If any provision of these By-Laws is or becomes inconsistent with any provision of the Restated Certificate of Incorporation, the DGCL or any other applicable law, the provision of these By-Laws shall not be given any effect to the extent of the inconsistency, but shall otherwise be given full force and effect.

SECTION 9. Notice and Waiver of Notice.

(a) Whenever any notice is required by these By-Laws to be given to the stockholders, personal notice is not meant unless expressly so stated, and any notice so required shall be deemed to be sufficient if made in any manner permitted by law. Stockholders not entitled to vote shall not be entitled to receive notice of any meetings except as otherwise required by law.

(b) Without limiting the manner by which notice otherwise may be given effectively to stockholders of the Corporation pursuant to the DGCL, the Restated Certificate of Incorporation or these By-Laws, any notice to stockholders of the Corporation given by the Corporation under any provision of the DGCL, the Restated Certificate of Incorporation or these By-Laws shall be effective if given by a form of electronic transmission consented to by the stockholder of the Corporation to whom the notice is given. Any such consent shall be deemed revoked if:

- (i) the Corporation is unable to deliver by electronic transmission two (2) consecutive notices given by the Corporation in accordance with the consent; and
- (ii) the 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.

However, the inadvertent failure to treat the inability as a revocation shall not invalidate any meeting or other action. For purposes of these By-Laws, except as otherwise limited by applicable law, the term “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 of that communication, and that may be directly reproduced in paper form by the recipient through an automated process.

(c) Whenever notice is required to be given under any provisions of the DGCL, the Restated Certificate of Incorporation or these By-Laws, a written waiver of notice, signed by the stockholder entitled to notice, or a waiver by electronic transmission by the person or entity entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any meeting of the stockholders of the Corporation need be specified in any waiver of notice of the meeting. Attendance of a stockholder of the Corporation at a meeting of the stockholders shall constitute a waiver of notice of the meeting, except when the stockholder attends for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

SECTION 10. Voting of Stock in Other Corporations. Unless a resolution of the Board of Directors otherwise provides, the Chairman of the Board, the Chief Executive Officer, the Chief Operating Officer or the Chief Financial Officer, from time to time, may (or may appoint one or more attorneys or agents to) cast the votes which the Corporation may be entitled to cast as a shareholder or otherwise in any other corporation, any of whose shares or securities may be held by the Corporation, at meetings of the holders of the shares or other securities of the other corporation.

ARTICLE VIII

Amendments

SECTION 1. These By-Laws may be amended or repealed or new by-laws adopted:

(a) if the Restated Certificate of Incorporation so provides, by the affirmative vote of a majority of the directors present at any regular or special meeting of the Board of Directors at which a quorum is present, or

(b) when a quorum is present at any annual or special meeting of stockholders, by the vote of the holders of at least 75.0% of the voting power of the issued and outstanding stock of the Corporation entitled to vote thereon.

MRC GLOBAL INC.
EXECUTIVE COMPENSATION CLAWBACK POLICY
Adopted November 1, 2023

Introduction

The Board of Directors (the “Board”) of MRC Global Inc. (the “Company”) has adopted this Executive Compensation Clawback Policy (this “Policy”) effective as of October 2, 2023 (the “Effective Date”). This Policy is designed to comply with Section 10D of the Securities Exchange Act of 1934 (as amended, the “Exchange Act”), Rule 10D-1 promulgated under the Exchange Act and Section 303A.14 of the New York Stock Exchange (the “Exchange”) Listed Company Manual (the “Listing Standards”). The prior Executive Compensation Clawback Policy dated February 19, 2015 is hereby terminated as of the Effective Date but shall continue to apply for compensation received prior to the Effective Date.

Administration

The Board has delegated administration of this Policy to the Compensation & Human Capital Committee (the “Committee”) of the Board. Absent manifest error, any determinations that the Committee makes in the interpretation or administration of this Policy shall be final and binding on all affected Covered Executives (defined below).

Covered Executives

This Policy applies to Covered Compensation (defined below) that is granted to, earned by or vested in favor of the Company's current and former executive officers who are subject to the requirements of Section 16 of the Exchange Act and such other senior executives or employees who the Board or Committee may include from time to time by amendment to the Policy (“Covered Executives”). “Covered Compensation” means Incentive Compensation (defined below) that is granted to, earned by or vested in favor of Covered Executives on or after the Effective Date and after the date an executive becomes a Covered Executive. Covered Compensation does not include any compensation that an executive received during any three-year recoupment period described below if the executive was not a Covered Executive during that period.

Recoupment; Accounting Restatement

If the Company is required to prepare an accounting restatement of its financial statements due to the Company's material noncompliance with any financial reporting requirement under the securities laws, the Committee will require reimbursement or forfeiture of any excess Covered Compensation that each Covered Executive received during the three completed fiscal years immediately preceding the date on which the Company is required to prepare an accounting restatement.

