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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **October 28, 2022**

RIGEL PHARMACEUTICALS, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation)

0-29889
(Commission File No.)

94-3248524
(IRS Employer Identification No.)

1180 Veterans Boulevard
South San Francisco, CA
(Address of principal executive offices)

94080
(Zip Code)

Registrant's telephone number, including area code: **(650) 624-1100**

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

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

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

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on Which Registered
Common Stock, par value \$0.001 per share	RIGL	The Nasdaq Stock Market LLC

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

Emerging growth company ☐

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

Item 1.01. Entry into a Material Definitive Agreement.

On October 28, 2022, Rigel Pharmaceuticals, Inc. (“Rigel” or the “Company”) entered into a sublease agreement with Atara Biotherapeutics, Inc. to sublease approximately 13,670 rentable square feet of office space located in South San Francisco, California. Subject to the terms of the sublease agreement, the lease term shall commence no sooner than November 1, 2022 and shall expire on May 24, 2025. The future lease payments associated with this sublease agreement are approximately \$1.7 million. We expect this new leased facility will be held as our new headquarters following the expiration of our current leased facility in South San Francisco, California in January 2023.

The foregoing description of the material terms of the sublease agreement does not purport to be complete and is subject to, and is qualified in its entirety by reference to, the sublease agreement, which will be filed as an exhibit to the Company’s Annual Report on Form 10-K for the year ending December 31, 2022.

Item 2.02. Results of Operations and Financial Condition.

On November 3, 2022, Rigel announced certain financial results for its third quarter ended September 30, 2022. A copy of Rigel’s press release, titled “Rigel Reports Third Quarter 2022 Financial Results and Provides Business Update,” is furnished pursuant to Item 2.02 as Exhibit 99.1 hereto.

The information in this Item 2.02, including the exhibit incorporated by reference herein, shall not be deemed to be “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that section or Sections 11 and 12(a)(2) of the Securities Act of 1933, as amended. The information contained herein and in the accompanying exhibit shall not be incorporated by reference into any filing with the U.S. Securities and Exchange Commission made by Rigel, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

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

On October 31, 2022, the Board of Directors of the Company (the “Board”) approved the second amendment and restatement of the Bylaws of the Company (the “Amended and Restated Bylaws”). The Amended and Restated Bylaws are effective as of October 31, 2022.

The principal revisions in the Amended and Restated Bylaws include (i) additional disclosure and procedural requirements for stockholders to submit nominations or stockholder proposals, (ii) modifications with respect to the conduct of stockholder meetings and the mechanisms for setting their date, time, and place, and (iii) provisions establishing the Delaware Court of Chancery as the exclusive forum for certain legal actions, including certain stockholder and intra-corporate disputes, and establishing the federal district courts of the United States as the exclusive forum for any complaint asserting a cause of action arising under the Securities Act of 1933, as amended.

The foregoing summary does not purport to be complete and is qualified in its entirety by the text of the Amended and Restated Bylaws, a copy of which is filed herewith as Exhibit 3.1 to this Current Report on Form 8-K and is incorporated by reference into this Item 5.03.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit	Description
<u>3.1</u>	<u>Amended and Restated Bylaws of Rigel Pharmaceuticals, Inc., dated October 31, 2022</u>
<u>99.1</u>	<u>Press Release, dated November 3, 2022, titled "Rigel Reports Third Quarter 2022 Financial Results and Provides Business Update"</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

Forward-Looking Statements

Any statements contained in this report that are not statements of historical fact may be deemed to be forward-looking statements. Forward-looking statements can be identified by words such as "plan", "potential", "may", "expect", "will", "believe", "intend" and similar expressions in reference to future periods. Forward-looking statements are neither historical facts nor assurances of future performance. Instead, they are based on Rigel's current beliefs, expectations, and assumptions regarding the future of our business, future plans and strategies, projections, anticipated events and trends, the economy and other future conditions, and hence they inherently involve significant risks, uncertainties and changes in circumstances that are difficult to predict and many of which are outside of our control. Therefore, you should not rely on any of these forward-looking statements. Actual results and the timing of events could differ materially from those anticipated in such forward looking statements as a result of these risks and uncertainties, which include, without limitation, risks detailed from time to time in Rigel's reports filed with the Securities and Exchange Commission, including its Quarterly Report on Form 10-Q for the quarter ended June 30, 2022 and subsequent filings. Any forward-looking statement made by us in this report is based only on information currently available to us and speaks only as of the date on which it is made. Rigel does not undertake any obligation to update forward-looking statements, whether written or oral, that may be made from time to time, whether as a result of new information, future developments or otherwise, and expressly disclaims any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein, except as required by law.

SIGNATURES

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

Dated: November 3, 2022

RIGEL PHARMACEUTICALS, INC.

By: /s/ Raul R. Rodriguez
Raul R. Rodriguez
Chief Executive Officer

AMENDED AND RESTATED BYLAWS
OF
RIGEL PHARMACEUTICALS, INC.
(A DELAWARE CORPORATION)

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AMENDED AND RESTATED BYLAWS

OF

**RIGEL PHARMACEUTICALS, INC.
(A DELAWARE CORPORATION)**

ARTICLE I

OFFICES

Section 1. Registered Office. The registered office of the corporation in the State of Delaware shall be in the City of Dover, County of Kent.

Section 2. Other Offices. The corporation shall also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and may also have offices at such other places, both within and 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

CORPORATE SEAL

Section 3. Corporate Seal. The corporate seal shall consist of a die bearing the name of the corporation and the inscription, "Corporate Seal-Delaware." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE III

STOCKHOLDERS' MEETINGS

Section 4. Place Of Meetings.

(a) Meetings of the stockholders of the corporation shall be held at such place, either within or without the State of Delaware, as may be designated from time to time by the Board of Directors, or, if not so designated, then at the office of the corporation required to be maintained pursuant to Section 2 hereof.

(b) At the sole discretion of the Board of Directors, and subject to applicable laws and any guidelines and procedures that the Board of Directors may adopt, a meeting of the stockholders may be conducted in whole or in part by electronic transmission by and to the corporation, electronic video screen communication, conference telephone, or other means of remote communication.

Section 5. Annual Meetings.

(a) The annual meeting of the stockholders of the corporation, for the purpose of election of directors and for such other business properly brought before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors or a duly authorized committee thereof. The Board of Directors may postpone, reschedule or cancel any previously scheduled annual meeting of stockholders for any reason.

Section 6. Special Meetings.

(a) Special meetings of the stockholders of the corporation may be called, for any purpose or purposes, by (i) the Chairman of the Board of Directors, the Chief Executive Officer or the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption) or (ii) at any time or times that the corporation is subject to Section 2115(b) of the California General Corporation Law, one or more stockholders entitled to cast not less than ten percent (10%) (the "Requisite Percentage") of the votes on the Requested Record Date (as such term is defined below) if a timely request in proper written form is delivered to the Secretary in compliance with this Section (such request, a "Special Meeting Request"). The Board of Directors may postpone, reschedule or cancel any previously scheduled special meeting of stockholders called pursuant to the foregoing clause (i) for any reason.

No stockholder may submit a Special Meeting Request without first submitting a request in proper written form to the Secretary at the principal executive offices of the corporation that the Board of Directors fix a record date for determining stockholders entitled to submit a Special Meeting Request pursuant to clause (ii) of this Section 6(a) (a "Requested Record Date"). To be in proper written form, such request shall be signed and dated by the stockholder submitting the request and shall set forth as to each Proposing Person (as such term is defined below), proposed item of business and proposed director nominee, as applicable, all information, statements, questionnaires, representations and acknowledgements required to be set forth in a notice under Section 15 as if each item of business or director nominee were to be considered at an annual meeting of stockholders.

(b) Within ten (10) business days after the Secretary receives a request to fix a Requested Record Date in compliance with Section 6(a), the Board of Directors shall adopt a resolution fixing a Requested Record Date, which Requested Record Date shall not precede the date upon which the resolution fixing the Requested Record Date is adopted by the Board of Directors. Notwithstanding anything else in these Bylaws, if no resolution fixing a Requested Record Date has been adopted by the Board of Directors within ten (10) business days after the date on which such a request to fix a Requested Record Date was received by the Secretary, the Requested Record Date in respect thereof shall be deemed to be the twentieth (20th) day after the date on which such a request is received by the Secretary. Notwithstanding anything in this Section 6 to the contrary, no Requested Record Date shall be fixed if the Board of Directors determines that any Special Meeting Request that would be submitted following such Requested Record Date could not comply with the requirements set forth in Section 6(g).

