

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549
FORM 10-Q**

(Mark One)

Quarterly Report Pursuant to Section 13 or 15 (d) of the Securities Exchange Act of 1934

For the quarterly period ended **June 29, 2024**

or

Transition Report Pursuant to Section 13 or 15 (d) of the Securities Exchange Act of 1934

For the transition period from _____ to _____

Commission File Number **1-10948**

The ODP Corporation

(Exact Name of Registrant as Specified in its Charter)



Delaware
(State or Other Jurisdiction of Incorporation or Organization)

85-1457062
(IRS Employer Identification No.)

6600 North Military Trail, Boca Raton, Florida
(Address of Principal Executive Offices)

33496
(Zip Code)

(561) 438-4800

(Registrant's Telephone Number, Including Area Code)

(Former Name, Former Address and Former Fiscal Year, If Changed Since Last Report)

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

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on which Registered
Common Stock, par value \$0.01 per share	ODP	The NASDAQ Stock Market (NASDAQ Global Select Market)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

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

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

Large accelerated filer Accelerated filer Non-accelerated filer
Smaller reporting company Emerging growth company

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

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

The number of shares outstanding of the registrant's common stock, as of the latest practicable date: At July 31, 2024, there were 33,580,978 outstanding shares of The ODP Corporation Common Stock, \$0.01 par value.

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The order and presentation of this Quarterly Report on Form 10-Q differ from that of the traditional U.S. Securities and Exchange Commission (“SEC”) Form 10-Q format. We believe that our format better presents the relevant sections of this document and enhances readability. See “Form 10-Q Cross-Reference Index” within Other Information for a cross-reference index to the traditional SEC Form 10-Q format.

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THE ODP CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(In millions, except per share amounts)
(Unaudited)

	13 Weeks Ended		26 Weeks Ended	
	June 29, 2024	July 1, 2023	June 29, 2024	July 1, 2023
Sales	\$ 1,717	\$ 1,907	\$ 3,586	\$ 4,013
Cost of goods and occupancy costs	1,375	1,493	2,836	3,118
Gross profit	342	414	750	895
Selling, general and administrative expenses	309	347	650	712
Asset impairments	8	6	14	10
Merger and restructuring expenses, net	25	1	45	1
Operating income	—	60	41	172
Other income (expense):				
Interest income	2	2	5	4
Interest expense	(5)	(5)	(10)	(10)
Other income, net	(1)	3	(1)	5
Income (loss) from continuing operations before income taxes	(4)	60	35	171
Income tax expense	—	17	8	44
Net income (loss) from continuing operations	(4)	43	27	127
Discontinued operations, net of tax	(69)	(9)	(85)	(20)
Net income (loss)	<u>\$ (73)</u>	<u>\$ 34</u>	<u>\$ (58)</u>	<u>\$ 107</u>
Basic earnings (loss) per share				
Continuing operations	\$ (0.12)	\$ 1.11	\$ 0.75	\$ 3.22
Discontinued operations	(1.93)	(0.22)	(2.34)	(0.52)
Net basic earnings (loss) per share	<u>\$ (2.05)</u>	<u>\$ 0.89</u>	<u>\$ (1.59)</u>	<u>\$ 2.70</u>
Diluted earnings (loss) per share				
Continuing operations	\$ (0.12)	\$ 1.09	\$ 0.73	\$ 3.11
Discontinued operations	(1.93)	(0.22)	(2.28)	(0.50)
Net diluted earnings (loss) per share	<u>\$ (2.05)</u>	<u>\$ 0.87</u>	<u>\$ (1.55)</u>	<u>\$ 2.61</u>

This report should be read in conjunction with the Notes to Condensed Consolidated Financial Statements herein and the Notes to Consolidated Financial Statements in The ODP Corporation Annual Report on Form 10-K filed on February 28, 2024 (the "2023 Form 10-K").

THE ODP CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(In millions)
(Unaudited)

	13 Weeks Ended		26 Weeks Ended	
	June 29, 2024	July 1, 2023	June 29, 2024	July 1, 2023
Net income (loss)	\$ (73)	\$ 34	\$ (58)	\$ 107
Other comprehensive income (loss), net of tax, where applicable:				
Foreign currency translation adjustments	1	5	(3)	7
Change in deferred pension	(1)	—	—	—
Other	—	(1)	—	(1)
Total other comprehensive income (loss), net of tax, where applicable	—	4	(3)	6
Comprehensive income (loss)	<u>\$ (73)</u>	<u>\$ 38</u>	<u>\$ (61)</u>	<u>\$ 113</u>

This report should be read in conjunction with the Notes to Condensed Consolidated Financial Statements herein and the Notes to Consolidated Financial Statements in the 2023 Form 10-K.

THE ODP CORPORATION
CONDENSED CONSOLIDATED BALANCE SHEETS
(In millions, except share and per share amounts)

	June 29, 2024	December 30, 2023
	(Unaudited)	
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 180	\$ 381
Receivables, net	465	485
Inventories	778	765
Prepaid expenses and other current assets	38	28
Current assets held for sale	15	80
Total current assets	1,476	1,739
Property and equipment, net	301	297
Operating lease right-of-use assets	999	983
Goodwill	403	403
Other intangible assets, net	43	45
Deferred income taxes	158	142
Other assets	273	278
Total assets	\$ 3,653	\$ 3,887
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Trade accounts payable	\$ 779	\$ 755
Accrued expenses and other current liabilities	840	915
Income taxes payable	5	6
Short-term borrowings and current maturities of long-term debt	10	9
Current liabilities held for sale	8	12
Total current liabilities	1,642	1,697
Deferred income taxes and other long-term liabilities	113	120
Pension and postretirement obligations, net	13	15
Long-term debt, net of current maturities	173	165
Operating lease liabilities, net of current portion	819	789
Total liabilities	2,760	2,786
Contingencies (Note 10)		
Stockholders' equity:		
Common stock — authorized 80,000,000 shares of \$0.01 par value; issued shares — 67,382,080 at June 29, 2024 and 66,700,292 at December 30, 2023; outstanding shares — 34,321,389 at June 29, 2024 and 36,959,377 at December 30, 2023	1	1
Additional paid-in capital	2,759	2,752
Accumulated other comprehensive loss	(117)	(114)
Accumulated deficit	(370)	(312)
Treasury stock, at cost — 33,060,691 shares at June 29, 2024 and 29,740,915 shares at December 30, 2023	(1,380)	(1,226)
Total stockholders' equity	893	1,101
Total liabilities and stockholders' equity	\$ 3,653	\$ 3,887

This report should be read in conjunction with the Notes to Condensed Consolidated Financial Statements herein and the Notes to Consolidated Financial Statements in the 2023 Form 10-K.

THE ODP CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In millions)
(Unaudited)

	26 Weeks Ended	
	June 29, 2024	July 1, 2023
Cash flows from operating activities:		
Net income (loss)	\$ (58)	\$ 107
Loss from discontinued operations, net of tax	(85)	(20)
Net income from continuing operations	27	127
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Depreciation and amortization	49	50
Amortization of debt discount and issuance costs	1	1
Charges for losses on receivables and inventories	12	10
Asset impairments	14	10
Gain on disposition of assets, net	(1)	(1)
Compensation expense for share-based payments	20	14
Deferred income taxes and deferred tax asset valuation allowances	(18)	23
Changes in working capital and other operating activities	(61)	(65)
Net cash provided by operating activities of continuing operations	43	169
Net cash used in operating activities of discontinued operations	(16)	(20)
Net cash provided by operating activities	27	149
Cash flows from investing activities:		
Capital expenditures	(50)	(36)
Businesses acquired, net of cash acquired	—	(10)
Proceeds from disposition of assets	1	101
Settlement of company-owned life insurance policies	1	1
Net cash provided by (used in) investing activities of continuing operations	(48)	56
Net cash used in investing activities of discontinued operations	(5)	(10)
Net cash provided by (used in) investing activities	(53)	46
Cash flows from financing activities:		
Net payments on long and short-term borrowings	(5)	(9)
Debt retirement	(240)	(165)
Debt issuance	246	165
Share purchases for taxes, net of proceeds from employee share-based transactions	(15)	(23)
Repurchase of common stock for treasury	(153)	(231)
Other financing activities	(7)	—
Net cash used in financing activities of continuing operations	(174)	(263)
Net cash provided by (used in) financing activities of discontinued operations	—	—
Net cash used in financing activities	(174)	(263)
Effect of exchange rate changes on cash, cash equivalents and restricted cash		
	(2)	1
Net decrease in cash, cash equivalents and restricted cash	(202)	(67)
Cash, cash equivalents and restricted cash at beginning of period	395	404
Cash, cash equivalents and restricted cash at end of period	\$ 193	\$ 337
Supplemental information on non-cash investing and financing activities		
Right-of-use assets obtained in exchange for new operating lease liabilities	\$ 155	\$ 148
Right-of-use assets obtained in exchange for new finance lease liabilities	8	3
Cash interest paid, net of amounts capitalized and non-recourse debt	8	10
Cash taxes paid, net	11	19

This report should be read in conjunction with the Notes to Condensed Consolidated Financial Statements herein and the Notes to Consolidated Financial Statements in the 2023 Form 10-K.

THE ODP CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In millions, except share amounts)
(Unaudited)

	26 Weeks Ended June 29, 2024						
	Common Stock Shares	Common Stock Amount	Additional Paid-in Capital	Accumulated Other Comprehen- sive Loss	Accumulated Deficit	Treasury Stock	Total Equity
Balance at December 30, 2023	66,700,292	\$ 1	\$ 2,752	\$ (114)	\$ (312)	\$ (1,226)	\$ 1,101
Net income	—	—	—	—	15	—	15
Other comprehensive loss	—	—	—	(3)	—	—	(3)
Exercise and release of incentive stock (including income tax benefits and withholding)	258,397	—	(6)	—	—	—	(6)
Amortization of long-term incentive stock grants	—	—	11	—	—	—	11
Repurchase of common stock	—	—	—	—	—	(50)	(50)
Other	—	—	1	—	—	—	1
Balance at March 30, 2024	66,958,689	\$ 1	\$ 2,758	\$ (117)	\$ (297)	\$ (1,276)	\$ 1,069
Net loss	—	—	—	—	(73)	—	(73)
Other comprehensive income	—	—	—	—	—	—	—
Exercise and release of incentive stock (including income tax benefits and withholding)	423,391	—	(9)	—	—	—	(9)
Amortization of long-term incentive stock grants	—	—	11	—	—	—	11
Repurchase of common stock	—	—	—	—	—	(104)	(104)
Other	—	—	(1)	—	—	—	(1)
Balance at June 29, 2024	67,382,080	\$ 1	\$ 2,759	\$ (117)	\$ (370)	\$ (1,380)	\$ 893

	26 Weeks Ended July 1, 2023						
	Common Stock Shares	Common Stock Amount	Additional Paid-in Capital	Accumulated Other Comprehen- sive Loss	Accumulated Deficit	Treasury Stock	Total Equity
Balance at December 31, 2022	65,636,015	\$ 1	\$ 2,742	\$ (77)	\$ (451)	\$ (928)	\$ 1,287
Net income	—	—	—	—	72	—	72
Other comprehensive income	—	—	—	2	—	—	2
Exercise and release of incentive stock (including income tax benefits and withholding)	812,978	—	(19)	—	—	—	(19)
Amortization of long-term incentive stock grants	—	—	9	—	—	—	9
Repurchase of common stock	—	—	—	—	—	(202)	(202)
Other	—	—	—	—	—	(1)	(1)
Balance at April 1, 2023	66,448,993	\$ 1	\$ 2,732	\$ (75)	\$ (379)	\$ (1,131)	\$ 1,148
Net income	—	—	—	—	34	—	34
Other comprehensive income	—	—	—	4	—	—	4
Exercise and release of incentive stock (including income tax benefits and withholding)	148,113	—	(4)	—	—	—	(4)
Amortization of long-term incentive stock grants	—	—	9	—	—	—	9
Repurchase of common stock	—	—	—	—	—	(31)	(31)
Other	—	—	—	—	1	—	1
Balance at July 1, 2023	66,597,106	\$ 1	\$ 2,737	\$ (71)	\$ (344)	\$ (1,162)	\$ 1,161

This report should be read in conjunction with the Notes to Condensed Consolidated Financial Statements herein and the Notes to Consolidated Financial Statements in the 2023 Form 10-K.

THE ODP CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

BASIS OF PRESENTATION

The ODP Corporation (including its consolidated subsidiaries, “ODP” or the “Company”) is a leading provider of products, services and technology solutions through an integrated business-to-business (“B2B”) distribution platform and omni-channel presence, which includes supply chain and distribution operations, dedicated sales professionals, online presence, and a network of Office Depot and OfficeMax retail stores. Through its operating companies ODP Business Solutions, LLC; Office Depot, LLC; and Veyer, LLC, The ODP Corporation empowers every business, professional, and consumer to achieve more every day.

The Company has three reportable segments (or “Divisions”), which are ODP Business Solutions Division, Office Depot Division, and Veyer Division. Refer to Note 3 for additional information. On April 24, 2024, the Company’s Board of Directors provided their approval of management’s commitment to a plan to sell its Varis Division through a single disposal group. Accordingly, Varis Division is presented as discontinued operations beginning in the second quarter of 2024. The Company has reclassified the financial results of the Varis Division to discontinued operations, net of tax in the Condensed Consolidated Statements of Operations for all periods presented. The Company also reclassified the related assets and liabilities as assets and liabilities held for sale on the accompanying Condensed Consolidated Balance Sheets as of June 29, 2024, and December 30, 2023. Cash flows from the Company’s discontinued operations are presented as such in the Condensed Consolidated Statements of Cash Flows for all periods. Refer to Note 11 for additional information.

The Condensed Consolidated Financial Statements as of June 29, 2024, and for the 13-week and 26-week periods ended June 29, 2024 (also referred to as the “second quarter of 2024” and the “first half of 2024,” respectively), and July 1, 2023 (also referred to as the “second quarter of 2023” and the “first half of 2023,” respectively) are unaudited. However, in management’s opinion, these Condensed Consolidated Financial Statements reflect all adjustments of a normal recurring nature necessary to provide a fair presentation of the Company’s financial position, results of operations, and cash flows for the periods presented.

The Company has prepared the Condensed Consolidated Financial Statements included herein pursuant to the rules and regulations of the SEC. Some information and note disclosures, which would normally be included in comprehensive annual financial statements prepared in accordance with accounting principles generally accepted in the United States (“GAAP”), have been condensed or omitted pursuant to those SEC rules and regulations. The preparation of these Condensed Consolidated Financial Statements requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. For a better understanding of the Company and its Condensed Consolidated Financial Statements, the Company recommends reading these Condensed Consolidated Financial Statements in conjunction with the audited financial statements, which are included in the Company’s 2023 Form 10-K. These interim results are not necessarily indicative of the results that should be expected for the full year.

CASH MANAGEMENT

The cash management process generally utilizes zero balance accounts which provide for the settlement of the related disbursement and cash concentration accounts on a daily basis. Amounts not yet presented for payment to zero balance disbursement accounts of \$8 million and \$13 million at June 29, 2024 and December 30, 2023, respectively, are presented in Trade accounts payable and Accrued expenses and other current liabilities.

At June 29, 2024 and December 30, 2023, cash and cash equivalents held outside the United States amounted to \$68 million and \$106 million, respectively. In the first half of 2024, the Company repatriated \$25 million cash that was held in Canada, for a cost of \$1 million.

The Company has certain ongoing pension obligations related to its frozen defined benefit pension plan in the United Kingdom (“UK”). Restricted cash consists primarily of cash in bank committed to fund UK pension obligations based on the agreements that govern the UK pension plan. Restricted cash is valued at cost, which approximates fair value. Restricted cash was \$3 million at June 29, 2024 and December 30, 2023, and is presented in Other assets.

In addition, \$10 million of cash at both June 29, 2024 and December 30, 2023 relates to the Varis Division and is presented in Current assets held for sale.

THE ODP CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited) – (Continued)

REVENUE AND CONTRACT BALANCES

The Company generates substantially all of its revenue from contracts with customers for the sale of products and services. Refer to Note 3 for information on revenue by reportable segment and product category. Contract balances primarily consist of receivables, assets related to deferred contract acquisition costs, liabilities related to payments received in advance of performance under the contract, and liabilities related to unredeemed gift cards and loyalty programs. The following table provides information about receivables, contract assets, and contract liabilities from contracts with customers:

<i>(In millions)</i>	June 29, 2024	December 30, 2023
Trade receivables, net	\$ 360	\$ 367
Short-term contract assets	4	4
Long-term contract assets	1	1
Short-term contract liabilities	26	29

The Company recognized revenues of \$11 million and \$21 million in the first half of 2024 and 2023, respectively, which were included in the short-term contract liability balance at the beginning of each respective period.

NEW ACCOUNTING STANDARDS

Standards that are not yet adopted:

Segment Reporting: In November 2023, the Financial Accounting Standards Board (the “FASB”) issued an accounting standard update that modified the disclosure requirements for all public entities that are required to report segment information. The update will change the reporting of segments by adding significant segment expenses, other segment items, title and position of chief operating decision maker and how they use the reported measures to make decisions. The update also requires all annual disclosures about reportable segment’s profit or loss and assets in interim periods. This accounting update is effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024, with early adoption permitted. The Company is evaluating the impact of this new standard and believes the adoption will result in additional disclosures, but will not have any other impact on its Consolidated Financial Statements.

Income Taxes: In December 2023, the FASB issued an accounting standard update that enhances the transparency and decision usefulness of income tax disclosures by adding effects from state and local taxes, foreign tax, changes in tax laws or rates in current period, cross-border tax laws, tax credits, valuation allowances, nontaxable and nondeductible items, and unrecognized tax benefits. This update will also require separate disclosure for any reconciling items. This accounting update is effective for fiscal years beginning after December 15, 2024, and interim periods within fiscal years beginning after December 15, 2025, with early adoption permitted. The Company is evaluating the impact of this new standard and believes the adoption will result in additional disclosures, but will not have any other impact on its Consolidated Financial Statements.

NOTE 2. MERGER AND RESTRUCTURING ACTIVITY

The Company has taken actions to optimize its asset base and drive operational efficiencies. These actions include acquiring profitable businesses, closing underperforming retail stores and non-strategic distribution facilities, consolidating functional activities, eliminating redundant positions and disposing of non-strategic businesses and assets. The expenses and any income recognized directly associated with these actions are included in Merger and restructuring expenses, net on a separate line in the Condensed Consolidated Statements of Operations in order to identify these activities apart from the expenses incurred to sell to and service customers. These expenses are not included in the determination of Division operating income. The table below summarizes the major components of Merger and restructuring expenses, net.

<i>(In millions)</i>	Second Quarter		First Half	
	2024	2023	2024	2023
Merger and transaction related expenses				
Transaction and integration	\$ —	\$ —	\$ —	\$ —
Total Merger and transaction related expenses	—	—	—	—
Restructuring expenses				
Severance	15	—	26	—
Professional fees	8	—	14	—
Facility closure, contract termination, and other expenses, net	2	1	5	1
Total Restructuring expenses, net	25	1	45	1
Total Merger and restructuring expenses, net	\$ 25	\$ 1	\$ 45	\$ 1

THE ODP CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited) – (Continued)

MERGER AND TRANSACTION RELATED EXPENSES

Transaction and integration expenses include legal, accounting, and other third-party expenses incurred in connection with acquisitions. In the second quarter and first half of 2024, the Company recognized transaction and integration expenses of less than \$1 million related to potential acquisition activities. The Company did not have any transaction and integration expenses in the second quarter of 2023, and had less than \$1 million of expenses in the first half of 2023.

RESTRUCTURING EXPENSES

Project Core

In March 2024, the Company's Board of Directors approved a restructuring plan to redesign its company-wide low-cost business model approach and create further efficiencies in its business to lower costs ("Project Core"). This was driven by a need to significantly reduce costs due to macroeconomic and other factors impacting the Company's sales, as well as insights gained following the first year of operations of realignment of its operating segments into four divisions. The scope of Project Core was approved in two phases, in March 2024 and April 2024, and includes cost improvement actions across the entire enterprise, including the Varis Division, which is now presented as discontinued operations. It aims to optimize the Company's organizational structure to support future growth of the business. Project Core is expected to be completed in 2025, with the majority of actions expected to be taken by the end of 2024. Total restructuring costs related to Project Core are estimated to be up to \$57 million, of which \$35 million are estimated to be termination benefits, which mainly consists of severance, and \$22 million are estimated to be costs to facilitate the program, which consists of third-party professional fees, and other incremental employee-related costs to implement actions. All costs of Project Core are expected to be cash expenditures.

In the second quarter of 2024, the Company incurred \$24 million of restructuring costs associated with Project Core. Of these costs, \$15 million was severance and \$9 million were costs to facilitate the program, which mainly consisted of third-party professional fees. In the first half of 2024, the Company incurred \$42 million of restructuring costs associated with Project Core. Of these costs, \$26 million was severance and \$16 million were costs to facilitate the program, which mainly consisted of third-party professional fees. In addition, in the first half of 2024, the Company incurred \$8 million of severance expenses related to the Varis Division, which are presented in discontinued operations and excluded from the table above.

The Company made cash payments of \$30 million and \$32 million associated with expenditures for Project Core in the second quarter and first half of 2024, respectively. Of these cash payments, \$8 million were related to the Varis Division.

Maximize B2B Restructuring Plan

Since the inception of the Maximize B2B Restructuring Plan in May 2020, the Company has closed a total of 297 retail stores and two distribution facilities through 2023, with an additional eight and 20 retail stores closed in the second quarter and first half of 2024, respectively, under this plan. In the second quarter and first half of 2024, the Company incurred \$1 million and \$3 million of restructuring costs associated with the Maximize B2B Restructuring Plan, respectively, and made cash payments of \$3 million and \$5 million associated with these expenditures, respectively. In the second quarter and first half of 2023, the Company incurred \$1 million of restructuring costs associated with the Maximize B2B Restructuring Plan, and made cash payments of \$1 million and \$4 million, respectively, associated with expenditures for the Maximize B2B Restructuring Plan.

MERGER AND RESTRUCTURING ACCRUALS

The activity in the merger and restructuring accruals the first half of 2024 is presented in the table below. Certain merger and restructuring charges are excluded from the table because they are paid as incurred or non-cash, such as accelerated depreciation and gains and losses on asset dispositions.

