

**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): **November 7, 2017**

ACM Research, Inc.
(Exact name of registrant as specified in its charter)

Delaware <i>(State or Other Jurisdiction of Incorporation or Organization)</i>	001-38273 <i>(Commission File Number)</i>	94-3290283 <i>(I.R.S. Employer Identification No.)</i>
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42307 Osgood Road, Suite I, Fremont, California 94539
(Address of principal executive offices) (Zip code)

Registrant's telephone number, including area code: **(510) 445-3700**

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

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

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 5.03 Amendments to Articles of Incorporation or By-laws; Change in Fiscal Year

On November 7, 2017, we filed a restated certificate of incorporation with the Secretary of State of the State of Delaware following the closing of our initial public offering of Class A common stock, or IPO. The board of directors and our stockholders had previously approved the restated certificate of incorporation for filing following the closing of the IPO, and certain terms of the restated certificate of incorporation are described in the final prospectus for the IPO, as filed with the Securities and Exchange Commission on November 3, 2017 pursuant to Rule 424(b) under the Securities Act of 1933.

The restated certificate of incorporation amended our prior certificate of incorporation to, among other things:

- authorize capital stock consisting of 50,000,000 shares of Class A Common Stock, par value \$0.0001 per share, 2,409,738 shares of Class B Common Stock, par value \$0.0001 per share, and 10,000,000 shares of Preferred Stock, par value \$0.0001 per share;
- eliminate all references to previously existing series of preferred stock;
- provide that directors may be removed from office with or without cause and only by the affirmative vote of the holders of at least 66-2/3% of the voting power of all of the then-outstanding shares of capital stock entitled to vote in the election of directors;
- provide that any vacancy on the board, including a vacancy resulting from an enlargement of the board, may be filled only by vote of a majority of the directors then in office;
- eliminate the ability of stockholders to take action by written consent in lieu of a meeting and to call special meetings of stockholders; and
- provide that the Court of Chancery in the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for all internal corporate claims, including claims in the right of our company (a) based on a violation of a duty by a current or former director or officer or stockholder in such capacity or (b) as to which Title 8 of the Delaware Code confers jurisdiction upon the Court of Chancery.

The foregoing description does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the restated certificate of incorporation, a copy of which is attached hereto as Exhibit 3.01 and is incorporated herein by reference.

On November 7, 2017, restated bylaws previously approved by the board became effective immediately following the closing of the IPO. Certain terms of the restated bylaws are described in the final prospectus for the IPO. The restated bylaws amend our prior bylaws to, among other things:

- eliminate the ability of stockholders to take action by written consent in lieu of a meeting;
- establish procedures relating to the presentation of stockholder proposals at stockholder meetings;
- establish procedures relating to the nomination of candidates for election to the board; and
- otherwise conform to amended provisions in the restated certificate of incorporation.

The foregoing description does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the restated bylaws, a copy of which is attached hereto as Exhibit 3.02 and is incorporated herein by reference.

Item 8.01. Other Events.

On November 7, 2017, we completed the IPO of 2,000,000 shares of Class A common stock at a public offering price of \$5.60 per share. The Class A common stock began trading on the Nasdaq Global Market on November 3, 2017 under the symbol “ACMR.” On November 14, 2017, we sold 233,000 shares of Class A common stock to the underwriters of the IPO at a price of \$5.60 per share pursuant to the underwriters’ partial exercise of an over-allotment option we granted in the underwriting agreement for the IPO. Under the terms of the over-allotment option, the underwriters have the right, exercisable until December 2, 2017, to purchase up to 97,000 additional shares of Class A common stock at a price of \$5.60 per share.

Following the closing of the IPO on November 7, 2017, we completed a private placement of 833,334 shares of Class A common stock to two investors at a price of \$5.60 per share.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description
3.01	<u>Restated Certificate of Incorporation of ACM Research, Inc., as filed with the Secretary of State of the State of Delaware on November 7, 2017</u>
3.02	<u>Restated Bylaws of ACM Research, Inc., effective as of November 7, 2017</u>

SIGNATURE

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

ACM RESEARCH, INC.

Dated: November 13, 2017

By: /s/ Min Xu

Min Xu
Chief Financial Officer

RESTATED CERTIFICATE OF INCORPORATION
OF
ACM RESEARCH, INC.

The name of the corporation is ACM Research, Inc. The corporation was incorporated under the name “ACM Research, Inc.” by the filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware on September 27, 2016, and such Certificate of Incorporation was amended by the filing of a Certificate of Amendment on September 13, 2017. This Restated Certificate of Incorporation, which restates and integrates and also further amends the provisions of the corporation’s Certificate of Incorporation, as previously amended, was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware by (a) the written consent of the board of directors of the corporation in accordance with Section 141(f) of the General Corporation Law of the State of Delaware and (b) the written consent of the stockholders of the corporation in accordance with Section 228 of the General Corporation Law of the State of Delaware. The corporation’s Certificate of Incorporation, as previously amended, is hereby amended, integrated and restated to read in its entirety as follows:

[Remainder of page intentionally left blank]

ARTICLE I. NAME AND ADDRESS

The name of the corporation is ACM Research, Inc. (the “Corporation”).

The address of the Corporation’s registered office in the State of Delaware is c/o Corporation Service Company, 251 Little Falls Drive, County of New Castle, Wilmington, Delaware 19808. The name of its registered agent at such address is Corporation Service Company.

ARTICLE II. PURPOSE

The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the “DGCL”).

ARTICLE III. CAPITAL STOCK

The total number of shares of capital stock that the Corporation is authorized to issue is 62,409,738, each of which shares has a par value of \$0.0001. The Corporation is authorized to issue three classes of capital stock, which are designated “*Class A Common Stock*,” “*Class B Common Stock*” and “*Preferred Stock*.” Of the 62,409,738 authorized shares of capital stock, 50,000,000 shares shall be designated as Class A Common Stock (“*Class A Common Shares*”), 2,409,738 shares shall be designated as Class B Common Stock (“*Class B Common Shares*”) and 10,000,000 shares shall be designated as Preferred Stock (“*Preferred Shares*”). Class A Common Shares and Class B Common Shares are referred to collectively as “*Common Shares*.”

A. Common Stock.

(1) Change in Authorized Shares. The number of authorized Class A Common Shares or Class B Common Shares may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of this Restated Certificate of Incorporation or any certificate of designation with respect to a series of Preferred Stock (a “*Certificate of Designation*”) authorized pursuant to Section 151(g) of the DGCL), the affirmative vote of the holders of capital stock representing a majority of the voting power of the then-outstanding Common Shares and Preferred Shares, voting together as a single class on an as-converted basis.