(c) To be timely, a Special Meeting Request must be delivered via registered mail to the Chair of the Board of Directors, Chief Executive Officer, Vice President or Secretary not later than sixty (60) days following the Requested Record Date. To be in proper written form, a Special Meeting Request shall be signed and dated by each stockholder requesting the special meeting (or a duly authorized agent thereof) and shall set forth, other than with respect to a Solicited Stockholder (as such term is defined below): (i) a statement of the specific purpose or purposes of the special meeting; (ii) as to each Proposing Person, proposed item of business and proposed director nominee, as applicable, all information, statements, questionnaires, representations and acknowledgements required to be set forth in a notice under Section 15 as if each item of business or director nominee were to be considered at an annual meeting of stockholders; (iii) an acknowledgement by such stockholder that a disposition of shares of capital stock of the corporation owned of record or beneficially as of the Requested Record Date, that is made at any time prior to the special meeting shall constitute a revocation of a Special Meeting Request with respect to such disposed shares; and (iv) documentary evidence that such stockholder owns the Requisite Percentage as of the Requested Record Date; provided, however, that if any stockholder making a Special Meeting Request is not the beneficial owner (as such term is defined below) of the shares representing the Requisite Percentage, then to be valid, the Special Meeting Request must also include documentary evidence that the beneficial owners on whose behalf the Special Meeting Request is made beneficially own the Requisite Percentage as of the date of the Special Meeting Request. As used in this Section 6(c), the term "Solicited Stockholder" means any stockholder that has provided a request to call a special meeting in response to a solicitation made pursuant to, and in accordance with, Section 14 of the Exchange Act by way of a consent solicitation.

(d) Following receipt of a Special Meeting Request by the Chair of the Board of Directors, Chief Executive Officer, Vice President or Secretary, it shall be the duty of such officer, subject to the immediately succeeding sentence, to cause notice to be given to the stockholders entitled to vote that a meeting has been requested by the person or persons calling the meeting, the date of which meeting, which shall be set by the Board of Directors, to be not less than thirty-five (35) days nor more than sixty (60) days after receipt of such Special Meeting Request. Subject to Section 6(g), within ten (10) days following receipt of a Special Meeting Request, the Board of Directors shall determine whether stockholders owning not less than the Requisite Percentage of the shares as of the Requested Record Date support the call of a special meeting and notify the requesting party or parties of its finding.

(e) The Board of Directors may request that the stockholder or stockholders requesting a Requested Record Date or submitting a Special Meeting Request furnish such additional information as may be reasonably required by the Board of Directors. Such stockholder or stockholders shall provide such additional information within five (5) business days after it has been requested by the Board of Directors.

(f) In connection with a special meeting called pursuant to clause (ii) of Section 6(a), the stockholder or stockholders that submitted a Special Meeting Request shall update the information previously provided to the corporation in connection with the Special Meeting Request so that the information provided or required to be provided in such Special Meeting Request is true and correct as of the record date for stockholders entitled to vote at the special meeting and as of the date that is ten (10) business days prior to the special meeting or any adjournment, postponement or rescheduling thereof, and such update shall be delivered in writing to the Secretary at the principal executive offices of the corporation not later than 5:00 p.m. Pacific Time (the “close of business”) ten (10) days after such record date (in the case of the update required to be made as of such record date) and not later than the close of business eight (8) business days prior to the date for the special meeting or, if practicable, any adjournment, postponement or rescheduling thereof (or, if not practicable, on the first practicable date prior to the date to which the special meeting has been adjourned, postponed or rescheduled) (in the case of the update required to be made as of ten (10) business days prior to the special meeting or any adjournment, postponement or rescheduling thereof). For the avoidance of doubt, any information provided pursuant to this Section 6(f) shall not be deemed to cure any deficiencies in a Special Meeting Request previously delivered pursuant to this Section 6. If the stockholder or stockholders that submitted a Special Meeting Request fail to provide any written update in accordance with this Section 6(f), the information as to which such written update relates may be deemed not to have been provided in accordance with this Section 6.

(g) If any information submitted pursuant to this Section 6 is inaccurate or incomplete in any material respect, such information shall be deemed not to have been provided in accordance with this Section 6. The stockholder or stockholders requesting a Requested Record Date or submitting a Special Meeting Request shall notify the Secretary in writing at the principal executive offices of the corporation of any inaccuracy or change in any information submitted within two (2) business days after becoming aware of such inaccuracy or change. Upon written request of the Secretary on behalf of the Board of Directors (or a duly authorized committee thereof), such stockholder or stockholders requesting a Requested Record Date or submitting a Special Meeting Request shall provide, within seven (7) business days after delivery of such request (or such longer period as may be specified in such request), (i) written verification, reasonably satisfactory to the Board of Directors, any committee thereof or any authorized officer of the corporation, to demonstrate the accuracy of any information submitted and (ii) a written affirmation of any information submitted as of an earlier date. If the stockholder or stockholders requesting a Requested Record Date or submitting a Special Meeting Request fail to provide such written verification or affirmation within such period, the information as to which written verification or affirmation was requested may be deemed not to have been provided in accordance with this Section 6.

(h) If the Board of Directors determines (i) that any request to fix a Requested Record Date or any Special Meeting Request (A) relates to an item of business proposed to be transacted at the special meeting that is not a proper subject for stockholder action under applicable law, (B) includes an item of business proposed to be transacted at such meeting that did not appear on the written request that resulted in the determination of the Requested Record Date, or (C) was made in a manner that involved a violation of the Exchange Act or otherwise does not comply with applicable law, or (ii) that any stockholder making a request to fix a Requested Record Date or making a Special Meeting Request has not otherwise complied with this Section 6, then the Board of Directors shall not accept, and shall consider ineffective, any such request and shall not be required to fix such Requested Record Date or the Chair of the Board of Directors, Chief Executive Officer, Vice President or Secretary, as applicable, shall not be required to cause notice to be given to stockholders entitled to vote that a special meeting has been requested by the person or persons calling the meeting, respectively. The Board of Directors shall determine in good faith whether the requirements set forth in this Section 6 have been satisfied.

(i) Any stockholder may revoke its signature or consent to a Special Meeting Request by written revocation delivered to the Secretary at any time prior to the special meeting. If one or more written revocations have been delivered to the Secretary and the result after giving effect to all revocations is that stockholders holding less than the Requisite Percentage have delivered a Special Meeting Request to the Secretary, then, (i) if the notice of meeting has not already been mailed to stockholders, the Secretary shall refrain from mailing the notice of the special meeting, and (ii) if the notice of meeting has already been mailed to stockholders, the Secretary shall revoke the notice of the meeting.

(j) Notwithstanding anything in these Bylaws to the contrary, the Board of Directors may submit its own proposal or proposals for consideration at a special meeting called pursuant to clause (ii) of Section 6(a). Nothing contained in this Section 6 shall be construed as limiting, fixing or affecting the time when a meeting of stockholders called by action of the Board of Directors may be held.

Section 7. Notice Of Meetings. Except as otherwise provided by law or the Amended and Restated Certificate of Incorporation, as further amended (the "Certificate of Incorporation"), written notice of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, date and hour and purpose or purposes of the meeting. Notice of the time, place and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof, either before or after such meeting, and will be waived by any stockholder by his attendance thereat in person or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

Section 8. Quorum. At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws, in all matters other than the election of directors, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders. Except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws, directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by the statute or by the Certificate of Incorporation or these Bylaws, a majority of the outstanding shares of such 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 and, except where otherwise provided by the statute or by the Certificate of Incorporation or these Bylaws, the affirmative vote of the majority (plurality, in the case of the election of directors) of the votes cast by the holders of shares of such class or classes or series shall be the act of such class or classes or series.

Section 9. Adjournment And Notice Of Adjourned Meetings. Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting, for any reason, even in the presence of a quorum, or by the vote of a majority of the shares casting votes. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting (including an adjournment taken to address a technical failure to convene or continue a meeting using remote communication) if the time and place thereof are (a) announced at the meeting at which the adjournment is taken, (b) displayed during the time scheduled for the meeting, on the same electronic network used to enable stockholders and proxy holders to participate in the meeting by means of remote communication or (c) set forth in the notice of meeting given in accordance with these Bylaws. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 10. Voting Rights. For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 12 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote or execute consents shall have the right to do so either in person or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period.

Section 11. Joint Owners Of Stock. If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the Delaware General Corporation Law ("DGCL"), Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) shall be a majority or even-split in interest.

Section 12. List Of Stockholders. The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days ending on the day before the meeting date: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation.

Section 13. No Consent of Stockholders in Lieu of Meeting. Except as otherwise expressly provided by the terms of any series of preferred stock permitting the holders of such series of preferred stock to act by written consent, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation, and, as specified by the Certificate of Incorporation, the ability of the stockholders to consent in writing to the taking of any action is specifically denied.

Section 14. Organization.

(a) At every meeting of stockholders, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the President, or, if the President is absent, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairman. The Secretary, or, in his absence, an Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

(b) The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

Section 15. Advance Notice of Stockholder Business and Nominations.

(a) Annual Meeting of Stockholders.

(i) Nominations of persons for election to the Board of Directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders only: (A) pursuant to the corporation's notice of meeting (or any supplement thereto) of stockholders given by or at the direction of the Board of Directors or any duly authorized committee thereof; (B) as otherwise properly brought before such annual meeting by or at the direction of the Board of Directors or any duly authorized committee thereof; or (C) by any stockholder of the corporation who was a stockholder of record at the time of giving of notice provided for in this Section 15, who is entitled to vote at the meeting and who complied with the notice procedures set forth in Section 15.