<i>(In millions)</i>	Balance as of December 30, 2023	Charges (credits) Incurred	Cash Payments	Balance as of June 29, 2024
Termination benefits:				
Project Core	\$ —	\$ 26	\$ (11)	\$ 15
Maximize B2B Restructuring Plan	2	—	(1)	1
Lease and contract obligations, accruals for facilities closures and other costs:				
Project Core	—	14	(12)	2
Maximize B2B Restructuring Plan	3	3	(3)	3
Comprehensive Business Review	1	(1)	—	—
Total	\$ 6	\$ 42	\$ (27)	\$ 21

Substantially all of these liabilities are short-term and are included in Accrued expenses and other current liabilities in the Condensed Consolidated Balance Sheets.

THE ODP CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited) – (Continued)

NOTE 3. SEGMENT INFORMATION

At June 29, 2024, the Company had three reportable segments:

ODP Business Solutions Division – The Company’s leading B2B distribution solutions provider serving small, medium, and enterprise level companies, including those in the public and education sectors. This segment operates in the United States, Puerto Rico, the U.S. Virgin Islands, and Canada. The ODP Business Solutions Division sells nationally branded, as well as the Company’s private branded, office supply and adjacency products and services to customers, who are served through a dedicated sales force, catalogs, telesales, and electronically through the Company’s Internet websites. Adjacency products and services include cleaning, janitorial and breakroom supplies, office furniture, technology products, and copy and print services. This segment also includes our Federation entities, which are over 20 regional office supply distribution businesses acquired by the Company as part of its transformation to expand its reach and distribution network into geographic areas that were previously underserved, and which continue to operate under their own brand names. The acquisition of these businesses has allowed for an effective means to expand our distribution reach, target new business customers, and grow our offerings beyond traditional office supplies.

Office Depot Division – The Company’s leading provider of retail consumer and small business products and services distributed through a fully integrated omni-channel platform of 894 Office Depot and OfficeMax retail locations in the United States, Puerto Rico, and the U.S. Virgin Islands, and an eCommerce presence (www.officedepot.com). The Office Depot Division sells office supplies, technology products and solutions, business machines and related supplies, cleaning, breakroom and facilities products, personal protective equipment, and office furniture, as well as offering business services including copying, printing, digital imaging, mailing, shipping, and technology support services. In addition, the print needs for retail and business customers are facilitated through the Company’s regional print production centers.

Veyer Division – The Company’s supply chain, distribution, procurement, and global sourcing operation, which specializes in B2B and consumer business service delivery, with core competencies in distribution, fulfillment, transportation, global sourcing, and purchasing. The Veyer Division’s customers include our Office Depot Division and ODP Business Solutions Division, as well as third-party customers. The Veyer Division also includes the Company’s global sourcing operations in Asia.

On April 24, 2024, management obtained the Board of Directors’ approval and committed to a plan to sell its Varis Division through a single disposal group. The Varis Division is the Company’s tech-enabled B2B indirect procurement marketplace, which provides a seamless way for buyers and suppliers to transact through the platform’s consumer-like buying experience, advanced spend management tools, network of suppliers, and technology capabilities. The Varis Division disposal group has met the accounting criteria to be classified as held for sale as of April 2024 and is presented as discontinued operations beginning in the second quarter of 2024. Refer to Note 11 for additional information.

Division operating income is determined based on the measure of performance reported internally to manage the business and for resource allocation. This measure charges to the respective Divisions those expenses considered directly or closely related to their operations and allocates support costs. Certain operating expenses and credits are not allocated to the Divisions, including asset impairments and merger and restructuring expenses, net, as well as expenses and credits retained at the Corporate level, including certain management costs and legacy pension and environmental matters. Other companies may charge more or less of these items to their segments and results may not be comparable to similarly titled measures used by other entities.

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The following is a summary of sales and operating income by each of the Divisions, reconciled to consolidated totals:

<i>(In millions)</i>	ODP Business Solutions Division	Office Depot Division	Veyer Division	Eliminations	Total
Second Quarter of 2024					
Sales (external)	\$ 915	\$ 792	\$ 10	\$ —	\$ 1,717
Sales (internal)	2	7	1,167	(1,176)	—
Total sales	\$ 917	\$ 799	\$ 1,177	\$ (1,176)	\$ 1,717
Division operating income	\$ 29	\$ 17	\$ 5	\$ —	\$ 51
First Half of 2024					
Sales (external)	\$ 1,838	\$ 1,729	\$ 19	\$ —	\$ 3,586
Sales (internal)	5	15	2,401	(2,421)	—
Total sales	\$ 1,843	\$ 1,744	\$ 2,420	\$ (2,421)	\$ 3,586
Division operating income	\$ 59	\$ 68	\$ 14	\$ —	\$ 141
Second Quarter of 2023					
Sales (external)	\$ 999	\$ 898	\$ 10	\$ —	\$ 1,907
Sales (internal)	3	8	1,312	(1,323)	—
Total sales	\$ 1,002	\$ 906	\$ 1,322	\$ (1,323)	\$ 1,907
Division operating income	\$ 45	\$ 35	\$ 6	\$ —	\$ 86
First Half of 2023					
Sales (external)	\$ 2,005	\$ 1,991	\$ 17	\$ —	\$ 4,013
Sales (internal)	7	17	2,725	(2,749)	—
Total sales	\$ 2,012	\$ 2,008	\$ 2,742	\$ (2,749)	\$ 4,013
Division operating income	\$ 84	\$ 120	\$ 21	\$ —	\$ 225

The reconciliation of the measure of Division operating income to Consolidated income from continuing operations before income taxes is as follows, and includes charges and credits retained at the Corporate level:

<i>(In millions)</i>	Second Quarter		First Half	
	2024	2023	2024	2023
Total Divisions operating income	\$ 51	\$ 86	\$ 141	\$ 225
Add/(subtract):				
Asset impairments	(8)	(6)	(14)	(10)
Merger and restructuring expenses, net	(25)	(1)	(45)	(1)
Unallocated expenses	(18)	(19)	(41)	(42)
Interest income	2	2	5	4
Interest expense	(5)	(5)	(10)	(10)
Other income, net	(1)	3	(1)	5
Income (loss) from continuing operations before income taxes	\$ (4)	\$ 60	\$ 35	\$ 171

The following table provides information about disaggregated sales by major categories:

<i>(In millions)</i>	Second Quarter		First Half	
	2024	2023	2024	2023
Major sales categories				
Supplies	\$ 846	\$ 948	\$ 1,775	\$ 1,999
Technology	475	525	1,004	1,139
Furniture and other	236	271	489	550
Copy and print	160	163	318	325
Total	\$ 1,717	\$ 1,907	\$ 3,586	\$ 4,013

The components of goodwill by segment are as follows:

<i>(In millions)</i>	Balance as of December 30, 2023	Balance as of June 29, 2024
ODP Business Solutions Division	\$ 149	\$ 149
Office Depot Division	219	219
Veyer Division	35	35
Total	\$ 403	\$ 403

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Goodwill and indefinite-lived intangible assets are tested for impairment annually as of the first day of fiscal December or more frequently when events or changes in circumstances indicate that impairment may have occurred. Each reportable segment also represents a reporting unit. There were no events or changes in circumstances that indicate an impairment may have occurred during the second quarter of 2024. The Company will continue to evaluate the recoverability of goodwill at the reporting unit level. If the operating results of the Company's reporting units deteriorate in the future, it may cause the fair value of one or more of the reporting units to fall below their carrying value, resulting in goodwill impairment charges.

NOTE 4. INCOME TAXES

The Company's effective tax rates were 0% and 23% for the second quarter and first half of 2024, respectively, and 28% and 26% for the second quarter and first half of 2023, respectively. For the second quarter and first half of 2024, the Company's effective tax rates were primarily impacted by the recognition of a tax benefit associated with stock-based compensation awards year-to-date and the settlement of an uncertain tax position for less than the reserve in the first quarter partially offset by additional uncertain tax positions in the second quarter. For the second quarter and first half of 2023, the Company's effective rates were primarily impacted by the recognition of a tax benefit associated with stock-based compensation awards year-to-date. These factors, along with the impact of state taxes and the mix of income and losses across U.S. and non-U.S. jurisdictions, caused the Company's effective tax rate to differ from the statutory rate of 21%. Changes in pretax income projections and the mix of income across jurisdictions could impact the effective tax rates in future quarters.

The Company continues to have a U.S. valuation allowance for certain U.S. federal credits and state tax attributes, which relates to deferred tax assets that require certain types of income or for income to be earned in certain jurisdictions in order to be realized. The Company will continue to assess the realizability of its deferred tax assets in the U.S. and remaining foreign jurisdictions in future periods. Changes in pretax income projections could impact this evaluation in future periods.

The Company files a U.S. federal income tax return and other income tax returns in various states and foreign jurisdictions. With few exceptions, the Company is no longer subject to U.S. federal and state and local income tax examinations for years prior to 2021 and 2014, respectively. The acquired OfficeMax U.S. consolidated group is no longer subject to U.S. federal income tax examination, and with few exceptions, is no longer subject to U.S. state and local income tax examinations for years prior to 2013. Generally, the Company is subject to routine examination for years 2013 and forward in its international tax jurisdictions.

It is anticipated that \$4 million of tax positions will be resolved within the next 12 months. Additionally, the Company anticipates that it is reasonably possible that new issues will be raised or resolved by tax authorities that may require changes to the balance of unrecognized tax benefits; however, an estimate of such changes cannot be reasonably made at this time.

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NOTE 5. EARNINGS (LOSS) PER SHARE

The following table represents the calculation of earnings per common share – basic and diluted:

<i>(In millions, except per share amounts)</i>	Second Quarter		First Half	
	2024	2023	2024	2023
Basic Earnings (Loss) Per Share				
Numerator:				
Net income (loss) from continuing operations	\$ (4)	\$ 43	\$ 27	\$ 127
Loss from discontinued operations, net of tax	(69)	(9)	(85)	(20)
Net income (loss)	<u>\$ (73)</u>	<u>\$ 34</u>	<u>\$ (58)</u>	<u>\$ 107</u>
Denominator:				
Weighted-average shares outstanding	35	38	36	40
Basic earnings (loss) per share				
Continuing operations	\$ (0.12)	\$ 1.11	\$ 0.75	\$ 3.22
Discontinued operations	(1.93)	(0.22)	(2.34)	(0.52)
Net basic earnings (loss) per share	<u>\$ (2.05)</u>	<u>\$ 0.89</u>	<u>\$ (1.59)</u>	<u>\$ 2.70</u>
Diluted Earnings (Loss) Per Share				
Numerator:				
Net income (loss) from continuing operations	\$ (4)	\$ 43	\$ 27	\$ 127
Loss from discontinued operations, net of tax	(69)	(9)	(85)	(20)
Net income (loss)	<u>\$ (73)</u>	<u>\$ 34</u>	<u>\$ (58)</u>	<u>\$ 107</u>
Denominator:				
Weighted-average shares outstanding	35	38	36	40
Effect of dilutive securities:				
Stock options and restricted stock	—	1	1	1
Diluted weighted-average shares outstanding	<u>35</u>	<u>39</u>	<u>37</u>	<u>41</u>
Diluted earnings (loss) per share				
Continuing operations	\$ (0.12)	\$ 1.09	\$ 0.73	\$ 3.11
Discontinued operations	(1.93)	(0.22)	(2.28)	(0.50)
Net diluted earnings (loss) per share	<u>\$ (2.05)</u>	<u>\$ 0.87</u>	<u>\$ (1.55)</u>	<u>\$ 2.61</u>

Awards of stock options and nonvested shares representing additional shares of outstanding common stock were 1 million and less than 1 million in the second quarter and first half of 2024, respectively, and 1 million and less than 1 million the second quarter and first half of 2023, respectively, but they were not included in the computation of diluted weighted-average shares outstanding because their effect would have been antidilutive.

NOTE 6. DEBT

On May 9, 2024, the Company entered into the Fourth Amended and Restated Credit Agreement (the “Fourth Amended Credit Agreement”), which provides for an \$800 million asset-based revolving credit facility (the “New Facility”). The New Facility matures on May 9, 2029. The Fourth Amended Credit Agreement replaced the Company’s then existing amended and restated credit agreement, the Third Amended and Restated Credit Agreement (the “Third Amended Credit Agreement”), that was due to mature in April 2025. The Company retired \$53 million of outstanding asset-based first-in, last-out term loan facility (the “FILO Term Loan Facility”) loans under the Third Amended Credit Agreement prior to its amendment, resulting in no remaining FILO Term Loan Facility loans. The Company incurred approximately \$5 million of new debt issuance costs for the Fourth Amended Credit Agreement, which will be recognized in interest expense through May 2029, the maturity date of the New Facility. The Company recognized less than \$1 million of loss from modification of debt related to this transaction in the second quarter of 2024, which represented the write-off of certain unamortized debt issuance costs as of the closing date of the transaction.

As provided by the Fourth Amended Credit Agreement, available amounts that can be borrowed at any given time are based on percentages of certain outstanding accounts receivable, credit card receivables, inventory, and the cash value of company-owned life insurance policies. During the first half of 2024, the Company elected to draw down \$246 million from its credit facilities under the Third and Fourth Amended Credit Agreements for working capital management. Of this amount, \$187 million was repaid during the first half of 2024, resulting in \$59 million of revolving loans outstanding under the New Facility at June 29, 2024. At June 29, 2024, the Company had \$41 million of outstanding standby letters of credit and \$641 million of available credit under the Fourth Amended Credit Agreement. The Company was in compliance with all applicable covenants at June 29, 2024.

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NOTE 7. STOCKHOLDERS' EQUITY

Accumulated other comprehensive loss activity, net of tax, where applicable, is provided in the following table:

<i>(In millions)</i>	Foreign Currency Translation Adjustments	Change in Deferred Pension and Other	Total
Balance at December 30, 2023	\$ (31)	\$ (83)	\$ (114)
Other comprehensive loss activity	(3)	—	(3)
Balance at June 29, 2024	<u>\$ (34)</u>	<u>\$ (83)</u>	<u>\$ (117)</u>

TREASURY STOCK

In February 2024, the Company's Board of Directors approved a new stock repurchase program of up to \$1 billion of its common stock, available through March 31, 2027, which replaced the then existing \$1 billion stock repurchase program. The new authorization may be suspended or discontinued at any time. The exact timing of share repurchases will depend on market conditions and other factors, and will be funded through available cash balances.

The Company repurchased 2 million shares of its common stock at a cost of \$104 million and 3 million shares at a cost of \$154 million in the second quarter and first half of 2024, respectively. As of June 29, 2024, \$869 million remains available for stock repurchases under the current stock repurchase program. Subsequent to the end of the second quarter of 2024 and through July 31, 2024, the Company repurchased 741 thousand shares of its common stock at a cost of \$29 million.

At June 29, 2024, there were 33 million shares of common stock held in treasury. The Company's Fourth Amended Credit Agreement permits restricted payments, such as common stock repurchases, but may be limited if the Company does not meet the required minimum liquidity or fixed charge coverage ratio requirements. Refer to Note 6 for additional information about the Company's compliance with covenants.

DIVIDENDS ON COMMON STOCK

The Company did not declare any cash dividends in the second quarter and first half of 2024. The Company does not anticipate declaring cash dividends in the foreseeable future. The Company's Fourth Amended Credit Agreement permits restricted payments, such as dividends, but may be limited if the Company does not meet the required minimum liquidity or fixed charge coverage ratio requirements. Refer to Note 6 for additional information about the Company's compliance with covenants.

NOTE 8. EMPLOYEE BENEFIT PLANS

Net periodic pension benefits for the North America and United Kingdom ("UK") pension plans and other postretirement benefit plans (the "Plans") are recorded at the Corporate level. The service cost for the Plans are reflected in Selling, general and administrative expenses, and the other components of net periodic pension benefits are reflected in Other income, net, in the Condensed Consolidated Statements of Operations.

PENSION AND OTHER POSTRETIREMENT BENEFIT PLANS – NORTH AMERICA

The components of net periodic pension benefit for the Company's North America pension plans are as follows:

<i>(In millions)</i>	Second Quarter		First Half	
	2024	2023	2024	2023
Interest cost	\$ 7	\$ 8	\$ 14	\$ 16
Expected return on plan assets	(7)	(8)	(14)	(17)
Amortization of gain	(1)	(2)	(1)	(3)
Net periodic pension benefit	<u>\$ (1)</u>	<u>\$ (2)</u>	<u>\$ (1)</u>	<u>\$ (4)</u>

The North America qualified pension plan is in a net asset position and included in Other assets in the Condensed Consolidated Balance Sheets at June 29, 2024 and December 30, 2023. The North America nonqualified pension plan is in a net liability position and included in Pension and postretirement obligations, net in the Condensed Consolidated Balance Sheets at June 29, 2024 and December 30, 2023. In the first half of 2024, \$1 million of cash contributions were made to the North America pension plans. The Company expects to make additional cash contributions of approximately \$1 million to the North America pension plans during the remainder of 2024.

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PENSION PLAN – UNITED KINGDOM

The components of net periodic pension cost for the Company’s pension plan in the UK are as follows:

<i>(In millions)</i>	Second Quarter		First Half	
	2024	2023	2024	2023
Interest cost	\$ 2	\$ 1	\$ 4	\$ 3
Expected return on plan assets	(2)	(1)	(3)	(3)
Amortization of loss	1	—	1	—
Net periodic pension cost	<u>\$ 1</u>	<u>\$ —</u>	<u>\$ 2</u>	<u>\$ —</u>

The Company has a frozen defined benefit pension plan in the UK. In July 2023, in accordance with applicable UK pension regulations, Trustees of the UK pension plan entered into an agreement with an insurer for the bulk annuity purchase of the plan, covering 100% of the plan’s members. This agreement, or buy-in, resulted in an exchange of plan assets for an annuity that covers the plan’s future projected benefit obligations. The Company anticipates the buyout of the plan and transfer of future benefit obligations of plan participants to be completed with existing plan funds in 2025. Accordingly, the Company does not expect the transaction to result in material cash inflows or outflows. At the completion of the buy-out, the Company will remove the assets and liabilities of the UK pension plan from its Condensed Consolidated Balance Sheet and a final non-cash plan settlement loss will be included in net periodic pension cost.

The UK pension plan is in a net asset position and included in Other assets in the Condensed Consolidated Balance Sheets at June 29, 2024. There was no net funded amount as of December 30, 2023. In the first half of 2024, cash contributions of \$1 million were made to the UK pension plan. The Company anticipates making further cash contributions of \$1 million to the UK pension plan during the remainder of 2024.

NOTE 9. FAIR VALUE MEASUREMENTS

The Company measures fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date under current market conditions. In developing its fair value estimates, the Company uses the following hierarchy:

- Level 1: Quoted prices in active markets for identical assets or liabilities.
- Level 2: Observable market-based inputs or unobservable inputs that are corroborated by market data.
- Level 3: Significant unobservable inputs that are not corroborated by market data. Generally, these fair value measures are model-based valuation techniques such as discounted cash flows or option pricing models using the Company’s own estimates and assumptions or those expected to be used by market participants.

RECURRING FAIR VALUE MEASUREMENTS

In accordance with GAAP, certain assets and liabilities are required to be recorded at fair value on a recurring basis. The Company’s assets and liabilities that are adjusted to fair value on a recurring basis are money market funds that qualify as cash equivalents, and derivative financial instruments, which may be entered into to mitigate risks associated with changes in foreign currency exchange rates, fuel and other commodity prices and interest rates. The Company did not have derivative financial instruments during the second quarter and first half of 2024.

NONRECURRING FAIR VALUE MEASUREMENTS

In addition to assets and liabilities that are recorded at fair value on a recurring basis, the Company records certain assets and liabilities at fair value on a nonrecurring basis as required by GAAP. Generally, assets are recorded at fair value on a nonrecurring basis as a result of impairment charges. In the second quarter and first half of 2024, the Company recognized asset impairment charges of \$8 million and \$14 million, respectively. Of these asset impairment charges, \$7 million and \$12 million in the second quarter and first half of 2024, respectively, related to the impairment of operating lease right-of-use (“ROU”) assets associated with the Company’s retail store locations, with the remainder relating to impairment of fixed assets. In the second quarter and first half of 2023, the Company recognized asset impairment charges of \$6 million and \$10 million, respectively. Of these asset impairment charges, \$4 million and \$7 million in the second quarter and first half of 2023, respectively, was related to the impairment of operating lease ROU assets associated with the Company’s retail store locations, with the remainder relating to impairment of fixed assets and other assets. All impairment charges discussed in the sections below are presented in Asset impairments in the Condensed Consolidated Statements of Operations.

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The Company regularly reviews retail store assets for impairment indicators at the individual store level, as this represents the lowest level of identifiable cash flows. When indicators of impairment are present, a recoverability analysis is performed which considers the estimated undiscounted cash flows over the retail store's remaining life and uses input from retail operations and accounting and finance personnel. These inputs include management's best estimates of retail store-level sales, gross margins, direct expenses, exercise of future lease renewal options when reasonably certain to be exercised, and resulting cash flows that can naturally include judgments about how current initiatives will impact future performance. The assumptions used within the recoverability analysis for the retail stores were updated to consider current quarter retail store operational results and formal plans for future retail store closures as part of the Company's restructuring programs, including the probability of closure at the retail store level. While it is generally understood that closures will approximate the store's lease termination date, it is possible that changes in store performance or other conditions could result in future changes in assumptions utilized. These assumptions reflected declining sales over the forecast period, and gross margin and operating cost assumptions that are consistent with recent actual results and consider plans for future initiatives.

If the undiscounted cash flows of a retail store cannot support the carrying amount of its assets, the assets are impaired if necessary and written down to estimated fair value. The fair value of retail store assets is determined using a discounted cash flow analysis which uses Level 2 unobservable inputs that are corroborated by market data such as independent real estate valuation opinions. Specifically, the analysis uses assumptions of potential rental rates for each retail store location which are based on market data for comparable locations. These estimated cash flows used in the second quarter of 2024 impairment calculation were discounted at a weighted average discount rate of 7%.