(2) Dividends. Class A Common Shares and Class B Common Shares shall be treated equally, identically and ratably, on a per share basis, with respect to any dividends or distributions as may be declared and paid from time to time out of any assets of the Corporation legally available therefor, *provided* that in the event a dividend is paid in the form of Class A Common Shares or Class B Common Shares (or rights to acquire such shares), then holders of Class A Common Shares shall receive Class A Common Shares (or rights to acquire such shares, as the case may be) and holders of Class B Common Shares shall receive Class B Common Shares (or rights to acquire such shares, as the case may be), with holders of Class A Common Shares and Class B Common Shares receiving, on a per share basis, an identical number of Class A Common Shares or Class B Common Shares, as applicable. Notwithstanding the foregoing, the board of directors of the Corporation (the “*Board*”) may declare a dividend or distribution that is not identical or equivalent on a per share basis as between the Class A Common Shares and Class B Common Shares (whether in the amount of such dividend or distribution payable per share, the form in which such dividend or distribution is payable, the timing of the payment, or otherwise) if such disparate dividend or distribution is approved in advance by the affirmative vote of the holders of a majority of the then-outstanding Class A Common Shares and a majority of the then-outstanding Class B Common Shares, voting separately as classes.

(3) Voting. On any matter submitted to a vote of the stockholders of the Corporation, holders of Common Shares are entitled to one vote for each Class A Common Share held and twenty votes for each Class B Common Share held. Except as otherwise provided in this Restated Certificate of Incorporation or the DGCL, the holders of Class A Common Shares and Class B Common Shares shall vote together as one class on all matters submitted to a vote of stockholders. Holders of Common Shares, as such, shall not be entitled to vote on any amendment to this Restated Certificate of Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Restated Certificate of Incorporation or the DGCL.

(4) Conversion Rights.

(a) Voluntary Conversion. Each Class B Common Share shall be convertible at any time, at the option of the holder thereof upon written notice to the Corporation, into one fully paid and nonassessable Class A Common Share. Before any holder may convert any Class B Common Shares, the holder shall (i) surrender the certificate or certificates therefor, duly endorsed, at the principal corporate office of the Corporation or of the transfer agent for the Class B Common Stock and (ii) provide written notice to the Corporation, at its principal corporate office, of the holder's election to convert such Class B Common Shares and the name or names in which the certificate or certificates for Class A Common Shares are to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder, or to the nominee or nominees or such holder, a certificate or certificates for the number of Class A Common Shares to which such holder shall be entitled upon such conversion. The conversion of such Class B Common Shares shall be deemed to have been made immediately prior to the close of business on the first date as of which the holder has, in accordance with this Section III.A(4)(a), both delivered written notice to the Corporation and surrendered the certificate or certificates for such shares, and the person or persons entitled to receive the Class A Common Shares issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Class A Common Shares as of such time and date. Each Class B Common Share that is converted pursuant to this Section III.A(4)(a) shall be retired by the Corporation and shall not be available for reissuance.

(b) Automatic Conversion.

(i) A Class B Common Share shall be immediately and automatically converted into one fully paid and nonassessable Class A Common Share, upon any of the following (each a "*Common Conversion Event*" with respect to such Class B Common Share):

- (A) the occurrence of a Transfer, other than a Permitted Transfer, of such Class B Common Share;
- (B) the receipt by the Corporation of the affirmative vote at a duly noticed stockholders meeting of the holders of a majority of the Class B Common Shares then outstanding in favor of the conversion of all of the Class B Common Shares; or
- (C) at 11:59 p.m. (Eastern standard time) on the first December 31 that occurs more than five years after the date of filing of this Restated Certificate of Incorporation with the Secretary of State of the State of Delaware (the "*Filing Date*") if the October Market Cap with respect to the month of October

immediately preceding such December 31 exceeds \$1,000,000,000.00, *provided* that this clause (C) shall be of no further effect, and no Common Conversion Event shall ever occur pursuant to this clause (C), as of any December 31 occurring less than five years after the Filing Date if the October Market Cap for the month of October immediately preceding such December 31 exceeds \$1,000,000,000.00.

For purposes of clarity, a Common Conversion Event pursuant to the preceding clause (A) shall apply only with respect to the share or shares being Transferred (other than in a Permitted Transfer) and not with respect to any other outstanding Class B Common Shares and a Common Conversion Event pursuant to the preceding clause (B) or (C) shall apply to all outstanding Class B Common Shares.

(ii) Each outstanding stock certificate that, immediately prior to a Common Conversion Event, represented one or more Class B Common Shares subject to such Common Conversion Event shall, upon such Common Conversion Event, be deemed to represent an equal number of Class A Common Shares, without the need for surrender or exchange thereof. The Corporation shall, upon the request of any holder whose Class B Common Shares have been converted into Class A Common Shares as a result of a Common Conversion Event and upon surrender by such holder to the Corporation of the outstanding certificate or certificates formerly representing such holder's Class B Common Shares, issue and deliver to such holder a certificate or certificates representing the Class A Common Shares into which such holder's Class B Common Shares were converted as a result of such Common Conversion Event. Each Class B Common Share that is converted pursuant to this Section III.A(4)(a) shall thereupon be retired by the Corporation and shall not be available for reissuance.

(iii) The Corporation may, from time to time, establish such policies and procedures, not in violation of the other provisions of this Restated Certificate of Incorporation or of applicable law, relating to the conversion of Class B Common Shares into Class A Common Shares, as it may deem necessary or advisable in connection therewith. If the Corporation has reason to believe that a Transfer giving rise to a conversion of Class B Common Shares into Class A Common Shares has occurred but has not theretofore been reflected on the books of the Corporation, the Corporation may request that the holder of such shares furnish affidavits or other evidence to the Corporation as the Corporation deems necessary to determine whether a conversion of Class B Common Shares to Class A Common Shares has occurred, and if such holder does not within ten days after the date of such request furnish sufficient evidence to the Corporation (in the manner provided in the request) to enable the Corporation to determine that no such conversion has occurred, any such Class B Common Shares, to the extent not previously converted, shall be automatically converted into Class A Common Shares and the same shall thereupon be registered on the books and records of the Corporation. In the event of any issue, question or uncertainty, the Board shall have full power and authority to take all actions and to make all determinations required as to whether a proposed or past Transfer of Class B Common Shares qualifies or qualified as a Permitted Transfer.

(c) Special Definitions. For purposes of this Restated Certificate of Incorporation, the following definitions shall apply:

(i) "*Family Member*" shall mean, with respect to any natural person who is a Qualified Stockholder, the spouse, or a parent, grandparent, lineal descendant, sibling or lineal descendant of a sibling, of such Qualified Stockholder. A lineal descendant shall include an adopted person if, but only if, he or she is adopted during minority.

