

On the Effective Date, pursuant to the Plan, FTSI filed the Amended and Restated Certificate of Incorporation (the “Certificate of Incorporation”) with the Delaware Secretary of State. Also on the Effective Date, in accordance with the Plan, FTSI adopted the Amended and Restated Bylaws (the “Bylaws”).

Pursuant to the Certificate of Incorporation, the authorized capital stock of FTSI consists of 49,000,000 shares of New Class A Common Stock and 1,000,000 shares of New Class B Common Stock and 5,000,000 shares of Preferred Stock, par value \$0.01 per share (the “Preferred Stock”). The New Class B Common Stock is identical to the New Class A Common Stock, except that such New Class B Common Stock shall not be listed for trading on any national securities exchange or NASDAQ, nor shall it be listed over-the-counter. Upon the written request of a holder of New Class B Common Stock, and in compliance with the provisions of the Certification of Incorporation, the shares of New Class B Common Stock shall be exchangeable into the same number of shares of New Class A Common Stock.

Each holder of shares of New FTS Equity shall be entitled to one vote for each share of New FTS Equity held of record by such holder on all matters on which stockholders generally are entitled to vote.

#### **Preferred Stock**

Shares of Preferred Stock may be issued in one or more classes or series from time to time, with each such class or series to consist of such number of shares and to have such designations, powers, preferences and relative, participating, optional or other rights, if any, and the qualifications, limitations or restrictions thereof, if any, with respect to each such class or series as shall be stated in the resolution or resolutions providing for the issuance of such class or series adopted by the Board.

It is not possible to state the actual effect of the issuance of any shares of Preferred Stock upon the rights of holders of the New FTS Equity until the Board determines the specific rights of the holders of the Preferred Stock. However, these effects might include:

- restricting dividends on the New FTS Equity;
- diluting the voting power of the New FTS Equity;

- impairing the liquidation rights of the New FTS Equity; and
- delaying or preventing a change in control of FTSI.

#### **Anti-Takeover Provisions**

Some provisions of Delaware law, the Certificate of Incorporation and the Bylaws summarized below could make certain change of control transactions more difficult, including acquisitions of FTSI by means of a tender offer, proxy contest or otherwise, as well as removal of the incumbent directors. These provisions may have the effect of preventing changes in management. It is possible that these provisions would make it more difficult to accomplish or deter transactions that a stockholder might consider in his or her best interest, including those attempts that might result in a premium over the market price for the New FTS Equity.

#### *Certain Related Party Transactions*

The Certificate of Incorporation provides that Related Party Transactions (as defined below) require (a) if the Related Party Transaction is an agreement or transaction described in clauses (i), (ii) or (iii) of the definition of "Related Party Transaction" and the consideration is all cash, the affirmative vote of the majority of the disinterested stockholders or (b) if (x) the Related Party Transaction is an agreement or transaction described in clauses (i), (ii) or (iii) of the definition of "Related Party Transaction" and any part of the consideration to be paid in such Related Party Transaction is other than cash or (y) the Related Party Transaction is an agreement or transaction described in clauses (iv), (v), (vi) or (vii) of the definition of "Related Party Transaction", the affirmative vote of 66 2/3% of the disinterested stockholders. Any amendment of this provision of the Certificate of Incorporation will require the affirmative vote of 66 2/3% of the stockholders. "Related Party Transaction" includes the following transactions between FTSI and any stockholder that, together with any of its affiliates, owns 20% or more of the voting stock of FTSI (a "Related Person"): (i) any merger or consolidation of FTSI or a subsidiary with a Related Person, (ii) any sale, transfer or other disposition of 10% or more of the consolidated assets of FTSI and its subsidiaries to a Related Person, (iii) the issuance of any securities of FTSI or a subsidiary to a Related Person, (iv) the adoption of any plan for the liquidation or dissolution of FTSI proposed by any Related Person, (v) any reclassification of securities or recapitalization of FTSI or merger or consolidation of FTSI with one or more subsidiaries that would have the effect of increasing the voting power of a Related Person in FTSI or a subsidiary, (vi) the acquisition or receipt of any assets or securities of a Related Person by FTSI or a subsidiary or (vii) any loan or other financial assistance by FTSI or a subsidiary for the benefit of a Related Person.