The Company will continue to evaluate initiatives to improve performance and lower operating costs. There are uncertainties regarding the impact of supply chain and macroeconomic conditions on the future results of operations, including the forecast period used in the recoverability analysis. To the extent that forward-looking sales and operating assumptions are not achieved and are subsequently reduced, additional impairment charges may result. However, at the end of the second quarter of 2024, the impairment recognized reflects the Company's best estimate of future performance.

In addition to its retail store assets, the Company also regularly evaluates whether there are impairment indicators associated with its other long-lived assets. The Company did not identify any impairment indicators for these long-lived assets as of June 29, 2024, and as a result, there were no associated impairment charges.

The Company had assets held for sale of \$15 million as of June 29, 2024, consisting of \$8 million related to the Varis Division, \$6 million in land, and \$1 million in other property.

OTHER FAIR VALUE DISCLOSURES

The fair values of cash and cash equivalents, receivables, trade accounts payable and accrued expenses and other current liabilities approximate their carrying values because of their short-term nature.

The following table presents information about financial instruments at the balance sheet dates indicated.

<i>(In millions)</i>	June 29, 2024		December 30, 2023	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
Financial assets:				
Company-owned life insurance	\$ 129	\$ 129	\$ 138	\$ 138
Financial liabilities:				
Long-term debt:				
New Facilities loans under the Third Amended Credit Agreement, due 2025	—	—	53	53
New Facility loan under the Fourth Amended Credit Agreement, due 2029	59	59	—	—
Revenue bonds, due in varying amounts periodically through 2029	75	76	75	76
American & Foreign Power Company, Inc. 5% debentures, due 2030	16	14	16	14

The following methods and assumptions were used to estimate the fair value of each class of financial instruments:

- *Company-owned life insurance*: In connection with the 2013 OfficeMax merger, the Company acquired company-owned life insurance policies on certain former employees. The fair value of the company-owned life insurance policies is derived using determinable net cash surrender value, which is the cash surrender value less any outstanding loans (Level 2 measure). Death benefits received on company-owned life insurance policies, which are tax-free at payout, typically exceed their cash surrender values.

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- *Long-term debt:* Long-term debt, for which there were no transactions on the measurement date, was valued based on quoted market prices near the measurement date when available or by discounting the future cash flows of each instrument using rates based on the most recently observable trade or using rates currently offered to the Company for similar debt instruments of comparable maturities (Level 2 measure). The carrying amount of the New Facility loan under the Fourth Amended Credit Agreement approximates fair value because the interest rates vary with market interest rates. Refer to Note 6 for additional information about the Fourth Amended Credit Agreement.

NOTE 10. CONTINGENCIES

LEGAL MATTERS

The Company is involved in litigation arising in the normal course of business. While, from time to time, claims are asserted that make demands for a large sum of money (including, from time to time, actions which are asserted to be maintainable as class action suits), the Company does not believe that contingent liabilities related to these matters (including the matters discussed below), either individually or in the aggregate, will materially affect the Company's financial position, results of operations, or cash flows.

In the ordinary course of business, sales to and transactions with government customers may be subject to lawsuits, investigations, audits and review by governmental authorities and regulatory agencies, with which the Company cooperates. Many of these lawsuits, investigations, audits and reviews are resolved without material impact to the Company. While claims in these matters may at times assert large demands, the Company does not believe that contingent liabilities related to these matters, either individually or in the aggregate, will materially affect its financial position, results of operations, or cash flows.

In addition to the foregoing, OfficeMax is named as a defendant in a number of lawsuits, claims, and proceedings arising out of the operation of certain paper and forest products assets prior to those assets being sold in 2004, for which OfficeMax agreed to retain responsibility. Also, as part of that sale, OfficeMax agreed to retain responsibility for all pending, threatened and future proceedings alleging asbestos-related injuries arising out of the operation of the paper and forest products assets prior to the closing of the sale. The Company has made provision for losses with respect to the pending proceedings. Additionally, as of June 29, 2024, the Company has made provision for environmental liabilities with respect to certain sites where hazardous substances or other contaminants are or may be located. For these combined liabilities, the Company's estimated range of reasonably possible losses was approximately \$15 million to \$25 million. The Company regularly monitors its estimated exposure to these liabilities. As additional information becomes known, these estimates may change, however, the Company does not believe any of these OfficeMax retained proceedings are material to the Company's financial position, results of operations, or cash flows.

NOTE 11. DISCONTINUED OPERATIONS

On April 24, 2024, the Company's Board of Directors approved management's commitment to a plan to sell its Varis Division through a single disposal group. The Company is actively marketing its Varis Division for sale at a price that the Company believes is reasonable in relation to its current fair value. The Varis Division is available for immediate sale in its present condition and any sale is expected to be subject to customary regulatory approvals. Based on these considerations and management's experience and ability to complete similar transactions in the past, management believes the sale is probable and expects to complete it within one year. Further, subsequently in July 2024, the Company signed a non-binding term sheet with a potential buyer of the Varis Division. However, there can be no assurance regarding the ultimate timing of this planned disposition or that such disposition will be completed. The Varis Division disposal group has met the accounting criteria to be classified as held for sale as of April 2024 and therefore is presented as such in the second quarter of 2024. The planned disposition of the Varis Division represents a strategic shift that will have a major impact on the Company's operations and financial results. Accordingly, the Company has presented the operating results and cash flows of its Varis Division as discontinued operations for all periods presented.

The Company incurred a \$77 million non-cash loss from classification to held for sale related to the Varis Division in the second quarter of 2024, which was measured at the lower of its carrying amount or estimated fair value less costs to sell and is included in the valuation allowance of the current assets held for sale. The loss from the sale of the Varis Division may be different from this estimate based on the final selling price once a transaction is completed, but it is expected that any difference would not be material. Also, restructuring expenses incurred by the Varis Division, which were previously presented as Corporate expenses, are included in the measurement and presentation of discontinued operations for all periods presented.

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The following table represents a reconciliation of the major components of discontinued operations, net of tax, as presented in the Condensed Consolidated Statements of Operations.

<i>(In millions)</i>	Second Quarter		First Half	
	2024	2023	2024	2023
Major components of discontinued operations before income taxes:				
Sales	\$ 2	\$ 2	\$ 3	\$ 4
Cost of goods and occupancy costs:	—	1	—	2
Gross profit	2	1	3	2
Selling, general and administrative expenses	11	14	26	32
Merger and restructuring expenses, net	—	—	8	—
Operating loss	(9)	(13)	(31)	(30)
Loss from major components of discontinued operations before income taxes	(9)	(13)	(31)	(30)
Loss on disposal of discontinued operations	(77)	—	(77)	—
Loss from discontinued operations before income taxes	(86)	(13)	(108)	(30)
Income tax benefit	(17)	(4)	(23)	(10)
Discontinued operations, net of tax	\$ (69)	\$ (9)	\$ (85)	\$ (20)

The following table represents the major classes of assets and liabilities of the disposal group classified as held for sale presented in the Condensed Consolidated Balance Sheets as of June 29, 2024 and December 30, 2023.

<i>(In millions)</i>	June 29, 2024	December 30, 2023
Major classes of assets included in discontinued operations:		
Cash and cash equivalents	\$ 10	\$ 10
Receivables, net	1	2
Deferred tax assets	13	—
Property and equipment, net	61	62
Less: valuation allowance	(77)	—
Total assets of the disposal group classified as held for sale	\$ 8	\$ 74
Major classes of liabilities included in discontinued operations:		
Accrued expenses and other current liabilities	\$ 5	\$ 8
Deferred income taxes and other long-term liabilities	3	4
Total liabilities of the disposal group classified as held for sale	\$ 8	\$ 12

The Company had previously sold its CompuCom Division on December 31, 2021, through a transaction that was structured and accounted for as an equity sale. The Company did not have any financial results related to discontinued operations of the CompuCom Division on its Condensed Consolidated Statements of Operations for the periods presented. The Company received \$5 million of cash from the purchaser in the first quarter of 2023 related to the settlement of the total cash purchase price, which is reflected in cash flows from investing activities of discontinued operations on the Condensed Consolidated Cash Flow Statement. In addition, the Company has a promissory note with a principal balance of \$59 million from the purchaser of the CompuCom Division and a \$9 million receivable related to an earn-out provision included in the securities purchase agreement. The promissory note and the earn-out are non-current receivables as of June 29, 2024.

MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Safe Harbor Statement Under the Private Securities Litigation Reform Act of 1995

This document, including the following discussion and analysis, contains statements that constitute “forward-looking statements” within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and Section 27A of the Securities Act of 1933, as amended. All statements that are not statements of historical fact are forward-looking statements. Without limitation, when we use the words “believe,” “estimate,” “plan,” “expect,” “intend,” “anticipate,” “continue,” “may,” “project,” “probably,” “should,” “could,” “will” and similar expressions in this Quarterly Report on Form 10-Q, we are identifying forward-looking statements (as such term is defined in the Private Securities Litigation Reform Act of 1995). These statements appear in a number of places in this discussion and analysis and include statements regarding the intent, belief, or current expectations of the Company, its directors, or its officers with respect to, among other things, trends affecting the Company’s financial condition or results of operations, the Company’s ability to achieve its strategic plans, including the planned sale of Varis and benefits related to Project Core, liquidity, suppliers, consumers, customers, and employees, disruptions or inefficiencies in our supply chain, uncertainties arising from conflicts including the conflicts in Russia-Ukraine and in the Middle East, and macroeconomic drivers and their effect on the U.S. economy, changes in worldwide and U.S. economic conditions including higher interest rates that materially impact consumer spending and employment and the demand for our products and services, and the outcome of contingencies such as litigation and investigations. Readers are cautioned that any forward-looking statements are not guarantees of future performance and involve risks and uncertainties. More information regarding these risks, uncertainties and other important factors that could cause actual results to differ materially from those in the forward-looking statements is set forth herein under “Risk Factors,” found in Other Information which supplements our discussion of “Risk Factors” within Other Key Information in our Annual Report on Form 10-K filed on February 28, 2024 (the “2023 Form 10-K”) with the SEC, Forward-Looking Statements, found in our 2023 Form 10-K.

Management’s Discussion and Analysis of Financial Condition and Results of Operations (“MD&A”) is intended to provide information to assist readers in better understanding and evaluating our financial condition and results of operations. We recommend reading this MD&A in conjunction with our Condensed Consolidated Financial Statements and the Notes to those statements included in the “Financial Statements” section of this Quarterly Report on Form 10-Q, as well as our 2023 Form 10-K.

OVERVIEW

THE COMPANY

We are a leading provider of products, services and technology solutions through an integrated business-to-business (“B2B”) distribution platform and omni-channel presence, which includes supply chain and distribution operations, dedicated sales professionals, online presence, and a network of Office Depot and OfficeMax retail stores. Through our operating companies ODP Business Solutions, LLC; Office Depot, LLC; and Veyer, LLC, we empower every business, professional, and consumer to achieve more every day.

As of June 29, 2024, our operations are organized into three reportable segments (or “Divisions”), as described below. Our Varis Division, which is our tech-enabled B2B indirect procurement marketplace, is held for sale and is being presented as discontinued operations beginning in the second quarter of 2024. Refer to the “Recent Developments” section below.

ODP Business Solutions Division – Our leading B2B distribution solutions provider serving small, medium, and enterprise level companies, including those in the public and education sectors. This segment operates in the United States, Puerto Rico, the U.S. Virgin Islands, and Canada. The ODP Business Solutions Division sells nationally branded, as well as our private branded, office supply and adjacency products and services to customers, who are served through a dedicated sales force, catalogs, telesales, and electronically through our Internet websites. Adjacency products and services include cleaning, janitorial, and breakroom supplies, office furniture, technology products, and copy and print services. This segment also includes our Federation entities, which are over 20 regional office supply distribution businesses acquired by us as part of our transformation to expand our reach and distribution network into geographic areas that were previously underserved, and which continue to operate under their own brand names. The acquisition of these businesses has allowed for an effective and accretive means to expand our distribution reach, target new business customers, and grow our offerings beyond traditional office supplies.

Office Depot Division – Our leading provider of retail consumer and small business products and services distributed through a fully integrated omni-channel platform of 894 Office Depot and OfficeMax retail locations in the United States, Puerto Rico and the U.S. Virgin Islands, and an eCommerce presence (www.officedepot.com). Our Office Depot Division sells office supplies, technology products and solutions, business machines and related supplies, cleaning, breakroom and facilities products, personal protective equipment, and office furniture as well as offering business services including copying, printing, digital imaging, mailing, shipping, and technology support services. In addition, the print needs for retail and business customers are facilitated through our regional print production centers.

Veyer Division – Our supply chain, distribution, procurement and global sourcing operation, which specializes in B2B and consumer business service delivery, with core competencies in distribution, fulfillment, transportation, global sourcing, and purchasing. The Veyer Division’s customers include our Office Depot Division and ODP Business Solutions Division, as well as third-party customers. The Veyer Division also includes the Company’s global sourcing operations in Asia.

RECENT DEVELOPMENTS

Planned Disposition of our Varis Division

On April 24, 2024, our Board of Directors approved management’s commitment to a plan to sell our Varis Division through a single disposal group. We are actively marketing the Varis Division for sale at a price that we believe is reasonable in relation to its current fair value. The Varis Division is available for immediate sale in its present condition and any sale is expected to be subject to customary regulatory approvals. Based on these considerations and management’s experience and ability to complete similar transactions in the past, management expects to complete the sale within one year. Further, subsequently in July 2024, we signed a non-binding term sheet with a potential buyer of the Varis Division. However, there can be no assurance regarding the ultimate timing of this planned disposition or that such disposition will be completed. The Varis Division disposal group has met the accounting criteria to be classified as held for sale as of April 2024 and therefore is presented as such in the second quarter of 2024. The planned disposition of our Varis Division represents a strategic shift that will have a major impact on our operations and financial results. Accordingly, the operating results and cash flows of the Varis Division are classified as discontinued operations for all periods presented. Refer to Note 11. “Discontinued Operations” in Notes to Condensed Consolidated Financial Statements for additional information.

RECENT GLOBAL EVENTS

We are closely monitoring the unfolding events due to the conflict in the Middle East, and its regional and global ramifications. We do not have operations in the Middle East, and our supply chain has not been impacted as of the date of this report. Other impacts due to this rapidly evolving situation are currently unknown and the broader economic impacts could potentially subject our business to materially adverse consequences should the situation escalate beyond its current scope.

CONSOLIDATED RESULTS OF CONTINUING OPERATIONS AND LIQUIDITY

The following summarizes the more significant factors impacting our operating results for the 13-week and 26-week periods ended June 29, 2024 (also referred to as the “second quarter of 2024” and the “the first half of 2024,” respectively) and July 1, 2023 (also referred to as the “second quarter of 2023” and the “the first half of 2023,” respectively).

Our consolidated sales were lower by \$190 million, or 10%, in the second quarter of 2024 compared to the same period in the prior year. Sales in our ODP Business Solutions Division decreased \$84 million, or 8%, as compared to the same period in the prior year. Our ODP Business Solutions Division experienced decreased sales across a majority of its product categories, primarily in technology and supplies. This was driven by lower demand from business-to-business customers, due to reduced spending, and fewer customers. Sales in our Office Depot Division decreased \$106 million, or 12%, as compared to the same period in the prior year, mainly as a result of planned store closures, lower demand, and lower average order values at our retail stores and eCommerce platform. The sales decline was across the majority of Office Depot Division’s product categories. The contribution of our Veyer Division to consolidated sales was not material.

Our consolidated sales were lower by \$427 million, or 11%, in the first half of 2024 compared to the same period in the prior year. Sales in our ODP Business Solutions Division decreased \$167 million, or 8%, and sales in our Office Depot Division decreased \$262 million, or 13%, as compared to the same period in the prior year. The drivers of the sales decline in the first half of 2024 for both our ODP Business Solutions Division and Office Depot Division were consistent with those described above for the second quarter of 2024. The contribution of our Veyer Division to consolidated sales was not material.

Sales (External) (In millions)	Second Quarter			First Half		
	2024	2023	Change	2024	2023	Change
ODP Business Solutions Division	\$ 915	\$ 999	(8)%	\$ 1,838	\$ 2,005	(8)%
Office Depot Division	792	898	(12)%	1,729	1,991	(13)%
Veyer Division	10	10	0%	19	17	12%
Total	\$ 1,717	\$ 1,907	(10)%	\$ 3,586	\$ 4,013	(11)%

OTHER SIGNIFICANT FACTORS IMPACTING TOTAL COMPANY RESULTS AND LIQUIDITY

- Total gross profit decreased \$72 million, or 17% in the second quarter of 2024 when compared to the same period in 2023. Our Office Depot Division, ODP Business Solutions Division, and Veyer Division had \$39 million, \$29 million, and \$4 million lower gross profit, respectively. Total gross profit decreased \$145 million, or 16%, in the first half of 2024 when compared to the same period in 2023. Our Office Depot Division, ODP Business Solutions Division, and Veyer Division had \$95 million, \$40 million, and \$9 million lower gross profit, respectively. The decreases in gross profit in both the second quarter and first half of 2024 were mainly due to the flow through impact of lower sales and decrease in gross margin.
- Total gross margin for the second quarter and first half of 2024 was 20% and 21%, respectively. Total gross margin for both the second quarter and first half of 2023 was 22%. The decrease in gross margin is mainly the result of higher supply chain and occupancy costs as a percentage of sales. Our supply chain and occupancy costs have increased in the first half of 2024 as a percentage of sales, including transportation, facility and store rents, and utilities.
- Total selling, general, and administrative expenses decreased \$38 million and \$62 million in the second quarter and first half of 2024, respectively, when compared to the same periods in 2023. This decrease in the second quarter of 2024 was driven by decreases of \$22 million in our Office Depot Division, \$12 million in our ODP Business Solutions Division, and \$3 million in our Veyer Division. This decrease in the first half of 2024 was driven by decreases of \$42 million in our Office Depot Division, \$15 million in our ODP Business Solutions Division, and \$3 million in our Veyer Division. The remaining decrease for both periods is attributable to lower corporate expenses. Selling, general, and administrative expenses as a percentage of total sales was 18% and flat in both the second quarter and first half of 2024, as compared to the same prior year periods.
- We recorded \$8 million and \$14 million of asset impairment charges in the second quarter and first half of 2024, respectively, primarily related to the impairment of operating lease ROU assets associated with our retail store locations, with the remainder relating to impairment of fixed assets. Refer to Note 9. "Fair Value Measurements" in Notes to Condensed Consolidated Financial Statements for additional information.
- Our merger and restructuring expenses, net were \$25 million and \$45 million in the second quarter and first half of 2024, respectively. The expenses in the period related to restructuring activities, primarily \$24 million and \$42 million of restructuring costs associated with Project Core in the second quarter and first half of 2024, respectively. Refer to Note 2. "Merger and Restructuring Activity" in Notes to Condensed Consolidated Financial Statements for additional information.
- Our effective tax rate was 0% and 23% for the second quarter and first half of 2024, respectively, and 28% and 26% for the second quarter and first half of 2023, respectively. For the second quarter and first half of 2024, our effective tax rates were primarily impacted by the recognition of a tax benefit associated with stock-based compensation awards year-to-date and the settlement of an uncertain tax position for less than the reserve in the first quarter, partially offset by additional uncertain tax positions in the second quarter. For the second quarter and first half of 2023, our effective rate was primarily impacted by the recognition of a tax benefit associated with stock-based compensation awards year-to-date. These factors, along with the impact of state taxes and the mix of income and losses across U.S. and non-U.S. jurisdictions, caused our effective tax rate of 23% for the first half of 2024 to differ from the statutory rate of 21%. Changes in pretax income projections and the mix of income across jurisdictions could impact the effective tax rates in future quarters. Refer to Note 4. "Income Taxes" in Notes to Condensed Consolidated Financial Statements for additional information.
- Diluted loss per share from continuing operations was \$(0.12) in the second quarter of 2024 compared to diluted earnings per share from continuing operations of \$1.09 in the second quarter of 2023. Diluted earnings per share from continuing operations was \$0.73 in the first half of 2024 compared to \$3.11 in the first half of 2023. The decrease in diluted earnings per share from continuing operations in the second quarter and first half of 2024 compared to the same prior year periods is due to lower net income, partially offset by the impact of lower weighted average shares. Refer to Note 5. "Earnings (Loss) Per Share" in Notes to Condensed Consolidated Financial Statements for additional information.
- Diluted loss per share from discontinued operations was \$(1.93) in the second quarter of 2024 compared to \$(0.22) in the second quarter of 2023. Diluted loss per share from discontinued operations was \$(2.28) in the first half of 2024 compared to \$(0.50) in the first half of 2023.
- Net diluted loss per share was \$(2.05) in the second quarter of 2024 compared to net diluted earnings per share of \$0.87 in the second quarter of 2023. Net diluted loss per share was \$(1.55) in the first half of 2024 compared to net diluted earnings per share of \$2.61 in the first half of 2023.

- We repurchased 2 million shares of our common stock in the second quarter of 2024 for total consideration of \$104 million. In the first half of 2024, we repurchased 3 million shares of our common stock for a total consideration of \$154 million. As of June 29, 2024, \$869 million remains available for stock repurchases under the current stock repurchase program. Subsequent to the end of second quarter of 2024 and through July 31, 2024, we bought back 741 thousand shares of our common stock at a cost of \$29 million.
- At June 29, 2024, we had \$190 million in cash and cash equivalents, including \$10 million that is presented in Current assets held for sale related to the Varis Division, and \$641 million of available credit under the Fourth Amended Credit Agreement (as defined in Note 6. “Debt” in Notes to Condensed Consolidated Financial Statements), for a total liquidity of approximately \$831 million. Cash provided by operating activities of continuing operations was \$43 million in the first half of 2024 compared to cash provided by operating activities of continuing operations of \$169 million in the comparable prior year period. Refer to the “Liquidity and Capital Resources” section for further information on cash flows.

OPERATING RESULTS BY DIVISION

Discussion of additional income and expense items, including material charges and credits and changes in interest and income taxes follows our review of segment results.