(ii) “October Market Cap” shall mean, with respect to any October throughout which Class A Common Stock is traded on a securities exchange registered with the Securities and Exchange Commission, the product of:

- (A) the average of the VWAPs for each of the days in such month of October on which Class A Common Stock is traded on a securities exchange registered with the Securities and Exchange Commission, where “VWAP” means, for any such trading day, the daily volume weighted average price for the regular trading day session (the total dollar amount traded during regular trading hours on such day divided by trading volume during such trading hours) of the Class A Common Stock on The NASDAQ Global Market (or such other exchange or market as is then the principal trading exchange or market for the Class A Common Stock), as reported by Bloomberg L.P. (or, if not reported on Bloomberg, L.P., on such reporting service as shall be approved by the Board), multiplied by
- (B) the number of Common Shares outstanding as of 11:59 p.m. (Eastern daylight saving time) on the last trading day of such month of October.

(iii) “Permitted Entity” shall mean, with respect to a Qualified Stockholder:

- (A) a bona fide trust for which (1) the trustee is such Qualified Stockholder, the trustee of such Qualified Stockholder, a Family Member of such Qualified Stockholder, or a professional in the business of providing trustee services (including a private professional fiduciary, trust company or bank trust department) and (2) the beneficiaries are comprised solely of (A) such Qualified Stockholder, one or more Family Members or trust beneficiaries of such Qualified Stockholder, or one or more other Permitted Entities of such Qualified Stockholder; or
- (B) a general partnership, limited partnership, limited liability company, corporation or other entity owned exclusively by such Qualified Stockholder or one or more Family Members or other Permitted Entities of such Qualified Stockholder.

(iv) “Permitted Transfer” shall mean, and be restricted to, any Transfer of a Class B Common Share:

- (A) by a Qualified Stockholder to one or more Family Members or Permitted Entities of such Qualified Stockholder;
- (B) by a Permitted Entity of a Qualified Stockholder to such Qualified Stockholder or one or more Family Members or other Permitted Entities of such Qualified Stockholder; or
- (C) by a Qualified Stockholder to a natural person or entity that both:
 - (i) was, as of the date on which such Qualified Stockholder became a Qualified Stockholder (that is, the later of the Filing Date and the date of a Permitted Transfer to such Qualified Stockholder described in clause (ii) of Section III.A(4)(c)(v)), and

- (ii) is, as of the date of such Transfer,
the sole equity owner of such Qualified Stockholder.

(v) “*Qualified Stockholder*” shall mean, with respect to a Class B Common Share, (i) the holder of such Class B Common Share as of the Filing Date or (ii) a Transferee of such Class B Common Share pursuant to a Permitted Transfer after the Filing Date.

(vi) “*Transfer*” shall mean, with respect to a Class B Common Share, any sale, assignment, transfer, conveyance, hypothecation or other transfer or disposition of such share or any legal or beneficial interest in such share, whether or not for value and whether voluntary or involuntary or by operation of law, including a transfer of a Class B Common Share to a broker or other nominee (regardless of whether there is a corresponding change in beneficial ownership), or the transfer of, or entering into a binding agreement with respect to, Voting Control over such Class B Common Share by proxy or otherwise, *provided* that the following shall not be considered a “Transfer,” whether entered into before or after the Filing Date:

- (A) the granting of a revocable proxy to officers or directors of the Corporation at the request of the Board in connection with actions to be taken at an annual or special meeting of stockholders;
- (B) the entry into of a voting trust, agreement or arrangement (with or without granting a proxy) as part of, or in connection with, a director nomination agreement entered into by the Corporation in favor of one or more persons as part of an equity financing transaction;
- (C) the entry into of a voting trust, agreement or arrangement (with or without granting a proxy) solely with stockholders who are holders of Class B Common Shares that (1) is disclosed either in a Schedule 13D filed with the Securities and Exchange Commission or in writing to the Secretary of the Corporation, (2) either has a term not exceeding one year or is terminable by the holder of the shares subject thereto at any time and (3) does not involve any payment of cash, securities, property or other consideration to the holder of the shares subject thereto other than the mutual promise to vote shares in a designated manner; or
- (D) a pledge of Class B Common Shares by a stockholder that creates a mere security interest in such shares pursuant to a bona fide loan or indebtedness transaction for so long as such stockholder continues to exercise Voting Control over such pledged shares, *provided* that a foreclosure on such shares or other similar action by the pledgee shall constitute a “Transfer” unless such foreclosure or similar action qualifies as a “Permitted Transfer.”

A “*Transfer*” shall also be deemed to have occurred with respect to a Class B Common Share beneficially held by (i) an entity that is a Permitted Entity, if there occurs any act or circumstance that causes such entity to no longer be a Permitted Entity or (ii) an entity that is a Qualified Stockholder, if there occurs a Transfer on a cumulative basis, from and after the Filing Date, of a majority of the voting power of the voting securities of such entity or any other entity that directly or indirectly owns or controls a majority of the voting power of the voting securities of such initial entity, other than a Transfer to parties that are, as of the Filing Date, holders of voting securities of any such initial entity or other entity.

(vii) “Voting Control” shall mean, with respect to a Class B Common Share, the power (whether exclusive or shared) to vote or direct the voting of such share by proxy, voting agreement or otherwise.

(viii) “Voting Threshold Date” shall mean 5:00 p.m. (Eastern time) on the first day falling on or after the date on which the outstanding Class B Common Shares represent less than a majority of the total voting power of the then outstanding shares of the Corporation then entitled to vote generally in the election of directors.

(5) Reservation of Shares. The Corporation shall at all times reserve and keep available out of its authorized but unissued Class A Common Shares, solely for the purpose of effecting the conversion of the Class B Common Shares, such number of Class A Common Shares as shall from time to time be sufficient to effect the conversion of all outstanding Class B Common Shares into Class A Common Shares.

(6) Subdivision or Combinations. If the Corporation in any manner subdivides or combines the outstanding shares of one class of Common Stock, the outstanding shares of the other class of Common Stock will be subdivided or combined in the same manner.

(7) Equal Status. Except as expressly provided in this Article III or required by applicable law, Class A Common Shares and Class B Common Shares shall have the same rights, preferences, powers and restrictions and limitations, shall rank equally, shall share ratably and shall be identical in all respects as to all matters.

(8) Protective Provision. The Corporation shall not, whether by merger, consolidation or otherwise, amend, alter, repeal or waive any provision of this Section III.A (or adopt any provision inconsistent therewith), without first obtaining the affirmative vote of the holders of a majority of the then outstanding Class B Common Shares, voting as a separate class, in addition to any other vote required by the DGCL, this Restated Certificate of Incorporation or the Bylaws of the Corporation.