Incentive Compensation

“Incentive Compensation” means any compensation that is granted, earned or vested based wholly or in part upon the attainment of a Financial Reporting Measure (defined below). Incentive Compensation is “received” for purposes of this Policy in the Company’s fiscal period during which the Financial Reporting Measure specified in the Incentive Compensation award is attained, even if the payment or grant of such Incentive Compensation occurs after the end of that period. As of the Effective Date, the following are examples of Incentive Compensation of the Company that are based on a Financial Reporting Measure:

- Annual cash short-term incentive (STI)
- Performance share units

A “Financial Reporting Measure” is (i) any measure that is determined and presented in accordance with the accounting principles used in preparing the Company’s financial statements, and any measure that is derived wholly or in part from such measure, (ii) stock price and (iii) total shareholder return. A Financial Reporting Measure need not be presented within the Company’s financial statements or included in a filing with the Securities Exchange Commission (“SEC”). As of the Effective Date, the following are examples of Financial Reporting Measures that the Company currently utilizes to provide Incentive Compensation:

- Relative total shareholder return (“TSR”) compared to the TSR of other companies and funds
- Adjusted earnings before interest, taxes, depreciation, and amortization (EBITDA)
- Adjusted return on average net capital employed (RANCE)

For the avoidance of doubt, the listed Incentive Compensation above as well as other forms of Incentive Compensation not listed above determined upon the attainment of the Financial Reporting Measures (whether or not listed above) shall become subject to this Policy as Covered Compensation.

Excess Incentive Compensation: Amount Subject to Recovery

The amount to be recovered will be the excess of the Covered Compensation paid to the Covered Executive based on the erroneous data over the Covered Compensation that would have been paid to the Covered Executive had it been based on the restated results. As provided by the Listing Standards, the recovered amount must be computed without regard to any taxes that the Covered Executive paid.

If the Committee cannot determine the amount of excess Covered Compensation received by the Covered Executive directly from the information in the accounting restatement, then the Committee will make its determination based on a reasonable estimate of the effect of the accounting restatement. As provided by the Listing Standards, for incentive-based compensation based on stock price or total shareholder return, where the amount of erroneously awarded compensation is not subject to mathematical recalculation directly from the information in an accounting restatement:

- The amount must be based on a reasonable estimate of the effect of the accounting restatement on the stock price or total shareholder return upon which the incentive-based compensation was received; and
- The issuer must maintain documentation of the determination of that reasonable estimate and provide the documentation to the Exchange.

Method of Recoupment

The Committee will determine, in its sole discretion, the method for recouping Covered Compensation hereunder which may include (without limitation):

- requiring reimbursement of cash Covered Compensation previously paid;
- seeking recovery of any gain realized on the vesting, exercise, settlement, sale, transfer, or other disposition of any equity-based awards that are Covered Compensation
- offsetting the recouped amount from any compensation that the Company otherwise owes to the Covered Executive
- cancelling outstanding vested or unvested equity awards
- taking any other remedial and recovery action that law permits

No Indemnification

The Company shall not indemnify any Covered Executives against the loss of any incorrectly awarded Covered Compensation.

Interpretation

The Committee is authorized to interpret and construe this Policy and to make all determinations necessary, appropriate, or advisable for the administration of this Policy. It is intended that this Policy be interpreted in a manner that is consistent with the requirements of Section 10D of the Exchange Act and any applicable rules or standards that the SEC or the Exchange adopts.

Amendment; Termination

The Committee may amend this Policy from time to time in its discretion and shall amend this Policy as it deems necessary to reflect further regulations adopted by the SEC under Section 10D of the Exchange Act or rules or interpretations promulgated thereunder and to comply with any Listing Standards. The Committee may terminate this Policy at any time.

Other Recoupment Rights

The Committee intends that this Policy will be applied to the fullest extent of the law. Any right of recoupment under this Policy is in addition to, and not in lieu of, any other remedies or rights of recoupment that may be available to the Company pursuant to the terms of any similar policy in any employment agreement, equity award agreement or similar agreement and any other legal remedies available to the Company.

Impracticability

The Committee must cause the Company to recover erroneously awarded compensation in compliance with this Policy except to the extent that one or more of the conditions below are met, and the Committee (or a majority of the independent directors serving on the Board) has made a determination that recovery would be impracticable. The following are exceptions to the recovery requirement:

- The direct expense paid to a third party to assist in enforcing the policy would exceed the amount to be recovered. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on expense of enforcement, the issuer must make a reasonable attempt to recover such erroneously awarded compensation, document the recovery attempt and provide that documentation to the Exchange.

- Recovery would violate home country law where that law was adopted prior to November 28, 2022. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on violation of home country law, the issuer must obtain an opinion of home country counsel, acceptable to the Exchange, that recovery would result in such a violation and must provide the opinion to the Exchange.
- Recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the registrant, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder.

CERTIFICATION

I, Robert J. Saltiel, Jr., certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the period ended September 30, 2023 of MRC Global Inc.;
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 officer 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 the 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 officer 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: November 8, 2023

/s/ Robert J. Saltiel, Jr.

Name: Robert J. Saltiel, Jr.

Title: President and Chief Executive Officer

CERTIFICATION

I, Kelly Youngblood, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the period ended September 30, 2023 of MRC Global Inc.;
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 officer 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 the 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 officer 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: November 8, 2023

/s/ Kelly Youngblood

Name: Kelly Youngblood
Title: Executive Vice President and Chief Financial Officer

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the filing of the Quarterly Report on Form 10-Q of MRC Global Inc., a Delaware corporation (the "Company"), for the period ended September 30, 2023 (the "Report"), each of the undersigned officers of the Company certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

- (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.

Date: November 8, 2023

/s/ Robert J. Saltiel, Jr.

Name: Robert J. Saltiel, Jr.
Title: President and Chief Executive Officer

/s/ Kelly Youngblood

Name: Kelly Youngblood
Title: Executive Vice President and Chief Financial Officer