(ii) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (C) of Section 15(a)(i) of these Bylaws, (i) the stockholder must have given timely notice thereof in writing to the Secretary of the corporation, (ii) such other business must be a proper matter for stockholder action under the DGCL, (iii) the stockholder and the beneficial owner, if any, on whose behalf any such proposal or nomination is made, must have complied with all of the requirements set forth in, and acted in accordance with the representations made pursuant to, this Section 15. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the ninetieth (90th) day nor earlier than the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is changed by more than thirty (30) days from such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such annual meeting is first made. In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described above. To be in proper written form, such stockholder's notice shall set forth:

(A) as to each person, if any, whom the stockholder giving notice under this Section 15 (the “Noticing Stockholder”) proposes to nominate for election as a director (each, a “Proposed Nominee”):

(1) the age and the principal occupation or employment of such Proposed Nominee;

(2) a description of all direct and indirect compensation or other material monetary agreements, arrangements or understandings during the past three (3) years, and any other material relationships, between or among any Proposing Person, on the one hand, and such Proposed Nominee and such Proposed Nominee’s respective affiliates (as such term is defined below) and associates (as such term is defined below), on the other hand, including all information that would be required to be disclosed pursuant to Item 404 of Regulation S-K as if any Proposing Person were the “registrant” for purposes of such rule and such Proposed Nominee were a director or executive officer of such registrant;

(3) a description of any business or personal interests that could place such Proposed Nominee in a potential conflict of interest with the corporation or any of its subsidiaries;

(4) a written questionnaire with respect to the background and qualification of such Proposed Nominee, completed by such Proposed Nominee in the form required by the corporation (which form the Noticing Stockholder shall request in writing from the Secretary prior to submitting notice and which the Secretary shall provide to such Noticing Stockholder within ten (10) days after receiving such request);

(5) a written representation and agreement completed by such Proposed Nominee in the form required by the corporation (which form the Noticing Stockholder shall request in writing from the Secretary prior to submitting notice and which the Secretary shall provide to the Noticing Stockholder within ten (10) days after receiving such request), providing, among other things, that such Proposed Nominee: (aa) is not and will not become a party to any agreement, arrangement or understanding with, or any commitment or assurance to, any person or entity as to how such Proposed Nominee, if elected as a director of the corporation, will act or vote on any issue or question to be decided by the Board of Directors or that otherwise relates to the corporation or such Proposed Nominee’s service on the Board of Directors (a “Voting Commitment”) that has not been disclosed to the corporation or any Voting Commitment that could limit or interfere with such Proposed Nominee’s ability to comply, if elected as a director of the corporation, with such Proposed Nominee’s fiduciary duties under applicable law; (bb) is not and will not become a party to any compensatory, payment or other financial agreement, arrangement or understanding with any person other than with the corporation, including any agreement to indemnify such Proposed Nominee for obligations arising as a result of such Proposed Nominee’s service as a director of the corporation, in connection with such Proposed Nominee’s nomination, service or action as a director of the corporation that has not been disclosed to the corporation; (cc) will, if elected as a director of the corporation, comply with all applicable laws and stock exchange listing standards, the Certificate of Incorporation, these Bylaws and the corporation’s policies, guidelines and principles applicable to directors, including, without limitation, the corporate governance, business conduct, conflict of interest, confidentiality, insider trading and stock ownership and trading policies and guidelines, and any other corporation policies and guidelines applicable to directors, and all applicable fiduciary duties under state law; (dd) intends to serve a full term as a director of the corporation, if elected; (ee) will provide facts, statements and other information in all communications with the corporation and its stockholders that are or will be true and correct, and that do not and will not omit to state any fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; and (ff) will tender his or her resignation as a director of the Corporation if the Board of Directors determines that such Proposed Nominee failed to comply with the provisions of this Section 15(a)(ii)(A)(5) in all material respects, provides such Proposed Nominee of notice of any such determination and, if such non-compliance may be cured, such Proposed Nominee fails to cure such non-compliance within ten business days after delivery of such notice to such Proposed Nominee; and

(6) all other information relating to such Proposed Nominee that would be required to be disclosed in a proxy statement or other filing made with the U.S. Securities and Exchange Commission (the “SEC”) by any Proposing Person in connection with the solicitation of proxies for a contested election of directors, or would be otherwise required, in each case pursuant to Section 14(a) of the Exchange Act, including such Proposed Nominee’s written consent to being named in the proxy statement as a nominee and to serving as a director if elected, whether or not any Proposing Person intends to deliver a proxy statement or conduct a proxy solicitation;

(B) if the notice relates to any business (other than the nomination of persons for election as directors) that the Noticing Stockholder proposes to bring before the meeting:

- (1) a brief description of the business desired to be brought before the meeting;
- (2) the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Certificate of Incorporation or these Bylaws, the language of the proposed amendment);
- (3) the reasons for conducting such business at the meeting;
- (4) any material interest in such business of any Proposing Person; and
- (5) all other information relating to such business that would be required to be disclosed in a proxy statement or other filing made with the SEC by any Proposing Person in connection with the contested solicitation of proxies in support of such business or that would otherwise be required, in each case pursuant to Section 14(a) of the Exchange Act, whether or not any Proposing Person intends to deliver a proxy statement or conduct a proxy solicitation;

(C) as to each Proposing Person:

(1) the name and address of such Proposing Person (as they appear on the corporation's books, if applicable);

(2) (aa) the class or series and number of shares of capital stock of the corporation that are, directly or indirectly, owned beneficially and held of record by such Proposing Person (including any class or series of shares of capital stock of the corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future); (bb) the date or dates such shares were acquired; (cc) the investment intent of such acquisition; and (dd) any pledge by such Proposing Person with respect to any of such shares;

(3) any Derivative Instrument (as such term is defined below) owned beneficially, directly or indirectly, by any such Proposing Person or to which any such Proposing Person is a party, all of which Derivative Instruments shall be disclosed without regard to whether (aa) any such Derivative Instrument conveys any voting rights in shares of any class or series of capital stock of the corporation to such Proposing Person, (bb) any such Derivative Instrument is required to be, or is capable of being, settled through delivery of shares of any class or series of capital stock of the corporation or (cc) such Proposing Person may have entered into other transactions that hedge or mitigate the economic effect of any such Derivative Instrument;

(4) a description of any proxy (other than a revocable proxy given in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by way of a solicitation statement filed on Schedule 14A), contract, arrangement, understanding or relationship (aa) pursuant to which such Proposing Person has a right to vote, directly or indirectly, any shares of the corporation or (bb) with respect to the proposal or nomination, as applicable, or the voting of shares of any class or series of capital stock of the corporation between or among the Proposing Persons;

(5) any rights to dividends on the shares of the corporation owned beneficially, directly or indirectly, by any such Proposing Person that are separated or separable from such underlying shares;

(6) any proportionate interest in shares of the corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership, limited liability company or similar entity in which any such Proposing Person (aa) is a general partner or, directly or indirectly, beneficially owns an interest in a general partner of such general or limited partnership or (bb) is the manager, managing member or, directly or indirectly, beneficially owns an interest in the manager or managing member of such limited liability company or similar entity;

(7) any performance-related fees (other than an asset-based fee) that such Proposing Person is directly or indirectly entitled to based on any increase or decrease in the value of shares of the corporation or Derivative Instruments, including, without limitation, any such interests held by members of any such Proposing Person's immediate family sharing the same household;

(8) any direct or indirect interest of such Proposing Person in any contract or arrangement with the corporation or any affiliate of the corporation (including any employment agreement, collective bargaining agreement or consulting agreement);

(9) a complete and accurate description of any pending, or to such Proposing Person's knowledge, threatened, legal proceeding in which such Proposing Person is a party or participant involving the corporation or, to such Proposing Person's knowledge, any current or former officer, director, affiliate or associate of the corporation;

(10) a complete and accurate description of any violations by such Proposing Person of federal or state securities laws relating to the disclosure of information (and supplemental disclosure that, if had been provided, would have cured such violation) and of any breach of a contract with the corporation by such Proposing Person;

(11) a representation that no Proposing Person has breached any contract or other agreement, arrangement or understanding with the corporation except as otherwise disclosed pursuant to Section 15(a)(ii);

(12) a description of all agreements, arrangements or understandings by and among any Proposing Person(s) and/or any other person(s) (including any Proposed Nominee(s)) (naming such person(s)) pertaining to the nomination(s) or other business proposed to be brought before the meeting;

(13) all other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing made with the SEC if, with respect to any such nomination or item of business, such Proposing Person was a participant in a contested solicitation subject to Section 14(a) of the Exchange Act, whether or not any such Proposing Person intends to deliver a proxy statement or conduct its own proxy solicitation;

(14) any other information about any Derivative Instrument that would be required to be disclosed in a proxy statement or other filing required to be filed with the SEC if, with respect to any such nomination or item of business, such Proposing Person was a participant in a solicitation pursuant to Section 14(a) of the Exchange Act, as if such Derivative Instrument was treated the same as securities of the corporation under such requirements; and

(15) all information that would be required to be set forth in a Schedule 13D filed pursuant to Rule 13d-1(a) promulgated under the Exchange Act or an amendment pursuant to Rule 13d-2(a) promulgated under the Exchange Act as if such a statement were required to be filed under the Exchange Act by such Proposing Person (regardless of such Proposing Person is actually required to file a Schedule 13D);

provided, however, the disclosures in the foregoing clauses (1) through (15) shall not include any disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these Bylaws on behalf of a beneficial owner;

(D) a representation that (1) the Noticing Stockholder is a holder of record of stock of the corporation at the time of the giving of notice provided for in these Bylaws and is entitled to vote at such meeting and (2) the Noticing Stockholder (or a qualified representative (as such term is defined below) thereof) intends to appear in person at the meeting to present such Proposed Nominee or Proposed Nominees for election or to bring such business before the meeting;

(E) an acknowledgement that if such Noticing Stockholder (or a qualified representative thereof) does not appear at such meeting (including virtually in the case of a meeting conducted solely by electronic transmission by and to the corporation, electronic video screen communication, conference telephone, or other means of remote communication) to present the Proposed Nominee or Proposed Nominees for election or proposed business, as applicable, the corporation need not present such Proposed Nominee or Proposed Nominees for election or proposed business for a vote at such meeting, notwithstanding that proxies in respect of such vote may have been received by the corporation;

(F) a representation as to whether or not any Proposing Person intends to solicit proxies in support of director nominees other than the corporation's nominees in accordance with Rule 14a-19 promulgated under the Exchange Act; and

(G) a representation that the Proposing Persons have complied, and will comply, with all applicable requirements of state law and the Exchange Act with respect to matters set forth in this Section 15.