(9) Change of Control Vote. Until the first date on which the outstanding Class B Common Shares represent less than 35% of the total voting power of the then-outstanding capital stock of the Corporation then entitled to vote generally in the election of directors, the Corporation shall not consummate a Change in Control Transaction without first obtaining the affirmative vote (or written consent if action by written consent of stockholders is permitted at such time under this Restated Certificate of Incorporation) of the holders of a majority of the then outstanding Class B Common Shares, voting as a separate class, in addition to any other vote required by applicable law, this Restated Certificate of Incorporation or the Bylaws of the Corporation. For the foregoing purposes, each of the following events shall be considered a “*Change in Control Transaction*”:

(a) a merger or consolidation in which

- (i) the Corporation is a constituent party or
- (ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, a majority, by voting power, of the capital stock of

(y) the surviving or

resulting corporation or (z) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

(b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, in a single transaction or in a series of related transactions, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation.

B. Preferred Stock.

(1) Series of Preferred Stock. The Board is hereby authorized to provide for the issuance of Preferred Shares in one or more series and, by filing a Certificate of Designation, to establish from time to time the number of shares to be included in each such series, and such voting powers, full or limited, or no voting powers, and such designations, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including dividend rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated and expressed in such resolutions, all to the full extent now or hereafter permitted by the DGCL. Without limiting the generality of the foregoing, the resolutions providing for the issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to any other series of Preferred Stock to the extent permitted by law.

(2) Change in Authorized Shares. The number of authorized Preferred Shares may be increased or decreased (but not below the number of shares then outstanding) by the affirmative vote of the holders of a majority of the voting power of the capital stock of the Corporation entitled to vote thereon, voting as a single class, irrespective of the provisions of Section 242(b)(2) of the DGCL, unless a vote of such holders is required pursuant to the terms of any Certificate of Designation or this Restated Certificate of Incorporation.

ARTICLE IV. DIRECTORS

A. General Powers.

The business and affairs of the Corporation shall be managed by or under the direction of the Board.

B. Number of Directors.

Subject to the rights of holders of any series of Preferred Stock to elect directors, the number of directors of the Corporation shall be determined exclusively by resolution adopted by a number of directors constituting a majority of the total number of authorized directors of the Corporation, whether or not there exist any vacancies in previously authorized directorships.

C. Classified Board.

Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, immediately following the Voting Threshold Date, the directors shall be divided, with respect to the time for which they severally hold office, into three classes designated as Class I, Class II and Class III, respectively (the "*Classified Board*"). The Board shall assign directors in office immediately prior to the Classified Board becoming effective to the several classes of the Classified Board, which assignments shall become effective at the same time the Classified Board becomes

effective. Directors shall be assigned to each class in accordance with a resolution or resolutions adopted by a majority of the Board, with the number of directors in each class to be divided as nearly equal as reasonably possible. The initial term of office of the Class I directors shall expire at the Corporation's first annual meeting of stockholders following the date on which the Classified Board becomes effective, the initial term of office of the Class II directors shall expire at the Corporation's second annual meeting of stockholders following the date on which the Classified Board becomes effective, and the initial term of office of the Class III directors shall expire at the Corporation's third annual meeting of stockholders following the date on which the Classified Board becomes effective. At each annual meeting of stockholders following the date on which the Classified Board becomes effective, directors elected to succeed those directors of the class whose terms then expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election.

D. Removal.

Subject to the rights of holders of any series of Preferred Stock, from and after the effectiveness of the Classified Board, directors of the Corporation may be removed with or without cause only by the affirmative vote of the holders of at least sixty-six and two-thirds of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors.

E. Vacancies.

Subject to the rights of holders of any series of Preferred Stock, any vacancy or newly created directorship in the Board, however occurring, shall be filled only by vote of a majority of the remaining directors then in office, although less than a quorum, or by a sole remaining director and shall not be filled by the stockholders. A director elected to fill a vacancy or newly created directorship shall hold office until the election and qualification of a successor or such director's earlier death, resignation or removal.

F. Stockholder Nominations and Business, etc.

Advance notice of stockholder nominations for election of directors and other business to be brought by stockholders before a meeting of stockholders shall be given in the manner provided by the Bylaws of the Corporation.

G. Election of Directors.

No stockholder will be permitted to cumulate votes in any election of directors. The election of directors need not be by written ballot.

ARTICLE V. ACTION BY WRITTEN CONSENT

Subject to the rights of holders of any series of Preferred Stock, from and after the Voting Threshold Date, stockholders of the Corporation may not take any action by written or electronic consent in lieu of a meeting, and all stockholder action shall be taken at a meeting of stockholders.

ARTICLE VI. SPECIAL MEETINGS

Special meetings of stockholders for any purpose or purposes may be called at any time only by (a) the Board pursuant to a resolution adopted by a number of directors constituting a majority of the total number of authorized directors of the Corporation, whether or not there exist any vacancies in previously

authorized directorships, (b) the Chairman of the Board or (c) the Chief Executive Officer, and may not be called by any other person or persons. Business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

ARTICLE VII. BYLAWS

A. Amendments by the Board.

In furtherance and not in limitation of the powers conferred upon it by the DGCL, the Board shall have the power to adopt, amend, alter or repeal the Bylaws of the Corporation.

B. Amendments by the Stockholders.

The stockholders shall also have the power to adopt, amend or repeal the Bylaws of the Corporation. Prior to the Voting Threshold Date, in addition to any vote of the holders of any class or series of stock of the Corporation required by applicable law or by this Restated Certificate of Incorporation, such adoption, amendment or repeal of the Bylaws of the Corporation by the stockholders shall require the affirmative vote of a majority in voting power of all of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class. From and after the Voting Threshold Date, in addition to any vote of the holders of any class or series of stock of the Corporation required by applicable law or by this Restated Certificate of Incorporation, such adoption, amendment or repeal of the Bylaws of the Corporation by the stockholders shall require the affirmative vote of the holders of at least two-thirds of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

ARTICLE VIII. AMENDMENTS

Notwithstanding any other provisions of this Restated Certificate of Incorporation or any provision of law, this Restated Certificate of Incorporation or the Bylaws of the Corporation, but in addition to any vote of the holders of any class or series of stock required by law, this Restated Certificate of Incorporation or a Certificate of Designation, from and after the Voting Threshold Date, the affirmative vote of the holders of at least s sixty-six and two-thirds of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors shall be required to amend or repeal, or to adopt any provision inconsistent with, Articles IV through XI.