ODP BUSINESS SOLUTIONS DIVISION

<i>(In millions)</i>	Second Quarter		First Half	
	2024	2023	2024	2023
Sales (external)	\$ 915	\$ 999	\$ 1,838	\$ 2,005
Sales (internal)	\$ 2	\$ 3	\$ 5	\$ 7
% change of total sales	(8)%	0%	(8)%	1%
Division operating income	\$ 29	\$ 45	\$ 59	\$ 84
% of total sales	3%	4%	3%	4%

Sales in our ODP Business Solutions Division decreased \$85 million and \$169 million, or 8% and 8%, in the second quarter and first half of 2024, respectively, compared to the corresponding periods in 2023. During both the second quarter and first half of 2024, our ODP Business Solutions Division experienced decreased sales across a majority of its product categories, primarily in technology and supplies, compared to the corresponding periods in 2023. This was driven by lower demand from business-to-business customers, due to reduced spending and fewer customers. We expect sales in our ODP Business Solutions Division to continue to be adversely impacted in the near term due to macroeconomic factors that continue to weigh on the U.S. economy, which can materially impact spending by our business-to-business customers and the demand for our products and services. Sales include internal sales of \$2 million and \$5 million in the second quarter and first half of 2024, respectively, which relate to ODP Business Solutions Division customers’ transactions held at Office Depot Division retail store locations.

Our ODP Business Solutions Division sales could be adversely impacted in the near term related to numerous factors, among others, a weaker U.S. economy and higher unemployment and inflation that materially impact spending, the demand for our products and services and the availability of supply. The changes in work environments as a result of the general macroeconomic environment, including ongoing remote work trends, have been material to the results of the ODP Business Solutions Division in the second quarter and first half of 2024. A prolonged or permanent shift to hybrid or continued remote work arrangements, as well as the substance and pace of macroeconomic recovery, could continue to have a material impact to the future results of the ODP Business Solutions Division.

Our ODP Business Solutions Division operating income was \$29 million in the second quarter of 2024, which decreased 36% as compared to \$45 million in the second quarter of 2023. Operating income as a percentage of sales decreased 140 basis points in the second quarter of 2024 compared to the corresponding period in 2023. The reduction in operating income was mainly due to the flow through impact of lower sales, as well as a 170 basis point lower gross margin rate primarily due to lower product margin rate and deleveraging in supply chain costs, which resulted in \$29 million lower gross profit. The decrease in gross profit was partially offset by \$12 million lower selling, general and administrative expenses. Selling, general and administrative expenses as a percentage of sales was 30 basis points lower compared to the corresponding period in the prior year, mainly due to lower employee-related costs as a result of Project Core.

Our ODP Business Solutions Division operating income was \$59 million in the first half of 2024, which decreased 30% as compared to \$84 million in the first half of 2023. Operating income as a percentage of sales decreased 100 basis points in the first half of 2024 compared to the corresponding period in 2023. The reduction in operating income was mainly due to the flow through impact of lower sales, as well as an 80 basis point lower gross margin rate primarily due to deleveraging in supply chain costs, which resulted in \$40 million lower gross profit. The decrease in gross profit was partially offset by \$15 million lower selling, general and administrative expenses. Selling, general and administrative expenses as a percentage of sales was 20 basis points higher compared to the corresponding period in the prior year, mainly due to the deleveraging impact of lower sales.

OFFICE DEPOT DIVISION

<i>(In millions)</i>	Second Quarter				First Half			
	2024		2023		2024	2023		
Sales (external)	\$	792	\$	898	\$	1,729	\$	1,991
Sales (internal)	\$	7	\$	8	\$	15	\$	17
% change of total sales		(12)%		(13)%		(13)%		(10)%
Division operating income	\$	17	\$	35	\$	68	\$	120
% of total sales		2%		4%		4%		6%
Change in comparable store sales		(7)%		(8)%		(8)%		(5)%

Sales in our Office Depot Division decreased \$107 million and \$264 million, or 12% and 13%, in the second quarter and first half of 2024, respectively, compared to the corresponding periods in 2023. The largest drivers of our product sales decline for the second quarter and first half of 2024 were planned store closures, lower demand, and lower average order values in our stores. Our eCommerce platform also experienced lower demand. The sales decline in the second quarter and first half of 2024 was across the majority of our product categories. The demand for these categories was mainly impacted by reduced spending of our customers due to macroeconomic factors affecting the U.S. economy. In addition, certain interruptions experienced due to inclement weather further impacted our store traffic during the competitive back-to-business season, and our results for the first half of 2024. We believe sales in our Office Depot Division may continue to be adversely impacted in the near term and potentially longer related to numerous factors, among others, a weaker U.S. economy and higher unemployment that materially impact consumer spending, and the demand for our products and services.

Sales include internal sales of \$7 million and \$15 million in the second quarter and first half of 2024, respectively, which relate to print services provided to the ODP Business Solutions Division as well as internal service fees for providing buy online, pick up in store (“BOPIS”) transactions to ODP Business Solutions Division customers.

Sales generated through our eCommerce platform include online sales fulfilled through warehouses, BOPIS transactions, online orders shipped from store, and same day delivery orders fulfilled with retail store inventory. These sales represented 32% and 31% of Office Depot Division’s total sales in the second quarter and first half of 2024, respectively, as compared to 30% and 29% of total sales in the comparable prior periods.

Comparable store sales decreased 7% and 8% in the second quarter and first half of 2024, respectively, reflecting lower store traffic and average order value, partially offset by higher conversion rate. The average order value was impacted by lower sales in our supplies, workspace and technology product categories. Our comparable store sales relate to stores that have been open for at least one year. Stores are removed from the comparable sales calculation one month prior to closing, as sales during that period are mostly related to clearance activity. Stores are also removed from the comparable sales calculation during periods of store remodeling, store closures due to hurricanes or natural disasters, or if significantly downsized. Our measure of comparable store sales has been applied consistently across periods but may differ from measures used by other companies.

Our Office Depot Division operating income was \$17 million in the second quarter of 2024, which decreased 51% as compared to \$35 million in the second quarter of 2023. Operating income as a percentage of sales decreased 170 basis points in the second quarter of 2024 compared to the corresponding period in 2023. The reduction in operating income was mainly due to the flow through impact of lower sales, as well as a 150 basis point lower gross margin rate primarily due to deleveraging in supply chain and occupancy costs, which resulted in \$39 million lower gross profit. The decrease in gross profit was partially offset by \$22 million lower selling, general and administrative expenses, which was driven by store closures as part of the Maximize B2B Restructuring Plan, and other initiatives to reduce costs as our retail footprint is reduced. Selling, general and administrative expenses as a percentage of sales were 20 basis points higher due to deleveraging from lower sales.

Our Office Depot Division operating income was \$68 million in the first half of 2024, which decreased 43% as compared to \$120 million in the first half of 2023. Operating income as a percentage of sales decreased 210 basis points in the first half of 2024 compared to the corresponding period in 2023. The reduction in operating income was mainly due to the flow through impact of lower sales as well as a 140 basis point lower gross margin rate primarily due to deleveraging in supply chain and occupancy costs, which resulted in \$95 million lower gross profit. The decrease in gross profit was partially offset by \$42 million lower selling, general and administrative costs, resulting from the initiatives discussed above. Selling, general and administrative expenses as a percentage of sales was 70 basis points higher compared to the corresponding period in the prior year, mainly due to deleveraging from lower sales.

As of June 29, 2024, our Office Depot Division operated 894 retail stores in the United States, Puerto Rico, and the U.S. Virgin Islands compared to 952 stores at the end of the second quarter of 2023. Charges associated with store closures as part of a restructuring plan are reported as appropriate in Asset impairments and Merger and restructuring expenses, net in the Condensed Consolidated Statements of Operations. In addition, as part of our periodic recoverability assessment of owned retail store and distribution center assets and operating lease ROU assets, we recognize impairment charges in the Asset impairments line item of our Condensed Consolidated Statements of Operations. These charges are reflected in Corporate reporting and are not included in the determination of Division operating income. Refer to the “Corporate” section below for additional information of expenses incurred to date.

VEYER DIVISION

(In millions)	Second Quarter		First Half	
	2024	2023	2024	2023
Sales (external)	\$ 10	\$ 10	\$ 19	\$ 17
Sales (internal)	\$ 1,167	\$ 1,312	\$ 2,401	\$ 2,725
% change of total sales	(11)%	(7)%	(12)%	(7)%
Division operating income	\$ 5	\$ 6	\$ 14	\$ 21
% of total sales	0%	0%	1%	1%

Internal sales represent sales of product and supply chain services provided to our Office Depot Division and ODP Business Solutions Division, which are then sold to third-party customers through those divisions. Internal sales of product are made at a price that includes a service fee to the cost of product we source from third-party vendors, net of the impact of vendor income, and certain other adjustments. Internal sales of services represent supply chain and logistics support services, which include warehousing, shipping and handling, returns and others. These internal sales of services are also provided to the Office Depot Division and the ODP Business Solutions Division, at a service fee over cost. Internal sales are eliminated upon consolidation.

Our Veyer Division aims to be the lowest cost provider to the Office Depot Division and the ODP Business Solutions Division, with the purpose of achieving the most favorable outcome for our consolidated results. As a result, Veyer Division's internal sales and profitability related to these internal sales could be impacted by product cost fluctuations and activities that we may undertake to drive efficiencies in the Veyer Division, including rebates we may receive from third-party vendors, as well as decisions made independently by the Office Depot Division and ODP Business Solutions Division for alternative sourcing options to meet customer needs.

In the second quarter of 2024 and the second quarter of 2023, \$525 million and \$607 million of internal sales are to the Office Depot Division, and \$642 million and \$705 million are to the ODP Business Solutions Division, respectively. The decrease in internal sales to the Office Depot Division is related to the decline in customer demand at our retail stores and eCommerce platform, which is discussed further in the Office Depot Division section above. The decrease in internal sales to the ODP Business Solutions Division is related to reduced demand experienced by ODP Business Solutions Division during the second quarter of 2024, which is discussed further in the ODP Business Solutions Division section above. In the first half of 2024 and the first half of 2023, \$1.1 billion and \$1.3 billion of internal sales are to the Office Depot Division, respectively, and \$1.3 billion and \$1.4 billion are to the ODP Business Solutions Division, respectively. The drivers of the change in internal sales to the Office Depot Division and the ODP Business Solutions Division in the first half of 2024 are consistent with those described above.

External sales represent supply chain services provided to third parties, as well as product sales by our Asia sourcing operation to third parties. External sales were flat in the second quarter of 2024 compared to the corresponding period in the prior year. The \$2 million increase in external sales in the first half of 2024 was driven by supply chain services and product sales to third parties.

Our Veyer Division operating income was \$5 million in the second quarter of 2024 compared to \$6 million in the second quarter of 2023, which was driven by the flow through impact of lower internal sales. Our Veyer Division operating income was \$14 million in the first half of 2024 compared to \$21 million in the first half of 2023. The decrease in the period related to the flow through impact of lower internal sales, which resulted in \$10 million less gross profit, partially offset by \$3 million lower selling, general and administrative expenses. This was partially offset by a favorable impact of \$1 million from higher sales to third parties. The gross margin was flat as compared to the corresponding periods in the prior year. Future performance of our Veyer Division is dependent upon market conditions in the transportation and logistics industry, including fluctuations in labor and fuel costs, and its ability to pass any cost increases through to its customers.

CORPORATE

The line items in our Condensed Consolidated Statements of Operations included as Corporate activities are Asset impairments and Merger and restructuring expenses, net. These activities are managed at the Corporate level and, accordingly, are not included in the determination of Division income for management reporting or external disclosures. In addition to these charges and credits, certain selling, general and administrative expenses are not allocated to the Divisions and are managed at the Corporate level. Those expenses are addressed in the section “Unallocated Expenses” below.

Asset impairments

We recognized asset impairment charges of \$8 million and \$14 million in the second quarter and first half of 2024. Of these asset impairment charges, \$7 million and \$12 million related to the impairment of operating lease ROU assets associated with our retail store locations, with the remainder relating to impairment of fixed assets. We recognized asset impairment charges of \$6 million and \$10 million in the second quarter and first half of 2023. Of these asset impairment charges, \$4 million and \$7 million in the second quarter and first half of 2023, respectively, was related to the impairment of operating lease ROU assets associated with our retail store locations, with the remainder relating to impairment of fixed assets and other assets.

We regularly review retail store assets for impairment indicators at the individual store level, as this represents the lowest level of identifiable cash flows. When indicators of impairment are present, a recoverability analysis is performed which considers the estimated undiscounted cash flows over the retail store’s remaining life and uses inputs from retail operations and accounting and finance personnel. These inputs include our best estimates of retail store-level sales, gross margins, direct expenses, exercise of future lease renewal options when reasonably certain to be exercised, and resulting cash flows, which, by their nature, include judgments about how current initiatives will impact future performance. In the second quarter and first half of 2024, the assumptions used within the recoverability analysis for the retail stores were updated to consider current quarter retail store operational results and formal plans for future retail store closures as part of our restructuring programs, including the probability of closure at the retail store level. While it is generally expected that closures will approximate the store’s lease termination date, it is possible that changes in store performance or other conditions could result in future changes in assumptions utilized. In addition, the assumptions used reflected declining sales over the forecast period, and gross margin and operating cost assumptions that are consistent with recent actual results and consider plans for future initiatives. If the undiscounted cash flows of a retail store cannot support the carrying amount of its assets, the assets are impaired and written down to estimated fair value.

We test our goodwill and indefinite-lived intangible assets for impairment annually as of the first day of fiscal December or more frequently when events or changes in circumstances indicate that impairment may have occurred. There were no events or changes in circumstances that indicate an impairment may have occurred during the second quarter of 2024. We will continue to evaluate the recoverability of goodwill at the reporting unit level on an annual basis and whenever events or changes in circumstances indicate there may be a potential impairment. If the operating results of our reporting units deteriorate in the future, it may cause the fair value of one or more of the reporting units to fall below their carrying value, resulting in goodwill impairment charges. Further, while we are currently in a strong liquidity and capital position, a significant deterioration may have a material impact on our liquidity and capital in future periods.

Merger and restructuring expenses, net

We have taken actions to optimize our asset base and drive operational efficiencies. These actions include acquiring profitable businesses, closing underperforming retail stores and non-strategic distribution facilities, consolidating functional activities, eliminating redundant positions, and disposing of non-strategic businesses and assets. The expenses and any income recognized directly associated with these actions are included in Merger and restructuring expenses, net on a separate line in the Condensed Consolidated Statements of Operations in order to identify these activities apart from the expenses incurred to sell to and service customers. These expenses are not included in the determination of Division operating income.

In March 2024, our Board of Directors approved a restructuring plan to redesign our company-wide low-cost business model approach and create further efficiencies in our business to lower costs (“Project Core”). This was driven by a need to significantly reduce costs due to macroeconomic and other factors impacting our sales, as well as insights gained following the first year of operations of realignment of our operating segments into four divisions. The scope of Project Core was approved in two phases, in March 2024 and April 2024, and includes cost improvement actions across the entire enterprise, including our Varis Division, which is now presented as discontinued operations. It aims to optimize our organizational structure to support future growth of the business. Project Core is expected to be completed in 2025, with the majority of actions expected to be taken by the end of 2024. Total restructuring costs related to Project Core are estimated to be up to \$57 million, of which \$35 million are estimated to be termination benefits, which mainly consists of severance, and \$22 million are estimated to be costs to facilitate the program, which mainly consists of third-party professional fees and other incremental employee-related costs to implement actions. All costs of Project Core are expected to be cash expenditures.

Merger and restructuring expenses, net were \$25 million and \$45 million in the second quarter and first half of 2024, respectively, compared to \$1 million in the second quarter and first half of 2023. Of the expenses in the second quarter and first half of 2024, \$24 million and \$42 million, respectively, relate to Project Core. Also related to Project Core and included within discontinued operations in the first half of 2024 are \$8 million of severance expenses in our Varis Division. Refer to Note 2 “Merger and Restructuring Activity” in Notes to Condensed Consolidated Financial Statements for an additional analysis of these Corporate charges.

Unallocated Expenses

We allocate to our Divisions functional support expenses that are considered to be directly or closely related to segment activity. These allocated expenses are included in the measurement of Division operating income. Other companies may charge more or less for functional support expenses to their segments, and our results, therefore, may not be comparable to similarly titled measures used by other companies. The unallocated expenses primarily consist of the buildings used for our corporate headquarters and personnel not directly supporting the Divisions, including certain executive, finance, legal, audit and similar functions. Unallocated expenses were \$18 million and \$41 million in the second quarter and first half of 2024, respectively, compared to \$19 million and \$42 million in the second quarter and first half of 2023, respectively. The decrease in the second quarter and first half of 2024 was primarily due to lower corporate payroll and incentive expenses.

Other Income and Expense

<i>(In millions)</i>	Second Quarter		First Half	
	2024	2023	2024	2023
Interest income	\$ 2	\$ 2	\$ 5	\$ 4
Interest expense	(5)	(5)	(10)	(10)
Other income, net	(1)	3	(1)	5

We recorded less than \$1 million and \$1 million of interest expense in the second quarter and first half of 2024, respectively, and \$1 million and \$3 million of interest expense in the second quarter and first half of 2023, respectively, related to the Third Amended Credit Agreement. In May 2024, we entered into the Fourth Amended and Restated Credit Agreement, which provided for an \$800 million asset-based revolving credit facility, maturing in May 2029. This agreement replaced our then existing amended and restated credit agreement, the Third Amended Credit Agreement, that was due to mature in April 2025. We recognized less than \$1 million of loss from modification of debt related to this transaction in the second quarter of 2024, which represented the write-off certain unamortized debt issuance costs as of the closing date of the transaction. We recorded \$1 million of interest expense in the first half of 2024, related to the Fourth Amended Credit Agreement. We also recorded interest expense related to our finance lease obligations and revenue bonds in all periods presented.

Other income, net includes the pension credit related to the frozen OfficeMax pension and other benefit plans, as well as the pension credit related to the pension plan in the United Kingdom that has been retained by us in connection with the sale of the European Business.

Income Taxes

Our effective tax rate was 0% and 23% for the second quarter and first half of 2024, respectively, and 28% and 26% for the second quarter and first half of 2023, respectively. For the second quarter and first half of 2024, our effective tax rates were primarily impacted by the recognition of a tax benefit associated with stock-based compensation awards year-to-date and the settlement of an uncertain tax position for less than the reserve in the first quarter, partially offset by additional uncertain tax positions in the second quarter. For the second quarter and first half of 2023, our effective rate was primarily impacted by the recognition of a tax benefit associated with stock-based compensation awards year-to-date. This, along with the impact of state taxes and the mix of income and losses across U.S. and non-U.S. jurisdictions, caused our effective tax rate to differ from the statutory rate of 21%. Changes in pretax income projections and the mix of income across jurisdictions could impact the effective tax rates in future quarters.

We continue to have a U.S. valuation allowance for certain U.S. federal credits and state tax attributes, which relates to deferred tax assets that require certain types of income or for income to be earned in certain jurisdictions in order to be realized. We will continue to assess the realizability of our deferred tax assets in the U.S. and remaining foreign jurisdictions in future periods. Changes in pretax income projections could impact this evaluation in future periods.

We file a U.S. federal income tax return and other income tax returns in various states and foreign jurisdictions. With few exceptions, we are no longer subject to U.S. federal and state and local income tax examinations for years prior to 2021 and 2014, respectively. The acquired OfficeMax U.S. consolidated group is no longer subject to U.S. federal income tax examination, and with few exceptions, is no longer subject to U.S. state and local income tax examinations for years prior to 2013. Generally, we are subject to routine examination for years 2013 and forward in our international tax jurisdictions.

It is anticipated that \$4 million of tax positions will be resolved within the next 12 months. Additionally, we anticipate that it is reasonably possible that new issues will be raised or resolved by tax authorities that may require changes to the balance of unrecognized tax benefits; however, an estimate of such changes cannot be reasonably made at this time.

The Organization for Economic Cooperation and Development reached agreement among various countries to implement a minimum 15% tax rate on certain multinational enterprises, commonly referred to as Pillar Two. Many countries continue to announce changes in their tax laws and regulations based on the Pillar Two proposals. We are continuing to evaluate the impact of these proposed and enacted legislative changes as new guidance becomes available. We do not expect these legislative changes to have an adverse impact on our effective tax rate, tax liabilities or cash tax.

Discontinued Operations

Refer to Note 11. “Discontinued Operations” in Notes to Condensed Consolidated Financial Statements for information regarding the Varis Division which is accounted for as discontinued operations.

LIQUIDITY AND CAPITAL RESOURCES

LIQUIDITY

At June 29, 2024 and December 30, 2023, we had \$190 million and \$392 million in cash and cash equivalents, respectively, of which \$10 million at both June 29, 2024 and December 30, 2023 is presented in Current assets held for sale related to the Varis Division. In addition, at June 29, 2024 and December 30, 2023, we had \$641 million and \$696 million of available credit under the Fourth Amended Credit Agreement, respectively, for a total liquidity of approximately \$831 million and \$1.1 billion at the end of each respective period. Despite the weaker global economic conditions and the uncertainties related to the current macroeconomic environment, we currently believe that as a result of our strong financial position, including our cash and cash equivalents on hand, availability of funds under the Fourth Amended Credit Agreement, and future year cash flows generated from operations, we will be able to fund our working capital, capital expenditures, debt repayments, common stock repurchases, dividends (if any), merger integration and restructuring expenses, and future acquisitions consistent with our strategic growth initiatives for at least the next twelve months from the date of this Quarterly Report on Form 10-Q. From time to time, we may prepay outstanding debt and/or restructure or refinance debt obligations.

Financing

On May 9, 2024, as disclosed in Note 6. “Debt,” we entered into the Fourth Amended and Restated Credit Agreement, which provides for an \$800 million asset-based revolving credit facility (the “New Facility”). The New Facility matures in May 2029. The Fourth Amended Credit Agreement replaced our then existing amended and restated credit agreement, the Third Amended Credit Agreement, that was due to mature in April 2025. The Company retired \$53 million of outstanding FILO Term Loan Facility loans under the Third Amended Credit Agreement prior to its amendment, resulting in no remaining FILO Term Loan Facility loans.

During the first half of 2024, we elected to draw down \$246 million from the credit facilities under the Third and Fourth Amended Credit Agreements for working capital management. Of this amount, \$187 million was repaid during the first half of 2024, resulting in \$59 million of revolving loans outstanding under the New Facility at June 29, 2024. Also, at June 29, 2024, we had \$41 million of outstanding standby letters of credit and \$641 million of available credit under the Fourth Amended Credit Agreement. We were in compliance with all applicable covenants at June 29, 2024.