Notwithstanding anything in the second sentence of Section 15(a)(ii) to the contrary, in the event that the number of directors to be elected to the Board of Directors of the corporation at an annual meeting is increased and there is no public announcement by the corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least ten (10) days before the last day a stockholder may deliver a notice of nomination in accordance with the second sentence of Section 15(a)(ii), a stockholder's notice required by this Section 15 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the corporation.

(b) Special Meetings of Stockholders.

(i) Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the corporation's notice of meeting (or any supplement thereto) (A) by or at the direction of the Board of Directors or any duly authorized committee thereof, (B) by a stockholder pursuant to Section 6, or (C) provided that the Board of Directors or any duly authorized committee thereof has determined that directors shall be elected at such meeting, by any stockholder of the corporation who is a stockholder of record at the time the notice provided for in this Section 15 is delivered to the Secretary and through the time of the special meeting, who is entitled to vote at the meeting and upon such election, and who complies with the notice procedures set forth in this Section 15. For nominations to be properly brought before a special meeting by a stockholder pursuant to clause (C) of the preceding sentence, (1) the stockholder must have given timely notice thereof in proper written form to the Secretary and (2) the stockholder and any beneficial owner, if any, on whose behalf any such nomination is made, must have complied with all requirements set forth in, and acted in accordance with representations made pursuant to, this Section 15. To be in proper written form, such notice must include, as to each Proposing Person, proposed item of business and proposed director nominee, as applicable, all information, statements, questionnaires, representations and acknowledgements required to be set forth in a notice under Section 15(a)(ii) as if each item of business or director nominee were to be considered at an annual meeting of stockholders. To be timely, such notice shall be delivered to the Secretary at the principal executive offices of the corporation not earlier than the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth (10th) day following the day on which public announcement (as such term is defined below) is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall an adjournment, postponement or rescheduling of a special meeting (or the public announcement thereof) commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) General.

(i) Only such persons who are nominated in accordance with the procedures set forth in this Section 15 (in the case of an annual or special meeting) shall be eligible to be elected at an annual or special meeting of stockholders of the corporation to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 15. The number of nominees a Noticing Stockholder may nominate for election at a meeting of stockholders shall not exceed the number of directors to be elected at such meeting. Except as otherwise provided by law or in these Bylaws, the chair of the meeting shall have the power and duty (A) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 15, and (B) if any proposed nomination or business was not made or proposed in compliance with this Section 15, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Section 15, unless otherwise required by law, if the Noticing Stockholder (or a qualified representative thereof) does not appear at the annual or special meeting of stockholders of the corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be considered, notwithstanding that proxies in respect of such vote may have been received by the corporation.

(ii) The Board of Directors may request that any Proposing Person and any Proposed Nominee furnish such additional information as may be reasonably required by the Board of Directors. Such Proposing Person and/or Proposed Nominee shall provide such additional information within ten (10) days after it has been requested by the Board of Directors. The Board of Directors may require any Proposed Nominee to submit to interviews with the Board of Directors or any committee thereof, and such Proposed Nominee shall make themselves available for any such interviews within no less than ten (10) business days following the date of such request.

(iii) A Noticing Stockholder shall update its notice and any other information provided to the corporation so that the information provided or required to be provided in such notice is true and correct as of the record date for stockholders entitled to vote at the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment, postponement or rescheduling thereof, and such update shall be delivered in writing to the Secretary at the principal executive offices of the corporation not later than the close of business ten (10) days after such record date (in the case of the update required to be made as of such record date), and not later than the close of business eight (8) business days prior to the date for the meeting or, if practicable, any adjournment, postponement or rescheduling thereof (or, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned, postponed or rescheduled) (in the case of the update required to be made as of ten (10) business days prior to the meeting or any adjournment, postponement or rescheduling thereof). Notwithstanding the foregoing, if a Noticing Stockholder no longer plans to solicit proxies in accordance with its representation pursuant to Section 15(a)(ii)(F), such Noticing Stockholder shall inform the corporation of this change by delivering a writing to the Secretary at the principal executive offices of the corporation no later than two (2) business days after the occurrence of such change. A Noticing Stockholder shall also update its notice so that the information required by Section 15(a)(ii)(A)(15) is current through the date of the meeting or any adjournment, postponement or rescheduling thereof, and such update shall be delivered in writing to the Secretary at the principal executive offices of the corporation no later than two (2) business days after the occurrence of any material change to the information previously disclosed pursuant to Section 15(a)(ii)(A)(15). For the avoidance of doubt, any information provided pursuant to this Section 15(c)(iii) shall not be deemed to cure any deficiencies in any notice provided by a Noticing Stockholder, extend any applicable deadlines under this Section 15 or enable or be deemed to permit a Noticing Stockholder to amend or update any proposal or to submit any new proposal, including by changing or adding nominees, matters, business and/or resolutions proposed to be brought before a meeting of stockholders. If a Noticing Stockholder fails to provide any written update in accordance with this Section 15(c)(iii), the information as to which such written update relates may be deemed not to have been provided in accordance with these Bylaws.

(iv) If any information submitted pursuant to this Section 15 is inaccurate or incomplete in any material respect, such information shall be deemed not to have been provided in accordance with these Bylaws. The Noticing Stockholder shall notify the Secretary in writing at the principal executive offices of the corporation of any inaccuracy or change in any information submitted within two (2) business days after becoming aware of such inaccuracy or change. Upon written request of the Secretary on behalf of the Board of Directors (or a duly authorized committee thereof), the Noticing Stockholder shall provide, within seven (7) business days after delivery of such request (or such longer period as may be specified in such request), (A) written verification, reasonably satisfactory to the Board of Directors, any committee thereof or any authorized officer of the corporation, to demonstrate the accuracy of any information submitted and (B) a written affirmation of any information submitted as of an earlier date. If the Noticing Stockholder fails to provide such written verification or affirmation within such period, the information as to which written verification or affirmation was requested may be deemed not to have been provided in accordance with these Bylaws.

(v) Notwithstanding the foregoing provisions of this Section 15, unless otherwise required by law, if any Proposing Person (A) provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act and (B) subsequently fails to comply with the requirements of Rule 14a-19(a)(2) and Rule 14a-19(a)(3) promulgated under the Exchange Act, then the corporation shall disregard any proxies or votes solicited for the Proposed Nominees. Upon request by the corporation, if any Proposing Person provides notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act, such Proposing Person shall deliver to the corporation, no later than five (5) business days prior to the applicable meeting, reasonable evidence that it has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act.

(vi) Notwithstanding the foregoing provisions of this Section 15, the Proposing Persons shall also comply with all applicable requirements of state law and the Exchange Act with respect to the matters set forth in this Section 15. Nothing in this Section 15 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 (or any successor thereto) promulgated under the Exchange Act (and any proposal included in the corporation's proxy statement pursuant to such Rule shall not be subject to any of the advance notice requirements in this Section 15).

(vii) For purposes of these Bylaws, the terms "affiliate" and "associate" shall have the meanings set forth in Rule 12b-2 promulgated under the Exchange Act.

(viii) For purposes of these Bylaws, the terms "beneficial owner" and "beneficially owned" shall have the meanings set forth in Section 13(d) of the Exchange Act.

(ix) For purposes of this Section 15, the term "Derivative Instrument," shall mean any agreement, arrangement or understanding, written or oral, (including any derivative, long or short position, profit interest, forward, future, swap, option, warrant, convertible security, stock appreciation right or similar right, hedging transaction, repurchase agreement or arrangement, borrowed or loaned shares and so-called "stock borrowing" agreement or arrangement) with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of capital stock of the corporation or with a value derived in whole or in part from the value of any class or series of shares of capital stock of the corporation, the effect or intent of which is to mitigate loss, manage risk or benefit from changes in the price of any shares of capital stock of the corporation, to transfer to or from any person or entity, in whole or in part, any of the economic consequences of ownership of any shares of capital stock of the corporation, to maintain, increase or decrease the voting power of any person or entity with respect to shares of capital stock of the corporation or to provide any person or entity, directly or indirectly, with the opportunity to profit or share in any profit derived from, or to otherwise benefit economically from, any increase or decrease in the value of any shares of capital stock of the corporation, without regard to whether such agreement, arrangement or understanding is required to be reported on a Schedule 13D in accordance with the Exchange Act.