ARTICLE IX. FORUM SELECTION

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery in the State of Delaware shall be the sole and exclusive forum for all “internal corporate claims.” “Internal corporate claims” means claims, including claims in the right of the Corporation, (a) that are based upon a violation of a duty by a current or former director or officer or stockholder in such capacity, or (b) as to which Title 8 of the Delaware Code confers jurisdiction upon the Court of Chancery, except for, as to each of (a) and (b) above, any claim as to which the Court of Chancery determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, or for which the Court of Chancery does not have subject matter jurisdiction. If any provision or provisions of this Article IX shall be held to be invalid, illegal or unenforceable as

applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article IX (including each portion of any sentence of this Article IX containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

ARTICLE X. INDEMNIFICATION

The Corporation shall indemnify (and advance expenses to) its officers and directors to the full extent permitted by the DGCL, as amended from time to time.

ARTICLE XI. EXCULPATION

To the fullest extent permitted by law, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability. No amendment to or repeal of this provision, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article XI, shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal. If the DGCL is amended to permit further elimination or limitation of the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL as so amended.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, this Restated Certificate of Incorporation, which restates, integrates and amends the Certificate of Incorporation of the Corporation, as previously amended, and which has been duly adopted in accordance with Sections 141(f), 228, 242 and 245 of the General Corporation Law of the State of Delaware, has been executed by its duly authorized officer as of November 7, 2017.

ACM RESEARCH, INC.

By: /s/ David H. Wang
David H. Wang
Chief Executive Officer and President

RESTATED BYLAWS
OF
ACM RESEARCH, INC.
(A DELAWARE CORPORATION)

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ARTICLE I

OFFICES

1.1 Offices. The address of the registered office of ACM Research, Inc. (the “Corporation”) is c/o Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware, 19808. The registered agent at such address is Corporation Service Company. The Corporation may also have offices at such other places both within and outside the State of Delaware as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

2.1 Annual Meeting. If required by applicable law, the annual meeting of the stockholders of the Corporation shall be held on such date, at such time and at such place, if any, within or outside the State of Delaware as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting.

2.2 Special Meetings. Special meetings of the stockholders of the Corporation shall be held on such date, at such time and at such place, if any, as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting.

2.3 Notice of Meetings. Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given that shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting) and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, the Certificate of Incorporation or these Bylaws, the notice of any meeting shall be given not less than ten nor more than sixty days before the date of the meeting to each stockholder entitled to vote at the meeting as of the record date for determining the stockholders entitled to notice of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder’s address as it appears on the records of the Corporation.

2.4 Quorum and Adjournment. Except as otherwise required by law, by the Certificate of Incorporation or by these Bylaws, the presence, in person or by proxy, of the holders of a majority of the aggregate voting power of the stock issued and outstanding, entitled to vote thereat, shall constitute a quorum for the transaction of business at all meetings of the stockholders. Whether or not a quorum is present at a meeting of stockholders, the chair of the meeting shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting.

2.5 Adjourned Meetings. Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than thirty days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix as the record date for determining stockholders entitled to notice of such

adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting.

2.6 Vote Required. Except as otherwise provided by law, these Bylaws, the rules or regulations of any stock exchange applicable to the Corporation, any regulation applicable to the Corporation or its securities or by the Restated Certificate of Incorporation:

(a) Directors shall be elected by a plurality of the votes present in person or represented by proxy at a meeting of the stockholders and entitled to vote in the election of directors; and

(b) Whenever any corporate action other than the election of Directors is to be taken, it shall be authorized by the affirmative vote of a majority in voting power of the shares present in person or represented by proxy at a meeting of stockholders and entitled to vote on the subject matter.

2.7 Manner of Voting. At each meeting of stockholders, each stockholder having the right to vote shall be entitled to vote in person or by proxy. Proxies need not be filed with the Secretary of the Corporation until the meeting is called to order, but shall be filed before being voted. Each stockholder shall be entitled to vote each share of stock having voting power registered in his or her name on the books of the Corporation on the record date fixed for determination of stockholders entitled to vote at such meeting.

2.8 Stockholder Action without a Meeting. Unless otherwise provided in the Restated Certificate of Incorporation and subject to the rights of the holders of the shares of any series of preferred stock, any action that is required to be or may be taken by the stockholders of the Corporation must be effected at a duly held meeting of stockholders of the Corporation at which a quorum is presented or represented and may not be effected by a consent in writing or by electronic communication by stockholder.

2.9 Inspectors of Election. The Corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors of election, who may be employees of the Corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event no inspector so appointed or designated is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector or inspectors so appointed or designated shall (a) ascertain the number of shares of capital stock of the Corporation outstanding and the voting power of each such share, (b) determine the shares of capital stock of the Corporation represented at the meeting and the validity of proxies and ballots, (c) count all votes and ballots, (d) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (e) certify their determination of the number of shares of capital stock of the Corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the Corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

2.10 Conduct of Meetings. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person

presiding over any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the presiding person of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

2.11 Notice of Stockholder Business and Nominations.

(a) Annual Meetings of Stockholders.

- (i) Nominations of persons for election to the Board of Directors of the Corporation and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders only (a) pursuant to the Corporation's notice of meeting (or any supplement thereto), (b) by or at the direction of the Board of Directors or any committee thereof or (c) by any stockholder of the Corporation who was a stockholder of record of the Corporation at the time the notice provided for in this Section 2.11 of Article II is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and who complies with the notice procedures set forth in Article II.
- (ii) For any nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (c) of paragraph (a)(i) of this Section 2.11 of Article II, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and any such proposed business (other than the nominations of persons for election to the Board of Directors) must constitute a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 90th day, nor earlier than the close of business on the 120th day, prior to the first anniversary of the preceding year's annual meeting (*provided, however*, in the event no annual meeting was held in the previous year or if the date of the annual meeting is more than 30 days before or more than 70 days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the day on which public announcement of the date of such meeting is first made by the Corporation). In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the

giving of a stockholder's notice as described above. Such stockholder's notice shall set forth: (a) as to each person whom the stockholder proposes to nominate for election as a director (i) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Section 14(a) of the Securities Exchange Act of 1934, as amended (the "*Exchange Act*"), and the rules and regulations promulgated thereunder, and (ii) such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected; (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, 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 bylaws of the Corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, (ii) the class or series and number of shares of capital stock of the Corporation that are owned beneficially and of record by such stockholder and such beneficial owner, (iii) a description of any agreement, arrangement or understanding with respect to the nomination or proposal between or among such stockholder and/or such beneficial owner, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing, including, in the case of a nomination, the nominee, (iv) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder's notice by, or on behalf of, such stockholder and such beneficial owners, whether or not such instrument or right shall be subject to settlement in underlying shares of capital stock of the Corporation, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner, with respect to securities of the Corporation, (v) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, (vi) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group that intends (a) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (b) otherwise to solicit proxies or votes from stockholders in support of such proposal or nomination, and (vii) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder. The foregoing notice requirements of this Section 2.11 of Article II shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the Corporation of his, her or its intention to present a proposal at an annual meeting in compliance with applicable rules and

regulations promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting. The Corporation may require any proposed nominee to furnish such other information as the Corporation may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation.