Acquisitions and dispositions

In addition to the business acquisition disclosed herein, we have evaluated, and expect to continue to evaluate, possible acquisitions and dispositions of businesses and assets in connection with our strategic transformation. Such transactions may be material and may involve cash, our securities or the incurrence of additional indebtedness.

Capital Expenditures

We estimate capital expenditures in 2024 to be up to approximately \$110 million, which includes investments to support our business priorities. These expenditures will be funded through available cash on hand and operating cash flows.

Capital Return Programs – Share Repurchases and Dividends

In February 2024, our Board of Directors approved a new stock repurchase program of up to \$1 billion of our common stock, available through March 31, 2027, which replaced the then existing \$1 billion stock repurchase program. In the first half of 2024, we repurchased 3 million shares of our common stock for total consideration of \$154 million. As of June 29, 2024, \$869 million remains available for stock repurchases under the current stock repurchase program. Subsequent to the end of the second quarter of 2024 and through July 31, 2024, we repurchased 741 thousand shares of our common stock at a cost of \$29 million.

The new authorization may be suspended or discontinued at any time. The stock repurchase authorization permits us to repurchase stock from time-to-time through a combination of open market repurchases, privately negotiated transactions, 10b5-1 trading plans, accelerated stock repurchase transactions and/or other derivative transactions. The exact number and timing of stock repurchases will depend on market conditions and other factors and will be funded through available cash balances. Our Fourth Amended Credit Agreement permits restricted payments, such as common stock repurchases, but may be limited if we do not meet the required minimum liquidity or fixed charge coverage ratio requirements. The authorized amount under the stock repurchase program excludes fees, commissions, taxes or other expenses.

We did not declare any cash dividends in the second quarter and first half of 2024. We do not anticipate declaring cash dividends in the foreseeable future. Our Fourth Amended Credit Agreement permits restricted payments, such as dividends, but may be limited if we do not meet the required minimum liquidity or fixed charge coverage ratio requirements.

We will continue to evaluate our capital return programs as appropriate. Decisions regarding future share repurchases and dividends are within the discretion of our Board of Directors, and depend on a number of factors, including, general business and economic conditions, which includes the impact of COVID-19 on such conditions, and other factors which are discussed in this discussion and analysis and “Risk Factors” within Other Key Information in our 2023 Form 10-K.

CASH FLOWS

Continuing Operations

Cash provided by (used in) operating, investing and financing activities of continuing operations is summarized as follows:

<i>(In millions)</i>	First Half	
	2024	2023
Operating activities of continuing operations	\$ 43	\$ 169
Investing activities of continuing operations	(48)	56
Financing activities of continuing operations	(174)	(263)

Operating Activities

In the first half of 2024, cash provided by operating activities of continuing operations was \$43 million, compared to \$169 million during the corresponding period in 2023. This decrease in cash flows from operating activities was primarily driven by \$89 million less net income after adjusting for non-cash charges and \$41 million less usage of deferred tax assets, slightly offset by \$4 million more cash flows from working capital. Working capital is influenced by a number of factors, including period end sales, the flow of goods, credit terms, timing of promotions, vendor production planning, new product introductions and working capital management. In the first half of 2024, the primary driver for higher cash flows from working capital was \$24 million more cash flows from our trade payables and other liabilities, partially offset by a \$20 million decrease from other current and noncurrent assets. The changes in our payables and other liabilities and in other current and noncurrent assets are reflective of the timing of payments.

For our accounting policy on cash management, refer to Note 1. “Summary of Significant Accounting Policies” in Notes to Condensed Consolidated Financial Statements.

Investing Activities

Cash used in investing activities of continuing operations was \$48 million in the first half of 2024, compared to cash provided by investing activities of continuing operations of \$56 million in the first half of 2023. The cash outflow in the first half of 2024 was driven by \$50 million in capital expenditures associated with improvements in our service platform, distribution network, and eCommerce capabilities, partially offset by \$1 million of proceeds from disposition of assets and \$1 million proceeds from settlement of company owned life insurance contracts. The cash inflow in the first half of 2023 was driven by \$101 million of proceeds from disposition of assets, of which \$100 million related to the sale of our corporate headquarters. These inflows were partially offset by \$36 million in capital expenditures associated with improvements in our service platform, distribution network, and eCommerce capabilities, as well as \$10 million outflow related to business acquisition.

Financing Activities

Cash used in financing activities of continuing operations was \$174 million in the first half of 2024, compared to \$263 million in the first half of 2023. The cash outflow in the first half of 2024 primarily consisted of \$187 million related to the repayment of the New Facility, \$153 million in repurchases of common stock, including commissions, \$53 million related to the retirement of our FILO Term Loan Facility loans, \$15 million share purchases for taxes, net of proceeds, for employee share-based transactions, and \$5 million of net payments on long- and short-term borrowings activity related to our debt. These outflows were partially offset by \$246 million draw down on the New Facility. The cash outflow in the first half of 2023 primarily consisted of \$231 million in repurchases of common stock, including commissions, \$23 million share purchases for taxes, net of proceeds, for employee share-based transactions, and \$9 million of net payments on long- and short-term borrowings activity related to our debt.

Discontinued Operations

Cash used in operating, investing and financing activities of discontinued operations is summarized as follows:

<i>(In millions)</i>	First Half	
	2024	2023
Operating activities of discontinued operations	\$(16)	\$(20)
Investing activities of discontinued operations	(5)	(10)

Cash used in operating activities of discontinued operations was \$16 million in the first half of 2024, compared to \$20 million in the first half of 2023. The change in operating cash flows of discontinued operations in the comparative period was primarily driven by less cash outflows from working capital in discontinued operations in the first half of 2024.

Cash used in investing activities of discontinued operations was \$5 million in the first half of 2024, compared to \$10 million in the first half of 2023. The change in investing cash flows of discontinued operations in the comparative period reflects the reduction in capital expenditures in discontinued operations related to the Varis Division, partially offset by \$5 million of proceeds received from the purchaser of our CompuCom Division in the first half of 2023 to settle the cash, debt and working capital adjustments related to sale of this division.

NEW ACCOUNTING STANDARDS

For a description of new applicable accounting standards, refer to Note 1. “Summary of Significant Accounting Policies” in Notes to Condensed Consolidated Financial Statements of this Quarterly Report on Form 10-Q.

CRITICAL ACCOUNTING POLICIES

Our Condensed Consolidated Financial Statements have been prepared in accordance with accounting principles generally accepted in the United States of America. Preparation of these statements requires management to make judgments and estimates. Some accounting policies have a significant impact on amounts reported in these financial statements. A summary of significant accounting policies and a description of accounting policies that are considered critical may be found in our 2023 Form 10-K, in Note 1 of the Notes to Consolidated Financial Statements and the Critical Accounting Policies and Estimates section of the Management’s Discussion and Analysis of Financial Condition and Results of Operations. Except for our accounting policy updates described in Note 1 “Summary of Significant Accounting Policies” in Notes to Condensed Consolidated Financial Statements of this Quarterly Report on Form 10-Q, there have been no significant changes to our critical accounting policies since December 30, 2023.

OTHER INFORMATION

QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

At June 29, 2024, there had not been a material change in the interest rate, foreign exchange, and commodities risks information disclosed in the “Market Sensitive Risks and Positions” subsection of the Management’s Discussion and Analysis of Financial Condition and Results of Operations set forth in our 2023 Form 10-K.

CONTROLS AND PROCEDURES

DISCLOSURE CONTROLS AND PROCEDURES

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in our reports is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure. Our management recognizes that any controls and procedures, no matter how well designed and operated, can only provide reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the possible controls and procedures. Each reporting period, we carry out an evaluation, with the participation of our principal executive officer and principal financial officer, or persons performing similar functions, of the effectiveness of the design and operation of our disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act.

Based on management’s evaluation, our principal executive officer and principal financial officer have concluded that, as of June 29, 2024, our disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms and that such information is accumulated and communicated to management, including the principal executive officer and the principal financial officer, or persons performing similar functions, as appropriate, to allow timely decisions regarding required disclosures.

CHANGES IN INTERNAL CONTROL OVER FINANCIAL REPORTING

There were no changes in our internal control over financial reporting during the quarter ended June 29, 2024 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

LEGAL PROCEEDINGS

For a description of our legal proceedings, see Note 10. “Contingencies” in Notes to Condensed Consolidated Financial Statements of this Quarterly Report on Form 10-Q.

RISK FACTORS

There have been no material changes with respect to the risk factors disclosed in our 2023 Form 10-K.

UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

We repurchased 2 million shares of our common stock at a cost of \$104 million in the second quarter of 2024. As of June 29, 2024, \$869 million remained available for additional repurchases under the current stock repurchase. Subsequent to the end of the second quarter of 2024 and through July 31, 2024, we repurchased 741 thousand shares of our common stock at a cost of \$29 million.

Period	Total Number of Shares Purchased (In thousands)	Average Price Paid per Share	Total Number of Shares Purchased as Part of a Publicly Announced Plan or Program (In thousands)	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Repurchase Program (In millions)
March 31, 2024 — April 27, 2024	642	\$ 51.42	642	\$ 939
April 28, 2024 — May 25, 2024	582	\$ 45.33	582	\$ 913
May 26, 2024 — June 29, 2024	1,139	\$ 39.07	1,139	\$ 869
Total	2,363	\$ 43.97	2,363	

The new authorization may be suspended or discontinued at any time. The stock repurchase authorization permits us to repurchase stock from time-to-time through a combination of open market repurchases, privately negotiated transactions, 10b5-1 trading plans, accelerated stock repurchase transactions and/or other derivative transactions. The exact number and timing of stock repurchases will depend on market conditions and other factors and will be funded through available cash balances. Our Fourth Amended Credit Agreement permits restricted payments, such as common stock repurchases, but may be limited if we do not meet the required minimum liquidity or fixed charge coverage ratio requirements. The authorized amount under the stock repurchase program excludes fees, commissions, taxes or other expenses.

We did not declare any cash dividends in second quarter and first half of 2024 and do not anticipate declaring cash dividends in the foreseeable future. Our Fourth Amended Credit Agreement permits restricted payments, such as dividends, but may be limited if we do not meet the required minimum liquidity or fixed charge coverage ratio requirements.

OTHER INFORMATION

AMENDED AND RESTATED BYLAWS

On August 2, 2024, our Board of Directors amended our bylaws, effective immediately, to (i) address meetings of stockholders by remote communication, along with related notice and adjournment provisions; (ii) change the vote required for stockholder action from a majority of the shares present in person or represented by proxy and entitled to vote to a majority of votes cast; (iii) eliminate the requirement to have a stockholder list available for inspection at stockholder meetings as permitted by recent changes to the Delaware General Corporation Law; and (iv) eliminate the requirement that nominees to the Board of Directors submit irrevocable resignation letters that become effective upon certain determinations by the Board of Directors. The amendments to the bylaws also included certain other modifications that provide clarification and consistency.

The foregoing description of the amendments to our bylaws is qualified in its entirety by the text of the bylaws, as amended, a copy of which is attached as Exhibit 3.1 to this Quarterly Report on Form 10-Q and is incorporated herein by reference.

RULE 10B5-1 TRADING PLANS

None of our directors or executive officers adopted or terminated a Rule 10b5-1 trading arrangement or a non-Rule 10b5-1 trading arrangement (as defined in Item 408(c) of Regulation S-K) during the second quarter of 2024.

EXHIBITS

- 3.2 [Amended and Restated Bylaws of The ODP Corporation](#)
- 31.1 [Certification of Principal Executive Officer required by Securities and Exchange Commission Rule 13a-14\(a\) or 15d-14\(a\)](#)
- 31.2 [Certification of Principal Financial Officer required by Securities and Exchange Commission Rule 13a-14\(a\) or 15d-14\(a\)](#)
- 32 [Certification of Principal Executive Officer and Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002](#)
- 101.INS Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
- 101.SCH Inline XBRL Taxonomy Extension Schema Document
- 101.CAL Inline XBRL Taxonomy Extension Calculation Linkbase Document
- 101.DEF Inline XBRL Taxonomy Extension Definition Linkbase Document
- 101.LAB Inline XBRL Taxonomy Extension Label Linkbase Document
- 101.PRE Inline XBRL Taxonomy Extension Presentation Linkbase Document
- 104 The cover page from this Quarterly Report on Form 10-Q has been formatted in Inline XBRL and contained in Exhibit 101.

FORM 10-Q CROSS-REFERENCE INDEX

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SIGNATURES

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

THE ODP CORPORATION

(Registrant)

Date: August 7, 2024

By: /s/ GERRY P. SMITH

Gerry P. Smith
Chief Executive Officer
(Principal Executive Officer)

Date: August 7, 2024

By: /s/ D. ANTHONY SCAGLIONE

D. Anthony Scaglione
Executive Vice President and
Chief Financial Officer
(Principal Financial Officer)

Date: August 7, 2024

By: /s/ MAX W. HOOD

Max W. Hood
Senior Vice President and
Chief Accounting Officer
(Principal Accounting Officer)

**AMENDED AND RESTATED BYLAWS OF
THE ODP CORPORATION,
A DELAWARE CORPORATION**

ARTICLE I

OFFICES

Section 1. Registered Office. The registered office of the corporation shall be located at the corporation's principal place of business in the State of Delaware or at the office of the person or entity then acting as the corporation's registered agent in Delaware. The registered office and/or registered agent of the corporation may be changed from time to time by resolution of the Board of Directors.

Section 2. Other Offices. The corporation may also have offices at such other places as the Board of Directors may from time to time determine or the business of the corporation may require.

ARTICLE II

STOCKHOLDERS

Section 1. Annual Meeting. The annual meeting of stockholders for the election of directors and the conduct of such other business as may properly come before the meeting in accordance with these Bylaws shall be held at such place, if any, including by remote communication, and time on such day, other than a legal holiday, as the Board of Directors in each such year determines. The Board of Directors may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board of Directors.

Section 2. Special Meetings. Special meetings of stockholders may be called for any purpose and may be held at such time and place as shall be stated in a notice of meeting or in a duly executed waiver of notice thereof. 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.

(a) A special meeting of stockholders may be called at any time by the Chief Executive Officer or, if directed by resolution of the Board of Directors, the Secretary.

(b) A special meeting of stockholders shall be called by the Secretary at the written request (a "Special Meeting Request") of holders of record of at least 25% of the outstanding common stock of the corporation entitled to vote on the matter or matters to be brought before the proposed special meeting (the "Requisite Percentage"). A Special Meeting Request to the Secretary shall be signed by each stockholder requesting the special meeting (each, a "Requesting Stockholder") and shall be accompanied by a notice setting forth the information required by Section 14(a)(2)(A)-(D) of this Bylaw, as if such Section were applicable to Special Meeting Requests. Requesting Stockholders who collectively hold at least the Requisite Percentage on the date the Special Meeting Request is submitted to the Secretary must (i) continue to hold at least the number of shares of common stock set forth in the Special Meeting Request with respect to each such Requesting Stockholder through the date of the special meeting and (ii) submit a written certification (an "Ownership Certification") confirming the continuation of such holdings on the business day immediately preceding the special meeting, which Ownership Certification shall include the information required by Section 14(a)(2)(A) of this Bylaw as of the date of such special meeting with respect to each such Requesting Stockholder.

(c) A special meeting called pursuant to Section 2(a) or Section 2(b) of this Bylaw shall be held at such date, time and place as may be fixed by the Board of Directors in accordance with these Bylaws; *provided, however*, that the date of any special meeting called pursuant to Section 2(b) of this Bylaw shall not be more than 90 days after a Special Meeting Request that satisfies the requirements of this Section 2 is received by the Secretary. The day, place and hour of such special meeting shall be set forth in the notice of special meeting. If a valid Special Meeting Request is received by the Secretary subsequent to a valid Special Meeting Request and before the date of the corresponding special meeting of shareholders, all items of business contained in such Special Meeting Requests may be presented at one special meeting.

(d) Notwithstanding the foregoing provisions of this Section 2, a special meeting requested by stockholders pursuant to Section 2(b) of this Bylaw shall not be held if (i) the Special Meeting Request does not comply with this Section 2; (ii) the Special Meeting Request relates to an item of business that is not a proper subject for stockholder action under applicable law; (iii) the Special Meeting Request is received by the corporation during the period commencing 90 days prior to the first anniversary of the date of the immediately preceding annual meeting and ending on the date of the next annual meeting; (iv) an annual or special meeting of stockholders that included a substantially similar item of business (“Similar Business”) (as determined in good faith by the Board of Directors) was held not more than 120 days before the Special Meeting Request was received by the Secretary; (v) the Board of Directors has called or calls for an annual or special meeting of stockholders to be held within 90 days after the Special Meeting Request is received by the Secretary and the Board of Directors determines in good faith that the business to be conducted at such meeting includes the Similar Business; (vi) such Special Meeting Request was made in a manner that involved a violation of Regulation 14A under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or other applicable law; or (vii) two or more special meetings of stockholders called pursuant to the request of stockholders have been held within the 12-month period before the Special Meeting Request was received by the Secretary. For purposes of this Section 2(d), the nomination, election or removal of directors shall be deemed to be Similar Business with respect to all items of business involving the nomination, election or removal of directors, changing the size of the Board of Directors and filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors.

(e) Any Requesting Stockholder may revoke such stockholder’s participation in a Special Meeting Request at any time by written revocation delivered to the Secretary and if, following any such revocation, there are outstanding un-revoked requests from stockholders holding less than the Requisite Percentage in accordance with this Section 2, the Board of Directors may, in its discretion, cancel the special meeting. If none of the Requesting Stockholders appears or sends a duly authorized agent to present the business to be presented for consideration that was specified in the Special Meeting Request, or if the Ownership Certification does not satisfy the requirements set forth in Section 2(b) of this Bylaw, the corporation need not present such business for a vote at such special meeting.

(f) Business conducted at a special meeting requested by stockholders pursuant to Section 2(b) of this Bylaw shall be limited to the matters described in the applicable Special Meeting Request; *provided* that nothing herein shall prohibit the Board of Directors from submitting matters to the stockholders at any such special meeting requested by stockholders.

Section 3. Place of Meetings. Annual and special meetings may be held at such place, if any, either within or without the State of Delaware, as the Board of Directors may determine. The Board of Directors may, in its sole discretion, determine that meetings of the stockholders shall not be held at any place, but may instead be held solely by means of remote communication as described in Article II, Section 17 of these Bylaws in accordance with Section 211(a)(2) of the General Corporation Law of the State of Delaware.

Section 4. Notice. Whenever stockholders are required or permitted to take action at a meeting, written or printed notice stating the place, date, time, 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 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 determining stockholders entitled to notice of the meeting, and, in the case of special meetings, the purpose or purposes, of such meeting, shall be given to each stockholder entitled to vote at such meeting not less than 10 nor more than 60 days before the date of the meeting. All such notices shall be delivered, either (a) personally or by mail, by or at the direction of the Chief Executive Officer or the Secretary, and if mailed, such notice shall be deemed to be delivered when deposited in the United States mail, postage prepaid, addressed to the stockholder at his, her or its address as the same appears on the records of the corporation or (b) by a form of electronic transmission, including electronic mail, in the manner provided in and to the extent permitted by the General Corporation Law of the State of Delaware (the “Delaware General Corporation Law”). Nothing in these Bylaws shall preclude the stockholders from waiving notice as provided in Article IV hereof. Any previously scheduled annual meeting of the stockholders may be postponed, and any previously scheduled special meeting of the stockholders may be postponed or cancelled, by resolution of the Board of Directors upon public notice given prior to the time previously scheduled for such meeting of stockholders.

Section 5. Fixing a Record Date for Stockholder Meetings. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 60 nor less than 10 days before

the date of any such meeting. Only stockholders as of the record date are entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof. If no record date is fixed by the Board of Directors, the

record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be the close of business on the next day preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment or postponement of the meeting; *provided, however*, that the Board of Directors may fix a new record date for the adjourned or postponement meeting.

Section 6. Quorum. The holders of a majority of the issued and outstanding shares of common stock of the corporation entitled to vote, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders. If a quorum is not present, the chair of the meeting or the holders of a majority of the shares present in person or represented by proxy at the meeting and entitled to vote at the meeting may adjourn the meeting to another time and/or place from time to time. When a quorum is once present to commence a meeting of stockholders, it shall not be broken by the subsequent withdrawal of the stockholders or their proxies.

Section 7. Adjourned Meetings. When a meeting is adjourned to another time and place, notice need not be given of the adjourned meeting if the time, place (if any) thereof, and 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 adjourned meeting are (i) announced at the meeting at which the adjournment was taken, (ii) displayed, during the time scheduled for the meeting, on the same electronic network used to enable stockholders and proxy holders to participate in the meeting by means of remote communication or (iii) set forth in the notice of meeting given in accordance with Article II, Section 4 of these Bylaws. At any such adjourned meeting at which a quorum shall be present or represented, the corporation may transact any business which might have been transacted at the original meeting. Notwithstanding the foregoing, if the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given as provided in Section 4 of Article II hereof, but such notice may be waived as provided in Article IV hereof.

Section 8. Voting by Stockholders on Matters Other Than the Election of Directors. With respect to any matters as to which no other voting requirement is specified by the Delaware General Corporation Law, the certificate of incorporation of the corporation (the "Certificate of Incorporation") or these Bylaws, the affirmative vote required for stockholder action shall be that of a majority of votes cast at a meeting of stockholders at which a quorum is present. In the case of a matter submitted for a vote of the stockholders as to which a stockholder approval requirement is applicable under the stockholder approval policy of the NASDAQ Stock Market (or any other exchange on which the corporation's securities are listed), the requirements of Rule 16b-3 under the Exchange Act, or any provision of the Internal Revenue Code of 1986, as amended (the "Code"), including Code Section 162(m), in each case for which no higher voting requirement is specified by the Delaware General Corporation Law, the Certificate of Incorporation or these Bylaws, the vote required for approval shall be the requisite vote specified in such stockholder approval policy, Rule 16b-3 or such Code provision, as the case may be (or the highest such requirement if more than one is applicable). For the approval of the appointment of independent public accountants (if submitted for a vote of the stockholders), the vote required for approval shall be a majority of the votes cast on the matter.