(x) For purposes of these Bylaws, the term "Proposing Person" shall mean, with respect to any Noticing Stockholder or any stockholder submitting a request pursuant to Section 6 (A) such stockholder; (B) the beneficial owner or beneficial owners, if different from such stockholder, on whose behalf the notice is provided; (C) any member of the immediate family of any individual described in the foregoing clause (A) or (B) sharing the same household; (D) any affiliate or associate of any person described in the foregoing clauses (A) and (B); (E) any person who is a member of a "group" (as such term is used in Rule 13d-5 promulgated under the Exchange Act) with any other Proposing Person with respect to the stock of the corporation, including any Proposed Nominee; (F) any person with whom any person described in the foregoing clauses (A) through (D) is knowingly acting in concert with respect to the capital stock of the corporation; and (G) any participant (as defined in paragraphs (a) (ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with any person described in the foregoing clauses (A) through (D) with respect to any proposed nomination or business.

(d) For purposes of this Section 15, “public announcement” shall mean disclosure (A) in a press release issued by the corporation in accordance with its customary press release procedures, which is reported by the Dow Jones News Service, Associated Press or a comparable national news service or is generally available on Internet news sites or (B) or in a document publicly filed by the corporation with the SEC pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(e) For purposes of this Section 15, to be considered a “qualified representative” of a stockholder, a person must (A) be a duly authorized officer, manager or partner of such stockholder or (B) be authorized by a writing executed by such stockholder (or a reliable reproduction or an electronic transmission of such a writing) delivered by such stockholder to the Secretary at the principal executive offices of the corporation prior to the making of any nomination or proposal at a meeting of stockholders stating that such person is authorized to act for such stockholder as proxy at the meeting of stockholders, which writing (or a reliable reproduction or an electronic transmission of such a writing) must be produced at least twenty-four (24) hours prior to the meeting of stockholders.

ARTICLE IV

DIRECTORS

Section 16. Number And Term Of Office.

(a) The authorized number of directors of the corporation shall be fixed in accordance with the Certificate of Incorporation. Directors need not be stockholders unless so required by the Certificate of Incorporation. If for any cause, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws.

(b) At any meeting of stockholders for the election of one or more directors at which a quorum is present, each such director shall be elected by the vote of the majority of the votes cast with respect to that director, provided that if the number of nominees exceeds the number of directors to be elected, the directors shall be elected by the vote of a plurality of the shares represented in person or by proxy at any such meeting and entitled to vote on the election of directors. For purposes of this Section, a majority of the votes cast means that the number of shares voted “for” a director must exceed the number of votes cast as “withheld” for that director. If a director then serving on the Board of Directors does not receive the necessary votes, the director shall offer to tender his or her resignation to the Board of Directors. The Nominating and Corporate Governance Committee or other committee that may be designated by the Board of Directors will make a recommendation to the Board of Directors on whether to accept or reject the resignation, or whether other action should be taken. The Board of Directors will act on such committee’s recommendation and publicly disclose its decision and the rationale within 90 days from the date of the certification of the election results. In making their decision, such committee and the Board of Directors will evaluate the best interests of the corporation and its stockholders and shall consider all factors and information deemed relevant. The director who tenders his or her resignation will not participate in such committee’s recommendation or the Board of Director’s decision.

Section 17. Powers. The powers of the corporation shall be exercised, its business conducted and its property controlled by the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

Section 18. Classes of Directors. Subject to the rights of the holders of any series of preferred stock to elect additional directors under specified circumstances, the directors shall be divided into three classes designated as Class I, Class II and Class III, respectively. Directors shall be assigned to each class in accordance with a resolution or resolutions adopted by the Board of Directors. At each annual meeting of stockholders, directors shall be elected for a full term of three years to succeed the directors of the class whose terms expire at such annual meeting.

Notwithstanding the foregoing provisions of this section, each director shall serve until his successor is duly elected and qualified or until his death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

Section 19. Vacancies.

(a) Unless otherwise provided in the Certificate of Incorporation, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this Section 19 in the case of the death, removal or resignation of any director.

(b) If at the time of filling any vacancy or any newly created directorship, the directors then in office shall constitute less than a majority of the whole board (as constituted immediately prior to any such increase), the Delaware Court of Chancery may, upon application of any stockholder or stockholders holding at least ten percent (10%) of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in offices as aforesaid, which election shall be governed by Section 211 of the DGCL.

Section 20. Resignation. Any director may resign at any time by delivering his written resignation to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made, it shall be deemed effective at the pleasure of the Board of Directors. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each Director so chosen shall hold office for the unexpired portion of the term of the Director whose place shall be vacated and until his successor shall have been duly elected and qualified.

Section 21. Removal.

(a) Neither the Board of Directors nor any individual director may be removed without cause.

(b) Subject to any limitation imposed by law, any individual director or directors may be removed with cause by the affirmative vote of a majority of the voting power of the corporation entitled to vote at an election of directors.

Section 22. Meetings.

(a) **Annual Meetings.** The annual meeting of the Board of Directors shall be held immediately before or after the annual meeting of stockholders and at the place where such meeting is held. No notice of an annual meeting of the Board of Directors shall be necessary and such meeting shall be held for the purpose of electing officers and transacting such other business as may lawfully come before it.

(b) **Regular Meetings.** Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may be held at any time or date and at any place within or without the State of Delaware which has been designated by the Board of Directors and publicized among all directors. No formal notice shall be required for regular meetings of the Board of Directors.

(c) **Special Meetings.** Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board of Directors, the President or any two of the directors.

(d) **Telephone Meetings.** Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(e) **Notice of Meetings.** Notice of the time and place of all special meetings of the Board of Directors shall be orally or in writing, either personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means, during normal business hours, at least twenty-four (24) hours before the date and time of the meeting, or sent in writing to each director by first class mail, charges prepaid, at least three (3) days before the date of the meeting. Notice of any meeting may be waived in writing, or by electronic transmission, at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

(f) **Waiver of Notice.** The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present shall sign a written waiver of notice or shall waive notice by electronic transmission. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 23. Quorum And Voting.

(a) Unless the Certificate of Incorporation requires a greater number and except with respect to indemnification questions arising under Section 45 hereof, for which a quorum shall be one-third of the exact number of directors fixed from time to time in accordance with the Certificate of Incorporation, a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation; *provided, however*, at any meeting whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by the affirmative vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation or these Bylaws.

Section 24. Action Without Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee.

Section 25. Fees And Compensation. Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor.

Section 26. Committees.

(a) **Executive Committee.** The Board of Directors may appoint an Executive Committee to consist of one (1) or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and provided in the resolution of the Board of Directors shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any bylaw of the corporation.

(b) **Other Committees.** The Board of Directors may, from time to time, appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one (1) or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws.

(c) **Term.** Each member of a committee of the Board of Directors shall serve a term on the committee coexistent with such member's term on the Board of Directors. The Board of Directors, subject to any requirements of any outstanding series of preferred stock and the provisions of subsections (a) or (b) of this Bylaw, may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. 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, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(d) **Meetings.** Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 26 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by any director who is a member of such committee, upon written notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of written notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. A majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

Section 27. Organization. At every meeting of the directors, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the President (if a director), or if the President is absent, the most senior Vice President (if a director), or, in the absence of any such person, a chairman of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his absence, any Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

ARTICLE V

OFFICERS

Section 28. Officers Designated. The officers of the corporation shall include, if and when designated by the Board of Directors, the Chairman of the Board of Directors, the Chief Executive Officer, the President, one or more Vice Presidents, the Secretary, the Chief Financial Officer, the Treasurer and the Controller, all of whom shall be elected at the annual organizational meeting of the Board of Directors. The Board of Directors may also appoint one or more Assistant Secretaries, Assistant Treasurers, Assistant Controllers and such other officers and agents with such powers and duties as it shall deem necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors.

Section 29. Tenure And Duties Of Officers.

(a) **General.** All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors.

(b) **Duties of Chairman of the Board of Directors.** The Chairman of the Board of Directors, when present, shall preside at all meetings of the stockholders and the Board of Directors. The Chairman of the Board of Directors shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time. If there is no President, then the Chairman of the Board of Directors shall also serve as the Chief Executive Officer of the corporation and shall have the powers and duties prescribed in paragraph (c) of this Section 29.

(c) **Duties of President.** The President shall preside at all meetings of the stockholders and at all meetings of the Board of Directors, unless the Chairman of the Board of Directors has been appointed and is present. Unless some other officer has been elected Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. The President shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

(d) **Duties of Vice Presidents.** The Vice Presidents may assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. The Vice Presidents shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(e) **Duties of Secretary.** The Secretary shall attend all meetings of the stockholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute book of the corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties given him in these Bylaws and other duties commonly incident to his office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time. The President may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(f) **Duties of Chief Financial Officer.** The Chief Financial Officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. The President may direct the Treasurer or any Assistant Treasurer, or the Controller or any Assistant Controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and each Controller and Assistant Controller shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

Section 30. Delegation Of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

Section 31. Resignations. Any officer may resign at any time by giving written notice to the Board of Directors or to the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer.