- (iii) Notwithstanding anything in the second sentence of paragraph (a)(ii) of this Section 2.11 of Article II to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation at the annual meeting is increased effective after the time period for which nominations would otherwise be due under paragraph (a)(ii) of this Section 2.11 of Article II and there is no public announcement by the Corporation naming the nominees for the additional directorships at least 100 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 2.11 of Article II shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

(b) Special Meetings of Stockholders. 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 (1) by or at the direction of the Board of Directors or any committee thereof or (2) provided that the Board of Directors 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 Section 2.11 of Article II is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and upon such election and who complies with the notice procedures set forth in Section 2.11 of Article II. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by paragraph (a)(ii) of this Section 2.11 of Article II shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) General.

- (i) Except as otherwise expressly provided in any applicable rule or regulation promulgated under the Exchange Act, only such persons who are nominated in accordance with the procedures set forth in Section 2.11 of Article II 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 Section 2.11 Article II. Except as otherwise provided by law, 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 Article II (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group that solicited) or did not so solicit, as the case may be, proxies or votes in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by clause (a)(ii)(c)(vi) of Section 2.11 of Article II) and (b) if any proposed nomination or business was not made or proposed in compliance with Section 2.11 of Article II, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Article II, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of Article II, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

- (ii) For purposes of Article II, "public announcement" shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or other national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.
- (iii) Notwithstanding the foregoing provisions of this Section 2.11 of Article II, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in Article II; *provided, however*, that any references in these Bylaws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 2.11 of Article II (including paragraphs (a)(i)(c) and (b) hereof), and compliance with paragraphs (a)(i)(c) and (b) of this Section 2.11 of Article II shall be the exclusive means for a stockholder to make nominations or submit other business (other than, as provided in the penultimate sentence of Section 2.11(a)(ii) of Article II, business other than nominations brought properly under and in compliance with Rule 14a-8 of the Exchange Act, as may be amended from time to time). Nothing in Article II shall be deemed to affect any rights (a) of stockholders to request inclusion of proposals or nominations in the Corporation's proxy statement pursuant to applicable rules and regulations promulgated under the Exchange Act or (b) of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Restated Certificate of Incorporation.

ARTICLE III

DIRECTORS

3.1 Number; Term of Office. Subject to the Restated Certificate of Incorporation, the number of directors that shall constitute the whole Board of Directors shall be determined from time to time by resolution adopted by the Board of Directors. Each director shall hold office until a successor is duly elected and qualified or until the director's earlier death, resignation, disqualification or removal.

3.2 General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The Board of Directors may adopt such rules and procedures, not inconsistent with the Certificate of Incorporation, these Bylaws or applicable law, as it may deem proper for the conduct of its meetings and the management of the Corporation.

3.3 Resignations. Any Director may resign at any time by giving notice in writing or by electronic transmission to the Corporation. Such resignation shall take effect at the date of receipt of such notice or at any later time specified therein. Acceptance of such resignation shall not be necessary to make it effective.

3.4 Removal. Except as prohibited by applicable law or the Certificate of Incorporation, the stockholders entitled to vote in an election of directors may remove any director from office at any time, with or without cause, by the affirmative vote of sixty-six and two-thirds percent of the Corporation's outstanding voting power.

3.5 Vacancies. Any vacancies occurring in the Board of Directors, shall be filled only by the affirmative votes of a majority of the remaining members of the Board of Directors, although less than a quorum, or by a sole remaining director. A director so elected shall be elected to hold office until the earlier of the expiration of the term of office of the director whom he or she has replaced, a successor is duly elected and qualified or the earlier of such director's death, resignation or removal.

3.6 Annual Meetings. The Board of Directors may meet each year immediately following the annual meeting of stockholders, at the place where such meeting of stockholders has been held, or at such other place as shall be fixed by the person presiding over the meeting of the stockholders, for the purpose of election of officers and consideration of such other business as the Board of Directors considers relevant to the management of the Corporation.

3.7 Regular Meetings. Regular meetings of the Board of Directors may be held on such dates and at such times and places, if any, within or without the State of Delaware, as shall from time to time be determined by the Board of Directors. In the absence of any such determination, such meetings shall be held at such times and places, within or without the State of Delaware, as shall be designated by the Chair of the Board on not less than 24 hours' notice to each Director, given verbally or in writing, whether personally, by telephone (including by message or recording device), by facsimile transmission, or by other electronic transmission, or on not less than 3 calendar days' notice to each Director given in writing by mail.

3.8 Special Meetings. Special meetings of the Board of Directors may be held at the call of the Chair of the Board at such times and places, if any, within or without the State of Delaware, as he or she shall designate, on not less than 24 hours' notice to each Director, given verbally or in writing, whether personally, by telephone (including by message or recording device), by facsimile transmission, or by other electronic transmission, or on not less than 3 calendar days' notice to each Director given in writing by mail. Special meetings may also be called by the Secretary on like notice at the written request of a majority of the Directors then in office.

3.9 Quorum and Powers of a Majority. At all meetings of the Board of Directors or committee of the Board of Directors, the directors entitled to cast a majority of the votes of the whole Board of Directors or committee, as the case may be, shall constitute a quorum for the transaction of business, and except in cases in which the Certificate of Incorporation, these Bylaws or applicable law otherwise provides, a majority of the votes entitled to be cast by the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors or of such committee. In the absence of a quorum, a majority of the members present at any meeting may, without notice other than announcement at the meeting, adjourn such meeting from time to time until a quorum is present.

3.10 Manner of Acting.

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

(b) Any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board of Directors or such committee, as the case may be, consent thereto in writing or by electronic transmission, and the writings or electronic transmissions are filed with the minutes of proceedings of the Board of Directors or such committee.

3.11 Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent permitted by law and to the extent 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 that may require it; but no such committee shall have the power or authority to (a) approve or adopt or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (b) adopt, amend or repeal any bylaw of the Corporation.