Section 9. Voting by Stockholders in the Election of Directors. Each director to be elected by the stockholders shall be elected by a majority of the votes cast at any meeting held for the purpose of the election of directors at which a quorum is present, subject to the following provisions:

(a) Resignation of Incumbent Director Who Fails to Receive a Majority Vote: In any non-contested election of directors, any director nominee who is an incumbent director who receives a greater number of votes "against" his or her election than votes "for" such election shall immediately tender his or her resignation to the Board of Directors, which resignation shall be irrevocable. Thereafter, the Board of Directors shall decide, through a process managed by the Corporate Governance and Nominating Committee (and excluding the nominee in question from all Board of Directors and Committee deliberations), whether to accept such resignation within 90 days of the date of such resignation. Absent a compelling reason for the director to remain on the Board of Directors (as determined by the Board of Directors), the Board of Directors shall accept the resignation from the director. To the extent that the Board of Directors determines that there is a compelling reason for the director to remain on the Board of Directors and does not accept the resignation, the Board of Directors' explanation of its decision shall be disclosed promptly in a Current Report on Form 8-K filed with the United States Securities and Exchange Commission (the "SEC") or in a press release that is widely disseminated.

Definition of “Compelling Reason”: For purposes of this policy, a “compelling reason” shall be determined by the Board of Directors (excluding the nominee in question from all Board of Directors and Committee deliberations) and could include, by way of example and without limitation, situations in which a director nominee was the target of a “vote no” campaign on what the Board of Directors believes to be an illegitimate or inappropriate basis or if the resignation would cause the corporation to be in violation of its constituent documents or regulatory requirements.

(b) Consequences of the Board of Directors’ Acceptance or Non-Acceptance of a Director’s Resignation: If such incumbent director’s resignation is accepted by the Board of Directors, then such director shall immediately cease to be a member of the Board of Directors upon the date of action taken by the Board of Directors to accept such resignation. If such incumbent director’s resignation is not accepted by the Board of Directors, such director will continue to serve until the next annual meeting, or until his or her subsequent resignation or removal.

(c) Failure of a Non-Incumbent Director to Win Election: If any nominee for director who is not an incumbent fails in a non-contested election to receive a majority vote for his or her election at any meeting for the purpose of the election of directors at which a quorum is present, such candidate shall not be elected and shall not take office.

(d) Filling Vacancies: If an incumbent director’s resignation is accepted by the Board of Directors pursuant to this Bylaw, or if a non-incumbent nominee for director is not elected, the Board of Directors, may fill any resulting vacancy pursuant to the provisions of Article III, Section 4 of these Bylaws, or may decrease the size of the Board of Directors pursuant to the provisions of Article III, Section 2 of these Bylaws.

(e) Nominees to Agree in Writing to Abide by this Bylaw: To be eligible for election as a director of the corporation, each nominee (including incumbent directors and nominees proposed by stockholders in accordance with Article II, Section 14 of these Bylaws) must agree in writing in advance to comply with the requirements of this Section 9 of Article II of these Bylaws.

(f) Majority Vote Defined: For purposes of this Bylaw, a majority of votes cast shall mean that the number of shares voted “for” a director’s election exceeds 50% of the total number of votes cast with respect to that director’s election. Votes “cast” shall include votes “against” but shall exclude abstentions with respect to a director’s election or with respect to the election of directors in general.

(g) Vote Standard in Contested Elections: Notwithstanding anything to the contrary contained in this Article II, Section 9 of these Bylaws, in the event of a contested election, directors shall be elected by the vote of a plurality of the votes cast at any meeting for the election of directors at which a quorum is present. For purposes of this Bylaw, a contested election shall mean any election of directors in which the number of candidates for election as directors exceeds the number of directors to be elected, with the determination thereof being made by the Secretary (i) as of the close of the applicable notice of nomination period set forth in Article II, Section 14(a)(2) or Article II, Section 14(a)(4) of these Bylaws, whichever is later, based on whether one or more notice(s) of nomination were timely filed in accordance with said Bylaws or (ii) if later, reasonably promptly following the determination by any court or other tribunal of competent jurisdiction that one or more notice(s) of nomination were timely filed in accordance with said Bylaws; *provided*, that the determination that an election is a contested election by the Secretary pursuant to clause (i) or (ii) shall be determinative only as to the timeliness of a notice of nomination and not otherwise as to its validity. If, prior to the time the corporation mails its initial proxy statement in connection with such election of directors, one or more notices of nomination are withdrawn (or declared invalid or untimely by any court or other tribunal of competent jurisdiction) such that the number of candidates for election as director no longer exceeds the number of directors to be elected, the election shall not be considered a contested election, but in all other cases, once an election is determined to be a contested election, directors shall be elected by the vote of a plurality of the votes cast.

Section 10. Voting Rights. Except as otherwise provided by the Delaware General Corporation Law or by the Certificate of Incorporation and subject to Article VIII, Section 3 of these Bylaws, every stockholder shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of common stock held by such stockholder.

Section 11. Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him or her by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy specifically provides for a longer period. Each proxy shall be in writing executed by the stockholder or by a transmission permitted by law, including Rule 14a-19 promulgated under the Exchange Act, giving the proxy or by his duly authorized attorney. Unless and until voted, every proxy shall be revocable at the pleasure of the person who executed it, or his legal representatives

or assigns except in those cases where an irrevocable proxy permitted by statute has been given. Any proxy is suspended when the person executing the proxy is present at a meeting of stockholders and elects to vote, except that when such proxy is coupled with an interest sufficient in law to support an irrevocable power and the fact of the interest appears on the face of the proxy, the agent named in the proxy shall have all voting and other rights referred to in the proxy, notwithstanding the presence of the person executing the proxy. At each meeting of the stockholders, and before any voting commences, all proxies filed at or before the meeting shall be submitted to and examined by the Secretary or a person designated by the Secretary, and no shares may be represented or voted under a proxy that has been found to be invalid or irregular.

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

Section 12. Action by Written Consent.

(a) General. Any action required to be taken at any annual or special meeting of stockholders of the corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken and bearing the dates of signature of the stockholders who signed the consent or consents, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in the State of Delaware, or the corporation's principal place(s) of business, or an officer or agent of the corporation having custody of the book or books in which proceedings of meetings of the stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested, *provided, however*, that no consent or consents delivered by certified or registered mail shall be deemed delivered until received at the registered office. All consents properly delivered in accordance with this Section shall be deemed to be recorded when so delivered. Any action taken pursuant to such written consent or consents of the stockholders shall have the same force and effect as if taken by the stockholders at a meeting of stockholders.

(b) Inspectors of Written Consent. In the event of the delivery, in the manner provided by Section 12(a) of this Bylaw, to the corporation of the requisite written consent or consents to take corporate action and/or any related revocation or revocations, the corporation shall engage nationally recognized independent inspectors of elections for the purpose of promptly performing a ministerial review of the validity of the consents and revocations. For the purpose of permitting the inspectors to perform such review, no action by written consent without a meeting shall be effective until such date as the independent inspectors certify to the corporation that the consents delivered to the corporation in accordance with Section 12(a) of this Bylaw represent at least the minimum number of votes that would be necessary to take the corporate action. Nothing contained in this paragraph shall in any way be construed to suggest or imply that the Board of Directors or any stockholder shall not be entitled to contest the validity of any consent or revocation thereof, whether before or after such certification by the independent inspectors, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

(c) Effectiveness of Action by Written Consent. No written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered to the corporation as required by this section, written consents signed by the holders of a sufficient number of shares to take such corporate action are so recorded.

(d) Notice of Action by Written Consent. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the record date for the action by written consent determined in accordance with Section 12(b) of this Bylaw.

(e) Fixing a Record Date for Action by Written Consent. In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Only stockholders as of the record date are entitled to consent to corporate action in writing without a meeting. Any stockholder of record seeking to have the stockholders authorize or

take corporate action by written consent shall, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within 10 days after the date on which such a request is received, adopt a resolution fixing the record date (unless a record date has previously been fixed by the Board of Directors pursuant to the first sentence of this Bylaw). If no record date has been fixed by the Board of Directors, pursuant to this Bylaw or otherwise within 10 days of the date on which such a request is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by statute, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place(s) of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by statute, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 13. Stock Records. The corporation shall prepare, at least 10 days before each meeting or any adjournment thereof, 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 10 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 and the number and class and series, if any, of shares held by each. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of 10 days ending on the day before the meeting date: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation.

Section 14. Notice of Stockholder Nominations and Other Business.

(a) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board of Directors and the proposal of other business to be considered by the corporation's stockholders may be made at an annual meeting of stockholders (A) by or at the direction of the Board of Directors, including pursuant to the corporation's notice of meeting, or (B) by any stockholder of the corporation who, (x) with respect to nominations of persons and the proposal of any business not intended to be included in the corporation's proxy statement for such annual meeting, (i) was a stockholder of record at the time of giving of notice provided for in Section (a)(2) of this Bylaw and at the time of the annual meeting (including any adjournment or postponement thereof), (ii) is entitled to vote at the meeting and (iii) complies with the notice procedures set forth in Section (a)(2) of this Bylaw as to such business or nomination or (y) with respect to nominations of persons intended to be included in the corporation's proxy statement for such annual meeting, by a Nominator (as defined below) who complies with the notice and other procedures set forth in Section (a)(4) of this Bylaw; this clause (B) shall be the exclusive means for a stockholder to make nominations or submit other business (other than matters properly brought under Rule 14a-8 under the Exchange Act and included in the corporation's notice of meeting) before an annual meeting of stockholders.

(2) Without qualification, for any nominations or any other business to be properly brought before an annual meeting by a stockholder pursuant to Section 14(a)(1)(B)(x) of this Bylaw, the stockholder must have given timely notice in writing to the Secretary and such other business must otherwise be 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 earlier than the close of business on the 120th day and not later than the close of business on the 90th day prior to the first anniversary of the preceding year's annual meeting; *provided, however*, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to the date of such annual meeting and not later than the close of business on the later of the 90th day prior to the date of such annual meeting or, if the first public announcement of the date of such annual meeting is less than 100 days prior to the date of such annual meeting, the tenth day following the day on which public announcement of the date of such meeting is first made by the corporation. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

To be in proper form, a stockholder's notice (whether given pursuant to this Section 14(a)(2), Section 14(a)(4) or

Section 14(b) of this Bylaw) to the Secretary must:

- (A) set forth, 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, if any, (ii) (1) the class or series and number of shares of the corporation which are, directly or indirectly, owned beneficially and of record by such stockholder and such beneficial owner, (2) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the corporation or with a value derived in whole or in part from the value of any class or series of shares of the corporation, or which is intended to increase or decrease (or has the effect of increasing or decreasing) the voting power of any person with respect to the shares of any class or series of shares in the corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the corporation or otherwise (a "Derivative Instrument") directly or indirectly owned beneficially by such stockholder and such beneficial owner and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the corporation, (3) any proxy, contract, arrangement, understanding, or relationship pursuant to which such stockholder has a right to vote any shares of any security of the corporation or influence the voting over any such shares, (4) any short interest in any security of the corporation (for purposes of this Bylaw a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (5) any rights to dividends on the shares of the corporation owned beneficially by such stockholder and such beneficial owner that are separated or separable from the underlying shares of the corporation, (6) any proportionate interest in shares of the corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder and such beneficial owner is a general partner or, directly or indirectly, beneficially owns an interest in a general partner and (7) any performance-related fees (other than an asset-based fee) that such stockholder and such beneficial owner is entitled to based on any increase or decrease in the value of shares of the corporation or Derivative Instruments, if any, as of the date of such notice, including without limitation any such interests held by members of such person's immediate family sharing the same household (which information shall be supplemented by such stockholder and beneficial owner, if any, not later than 10 days after the record date for the meeting to disclose such ownership as of the record date), (iii) any other information relating to such stockholder and beneficial owner, if any, that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder; (iv) a representation that the stockholder is a stockholder of record of stock of the corporation at the time of the giving of notice provided for in these Bylaws, is entitled to vote at such meeting and that the stockholder (or a qualified representative thereof) intends to appear in person at the meeting to present such nominee for election or to bring such business before the meeting; and (v) a statement as to whether or not such stockholder or beneficial owner intends to deliver a proxy statement and form of proxy to, in the case of a nomination, a number of holders representing at least 67% of the voting power of shares entitled to vote on the election in support of such nominee or nominees or, in the case of a proposal to carry such proposal under applicable law;
- (B) if the notice relates to nominations of persons not intended to be included in the corporation's proxy statement, a stockholder who has delivered such notice shall promptly certify to the corporation, and notify the corporation in writing, that it has met the requirements of Rule 14a-19(a) (including for the avoidance of doubt Rule 14a-19(a)(3) which provides that "No person may solicit proxies in support of director nominees other than the registrant's nominees unless such person: ... Solicits the holders of shares representing at least 67% of the voting power of shares entitled to vote on the election of directors and includes a statement to that effect in the proxy statement or form of proxy.") and upon request of the corporation, shall, not later than five (5) business days prior to date of the applicable meeting of stockholders deliver to the corporation reasonable evidence of such compliance;
- (C) if the notice relates to any business other than a nomination of a director or directors that the stockholder proposes to bring before the annual meeting, set forth (i) a brief description of the business desired to be brought before the meeting, 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, in such business and (ii) a description of all agreements, arrangements and understandings between such stockholder and beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder;
- (D) set forth, as to each person, if any, whom the stockholder proposes to nominate for election or reelection to the

Board of Directors (i) all information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected) and (ii) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such stockholder and beneficial owner, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; and

(E) with respect to each nominee for election or reelection to the Board of Directors, include a completed and signed questionnaire, representation and agreement required by Article II, Section 15 of these Bylaws. The corporation may require any proposed nominee to furnish such other information as may reasonably be required by the corporation to determine the eligibility of such proposed nominee to serve as an independent director of the corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee.

(3) Notwithstanding anything in the second sentence of Section 14(a)(2) of this Bylaw to the contrary, with respect to nominations of persons not intended to be included in the corporation's proxy statement, in the event that the number of directors to be elected to the Board of Directors is increased and there is no public announcement by the corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least 100 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by Section (a)(2) of this Bylaw shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth day following the day on which such public announcement is first made by the corporation.

(4) Proxy Access for Director Nominations.

(A) Whenever the Board of Directors solicits proxies with respect to the election of directors at an annual meeting, in addition to any persons nominated for election to the Board of Directors by or at the direction of the Board of Directors, subject to the provisions of this Section 14(a)(4), the corporation shall: (i) include in its notice of meeting and proxy materials, as applicable, for any annual meeting of stockholders (1) the name of any person nominated for election (the "Stockholder Nominee") by a stockholder as of the date that the Notice of Proxy Access Nomination (as defined below) is received by the Secretary at the principal executive offices of the corporation in accordance with this Section 14(a)(4) who is entitled to vote for the election of directors at the annual meeting and who satisfies the notice, ownership and other requirements of this Section 14(a)(4) (such stockholder, together with the beneficial owner of such shares, a "Nominator") or by a group of no more than 20 such stockholders (such stockholders, together with the beneficial owners of such shares, a "Nominator Group") that, collectively as a Nominator Group, satisfies the notice, ownership and other requirements of this Section 14(a)(4) applicable to a Nominator Group; provided that, in the case of a Nominator Group, each member thereof (each a "Group Member") shall have satisfied the notice, ownership and other requirements of this Section 14(a)(4) applicable to Group Members, and (2) if the Nominator or the Nominator Group, as applicable, so elects, the Nomination Statement (as defined below) furnished by such Nominator or Nominator Group; and (ii) include such Stockholder Nominee's name on any ballot distributed at such annual meeting and on the corporation's proxy card (or any other format through which the corporation permits proxies to be submitted) distributed in connection with such annual meeting. Nothing in this Section 14(a)(4) shall limit the corporation's ability to solicit against, and include in its proxy materials its own statements relating to, any Stockholder Nominee, Nominator or Nominator Group, or to include such Stockholder Nominee as a nominee of the Board of Directors.

(B) At each annual meeting, a Nominator or Nominator Group may nominate one or more Stockholder Nominees for election at such meeting pursuant to this Section 14(a)(4); provided that the maximum number of Stockholder Nominees nominated by all Nominators and Nominator Groups (including Stockholder Nominees that were submitted by a Nominator or Nominator Group for inclusion in the corporation's proxy materials pursuant to this Section 14(a)(4) but either are subsequently withdrawn, disregarded, declared invalid or ineligible pursuant to this Section 14(a)(4)) to appear in the corporation's proxy materials with respect to an annual meeting shall not exceed the greater of

(i) two nominees and (ii) 20% of the total number of directors in office as of the Final Proxy Access Deadline (as defined below), or if such number is not a whole number, the closest whole number below 20% (the “Maximum Number”).

The Maximum Number shall be reduced, but not below zero, by the sum of:

(x) the number of persons that the Board of Directors decides to nominate pursuant to an agreement, arrangement or other understanding with one or more stockholders or beneficial owners, as the case may be, in lieu of such person being formally nominated as a director pursuant to this Section 14(a)(4) or Section 14(a)(2); and

(y) the number of persons that the Board decides to nominate for re-election who were previously elected to the Board based on a nomination made pursuant to this Section 14(a)(4) or Section 14(a)(2) or pursuant to an agreement, arrangement or other understanding with one or more stockholders or beneficial owners, as the case may be, in lieu of such person being formally nominated as a director pursuant to this Section 14(a)(4) or Section 14(a)(2), in each case, at one of the previous two annual meetings.

If one or more vacancies for any reason occurs on the Board of Directors at any time after the Final Proxy Access Deadline but before the date of the applicable annual meeting and the Board of Directors determines to reduce the size of the Board of Directors in connection therewith, the Maximum Number shall be calculated based on the number of directors in office as so reduced.

Any Nominator or Nominator Group submitting more than one Stockholder Nominee for inclusion in the corporation’s proxy materials pursuant to this Section 14(a)(4) shall rank in its Notice of Proxy Access Nomination such Stockholder Nominees based on the order that the Nominator or Nominator Group desires such Stockholder Nominees to be selected for inclusion in the corporation’s proxy materials in the event that the total number of Stockholder Nominees submitted by Nominators or Nominator Groups pursuant to this Section 14(a)(4) exceeds the Maximum Number. In the event that the number of Stockholder Nominees submitted by Nominators or Nominator Groups pursuant to this Section 14(a)(4) exceeds the Maximum Number, the highest ranking Stockholder Nominee who meets the requirements of this Section 14(a)(4) from each Nominator and Nominator Group will be selected for inclusion in the corporation’s proxy materials until the Maximum Number is reached, beginning with the Nominator or Nominator Group with the largest number of shares disclosed as owned (as defined below) in its respective Notice of Proxy Access Nomination submitted to the corporation and proceeding through each Nominator or Nominator Group in descending order of ownership. If the Maximum Number is not reached after the highest ranking Stockholder Nominee who meets the requirements of this Section 14(a)(4) from each Nominator and Nominator Group has been selected, this process will continue as many times as necessary, following the same order each time, until the Maximum Number is reached.

If, after the Final Proxy Access Deadline, whether before or after the mailing of the corporation’s definitive proxy statement, (i) a Stockholder Nominee who satisfies the requirements of this Section 14(a)(4) becomes ineligible for inclusion in the corporation’s proxy materials pursuant to this Section 14(a)(4), becomes unwilling to serve on the Board of Directors, dies, becomes disabled or is otherwise disqualified from being nominated for election or serving as a director of the corporation or (ii) a Nominator or Nominator Group withdraws its nomination or becomes ineligible, in each case as determined by the Board of Directors or the chair of the meeting, then the Board of Directors or the chair of the meeting shall declare each nomination by such Nominator or Nominator Group to be invalid, and each such nomination shall be disregarded, no replacement nominee or nominees shall be included in the corporation’s proxy materials or otherwise submitted for election as a director in substitution thereof and the corporation (1) may omit from its proxy materials information concerning such Stockholder Nominee and (2) may otherwise communicate to its stockholders, including without limitation by amending or supplementing its proxy materials, that the Stockholder Nominee will not be eligible for election at the annual meeting and will not be included as a Stockholder Nominee in the proxy materials.

(C) To nominate a Stockholder Nominee, the Nominator or Nominator Group shall submit to the Secretary the information required by this Section 14(a)(4) on a timely basis. To be timely, the Notice of Proxy Access Nomination must be addressed to and received by the Secretary not less than 120 days nor more than 150 days prior to the first anniversary of the date on which the corporation’s definitive proxy statement was released to stockholders in connection with the prior year’s annual meeting; provided, however, that if the annual meeting is

convened more than 30 days prior to or delayed by more than 60 days after the first anniversary of the date of the preceding year's annual meeting, the information must be so received not earlier than 120 days prior to such annual meeting and not later than the close of business on the later of (x) the 90th day prior to such annual meeting or (y) the 10th day following the day on which a public announcement of the date of the annual meeting is first made (the last day on which a Notice of Proxy Access Nomination may be delivered pursuant to and in accordance with this Section 14(a)(4), the "Final Proxy Access Deadline"); provided further that in no event shall any adjournment or postponement of an annual meeting, or the public announcement thereof, commence a new time period or extend any time period for the receipt of the information required by this Section 14(a)(4). The written notice required by this Section 14(a)(4) (the "Notice of Proxy Access Nomination") shall include:

- (i) a written notice of the nomination by such Nominator or Nominator Group expressly requesting to have its Stockholder Nominee included in the corporation's proxy materials pursuant to this Section 14(a)(4) that includes, with respect to the Stockholder Nominee and the Nominator (including any beneficial owner on whose behalf the nomination is made) or, in the case of a Nominator Group, with respect to each Group Member (including any beneficial owner on whose behalf the nomination is made) all of the representations, agreements and other information required in a stockholder notice submitted under Section 14(a)(2) of these By-Laws;
- (ii) if the Nominator or Nominator Group so elects, a written statement of the Nominator or Nominator Group for inclusion in the corporation's proxy statement in support of the election of the Stockholder Nominee(s) to the Board of Directors, which statement shall not exceed 500 words with respect to each Stockholder Nominee (the "Nomination Statement") and for the avoidance of doubt, the Nomination Statement shall be limited to 500 words and shall not include any images, charts, pictures, graphic presentations or similar items;
- (iii) in the case of a nomination by a Nominator Group, the designation by all Group Members of one specified Group Member (or a qualified representative thereof) that is authorized to act on behalf of all Group Members with respect to the nomination and matters related thereto, including withdrawal of the nomination;
- (iv) a representation by the Stockholder Nominee and the Nominator or Nominator Group (including each Group Member) and any beneficial owner on whose behalf the nomination is made that each such person has provided and will provide facts, statements and other information in all communications with the corporation and its stockholders and beneficial owners, including without limitation the Notice of Proxy Access Nomination and the Nomination Statement, that are and will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made in light of the circumstances under which they were made, not misleading;
- (v) a statement of the Nominator or Nominator Group (including each Group Member) and any beneficial owner on whose behalf the nomination is made, setting forth and certifying the number of shares such Nominator or Nominator Group is deemed to own (as determined in accordance with sub-paragraph (d) of this Section 14(a)(4)) continuously for at least three years as of the date of the Notice of Proxy Access Nomination and one or more written statements from the stockholder of the Required Shares (as defined below), and from each intermediary through which such shares are or have been held during the requisite three-year holding period, verifying that, as of a date within seven days prior to the date that the Notice of Proxy Access Nomination is received by the Secretary, the Nominator or the Nominator Group, as the case may be, owns, and has owned continuously for the preceding three years, the Required Shares, and the Nominator's or, in the case of a Nominator Group, each Group Member's agreement to provide (1) within seven days after the record date for the applicable annual meeting, written statements from the stockholder and intermediaries verifying the Nominator's or the Nominator Group's, as the case may be, continuous ownership of the Required Shares through the record date; provided that if and to the extent that a stockholder is acting on behalf of one or more beneficial owners, such written statements shall also be submitted by any such beneficial owner or owners, and (2) immediate notice if the Nominator or the Nominator Group, as the case may be, ceases to own the Required Shares prior to the date of the applicable annual meeting;
- (vi) a copy of any Schedule 14N that has been filed with the SEC as required by Rule 14a-18 under the Exchange Act.

