

Officer Exculpation

Proposal

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Approval of a Proposed Amendment and Restatement of Our Certificate of Incorporation to Provide for Officer Exculpation



The Board of Directors recommends a vote **“FOR”** the approval of a proposed amendment and restatement of the Company’s Amended and Restated Certificate of Incorporation to provide for exculpation of certain officers of the Company from personal liability under certain circumstances as permitted by Delaware law.

At the Annual Meeting, our shareholders will be asked to approve an amendment and restatement of the Amended and Restated Certificate of Incorporation of the Company (the **“Charter”**) to provide exculpation from liability for certain officers of the Company from certain claims of breach of the fiduciary duty of care, similar to protections currently available to directors of the Company. This description of the proposed amendment and restatement of the Charter is a summary and is qualified by the full text of the proposed Second Amended and Restated Certificate of Incorporation of the Company, which is attached to this proxy statement as Exhibit B and is marked to show the changes described herein (the **“Charter Amendment”**).

Any repeal or modification of the foregoing provision shall not adversely affect any right or protection of a Director or Officer of the Company existing at the time of such repeal or modification.

Background

The Company is incorporated in the State of Delaware and therefore subject to the Delaware General Corporation Law (**“DGCL”**). The DGCL permits Delaware corporations to limit or eliminate the directors’ personal liability for monetary damages resulting from a breach of the fiduciary duty of care, subject to certain limitations such as prohibiting exculpation for intentional misconduct or knowing violations of the law. These provisions are referred to as “exculpatory provisions” or “exculpatory protections.” Similar exculpatory provisions for directors are currently included in the Charter.

Effective August 1, 2022, the State of Delaware enacted legislation that permits Delaware corporations to provide similar exculpatory protections for officers. This decision was due in part to the recognition that both officers and directors owe fiduciary duties to corporations, and yet only directors were protected by the exculpatory provisions. In addition, Delaware courts experienced an increase in litigation in which plaintiffs attempted to exploit the absence of protection for officers to prolong litigation and extract settlements from defendant corporations. As adopted, amended Section 102(b)(7) of the DGCL protects officers from personal monetary liability under limited circumstances as explained below.

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Conditions and Limitations to Exculpation under DGCL Section 102(b)(7)

As amended, Section 102(b)(7) of the DGCL provides important conditions and limitations on a corporation's exculpation of its officers for monetary damages from breaches of fiduciary duty.

- Exculpation is only available for breaches of the fiduciary duty of care.
- Exculpation is not available for breaches of the fiduciary duty of loyalty to the corporation or its stockholders (which requires officers to act in good faith for the benefit of the corporation and its stockholders and not for personal gain).
- Exculpation is not available for acts or omissions not in good faith or which involve intentional misconduct or knowing violations of the law.
- The protections of Section 102(b)(7) are limited to monetary damages only, so that claims against officers for equitable relief are available.
- Exculpation is not available in connection with derivative claims on behalf of the corporation by a stockholder.

Reasons for the Proposal

The Board believes that eliminating personal monetary liability for officers under certain circumstances is reasonable, appropriate and consistent with similar limitations for directors. Delaware corporations that fail to adopt officer exculpation provisions may experience a disproportionate amount of nuisance litigation, as well as diversion of management attention from the business of the corporation.

Further, the Board anticipates that similar exculpation provisions are likely to be adopted by the Company's peers and others with whom the Company competes for executive talent. As a result, officer exculpation provisions may become necessary for Delaware corporations to attract and retain experienced and qualified corporate officers.

A Delaware corporation seeking to extend the benefits of the newly amended Section 102(b)(7) to its corporate officers must amend its certificate of incorporation, as the protections do not apply automatically and must be embedded in the corporation's certificate of incorporation to be effective. Accordingly, the Board has determined it advisable and in the best interests of the Company and its shareholders to seek shareholders' approval for the Charter Amendment.

Effect of the Proposal if Approved

The Charter Amendment would provide for the elimination of personal monetary liability for certain officers only in connection with direct claims brought by shareholders, subject to the limitations described under the heading "Conditions and Limitations to Exculpation under DGCL Section 102(b)(7)" above. As is the case with directors under the Charter, the Charter Amendment would not limit the liability of officers for any breach of the duty of loyalty to the Company or its stockholders, any acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, or any transaction from which the officer derived an improper personal benefit.

If the Charter Amendment is approved by the shareholders at the Annual Meeting, it will become effective upon the filing of the Charter Amendment with the Secretary of State of Delaware. In accordance with the DGCL, however, the Board may abandon the Charter Amendment without further action by the stockholders at any time prior to the effectiveness of the filing of the Charter Amendment with the Secretary of State of Delaware, notwithstanding shareholder approval. If the Charter Amendment is not approved by the shareholders at the Annual Meeting, it will not be filed with the Secretary of State of Delaware and will not become effective, and the Charter will remain unchanged.