3.12 Committee Procedure.

(a) Except as otherwise provided by these Bylaws or by the Board of Directors, each committee shall adopt its own rules governing the time, place, and method of holding its meetings and the conduct of its proceedings. In the absence of such rules, each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article III of these Bylaws.

(b) Each committee shall keep regular minutes of its proceedings and report the same to the Board of Directors when required.

(c) Any member of any committee may be removed from such committee either with or without cause, at any time, by the Board of Directors at any meeting thereof. Any vacancy in any committee shall be filled by the Board of Directors in the manner prescribed by the Certificate of Incorporation, these Bylaws or applicable law for the original appointment of the members of such committee.

3.13 Compensation.

(a) The Board of Directors, by a resolution or resolutions, may fix, and from time to time change, the compensation of Directors.

(b) Each Director shall be entitled to reimbursement from the Corporation for his or her reasonable expenses incurred with respect to duties as a member of the Board of Directors or any committee thereof.

(c) Nothing contained in these Bylaws shall be construed to preclude any Director from serving the Corporation in any other capacity and from receiving compensation from the Corporation for service rendered to it in such other capacity.

ARTICLE IV

OFFICERS

4.1 Number. The officers of the Corporation shall include a President and a Secretary. The Board of Directors may also elect such other officers as the Board of Directors may from time to time deem appropriate or necessary. Any two or more offices may be held by the same person.

4.2 Election of Officers, Qualification and Term. The officers of the Corporation shall be appointed from time to time by the Board of Directors and, shall hold office at the pleasure of the Board of Directors.

4.3 Removal. Any officer of the Corporation may be removed, with or without cause, by the Board of Directors, without prejudice to the rights, if any, of such officer under any contract to which it is a party.

4.4 Resignations. Any officer of the Corporation may resign at any time by giving notice to the Board of Directors. Such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.5 Salaries. The salaries of all officers of the Corporation shall be fixed by the Board of Directors from time to time, and no officer shall be prevented from receiving such salary by reason of the fact that he is also a Director of the Corporation.

4.6 The Chair of the Board. The Chair of the Board, if any, shall have the powers and duties customarily and usually associated with the office of the Chair of the Board.

4.7 Vice Chair of the Board. The Vice Chair of the Board, if any, shall have the powers and duties customarily and usually associated with the office of the Vice Chair of the Board.

4.8 The President. The President shall be the chief executive officer of the Corporation, shall have, subject to the supervision, direction and control of the Board of Directors, the general powers and duties of supervision, direction, and management of the affairs and business of the Corporation usually vested in the chief executive officer of a corporation, including all powers necessary to direct and control the organizational and reporting relationships within the Corporation. If at any time the office of the Chair of the Board and the Vice Chair of the Board shall not be filled, or in the event of the temporary absence or disability of the Chair of the Board and the Vice Chair of the Board, the President shall have the powers and duties of the Chair of the Board; *provided* such person also is a director of the Corporation.

4.9 The Vice Presidents. Each Vice President, if any, shall have such powers and perform such duties as may from time to time be assigned to him or her by the Board of Directors or the President.

4.10 The Secretary and Assistant Secretaries.

(a) The Secretary shall attend meetings of the Board of Directors and meetings of the stockholders and record all votes and minutes of all such proceedings in a book kept for such purpose. He or she shall have all such further powers and duties as generally are incident to the position of Secretary or as may from time to time be assigned to him or her by the Board of Directors or the President.

(b) Each Assistant Secretary, if any, shall have such powers and perform such duties as may from time to time be assigned to him or her by the Board of Directors, the President, or the Secretary. In case of the absence or disability of the Secretary, the Assistant Secretary designated by the President (or, in the absence of such designation, by the Secretary) shall perform the duties and exercise the powers of the Secretary.

4.11 The Treasurer and Assistant Treasurers. To the extent that the officers of the Corporation include a Treasurer and any Assistant Treasurers:

(a) The Treasurer shall have custody of the Corporation's funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit or cause to be deposited moneys or other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall also maintain adequate records of all assets, liabilities, and transactions of the Corporation, and shall see that adequate audits thereof are currently and regularly made. The Treasurer shall have such other powers and perform such other duties that generally are incident to the position of the Treasurer or as may from time to time be assigned to him or her by the Board of Directors or the President.

(b) The Treasurer shall be responsible for maintaining the accounting records and statements, and shall properly account for all monies and obligations due to the Corporation and all properties, assets, and liabilities of the Corporation. The Treasurer shall render to the Chair of the Board or the President such periodic reports covering the results of operations of the Corporation as may be required by either of them or by law.

(c) Each Assistant Treasurer shall have such powers and perform such duties as may from time to time be assigned to him or her by the Board of Directors, the President, or the Treasurer. In case of the absence or disability of the Treasurer, the Assistant Treasurer designated by the President (or, in the absence of such designation, by the Treasurer) shall perform the duties and exercise the powers of the Treasurer.

ARTICLE V

CAPITAL STOCK

5.1 Certificates. The shares of the Corporation shall be represented by certificates, *provided* that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a

certificate until such certificate is surrendered to the Corporation. Every holder of stock represented by certificates shall be entitled to have a certificate signed by or in the name of the Corporation by any two duly authorized officers of the Corporation. Any of or all the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

5.2 Transfers. Transfers of stock of the Corporation shall be made on the books of the Corporation only upon surrender to the Corporation of a certificate (if any) for the shares duly endorsed or accompanied by proper evidence of succession, assignment, or authority to transfer, *provided* such succession, assignment, or transfer is not prohibited by the Certificate of Incorporation, these Bylaws, applicable law, or contract. Thereupon, the Corporation shall issue a new certificate (if requested) to the person entitled thereto, cancel the old certificate (if any) and record the transaction upon its books.

5.3 Lost, Stolen, or Destroyed Certificates. Any person claiming a certificate of stock to be lost, stolen, or destroyed shall make an affidavit or an affirmation of that fact, and shall give the Corporation a bond of indemnity in satisfactory form and with one or more satisfactory sureties, whereupon a new certificate (if requested) may be issued of the same tenor and for the same number of shares as the one alleged to be lost, stolen, or destroyed.

5.4 Record Stockholders. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares as the person entitled to exercise the rights of a stockholder and shall not be bound to recognize any equitable or other claim to or interest in any such shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise expressly provided by the General Corporation Law of the State of Delaware.

5.5 Additional Powers of the Board.

(a) In addition to those powers set forth in Article III, the Board of Directors shall have power and authority to make all such rules and regulations as it shall deem expedient concerning the issue, transfer and registration of certificates for shares of stock of the Corporation, including the use of uncertificated shares of stock subject to the provisions of the General Corporation Law of the State of Delaware.