(vii) a representation by the Nominator (including any beneficial owner on whose behalf the nomination is made), or, in the case of a Nominator Group, each Group Member (including any beneficial owner on whose behalf the nomination is made) that:

(1) the Required Shares were acquired in the ordinary course of business and not with intent to change or influence control of the corporation, and each such person does not presently have such intent;

(2) each such person will maintain ownership (as defined in this Section 14(a)(4)) of the Required Shares through the date of the applicable annual meeting;

(3) each such person has not nominated, and will not nominate, for election to the Board of Directors at the applicable annual meeting any person other than its Stockholder Nominee(s) pursuant to this Section 14(a)(4);

(4) each such person has not distributed, and will not distribute, to any stockholders or beneficial owners any form of proxy for the applicable annual meeting other than the form distributed by the corporation;

(5) each such person has not engaged in, and will not directly or indirectly engage in, and has not been and will not be a participant (as defined in Schedule 14A of the Exchange Act) in, a "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the applicable annual meeting other than with respect to such Nominator or Nominator Group's Stockholder Nominee(s) or a nominee of the Board of Directors; and

(6) each such person consents to the public disclosure of the information provided pursuant to this Section 14(a)(4);

(viii) an executed agreement, in a form deemed satisfactory by the Board of Directors or any committee thereof, pursuant to which the Nominator (including any beneficial owner on whose behalf the nomination is made) or, in the case of a Nominator Group, each Group Member (including any beneficial owner on whose behalf the nomination is made) agrees to:

(1) comply with all applicable laws, rules and regulations arising out of or relating to the nomination of each Stockholder Nominee pursuant to this Section 14(a)(4);

(2) assume all liability stemming from any legal or regulatory violation arising out of the communications and information provided by such person(s) to the corporation and its stockholders and beneficial owners, including without limitation the Notice of Proxy Access Nomination and Nomination Statement;

(3) indemnify and hold harmless the corporation and each of its directors, officers, employees, agents and affiliates individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the corporation or any of its directors, officers, employees, agents and affiliates arising out of or relating to any nomination submitted by such person(s) pursuant to this Section 14(a)(4);

(4) file with the SEC any solicitation by or on behalf of the Nominator or Nominator Group (including each Group Member) and any beneficial owner on whose behalf the nomination is made relating to the meeting at which the Stockholder Nominee will be nominated, regardless of whether any such filing is required under Regulation 14A of the Exchange Act or whether any exemption from filing is available for such solicitation under Regulation 14A of the Exchange Act;

(5) furnish to the corporation all notifications and updated information required by this Section 14(a)(4), including, without limitation, the information required by sub-paragraph (E) of this Section 14(a)(4); and

(6) upon request, provide to the corporation within five business days after such request, but in any event prior to the day of the annual meeting, such additional information as reasonably requested by the corporation; and

(D) Ownership Requirements.

(i) To nominate a Stockholder Nominee pursuant to this Section 14(a)(4), the Nominator or Nominator Group shall have owned shares representing 3% or more of the voting power entitled to vote generally in the election of directors (the “Required Shares”) continuously for at least three years as of both the date the Notice of Proxy Access Nomination is submitted to the corporation and the record date for determining stockholders eligible to vote at the applicable annual meeting and must continue to own the Required Shares at all times between and including the date the Notice of Proxy Access Nomination is submitted to the corporation and the date of the applicable annual meeting; provided that if and to the extent a stockholder is acting on behalf of one or more beneficial owners (i) only the shares owned by such beneficial owner or owners, and not any other shares owned by any such stockholder, shall be counted for purposes of satisfying the foregoing ownership requirement and (ii) the aggregate number of stockholders and all such beneficial owners whose share ownership is counted for the purposes of satisfying the foregoing ownership requirement shall not exceed 20. For the purposes of determining whether the Nominator or Nominator Group owned the Required Shares for the requisite three-year period, the aggregate number of shares entitled to vote generally in the election of directors shall be determined by reference to the corporation’s periodic filings with the SEC during the ownership period. Two or more funds that are (i) under common management and investment control, (ii) under common management and funded primarily by the same employer or (iii) a “group of investment companies,” as such term is defined in the Investment Company Act of 1940, as amended, shall be treated as one stockholder or beneficial owner, as the case may be, for the purpose of satisfying the foregoing ownership requirements; provided that each fund otherwise meets the requirements set forth in this Section 14(a)(4); and provided further that any such funds for which shares are aggregated for the purpose of satisfying the foregoing ownership requirements provide documentation reasonably satisfactory to the corporation that demonstrates that the funds satisfy the criteria for being treated as one stockholder within seven days after the Notice of Proxy Access Nomination is delivered to the corporation. No shares may be attributed to more than one Nominator or Nominator Group, and no stockholder or beneficial owner may be a member of more than one Nominator Group (other than a stockholder directed to act by more than one beneficial owner) for the purposes of this Section 14(a)(4).

(ii) For purposes of this Section 14(a)(4), “ownership” shall be deemed to consist of and include only the outstanding shares as to which a person possesses both (i) the full voting and investment rights pertaining to such shares and (ii) the full economic interest in (including the opportunity for profit and risk of loss on) such shares; provided that the ownership of shares calculated in accordance with clauses (i) and (ii) shall not include any shares (1) that a person or any of its affiliates has sold in any transaction that has not been settled or closed, including any short sale, (2) that a person or any of its affiliates has borrowed for any purposes or purchased pursuant to an agreement to resell or (3) that are subject to any Derivative Instrument or similar agreement entered into by a person or any of its affiliates, whether any such security, instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares, in any case in which such security, instrument or agreement has, or is intended to have, or if exercised by either party would have, the purpose or effect of (x) reducing in any manner, to any extent or at any time in the future, the person’s or such person’s affiliates’ full right to vote or direct the voting of any such shares, and/or (y) hedging, offsetting or altering to any degree any gain or loss arising from the full economic ownership of such person’s or such person’s affiliates’ shares. “Ownership” shall include shares held in the name of a nominee or other intermediary so long as the person claiming ownership of such shares retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. A person’s ownership of shares shall be deemed to continue during any period in which the person has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement that is revocable at any time by the person. A person’s ownership of shares shall be deemed to continue during any period in which the person has loaned such shares provided that the person has the power to recall such loaned shares on five business days’ notice, will vote such shares at the annual meeting and will hold such shares through the date of the annual meeting. The determination of whether the requirements of “ownership” of shares for purposes of this Section 14(a)(4) are met shall be made by the Board of Directors or any committee thereof. Any such determination adopted in good faith by the Board of Directors or any committee thereof shall be conclusive and binding on the corporation, its stockholders and beneficial

owners and all other parties. For the purposes of this Section 14(a)(4), the terms “owned,” “owning” and other variations of the word “own” shall have correlative meanings. For the purposes of this Section 14(a)(4), the term “affiliate” or “affiliates” shall have the meaning ascribed thereto under the rules and regulations of the Exchange Act.

(E) For the avoidance of doubt, with respect to any nomination submitted by a Nominator Group pursuant to this Section 14(a)(4), the information required by sub-paragraph (C) of this Section 14(a)(4) to be included in the Notice of Proxy Access Nomination shall be provided by each Group Member (including any beneficial owner on whose behalf the nomination is made), and each such Group Member (including any beneficial owner on whose behalf the nomination is made) shall execute and deliver to the Secretary the representations and agreements required under sub-paragraph (C) of this Section 14(a)(4) at the time the Notice of Proxy Access Nomination is submitted to the corporation. In the event that the Nominator, Nominator Group or any Group Member shall have breached any of their agreements with the corporation or any information included in the Nomination Statement or the Notice of Proxy Access Nomination, or any other communications by the Nominator, Nominator Group or any Group Member (including any beneficial owner on whose behalf the nomination is made) with the corporation or its stockholders and beneficial owners, ceases to be true and correct in all material respects (or omits a material fact necessary to make the statements made, in light of the circumstances under which they were made and as of such later date, not misleading), each Nominator, Nominator Group or Group Member (including any beneficial owner on whose behalf the nomination is made), as the case may be, shall promptly (and in any event within 48 hours of discovering such breach or that such information has ceased to be true and correct in all material respects (or omits a material fact necessary to make the statements made, in light of the circumstances under which they were made and as of such later date, not misleading)) notify the Secretary of any such breach, inaccuracy or omission in such previously provided information and shall provide the information that is required to correct any such defect, if applicable, it being understood that providing any such notification shall not be deemed to cure any defect or limit the corporation’s rights to omit a Stockholder Nominee from its proxy materials as provided in this Section 14(a)(4).

(F) Stockholder Nominee Requirements.

(i) Within the time period specified in this Section 14(a)(4) for delivering the Notice of Proxy Access Nomination, each Stockholder Nominee must deliver to the Secretary a written representation and agreement, which shall be deemed a part of the Notice of Proxy Access Nomination for purposes of this Section 14(a)(4), that such person: (1) consents to being named in the corporation’s proxy statement as a nominee, to serve as a director if elected and to the public disclosure of the information provided pursuant to this Section 14(a)(4); (2) understands his or her duties as a director under the Delaware General Corporation Law and agrees to act in accordance with those duties while serving as a director; (3) is not and will not become a party to (x) any Voting Commitment (as defined in Article II, Section 15 herein) that has not been disclosed to the corporation or (y) any Voting Commitment that could limit or interfere with such person’s ability to comply, if elected as a director of the corporation, with such person’s fiduciary duties under applicable law; (4) is not and will not become a party to any Third Party Compensation Arrangement (as defined in Article II, Section 15 herein) that has not been disclosed to the corporation, and has not and will not receive any such Third Party Compensation Arrangement that has not been disclosed to the corporation; (5) if elected as a director of the corporation, will comply with all applicable laws and stock exchange listing standards and the corporation’s policies, guidelines and principles applicable to directors, including, without limitation, the corporation’s publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines and any other codes, policies and guidelines or any rules, regulations and listing standards, in each case, as applicable to directors; (6) agrees to meet with the Board of Directors or any committee or delegate thereof to discuss matters relating to the nomination of the Stockholder Nominee, including information in the Notice of Proxy Access Nomination and such Stockholder Nominee’s eligibility to serve as a member of the Board of Directors; and (7) will provide facts, statements and other information in all communications with the corporation and its stockholders and beneficial owners that are and will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(ii) At the request of the corporation, each Stockholder Nominee must promptly submit (but in no event later than seven days after receipt of the request) to the Secretary all completed and signed questionnaires required of directors. The corporation may request such additional information as necessary to permit the Board of Directors to determine if each nominee is independent, including for purposes of

serving on the committees of the Board of Directors, under the listing standards of each principal securities exchange upon which the corporation's shares are listed, any applicable rules of the SEC and any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the corporation's directors and to determine whether the nominee otherwise meets all other publicly disclosed standards applicable to directors.

(iii) In the event that a Stockholder Nominee shall have breached any of their agreements with the corporation or any information or communications provided by a Stockholder Nominee to the corporation or its stockholders and beneficial owners ceases to be true and correct in any respect or omits a fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, such nominee shall promptly (and in any event within 48 hours of discovering such breach or that such information has ceased to be true and correct in all material respects (or omits a material fact necessary to make the statements made, in light of the circumstances under which they were made and as of such later date, not misleading)) notify the Secretary of any such breach, inaccuracy or omission in such previously provided information and shall provide the information that is required to make such information or communication true and correct, if applicable, it being understood that providing any such notification shall not be deemed to cure any defect or limit the corporation's rights to omit a Stockholder Nominee from its proxy materials as provided in this Section 14(a)(4).

(G) Notwithstanding anything to the contrary contained in this Section 14(a)(4), the corporation shall not be required to include, pursuant to this Section 14(a)(4), a Stockholder Nominee in its proxy materials for any annual meeting, or, if the proxy statement already has been filed, to submit the nomination of a Stockholder Nominee to a vote at the annual meeting, notwithstanding that proxies in respect of such vote may have been received by the corporation:

(i) for any meeting for which the Secretary receives notice that any stockholder or beneficial owner, as the case may be, intends to nominate one or more persons for election to the Board of Directors pursuant to Section 14(a)(2);

(ii) who is not determined by the Board of Directors in its sole discretion to be independent under the listing standards of each principal securities exchange upon which the shares of the corporation are listed, any applicable rules of the SEC and any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the corporation's directors, including those applicable to a director's service on any of the committees of the Board of Directors, in each case as determined by the Board of Directors or any committee thereof, in its sole discretion;

(iii) whose election as a member of the Board of Directors would cause the corporation to be in violation of these Bylaws, the Certificate of Incorporation, the rules and listing standards of the principal securities exchanges upon which the shares of the corporation are listed, or any applicable law, rule or regulation or of any publicly disclosed standards of the corporation applicable to directors, in each case, as determined by the Board of Directors or any committee thereof, in its sole discretion;

(iv) who is or has been, within the past three years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, as amended;

(v) who is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in such a criminal proceeding within the past ten years;

(vi) who is subject to any order of the type specified in Rule 506(d) of Regulation D under the Securities Act of 1933, as amended;

(vii) if the Stockholder Nominee or Nominator (including any beneficial owner on whose behalf the nomination is made), or, in the case of a Nominator Group, any Group Member (including any beneficial owner on whose behalf the nomination is made) shall have provided information to the corporation in connection with such nomination that was untrue in any material respect or omitted to state a material fact necessary in order to make any statement made, in light of the circumstances under which it was made, not misleading, as determined by the Board of Directors or any committee thereof, in its sole discretion;

(viii) the Nominator (or a qualified representative thereof) or, in the case of a Nominator Group, the representative designated by the Nominator Group in accordance with sub-paragraph (c)(iii) of this Section 14(a)(4) (or a qualified representative thereof), or the Stockholder Nominee does not appear at the applicable annual meeting to present the Stockholder Nominee for election;

(ix) if the Nominator (including any beneficial owner on whose behalf the nomination is made), or, in the case of a Nominator Group, any Group Member (including any beneficial owner on whose behalf the nomination is made) has engaged in or is currently engaged in, or has been or is a participant (as defined in Schedule 14A of the Exchange Act) in, a “solicitation” within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the applicable annual meeting other than with respect to such Nominator or Nominator Group’s Stockholder Nominee(s) or a nominee of the Board of Directors; or

(x) the Nominator or, in the case of a Nominator Group, any Group Member, or applicable Stockholder Nominee otherwise breaches or fails to comply with its representations or obligations pursuant to these By-Laws, including, without limitation, this Section 14(a)(4).

For the purpose of this sub-paragraph (G), clauses (ii) through (x) will result in the exclusion from the proxy materials pursuant to this Section 14(a)(4) of the specific Stockholder Nominee(s) to whom the ineligibility applies, or, if the proxy statement has already been filed, the ineligibility of the Stockholder Nominee(s) and, in either case, the inability of the Nominator or Nominator Group that nominated any such Stockholder Nominee to substitute another Stockholder Nominee therefor; however, clause (i) will result in the exclusion from the proxy materials pursuant to this Section 14(a)(4) of all Stockholder Nominees for the applicable annual meeting, or, if the proxy statement already has been filed, the ineligibility of all Stockholder Nominees.

(H) Notwithstanding anything to the contrary contained in this Section 14(a)(4):

(i) the corporation may omit from its proxy materials any information, including all or any portion of the Nomination Statement, if the Board of Directors determines that the disclosure of such information would violate any applicable law or regulation or that such information is not true and correct in all material respects or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

(ii) if any Nominator, Nominator Group or Group Member (including any beneficial owner on whose behalf the nomination is made) or Stockholder Nominee has failed to comply with the requirements of this Section 14(a)(4), the Board of Directors or the chair of the meeting shall declare the nomination by such Nominator or Nominator Group to be invalid, and such nomination shall be disregarded.

(I) The Board of Directors (or any other person or body authorized by the Board of Directors) shall have the exclusive power and authority to interpret the provisions of this Section 14(a)(4) and make all determinations deemed necessary or advisable in connection with this Section 14(a)(4) to any person, facts or circumstances. All such actions, interpretations and determinations that are done or made by the Board of Directors (or any other person or body authorized by the Board of Directors) shall be final, conclusive and binding on the corporation, its stockholders and beneficial owners and all other parties.

(J) This Section 14(a)(4) shall be the exclusive method for stockholders to include nominees for director in the corporation’s proxy materials other than with respect to Rule 14a-19 under the Exchange Act to the extent applicable with respect to form of proxies.

(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 (1) by or at the direction of the Board of Directors, including pursuant to the corporation’s notice of meeting, (2) pursuant to Section 2 of this Bylaw, or (3) by any stockholder of the corporation who (i) is a stockholder of record at the time of giving of notice provided for in this Bylaw and at the time of the special meeting, (ii) is entitled to vote at the meeting (including any adjournment or postponement thereof), and (iii)

complies with the notice procedures set forth in this Bylaw as to such nomination. In the event a special meeting of stockholders is called for the purpose of electing one or more directors to the Board of Directors, any such stockholder 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 Section 14(a)(2) of this Bylaw with respect to any nomination (including the completed and signed questionnaire, representation and agreement required by Section 15 of this Bylaw) 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 the date of such special meeting and not later than the close of business on the later of the 90th day prior to the date of such special meeting or, if the first public announcement of the date of such special meeting is less than 100 days prior to the date of such special meeting, the tenth 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 any adjournment or postponement of a special meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

(c) General.

(1) Only such persons who are nominated in accordance with the procedures set forth in this Bylaw shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Bylaw. Except as otherwise provided by law, the Certificate of Incorporation or this Bylaw, the chair of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Bylaw and, if any proposed nomination or business is not in compliance with this Bylaw, to declare that such defective proposal or nomination shall be disregarded.

(2) For purposes of this Bylaw, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the SEC pursuant to Sections 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(3) Notwithstanding the foregoing provisions of this Bylaw, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Bylaw; *provided, however*, that any references in this Bylaw to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the requirements applicable to nominations or proposals as to any other business to be considered pursuant to Section 14(a)(1)(B) or Section 14(b) of this Bylaw. Nothing in this Bylaw shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (ii) of the holders of any series of Preferred Stock if and to the extent provided for under law, the Certificate of Incorporation or this Bylaw.

Section 15. Submission of Questionnaire, Representation and Agreement. To be eligible to be a nominee for election or reelection as a director of the corporation, a person must complete and deliver (in accordance with the time periods prescribed for delivery of notice under Article II, Section 14 of these Bylaws) to the Secretary at the principal executive offices of the corporation a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be in the form provided by the corporation, and shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such person (a) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the corporation or (2) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the corporation, with such person's fiduciary duties under applicable law, (b) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director (a "Third Party Compensation Arrangement") that has not been disclosed therein and (c) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the corporation.

Section 16. Fixing a Record Date for Other Purposes. In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purposes of any other lawful action, the Board of Directors may fix a record date, which record date, shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. Only stockholders as of the record date are entitled to receive such payments, distributions or other allotments or exercise such rights or take such other lawful action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 17. Remote Communication. If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxy holders not physically present at a meeting of stockholders may, by means of remote communication:

- (a) participate in a meeting of stockholders; and
- (b) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication,

provided, that

- (1) the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder;
- (2) the corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and
- (3) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

ARTICLE III DIRECTORS

Section 1. General Powers. The business and affairs of the corporation shall be managed by or under the direction of the Board of Directors.

Section 2. Number, Election and Term of Office. The number of directors which shall constitute the Board of Directors shall be established from time to time by a vote of a majority of the entire Board of Directors; *provided, however,* that the number of Directors shall not be reduced so as to shorten the term of any Director at the time in office. The Board of Directors shall be elected at the annual meeting of the stockholders and each director elected shall hold office until the next annual meeting of stockholders or until a successor is duly elected and qualified or until his or her earlier resignation or removal as hereinafter provided.

Section 3. Removal and Resignation. Any director or the entire Board of Directors may be removed at any time, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, except as otherwise provided by law. Any director may resign at any time upon written notice to the corporation. Such written resignation shall take effect at the time specified therein, and if no time is specified, at the time of its receipt by the Chair of the Board, Chief Executive Officer or the Secretary. Except as provided in Article II, Section 9(a) of these Bylaws, the acceptance of a resignation shall not be necessary to make it effective.

Section 4. Vacancies. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may only be filled by a majority of the directors then in office, even if less than a quorum, or by a sole remaining director. Each director so chosen shall hold office until the next annual meeting

of stockholders or until a successor is duly elected and qualified or until his or her earlier resignation or removal as herein provided. Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected. Each director chosen by any class or classes of stock or series thereof shall hold office until the next election of the class for which such directors have been chosen and until their successors shall be elected and qualified.