#### *Business Combinations under Delaware Law*

A Delaware corporation may "opt out" from the application of Section 203 through a provision in its certificate of incorporation. FTSI has "opted out" from the application of Section 203 of the Delaware General Corporation Law.

#### *Number and Election of Directors*

The number of directors shall be determined from time to time solely by resolution adopted by the affirmative vote of a majority of the Board.

#### *Calling of Special Meeting of Stockholders*

Special meetings of the stockholders may be called by the Board, the Chairman of the Board or the President or the Secretary of FTSI (the "Secretary"). A special meeting of the stockholders will be called by the Secretary upon the delivery of a written request to FTSI by the holders of record of at least 25% of the voting power of the outstanding capital stock of FTSI entitled to vote on the matter or matters to be brought before the proposed special meeting.

#### *Amendments to the Bylaws*

The Bylaws may be amended or repealed or new bylaws may be adopted by the stockholders entitled to vote thereon at any annual or special meeting thereof or by the Board.

#### *Other Limitations on Stockholder Actions*

Advance notice is required for stockholders to nominate directors or to submit proposals for consideration at meetings of stockholders. These procedures provide that notice of stockholder proposals must be timely given in writing to the Secretary prior to the meeting at which the action is to be taken. For business to be conducted at an annual meeting of stockholders, to be timely, notice must be received at the principal executive offices not less than 120 days nor more than 150 days prior to the anniversary of the immediately preceding annual meeting of stockholders. For business to be conducted at a special meeting of stockholders, to be timely, notice must be received at the principal executive offices not less than 120 days nor more than 150 days prior to the special meeting or the 10<sup>th</sup> day following the day on which public announcement of the date of the special meeting was first made. The Bylaws specify in detail the requirements as to form and content of all stockholder notices. These requirements may preclude stockholders from bringing matters before the stockholders at an annual or special meeting. The Bylaws also describe certain criteria for when stockholder meetings requested by stockholders need not be held.

Directors may be removed from office at any time, with or without cause, by the affirmative vote of holders of at least a majority of the outstanding shares of New FTS Equity entitled generally to vote in the election of directors.

#### *Newly Created Directorships and Vacancies on the Board*

Under the Bylaws, any newly created directorships resulting from any increase in the number of directors and any vacancies on the Board for any reason may be filled solely by a majority vote of the directors then in office, even if less than a quorum, or by a sole remaining director (and not by stockholders).

#### *No Cumulative Voting*

The Certificate of Incorporation provides that there will be no cumulative voting in the election of directors.

*Authorized but Unissued Shares*

Under Delaware law, FTSI's authorized but unissued shares of New FTS Equity are available for future issuance without stockholder approval. FTSI may use these additional shares of New FTS Equity for a variety of corporate purposes, including future public offerings to raise additional capital, acquisitions and employee benefit plans. The existence of authorized but unissued shares of New FTS Equity could render more difficult or discourage an attempt to obtain control of FTSI by means of a proxy contest, tender offer, merger or otherwise.

*Exclusive Forum*

The Certificate of Incorporation provides that, unless FTSI consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (the "Court of Chancery") (or, if and only if the Court of Chancery does not have jurisdiction, a state court located within the State of Delaware (or, if no state court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware)) will be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of FTSI, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of FTSI to FTSI or FTSI's stockholders, creditors or other constituents, or a claim of aiding and abetting any such breach of fiduciary duty, (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law or the Certificate of Incorporation or the Bylaws (in each case, as they may be amended from time to time), (iv) any action to interpret, apply, enforce or determine the validity of the Certificate of Incorporation or the Bylaws, (v) any action asserting a claim governed by the internal affairs doctrine, or (vi) any action asserting an "internal corporate claim" as that term is defined in Section 115 of the Delaware General Corporation Law.

The Certificate of Incorporation provides that, unless FTSI consents in writing to the selection of an alternative forum, the federal district courts in Delaware will be the sole and exclusive forum for any action brought under the Securities Act.