(b) The Board of Directors may appoint and remove transfer agents and registrars of transfers, and may require all stock certificates to bear the signature of any such transfer agent and/or any such registrar of transfers.

ARTICLE VI

INDEMNIFICATION

6.1 Indemnification. The Corporation shall indemnify, to the full extent that it shall have power under applicable law to do so and in a manner permitted by such law, any person made or threatened to be made a party to or is otherwise involved in any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (hereinafter, a "*Proceeding*"), by reason of the fact that such person, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation, or is or was serving at the request of Corporation as a director or officer of another corporation, partnership, joint venture, trust, or other enterprise. The Corporation may indemnify, to the full extent that it shall have power under applicable law to do so and in a manner permitted by such law, any person made or threatened to be made party to any Proceeding, by reason of

the fact that such person is or was an employee or agent of the Corporation, or is or was serving at the request of the Corporation as an employee or agent of another corporation, partnership, joint venture, trust, or other enterprise. Notwithstanding the preceding sentence, except as otherwise provided in Section 6.3 of this Article VI, the Corporation shall be required to indemnify any person in connection with a Proceeding (or part thereof) commenced by such person only if the commencement of such Proceeding (or part thereof) by the person was authorized in the specific case by the Board of Directors of the Corporation.

6.2 Advancement of Expenses. With respect to any person made or threatened to be made a party to any threatened, pending, or completed Proceeding, by reason of the fact that such person, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation, the Corporation shall pay the expenses (including attorneys' fees) incurred by such person in defending any such Proceeding in advance of its final disposition (hereinafter an "*advancement of expenses*"); *provided, however*, that the payment of expenses (including attorneys' fees) incurred by such person in advance of the final disposition of such Proceeding shall be made only upon receipt of an undertaking (hereinafter an "*undertaking*") by such person to repay all amounts advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "*final adjudication*") that such person is not entitled to be indemnified for such expenses under this Article VI or otherwise. With respect to any person made or threatened to be made a party to any Proceeding, by reason of the fact that such person is or was an employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, the Corporation may, in its discretion and upon such terms and conditions, if any, as the Corporation deems appropriate, pay the expenses (including attorneys' fees) incurred by such person in defending any such Proceeding in advance of its final disposition.

6.3 Claims. With respect to any person made or threatened to be made a party to any Proceeding, by reason of the fact that such person is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust, or other enterprise, the rights to indemnification and to the advancement of expenses conferred in Sections 6.1 and 6.2 of this Article VI shall be contract rights. If a claim under Sections 6.1 or 6.2 of this Article VI with respect to such rights is not paid in full by the Corporation within sixty days after a written demand has been received by the Corporation, except in the case of a claim for an advancement of expenses by an officer or director of the Corporation, in which case the applicable period shall be thirty days, the person seeking to enforce a right to indemnification or an advancement of expenses hereunder may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the person seeking to enforce a right to indemnification or an advancement of expenses hereunder or the person from whom the Corporation seeks to recover an advancement of expenses shall also be entitled to be paid the expenses (including attorneys' fees) of prosecuting or defending such suit. In any suit brought by a person seeking to enforce a right to indemnification hereunder (but not in a suit brought by a person seeking to enforce a right to an advancement of expenses hereunder) it shall be a defense that the person seeking to enforce a right to indemnification has not met any applicable standard for indemnification under applicable law. In any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that the person from whom the Corporation seeks to recover an advancement of expenses has not met any applicable standard for indemnification under applicable law. In any suit brought by a person seeking to enforce a right to indemnification or to an advancement of expenses hereunder, or by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the person seeking to enforce a right to indemnification or to an advancement of expenses or the person from whom the Corporation seeks to recover an advancement of expenses is not entitled to be indemnified, or to such an advancement of expenses, under this Article VI or otherwise shall be on the Corporation.

6.4 Non-exclusive Rights. The indemnification and advancement of expenses provided in this Article VI shall not be deemed exclusive of any other rights to which any person indemnified may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors, or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be such director, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

6.5 Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Article VI or otherwise.

6.6 Amendment or Repeal. Any right to indemnification or to advancement of expenses of any person arising hereunder shall not be eliminated or impaired by an amendment to or repeal of these Bylaws after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought.

ARTICLE VII

GENERAL PROVISIONS

7.1 Place and Inspection of Books.

(a) The books of the Corporation other than such books as are required by law to be kept within the State of Delaware shall be kept in such place or places either within or without the State of Delaware as the Board of Directors may from time to time determine.

(b) The officer who has charge of the stock ledger shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (*provided, however*, if the record date for determining the stockholders entitled to vote is less than ten days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order, and 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 at least ten days prior to the meeting (i) on a reasonably accessible electronic network, *provided* that the information required to gain access to such list is provided with the notice of meeting or (ii) during ordinary business hours at the principal place of business of the Corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 7.1(b) of Article VII or to vote in person or by proxy at any meeting of stockholders.

(c) The Board of Directors shall determine from time to time whether and, if allowed, when and under what conditions and regulations the accounts and books of the Corporation (except such as may be by law specifically open to inspection or as otherwise provided by these Bylaws) or any of them shall be open to the inspection of the stockholders and the stockholders' rights in respect thereof.

7.2 Waivers of Notice. Any waiver of notice, given by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person 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. Neither the business to be transacted at nor the purpose of any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in a waiver of notice.

7.3 Voting Shares in Other Corporations. The President or any other officer of the Corporation designated by the Board of Directors may vote any and all shares held by the Corporation in any other corporation.

7.4 Fiscal Year. The fiscal year of the Corporation shall be such fiscal year as the Board of Directors from time to time by resolution shall determine.

7.5 Gender/Number. As used in these Bylaws, the masculine, feminine, or neuter gender, and the singular and plural number, shall each include the other whenever the context so indicates.

7.6 Paragraph Titles. The titles of the paragraphs have been inserted as a matter of reference only and shall not control or affect the meaning or construction of any of the terms and provisions hereof.

7.7 Amendment. These Bylaws may be altered, amended or repealed, and new bylaws made, by the Board of Directors or by the stockholders of the Corporation: *provided, however*, in the case of amendments to the Bylaws by stockholders, no amendments may be made to Articles II, III, VI or this Section 7.7 of Article VII without the affirmative vote of sixty-six and two-thirds percent of the outstanding voting power of the Corporation.

7.8 Certificate of Incorporation. Notwithstanding anything to the contrary contained herein, if any provision contained in these Bylaws is inconsistent with or conflicts with a provision of the Certificate of Incorporation, such provision of these Bylaws shall be superseded by the inconsistent provision in the Certificate of Incorporation to the extent necessary to give effect to such provision in the Certificate of Incorporation.