Section 32. Removal. Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written consent of the directors in office at the time, or by any committee or superior officers upon whom such power of removal may have been conferred by the Board of Directors.

ARTICLE VI

EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

Section 33. Execution Of Corporate Instruments. The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation.

All checks and drafts drawn on banks or other depositories on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 34. Voting Of Securities Owned By The Corporation. All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman of the Board of Directors, the Chief Executive Officer, the President, or any Vice President.

ARTICLE VII

SHARES OF STOCK

Section 35. Form And Execution Of Certificates. The shares of the corporation shall be represented by certificates, or shall be uncertificated. Certificates for the shares of stock, if any, shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock represented by certificate in the corporation shall be entitled to have a certificate signed by or in the name of the corporation by the Chairman of the Board of Directors, or the President or any Vice President and by the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by such holder in the corporation. Any or all of the signatures on the certificate may be facsimiles. 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 such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

Section 36. Lost Certificates. A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or his legal representative, to agree to indemnify the corporation in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed.

Section 37. Transfers.

(a) Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and, in the case of stock represented by certificate, upon the surrender of a properly endorsed certificate or certificates for a like number of shares.

(b) The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

Section 38. Fixing Record Dates.

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, subject to applicable law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 39. Registered Stockholders. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VIII

OTHER SECURITIES OF THE CORPORATION

Section 40. Execution Of Other Securities. All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 35), may be signed by the Chairman of the Board of Directors, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; *provided, however*, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

ARTICLE IX

DIVIDENDS

Section 41. Declaration Of Dividends. Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation and applicable law.

Section 42. Dividend Reserve. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE X

MISCELLANEOUS

Section 43. Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

Section 44. Forum for Certain Actions.

(a) Unless a majority of the Board of Directors, acting on behalf of the corporation, consents in writing to the selection of an alternative forum (which consent may be given at any time, including during the pendency of litigation), the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another state court located within the State of Delaware or, if no court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware), to the fullest extent permitted by law, shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the corporation under Delaware law, (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer or other employee of the corporation to the corporation or the corporation's stockholders, (iii) any action asserting a claim against the corporation or any of its directors, officers or other employees arising pursuant to any provision of the DGCL, these Bylaws or the Certificate of Incorporation (in each case, as may be amended from time to time), (iv) any action asserting a claim against the corporation or any of its directors, officers or other employees governed by the internal affairs doctrine of the State of Delaware or (v) any other action asserting an "internal corporate claim," as defined in Section 115 of the DGCL, in all cases subject to the court's having personal jurisdiction over all indispensable parties named as defendants. Unless a majority of the Board of Directors, acting on behalf of the corporation, consents in writing to the selection of an alternative forum (which consent may be given at any time, including during the pendency of litigation), the federal district courts of the United States of America, to the fullest extent permitted by law, shall be the sole and exclusive forum for the resolution of any action asserting a cause of action arising under the Securities Act of 1933, as amended.

(b) If any action the subject matter of which is within the scope of subparagraph (a) of this Section 44 is filed in a court other than a court located within the State of Delaware (a “Foreign Action”) in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce subparagraph (a) of this Section 44 (an “Enforcement Action”) and (ii) having service of process made upon such stockholder in any such Enforcement Action by service upon such stockholder’s counsel in the Foreign Action as agent for such stockholder.

(c) If any provision of this Section 44 shall be held to be invalid, illegal or unenforceable as applied to any person, entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provision in any other circumstance and of the remaining provisions of this Section 44, and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

(d) For the avoidance of doubt, any person or entity purchasing or otherwise acquiring or holding any interest in any security of the corporation shall be deemed to have notice of and consented to the provisions of this Section 44.

ARTICLE XI

INDEMNIFICATION

Section 45. Indemnification Of Directors, Executive Officers, Other Officers, Employees And Other Agents.

(a) **Directors And Executive Officers.** The corporation shall indemnify its directors and executive officers (for the purposes of this Article XI, “executive officers” shall have the meaning defined in Rule 3b-7 promulgated under the 1934 Act) to the fullest extent not prohibited by the DGCL or any other applicable law; *provided, however*, that the corporation may modify the extent of such indemnification by individual contracts with its directors and executive officers; and, *provided, further*, that the corporation shall not be required to indemnify any director or executive officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the corporation, (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the DGCL or any other applicable law or (iv) such indemnification is required to be made under subsection (d).

(b) **Other Officers, Employees and Other Agents.** The corporation shall have power to indemnify its other officers, employees and other agents as set forth in the DGCL or any other applicable law. The Board of Directors shall have the power to delegate the determination of whether indemnification shall be given to any such person except executive officers to such officers or other persons as the Board of Directors shall determine.

(c) **Expenses.** The corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or executive officer, of the corporation, or is or was serving at the request of the corporation as a director or executive officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director in connection with such proceeding upon receipt of an undertaking by or on behalf of such person to repay said amounts if it should be determined ultimately that such person is not entitled to be indemnified under this Section 45 or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (e) of this Section 45, no advance shall be made by the corporation to an executive officer of the corporation (except by reason of the fact that such executive officer is or was a director of the corporation in which event this paragraph shall not apply) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to the proceeding, or (ii) if such quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

(d) **Enforcement.** Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and executive officers under this Bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or executive officer. Any right to indemnification or advances granted by this Section 45 to a director or executive officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. The claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting his claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL or any other applicable law for the corporation to indemnify the claimant for the amount claimed. In connection with any claim by an executive officer of the corporation (except in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such executive officer is or was a director of the corporation) for advances, the corporation shall be entitled to raise a defense as to any such action clear and convincing evidence that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation, or with respect to any criminal action or proceeding that such person acted without reasonable cause to believe that his conduct was lawful. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the DGCL or any other applicable law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct. In any suit brought by a director or executive officer to enforce a right to indemnification or to an advancement of expenses hereunder, the burden of proving that the director or executive officer is not entitled to be indemnified, or to such advancement of expenses, under this Section 45 or otherwise shall be on the corporation.

(e) **Non-Exclusivity of Rights.** The rights conferred on any person by this Bylaw shall not be exclusive of any other right which such person may have or hereafter acquire under any applicable statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the Delaware General Corporation Law, or by any other applicable law.

(f) **Survival of Rights.** The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director, officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) **Insurance.** To the fullest extent permitted by the DGCL or any other applicable law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Section 45.

(h) **Amendments.** Any repeal or modification of this Section 45 shall only be prospective and shall not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

(i) **Saving Clause.** If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and executive officer to the full extent not prohibited by any applicable portion of this Section 45 that shall not have been invalidated, or by any other applicable law. If this Section 45 shall be invalid due to the application of the indemnification provisions of another jurisdiction, then the corporation shall indemnify each director and executive officer to the full extent under any other applicable law.

(j) **Certain Definitions.** For the purposes of this Bylaw, the following definitions shall apply:

The term “proceeding” shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

The term “expenses” shall be broadly construed and shall include, without limitation, court costs, attorneys’ fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

The term the “corporation” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Section 45 with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

References to a “director,” “executive officer,” “officer,” “employee,” or “agent” of the corporation shall include, without limitation, situations where such person is serving at the request of the corporation as, respectively, a director, executive officer, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

References to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the corporation” shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the corporation” as referred to in this Section 45.

ARTICLE XII

NOTICES

Section 46. Notices.

(a) **Notice To Stockholders.** Whenever, under any provisions of these Bylaws, notice is required to be given to any stockholder, it shall be given in writing, timely and duly deposited in the United States mail, postage prepaid, and addressed to his last known post office address as shown by the stock record of the corporation or its transfer agent.

(b) **Notice To Directors.** Any notice required to be given to any director may be given by the method stated in subsection (a), or by overnight delivery service, facsimile, telex or telegram, except that such notice other than one which is delivered personally shall be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director.

(c) **Affidavit Of Mailing.** An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained.

(d) **Time Notices Deemed Given.** All notices given by mail or by overnight delivery service, as above provided, shall be deemed to have been given as at the time of mailing, and all notices given by facsimile, telex or telegram shall be deemed to have been given as of the sending time recorded at time of transmission.

(e) **Methods of Notice.** It shall not be necessary that the same method of giving notice be employed in respect of all directors, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

(f) **Failure To Receive Notice.** The period or limitation of time within which any stockholder may exercise any option or right, or enjoy any privilege or benefit, or be required to act, or within which any director may exercise any power or right, or enjoy any privilege, pursuant to any notice sent him in the manner above provided, shall not be affected or extended in any manner by the failure of such stockholder or such director to receive such notice.

(g) **Notice To Person With Whom Communication Is Unlawful.** Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

(h) **Notice To Person With Undeliverable Address.** Whenever notice is required to be given, under any provision of law or the Certificate of Incorporation or Bylaws of the corporation, to any stockholder to whom (i) notice of two consecutive annual meetings, and all notices of meetings to such person during the period between such two consecutive annual meetings, or (ii) all, and at least two, payments (if sent by first class mail) of dividends or interest on securities during a twelve-month period, have been mailed addressed to such person at his address as shown on the records of the corporation and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall be taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the corporation a written notice setting forth his then current address, the requirement that notice be given to such person shall be reinstated. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the DGCL, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to this paragraph.

ARTICLE XIII

AMENDMENTS

Section 47. Amendments. Subject to paragraph (h) of Section 45 of the Bylaws, the Bylaws may be altered or amended or new Bylaws adopted by the affirmative vote of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then-outstanding shares of the voting stock of the corporation entitled to vote. The Board of Directors shall also have the power to adopt, amend, or repeal Bylaws.

ARTICLE XIV

LOANS TO OFFICERS

Section 48. Loans To Officers. The corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a Director of the corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in these Bylaws shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.



Rigel Reports Third Quarter 2022 Financial Results and Provides Business Update

- FDA review ongoing for olutasidenib NDA; preparations underway for potential launch
- Third quarter TAVALISSE[®] net product sales of \$19.2 million and total revenues of \$22.4 million
- Conference call and webcast scheduled today at 4:30 p.m. Eastern Time

SOUTH SAN FRANCISCO, Calif., Nov. 3, 2022 /PRNewswire/ -- Rigel Pharmaceuticals, Inc. (Nasdaq: RIGL) today reported financial results for the third quarter ended September 30, 2022, including sales of TAVALISSE[®] (fostamatinib disodium hexahydrate) tablets for the treatment of adults with chronic immune thrombocytopenia (ITP) who have had an insufficient response to a previous treatment.

"We are excited to have several poster presentations at ASH that showcase our hematology-oncology portfolio. In particular, updated data from the Phase 2 registrational study of olutasidenib in patients with mIDH1 relapsed or refractory acute myeloid leukemia demonstrate durable remissions, which we believe truly differentiates olutasidenib as a potential market leading therapy," said Raul Rodriguez, Rigel's president and CEO. "In addition, during the third quarter of 2022, we made meaningful progress to position the company for the potential launch of olutasidenib and to drive growth in TAVALISSE ITP sales."

Business Update

- In the third quarter of 2022, TAVALISSE net product sales were \$19.2 million, an increase of 20% compared to the same period of 2021.
- In August, Rigel announced an exclusive license agreement with Forma Therapeutics, Inc. (Forma) to develop, manufacture and commercialize olutasidenib, an investigational, oral, small molecule inhibitor of mutant isocitrate dehydrogenase-1 (mIDH1) for the treatment of relapsed/refractory acute myeloid leukemia (R/R AML) and other malignancies. Forma's New Drug Application (NDA) for olutasidenib is under review by the U.S. Food and Drug Administration (FDA) with a Prescription Drug User Fee Act (PDUFA) target action date of February 15, 2023.
- Today, Rigel announced five poster presentations at the 64th ASH Annual Meeting, including updated data from the interim analysis of 147 efficacy evaluable patients with mIDH1 R/R AML who received olutasidenib monotherapy 150 mg twice daily. Results from the interim analysis of patients with mIDH1 R/R AML demonstrated a 35% CR+CRh* rate with a median duration of 25.9 months. The abstract concluded that the observed activity is clinically meaningful and represents a potential therapeutic advance in the treatment of this patient population.
- This week, Rigel announced top-line results from the FOCUS Phase 3 clinical trial of fostamatinib in high-risk hospitalized COVID-19 patients. While the trial approached but did not meet statistical significance (p=0.0603) in the primary efficacy endpoint of the number of days on oxygen through Day 29, all prespecified secondary endpoints in the study numerically favored fostamatinib over placebo, including mortality, time to sustained recovery, change in ordinal scale assessment, and number of days in the ICU. The Company is evaluating the opportunity and next steps in collaboration with its partner, the U.S. Department of Defense.
- In October, Rigel announced that it does not expect to file a supplemental NDA for fostamatinib for the treatment of patients with warm autoimmune hemolytic anemia (wAIHA) based on guidance from the FDA's review of the Company's re-analysis of data from the FORWARD Phase 3 trial. Rigel will continue to explore its options for the wAIHA program in relation to its complete portfolio of development opportunities.
- In October, Rigel also announced a 16% reduction in its workforce, resulting in the elimination of 30 positions primarily in development and administration.

*CR+CRh: Complete remission (CR) plus a complete remission with partial hematological recovery (CRh)

Financial Update

For the third quarter of 2022, Rigel reported a net loss of \$19.0 million, or \$0.11 per basic and diluted share, compared to a net loss of \$21.0 million, or \$0.12 per basic and diluted share, for the same period of 2021.

For the third quarter of 2022, total revenues were \$22.4 million, consisting of \$19.2 million in TAVALISSE net product sales, \$0.7 million in contract revenues from collaborations and \$2.5 million in government contract revenue. TAVALISSE net product sales of \$19.2 million increased by 20%, compared to \$16.0 million in the third quarter of 2021. Contract revenues from collaborations during the third quarter of 2022 consisted primarily of revenue from Grifols related to the delivery of fostamatinib supply, performance of certain research and development services pursuant to the collaboration agreement and royalty revenue. Government contract revenue for the third quarter of 2022 was related to the income recognized pursuant to the agreement with the U.S. Department of Defense (DOD) to support Rigel's ongoing Phase 3 clinical trial of fostamatinib in hospitalized patients with COVID-19.

For the third quarter of 2022, total costs and expenses were \$40.8 million, compared to \$41.3 million for the same period of 2021. The decrease in costs and expenses was primarily due to a decrease in research and development costs related to the Phase 3 clinical trial for wAIHA, the Phase 3 clinical trial in high-risk hospitalized patients with COVID-19 and the IRAK 1/4 inhibitor program. These decreases were partially offset by increased personnel related costs and commercial activities.

For the nine months ended September 30, 2022, Rigel reported a net loss of \$60.0 million, or \$0.35 per basic and diluted share, compared to a net income of \$4.7 million, or \$0.03 per basic and diluted share, for the same period of 2021.

For the nine months ended September 30, 2022, total revenues were \$69.0 million, consisting of \$53.9 million in TAVALISSE net product sales, \$12.5 million in contract revenues from collaborations and \$2.5 million in government contract revenue. TAVALISSE net product sales of \$53.9 million increased by 19% compared to \$45.4 million in the same period of 2021. Contract revenues from collaborations for the nine months ended September 30, 2022, consisted of \$7.6 million in revenue from Kissei primarily related to a milestone payment and delivery of fostamatinib supply, \$2.0 million in revenue related to the license agreement with Knight, \$2.4 million in revenue from Grifols related to the delivery of fostamatinib supply, performance of certain research and development services pursuant to the collaboration agreement and royalty revenue, and \$0.5 million in revenue related to the license agreement with Eli Lilly. Government contract revenue for the nine months ended September 30, 2022, was related to the income recognized pursuant to the agreement with the DOD as mentioned above.

For the nine months ended September 30, 2022, total costs and expenses were \$126.6 million, compared to \$119.9 million for the same period of 2021. The increase in costs and expenses was primarily due to increased personnel costs from the sales force expansion, increased commercial-related activities, and increased research and development costs for the IRAK1/4 inhibitor program. These increases were partially offset by decreased research and development costs related to the Phase 3 clinical trial for wAIHA and the ongoing Phase 3 clinical trial in high-risk hospitalized patients with COVID-19.

As of September 30, 2022, Rigel had cash, cash equivalents and short-term investments of \$81.6 million, compared to \$125.0 million as of December 31, 2021.

Conference Call and Webcast with Slides Today at 4:30pm Eastern Time

Rigel will host a live conference call and webcast today at 4:30 p.m. Eastern Time (1:30 p.m. Pacific Time) to discuss financial results and provide an update on the business.

Participants can access the live conference call by dialing (877) 407-3088 (domestic) or (201) 389-0927 (international). The conference call will also be webcast live and can be accessed from the Investor Relations section of the company's website at www.rigel.com. The webcast will be archived and available for replay after the call via the Rigel website.

About ITP

In patients with ITP (immune thrombocytopenia), the immune system attacks and destroys the body's own blood platelets, which play an active role in blood clotting and healing. Common symptoms of ITP are excessive bruising and bleeding. People suffering with chronic ITP may live with an increased risk of severe bleeding events that can result in serious medical complications or even death. Current therapies for ITP include steroids, blood platelet production boosters (TPO-RAs), and splenectomy. However, not all patients respond to existing therapies. As a result, there remains a significant medical need for additional treatment options for patients with ITP.

About AML

Acute myeloid leukemia (AML) is a cancer that starts in a person's bone marrow but often quickly moves into the blood. AML develops from immature blood cells, known as myeloid cells, that are supposed to mature into white blood cells. However, the diseased myeloid cells do not function properly. They instead multiply rapidly, which causes normal blood cell production to fail. AML occurs primarily in adults and accounts for about 1 percent of all adult cancers. The American Cancer Society estimates that in the United States alone, there will be about 20,050 new cases, most in adults, in 2022.¹

Relapsed AML affects about half of all patients who, following treatment and remission, experience a return of leukemia cells in the bone marrow.² Refractory AML, which affects between 10 and 40 percent of newly diagnosed patients, occurs when a patient fails to achieve remission even after intensive treatment.³

About AIHA

Autoimmune hemolytic anemia (AIHA) is a rare, serious blood disorder in which the immune system produces antibodies that lead to the destruction of the body's own red blood cells. Warm antibody AIHA (wAIHA), which is the most common form of AIHA, is characterized by the presence of antibodies that react with the red blood cell surface at body temperature. wAIHA affects approximately 36,000 adult patients in the U.S.⁴ and can be a severe, debilitating disease. To date, there are no disease-targeted therapies approved for wAIHA, despite the unmet medical need that exists for these patients.

About COVID-19 & SYK Inhibition

COVID-19 is the infectious disease caused by Severe Acute Respiratory Syndrome Coronavirus-2 (SARS-CoV-2). SARS-CoV-2 primarily infects the upper and lower respiratory tract and can lead to acute respiratory distress syndrome (ARDS). Additionally, some patients develop other organ dysfunction including myocardial injury, acute kidney injury, shock resulting in endothelial dysfunction and subsequently micro and macrovascular thrombosis.⁵ Much of the underlying pathology of SARS-CoV-2 is thought to be secondary to a hyperinflammatory immune response associated with increased risk of thrombosis.⁶

SYK is involved in the intracellular signaling pathways of many different immune cells. Therefore, SYK inhibition may improve outcomes in patients with COVID-19 via inhibition of key Fc gamma receptor (FcγR) and c-type lectin receptor (CLR) mediated drivers of pathology such as pro-inflammatory cytokine release by monocytes and macrophages, production of neutrophil extracellular traps (NETs) by neutrophils, and platelet aggregation.^{7,8,9,10} Furthermore, SYK inhibition in neutrophils and platelets may lead to decreased thrombo-inflammation, alleviating organ dysfunction in critically ill patients with COVID-19.

About TAVALISSE

Indication

TAVALISSE® (fostamatinib disodium hexahydrate) tablets is indicated for the treatment of thrombocytopenia in adult patients with chronic immune thrombocytopenia (ITP) who have had an insufficient response to a previous treatment.

Important Safety Information

Warnings and Precautions

- Hypertension can occur with TAVALISSE treatment. Patients with pre-existing hypertension may be more susceptible to the hypertensive effects. Monitor blood pressure every 2 weeks until stable, then monthly, and adjust or initiate antihypertensive therapy for blood pressure control maintenance during therapy. If increased blood pressure persists, TAVALISSE interruption, reduction, or discontinuation may be required.
- Elevated liver function tests (LFTs), mainly ALT and AST, can occur with TAVALISSE. Monitor LFTs monthly during treatment. If ALT or AST increase to ≥ 3 x upper limit of normal, manage hepatotoxicity using TAVALISSE interruption, reduction, or discontinuation.
- Diarrhea occurred in 31% of patients and severe diarrhea occurred in 1% of patients treated with TAVALISSE. Monitor patients for the development of diarrhea and manage using supportive care measures early after the onset of symptoms. If diarrhea becomes severe (\geq Grade 3), interrupt, reduce dose or discontinue TAVALISSE.
- Neutropenia occurred in 6% of patients treated with TAVALISSE; febrile neutropenia occurred in 1% of patients. Monitor the ANC monthly and for infection during treatment. Manage toxicity with TAVALISSE interruption, reduction, or discontinuation.
- TAVALISSE can cause fetal harm when administered to pregnant women. Advise pregnant women the potential risk to a fetus. Advise females of reproductive potential to use effective contraception during treatment and for at least 1 month after the last dose. Verify pregnancy status prior to initiating TAVALISSE. It is unknown if TAVALISSE or its metabolite is present in human milk. Because of the potential for serious adverse reactions in a breastfed child, advise a lactating woman not to breastfeed during TAVALISSE treatment and for at least 1 month after the last dose.

Drug Interactions

- Concomitant use of TAVALISSE with strong CYP3A4 inhibitors increases exposure to the major active metabolite of TAVALISSE (R406), which may increase the risk of adverse reactions. Monitor for toxicities that may require a reduction in TAVALISSE dose.
- It is not recommended to use TAVALISSE with strong CYP3A4 inducers, as concomitant use reduces exposure to R406.
- Concomitant use of TAVALISSE may increase concentrations of some CYP3A4 substrate drugs and may require a dose reduction of the CYP3A4 substrate drug.
- Concomitant use of TAVALISSE may increase concentrations of BCRP substrate drugs (eg, rosuvastatin) and P-Glycoprotein (P-gp) substrate drugs (eg, digoxin), which may require a dose reduction of the BCRP and P-gp substrate drug.

Adverse Reactions

- Serious adverse drug reactions in the ITP double-blind studies were febrile neutropenia, diarrhea, pneumonia, and hypertensive crisis, which occurred in 1% of TAVALISSE patients. In addition, severe adverse reactions occurred including dyspnea and hypertension (both 2%), neutropenia, arthralgia, chest pain, diarrhea, dizziness, nephrolithiasis, pain in extremity, toothache, syncope, and hypoxia (all 1%).
- Common adverse reactions ($\geq 5\%$ and more common than placebo) from FIT-1 and FIT-2 included: diarrhea, hypertension, nausea, dizziness, ALT and AST increased, respiratory infection, rash, abdominal pain, fatigue, chest pain, and neutropenia.

Please see www.TAVALISSEUSPI.com for full Prescribing Information.

To report side effects of prescription drugs to the FDA, visit www.fda.gov/medwatch or call 1-800-FDA-1088 (800-332-1088).

TAVALISSE and TAVLESSE are registered trademarks of Rigel Pharmaceuticals, Inc.

About Rigel

Rigel Pharmaceuticals, Inc. (Nasdaq: RIGL) is a biotechnology company dedicated to discovering, developing and providing novel small molecule drugs that significantly improve the lives of patients with hematologic disorders, cancer, and rare immune diseases. Founded in 1996, Rigel is based in South San Francisco, California. For more information on Rigel, the Company's marketed product and pipeline of potential products, visit www.rigel.com.

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Forward-Looking Statements

This release contains forward-looking statements relating to, among other things, our expectations related to the potential and market opportunity of olutasidenib; our wAIHA program; and the opportunity and next steps in collaboration with Rigel's partner, the U.S. Department of Defense. Any statements contained in this press release that are not statements of historical fact may be deemed to be forward-looking statements. Words such as "potential", "may", "expects", and similar expressions are intended to identify these forward-looking statements. These forward-looking statements are based on Rigel's current expectations and inherently involve significant risks and uncertainties. Actual results and the timing of events could differ materially from those anticipated in such forward-looking statements as a result of these risks and uncertainties, which include, without limitation, those risks and uncertainties associated with the commercialization and marketing of TAVALISSE; risks that the FDA, European Medicines Agency or other regulatory authorities may make adverse decisions regarding fostamatinib or olutasidenib; risks that our clinical trials may not be predictive of real-world results or of results in subsequent clinical trials; the availability of resources to develop, manufacture and commercialize our product candidates; market competition; and those other risks detailed from time to time in Rigel's reports filed with the Securities and Exchange Commission, including its Quarterly Report on Form 10-Q for the quarter ended June 30, 2022 and subsequent filings. Rigel does not undertake any obligation to update forward-looking statements and expressly disclaims any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein, except as required by law.

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RIGEL PHARMACEUTICALS, INC.
STATEMENTS OF OPERATIONS
(in thousands, except per share amounts)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
	(unaudited)			
Revenues:				
Product sales, net	\$ 19,188	\$ 16,012	\$ 53,935	\$ 45,441
Contract revenues from collaborations	722	4,531	12,529	73,886
Government contract	2,500	1,000	2,500	9,500
Total revenues	22,410	21,543	68,964	128,827
Costs and expenses:				
Cost of product sales	250	151	1,407	596
Research and development (see Note A)	14,666	18,300	44,907	51,933
Selling, general and administrative (see Note A)	25,897	22,877	80,279	67,376
Total costs and expenses	40,813	41,328	126,593	119,905
Income (loss) from operations	(18,403)	(19,785)	(57,629)	8,922
Interest income	192	14	255	31
Interest expense	(826)	(1,317)	(2,600)	(3,561)
Income (loss) before income taxes	(19,037)	(21,088)	(59,974)	5,392
Provision for (benefit from) income taxes	-	(136)	-	665
Net income (loss)	\$ (19,037)	\$ (20,952)	\$ (59,974)	\$ 4,727
Net income (loss) per share, basic and diluted				
Basic	\$ (0.11)	\$ (0.12)	\$ (0.35)	\$ 0.03
Diluted	\$ (0.11)	\$ (0.12)	\$ (0.35)	\$ 0.03
Weighted average shares used in computing net income (loss) per share, basic and diluted				
Basic	172,836	170,886	172,256	170,297
Diluted	172,836	170,886	172,256	176,452

Note A

Stock-based compensation expense included in:				
Selling, general and administrative	\$ 2,119	\$ 1,800	\$ 6,791	\$ 5,625
Research and development	588	402	1,514	1,522
	<u>\$ 2,707</u>	<u>\$ 2,202</u>	<u>\$ 8,305</u>	<u>\$ 7,147</u>

SUMMARY BALANCE SHEET DATA
(in thousands)

	September 30,	December 31,
	2022	2021 (1)
	(unaudited)	
Cash, cash equivalents and short-term investments	\$ 81,642	\$ 124,967
Total assets	115,609	167,328
Stockholders' equity (deficit)	(19,834)	30,374

(1) Derived from audited financial statements