Section 5. Annual Meetings of Board of Directors. The annual meeting of each newly elected Board of Directors shall be held without other notice than this Bylaw as soon as practicable after the annual meeting of stockholders at such location as is convenient and established by the Chief Executive Officer.

Section 6. Other Meetings and Notice. Regular meetings, other than the annual meeting, of the Board of Directors may be held at such location as is convenient and without notice at such time and at such place as shall from time to time be determined by resolution of the Board of Directors. Special meetings of the Board of Directors may be called (i) by the Chair of the Board or the Chief Executive Officer on at least 24 hours prior notice to each director, either personally, by telephone, by mail, by telegraph, by teletype or by e-mail or (ii) upon the request of at least three directors, by the Secretary on at least 72 hours' prior notice. If notice of less than three days is given, it shall be oral, whether by telephone or in person, or sent by special delivery mail, facsimile, telegraph or e-mail. If mailed, the notice shall be given when deposited in the United States mail, postage pre-paid. Nothing herein contained shall preclude the directors from waiving notice as provided in Article IV hereof.

Section 7. Chair of the Board. The Chair of the Board shall be appointed by resolution of the Board of Directors and shall preside at all meetings of the Board of Directors and stockholders.

Section 8. Quorum, Required Vote and Adjournment. A majority of the total number of directors shall constitute a quorum for the transaction of business except as otherwise provided by statute or by the Certificate of Incorporation or these Bylaws. The vote of a majority of directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless otherwise provided by an applicable provision of law, by these Bylaws, by the Certificate of Incorporation or by a resolution of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 9. Emergency Management Committee. If as a result of a catastrophe or other emergency condition a quorum of any committee of the Board of Directors having power to act in the premises cannot readily be convened and a quorum of the Board of Directors cannot readily be convened, then all the powers and duties of the Board of Directors shall automatically vest and continue, until a quorum of the Board of Directors can be convened, in the Emergency Management Committee, which shall consist of all readily available members of the Board of Directors and two of whose members shall constitute a quorum. The Emergency Management Committee shall call a meeting of the Board of Directors as soon as circumstances permit for the purpose of filling any vacancies on the Board of Directors and its committees and taking such other action as may be appropriate.

Section 10. Other Committees of the Board. The corporation shall have an Audit Committee, a Compensation and Talent Committee, and a Corporate Governance and Nominating Committee. The Board of Directors may, by resolution passed by a majority of the whole Board, designate other committees, and each such other committee shall consist of two 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 a committee. Such committee or committees (including the members thereof) shall serve at the pleasure of the Board of Directors and have such name or names and have as many members as may be determined from time to time by resolution adopted by the Board of Directors. Any member of the Board of Directors may participate in the meetings of any such committee, subject to the approval of the chair of such committee. The Board of Directors shall adopt a charter for each committee it designates (other than special committees), and each committee shall assess the adequacy of such charter annually and recommend any changes to the Board of Directors. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

Section 11. Limitations on Committee Powers. No committee of the Board of Directors, acting without concurrence of the entire Board, shall have power or authority to:

- (a) amend the Certificate of Incorporation or recommend the same to the stockholders;
- (b) adopt an agreement of merger or consolidation or recommend the same to the stockholders;
- (c) recommend to the stockholders the sale, lease, or exchange of all or substantially all of the corporation's property and assets;
- (d) recommend to the stockholders a dissolution of the corporation or a revocation of a dissolution;
- (e) amend or repeal these Bylaws;
- (f) unless expressly so provided by resolution of the Board of Directors, (i) declare a dividend; or (ii) authorize the issuance of shares of the corporation of any class; and
- (g) amend, alter, or repeal any resolution of the Board of Directors which, by its terms, provides that it shall not be amended, altered or repealed by any committee or, as applicable, a certain committee.

Section 12. Committee Rules. Each committee of the Board of Directors may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may otherwise be provided by a resolution of the Board of Directors designating such committee. Unless otherwise provided in such a resolution, the presence of at least a majority of the members of the committee shall be necessary to constitute a quorum. In the event that a member and that member's alternate, if alternates are designated by the Board of Directors as provided in Section 10 of this Article III, of such committee is or are absent or disqualified, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members 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.

Section 13. Use of Communications Equipment in Conducting Meetings. Members of the Board of Directors or any committee thereof may participate in and act at any meeting of the Board of Directors or committee through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in the meeting pursuant to this section shall constitute attendance and presence in person at the meeting of the person or persons so participating.

Section 14. Action Without a Meeting by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmissions are filed with the minutes of proceedings of the Board of Directors or committee.

Section 15. Compensation. The Board of Directors shall have the authority to fix the compensation of directors by written resolution. Nothing herein shall be construed to preclude any director from serving the corporation in any other capacity as an officer, employee, agent or otherwise, and receiving compensation therefor.

Section 16. Books and Records. The Board of Directors shall cause to be kept a record containing the minutes of the proceedings of the meetings of the Board of Directors and of the stockholders, appropriate stock books and registers and such books of records and accounts as may be necessary for the proper conduct of the business of the corporation.

ARTICLE IV WAIVER OF NOTICE

Whenever a notice is required to be given by any provision of law, by these Bylaws, or by the Certificate of Incorporation, a written waiver, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to such 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 sole and 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.

ARTICLE V OFFICERS

Section 1. Number and Authority. The Board of Directors of the corporation shall from time to time elect from its membership a Chair of the Board, who may also be the Chief Executive Officer or any other officer of the corporation. The officers of the corporation shall consist of at least the following: (1) a Chief Executive Officer, (2) a Chief Financial Officer, (3) a Secretary and (4) a Treasurer.

The Board of Directors may appoint such other officers and agents, including but not limited to, a President, a Chief Operating Officer, one or more Presidents of Divisions or Business Groups, one or more Executive Vice Presidents, Senior Vice Presidents, Vice Presidents, Assistant Vice Presidents, Assistant Secretaries and Assistant Treasurers, as it shall at any time or from time to time deem necessary or advisable. Pursuant to Section 10 of this Article V, the Board of Directors may delegate to the Chief Executive Officer the right to appoint such Executive Vice Presidents, Senior Vice Presidents, Vice Presidents, Assistant Vice Presidents, Assistant Secretaries, Assistant Treasurers and agents, as the Chief Executive Officer shall deem appropriate and necessary from time to time.

Any number of offices may be held by the same person, except that neither the Chief Executive Officer nor any President shall also hold the office of either Treasurer or Secretary. All officers, as between themselves and the corporation, shall have such authority and perform such duties in the management of the business and affairs of the corporation as may be provided in these Bylaws, or, to the extent not so provided, as may be prescribed by the Board of Directors or by the Chief Executive Officer.

Section 2. Election and Term of Office. The officers of the corporation (other than those appointed by the Chief Executive Officer pursuant to Section 10 of this Bylaw) shall be elected at least once annually by the Board of Directors, and each such officer shall hold office until the next annual meeting of the Board of Directors or until a successor is duly elected and qualified or until his or her earlier resignation or removal as herein provided. Vacancies may be filled or new offices created and filled at any meeting of the Board of Directors (or by the Chief Executive Officer pursuant to Section 10 of this Bylaw).

Section 3. Removal. All officers and agents shall hold office at the pleasure of the Board of Directors, and any officer or agent elected or appointed by the Board of Directors (or appointed by the Chief Executive Officer pursuant to Section 10 of this Bylaw) may be removed at any time by the Board of Directors for cause or without cause at any regular or special meeting, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Officers and agents appointed by the Chief Executive Officer pursuant to Section 10 of this Bylaw may be removed at any time by the Chief Executive Officer for cause or without cause, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 4. Vacancies. Any vacancy occurring in any office because of death, resignation, removal, disqualification or otherwise, may be filled by resolution of the Board of Directors.

Section 5. Compensation. Compensation of all officers and agents (other than the Chief Executive Officer) shall be fixed by or in the manner prescribed by the Compensation and Talent Committee, and no officer shall be prevented from receiving such compensation by virtue of his or her also being a director of the corporation. The compensation of the Chief Executive Officer shall be fixed by or in the manner prescribed by the Compensation and Talent Committee, but such compensation shall be subject to the approval of a majority of the independent directors of the Board of Directors.

Section 6. Chair of the Board. The Chair of the Board shall preside at all meetings of the directors, or (a) if the offices of the Chair of the Board and Lead Director are separate, the Chair may delegate such duties to the Lead Director or (b) if the offices of the Chief Executive Officer and Chair of the Board are separate, the Chair may delegate such duties to the Chief Executive Officer. The Chair of the Board shall perform such other duties as are required of him by the Board of Directors and shall have no other duties except such as are delegated to him by the Board of Directors.

Section 7. Chief Executive Officer. The Chief Executive Officer of the corporation shall have the general charge of the business and affairs of the corporation and shall oversee the management of the business of the corporation. In the absence of the Chair of the Board, or if designated to do so by the Board of Directors, the Chief Executive Officer shall preside at all meetings of the stockholders and of the directors and shall exercise the other powers and perform the other duties of the Chair of the Board or designate the executive officers of the corporation by whom such other powers shall be exercised and other duties performed. The Chief Executive Officer shall see to it that all resolutions and orders of the Board of Directors are carried into effect, and the Chief Executive Officer shall have full power of delegation in so doing. The Chief Executive Officer shall have such other powers and perform such other duties as the Board of Directors or these Bylaws may, from time to time, prescribe. The Chief Executive Officer shall have the power to execute any and all instruments and documents on behalf of the corporation and to delegate to any other officer of the corporation the power to execute any and all such instruments and documents.

Section 8. Secretary. The Secretary or the Secretary's designee shall attend all meetings of the Board of Directors and its committees and all meetings of the stockholders and shall record all the proceedings of the meetings in a book or books to be kept for that purpose; he or she shall see that all notices required to be given by these Bylaws or by law are duly given in accordance with the provisions of these Bylaws or as required by law; he or she shall be the custodian of the records and of the corporate seal or seals of the corporation; he or she shall have authority to affix the corporate seal or seals to all documents, the execution of which, on behalf of the corporation, under its seal, is duly authorized, and when so affixed it may be attested by his or her signature; and in general, he or she shall perform all duties incident to the office of the Secretary of a corporation, and such other duties as the Board of Directors or the Chief Executive Officer may from time to time prescribe.

Section 9. Treasurer. The Treasurer shall have charge of and be responsible for all funds, securities, receipts and disbursements of the corporation and shall deposit, or cause to be deposited, all moneys and other valuable effects in the name and to the credit of the corporation in such banks, trust companies, or other depositories as shall from time to time be selected by the Board of Directors. He or she shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation; he or she shall render to the Chair of the Board and to each member of the Board of Directors, whenever requested, an account of the Treasurer's actions and of the financial condition of the corporation. The Treasurer shall perform all of the duties incident to the office of the Treasurer of a corporation, and have such other powers and perform such other duties as the Board of Directors may, from time to time, prescribe. In the event the corporation shall fail to have a Treasurer at any time, then the duties of the Treasurer may be assumed and performed by the Chief Financial Officer and delegated by him to one or more assistant Treasurers.

Section 10. Other Officers, Assistant Officers and Agents. The Board of Directors may also elect or may delegate to the Chief Executive Officer the power to appoint such other officers, assistant officers and agents, as it may at any time or from time to time deem advisable, and any officers, assistant officers and agents so elected or appointed shall have such authority and perform such duties as the Board of Directors or the Chief Executive Officer may from time to time prescribe.

Section 11. Reservation of Authority. All other powers not expressly delegated or provided for herein, or in the Delaware General Corporation Law to any officer, are expressly reserved to the Board of Directors and may be delegated by it to any officer by resolution adopted from time to time by the Board of Directors.

ARTICLE VI

Reserved.

ARTICLE VII

INDEMNIFICATION OF OFFICERS, DIRECTORS AND OTHERS

Section 1. Coverage. Each person who was or is made a party or is 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 ("proceeding"), by reason of the fact that he or she is or was a director, officer of the

corporation (which term shall include any predecessor corporation of the corporation) or is or was serving at the request of the corporation as a director, officer, employee, fiduciary or agent of another corporation or of a partnership, joint venture, trust or other enterprise of any type or kind, domestic or foreign, including service with respect to employee benefit plans (“indemnitee”), whether the basis of such proceeding is an alleged action in an official capacity as a director, officer, employee, fiduciary or agent or in any other capacity while serving as a director, officer, employee, fiduciary or agent, shall be indemnified and held harmless by the corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the corporation to provide broader indemnification rights than said law permitted the corporation to provide prior to such amendment), against all expenses, liability and loss (including attorneys’ fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement or other disposition) incurred or suffered by such indemnitee in connection therewith and such indemnification shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the indemnitee’s heirs, executors and administrators. The right to indemnification conferred in this Bylaw shall be a contract right that vests at the time of such person’s service to or at the request of the corporation and includes the right to be paid by the corporation the expenses incurred in defending any such proceeding in advance of its final disposition, such advances to be paid by the corporation within 20 days after the receipt by the corporation of a statement or statements from the claimant requesting such advance or advances from time to time; provided, however, that if the Delaware General Corporation Law requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the corporation of an undertaking by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Bylaw or otherwise.

Section 2. Claims. To obtain indemnification under this Bylaw, a claimant shall submit to the corporation a written request, including therein or therewith such documentation and information as is reasonably available to the claimant and is reasonably necessary to determine whether and to what extent the claimant is entitled to indemnification. Upon such written request by a claimant for indemnification, a determination, if required by applicable law, with respect to the claimant’s entitlement thereto shall be made as follows: (a) if requested by the claimant, by Independent Counsel (as defined below), or (b) if no request is made by the claimant for a determination by Independent Counsel, (i) by the Board of Directors by a majority vote of a quorum consisting of Disinterested Directors (as defined below), or (ii) if a quorum of the Board of Directors consisting of Disinterested Directors is not obtainable or, even if obtainable, such quorum of Disinterested Directors so directs, by Independent Counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the claimant, or (iii) if a quorum of Disinterested Directors so directs, by the stockholders of the corporation. In the event the determination of entitlement to indemnification is to be made by Independent Counsel at the request of the claimant, the Independent Counsel shall be selected by the Board of Directors unless there shall have occurred within two years prior to the date of the commencement of the action, suit or proceeding for which indemnification is claimed a “Change of Control” as defined in the 2008 Office Depot Bonus Plan for Executive Management Employees, in which case the Independent Counsel shall be selected by the claimant unless the claimant shall request that such selection be made by the Board of Directors. If it is so determined that the claimant is entitled to indemnification, payment to the claimant shall be made within 10 days after such determination.

For purposes of this Bylaw:

“Disinterested Director” means a director of the corporation who is not and was not a party to the matter in respect of which indemnification is sought by the claimant.

“Independent Counsel” means a law firm, a member of a law firm, or an independent practitioner, that is experienced in matters of corporation law and shall include any person who, under the applicable standards of professional conduct then prevailing, would not have a conflict of interest in representing either the corporation or the claimant in an action to determine the claimant’s rights under this Bylaw.

Section 3. Enforcement of Claims. If a claim under Section 1 of this Bylaw is not paid in full by the corporation within 60 days after a written claim pursuant to Section 2 of this Bylaw has been received by the corporation, the claimant may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for

expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the corporation) that the claimant has not met the standard of conduct which makes it permissible under the Delaware General Corporation Law for the corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the corporation. Neither the failure of the corporation (including its Board of Directors, Independent Counsel or stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the corporation (including its Board of Directors, Independent Counsel or stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct. If a determination shall have been made pursuant to this Section 2 that the claimant is entitled to indemnification, the corporation shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 3. The corporation shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 3 that the procedures and presumptions of this Bylaw are not valid, binding and enforceable and shall stipulate in such proceeding that the corporation is bound by all the provisions of this Bylaw.

Section 4. Enforceability. If any provision or provisions of this Bylaw shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Bylaw (including, without limitation, each portion of any paragraph of this Bylaw containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Bylaw (including, without limitation, each such portion of any paragraph of this Bylaw containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

Section 5. Rights Not Exclusive. The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Bylaw (i) shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or Disinterested Directors or otherwise and (ii) cannot be terminated by the corporation, the Board of Directors or the stockholders of the corporation with respect to a person's service prior to the date of such termination. No repeal or modification of this Bylaw shall in any way diminish or adversely affect the rights of any current or former director, officer, employee or agent of the corporation hereunder in respect of any occurrence or matter arising prior to any such repeal or modification.

Section 6. Employees and Agents. Persons who are not covered by the foregoing provisions of this Article VII and who are or were employees or agents of the corporation may be indemnified and may have their expenses paid to the extent and subject to such terms and conditions as may be authorized at any time or from time to time by the Board of Directors or the Chief Executive Officer.

Section 7. Insurance. The corporation may purchase and maintain insurance on its own behalf and on behalf of any person who is or was a director, officer, employee, fiduciary or agent of the corporation or who is serving or has served 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 him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the corporation would have the power to indemnify such person against such liability under this Article VII.

Section 8. Merger or Consolidation. For purposes of this Article VII, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this Article VII with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

Section 9. Notices. Any notice, request or other communication required or permitted to be given to the corporation under this Article VII shall be in writing and either delivered in person or sent by a form of electronic

transmission, including electronic mail, telecopy, telex, telegram, overnight mail or courier service, or certified or registered mail, postage prepaid, return receipt requested, to the Secretary and shall be effective only upon receipt by the Secretary.

ARTICLE VIII CERTIFICATES OF STOCK

Section 1. Form. The shares of capital stock of the corporation shall be represented by certificates; provided, that the Board of Directors of the corporation may provide by a resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Every holder of capital stock in the corporation represented by certificates shall be entitled to have a certificate for shares of capital stock of the corporation signed by or in the name of the corporation by any two authorized officers of the corporation (it being understood that each of the Chair of the Board, the President, any Vice President, the Treasurer, any Assistant Treasurer, the Secretary and any Assistant Secretary of the corporation shall be an authorized officer for such purpose), certifying the number of shares owned by such holder in the corporation and registered in certificated form. Any or all such 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, any such certificate or certificates shall cease to be such officer, transfer agent or registrar of the corporation whether because of death, resignation or otherwise before such certificate or certificates have been delivered by the corporation, such certificate or certificates may nevertheless be issued and delivered as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures have been used thereon had not ceased to be such officer, transfer agent or registrar of the corporation. All certificates for shares shall be consecutively numbered or otherwise identified. The name of the person to whom certificated or uncertificated shares are issued, together with the number of shares and date of issue, shall be entered on the books of the corporation. Shares of stock of the corporation shall only be transferred on the books of the corporation by the holder of record thereof or by such holder's attorney duly authorized in writing and, (i) if such shares are certificated, upon surrender to the corporation of the certificate or certificates for such shares endorsed by the appropriate person or persons, with such evidence of the authenticity of such endorsement, transfer, authorization and other matters as the corporation may reasonably require, and accompanied by all necessary stock transfer stamps, or (ii) upon proper instructions from the holder of uncertificated shares. In the event of such transfer of certificated shares, it shall be the duty of the corporation to issue a new certificate or evidence of the issuance of uncertificated shares to the person entitled thereto, cancel the old certificate or certificates and record the transaction on its books. Upon receipt of proper transfer instructions from the holder of uncertificated shares, the corporation shall cancel such uncertificated shares and issue new equivalent uncertificated shares or certificated shares to the person entitled thereto and record such transaction upon its books. Except as otherwise provided by law, the Board of Directors may make or adopt such additional rules and regulations, not inconsistent with these Bylaws, as it may deem expedient, concerning the issue, transfer and registration of securities of the corporation. The Board of Directors may appoint or authorize any officer or officers to appoint, one or more transfer agents or registrars or both in connection with the transfer of any class or series of securities of the corporation.

Section 2. Lost Certificates. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates previously issued by the corporation alleged to have been lost, stolen or destroyed upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his or her legal representative, to indemnify the corporation or to give the corporation a bond sufficient to indemnify the corporation against any claim that may be made against the corporation on account of the loss, theft or destruction of any such certificate or the issuance of such new certificate.

Section 3. Registered Stockholders. Prior to the surrender to the corporation of the certificate or certificates for a share or shares of stock with a request to record the transfer of such share or shares, the corporation may treat the registered owner as the person entitled to receive dividends or other distributions, to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner, and as the person to hold liable for calls and assessments. The corporation shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof.

ARTICLE IX GENERAL PROVISIONS

Section 1. Dividends and Distributions. The Board of Directors shall have full power and discretion pursuant to law, at any regular or special meeting, subject to the provisions of the Certificate of Incorporation or the terms of any other corporate document or instrument, to determine what, if any, dividends or distributions shall be declared and paid or made upon or with respect to outstanding shares of the capital stock of the corporation. Dividends may be paid in cash, bonds, property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or any other purpose and the directors may modify or abolish any such reserve in the manner in which it was created.

Section 2. Checks, Drafts or Orders. All checks, drafts, or other orders for the payment of money by or to the corporation and all notes and other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers or agent, or agents of the corporation, and in such manner, as shall be determined by resolution of the Board of Directors or a duly authorized committee thereof.

Section 3. Contracts. The Board of Directors may authorize any officer or officers or any agent or agents of the corporation to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

Section 4. Loans. Subject to applicable laws limiting or prohibiting the corporation's ability to make such loans, the corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiary, including any officer or employee who is a director of the corporation or its subsidiary, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the corporation. The loan, guaranty or other assistance may be with or without interest, and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in this section contained shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

Section 5. Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

Section 6. Corporate Seal. The Board of Directors may provide a corporate seal, which shall be in the form of a circle and shall have inscribed thereon the name of the corporation and the words "Corporate Seal, Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

Section 7. Voting Securities Owned By Corporation. Voting securities in any other entity held by the corporation shall be voted by the Chair of the Board or the Chief Executive Officer, unless the Board of Directors specifically confers authority to vote with respect thereto, which authority may be general or confined to specific instances, upon some other person or officer. Any person authorized to vote securities shall have the power to appoint proxies, with or without general power of substitution.

Section 8. General and Special Bank Accounts. The Board of Directors may authorize from time to time the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as the Board of Directors may designate or as may be designated by any officer or officers of the corporation to whom such power of designation may be delegated by the Board of Directors from time to time. The Board of Directors may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these Bylaws, as it may deem expedient.

Section 9. Section Headings. Section headings in these Bylaws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

Section 10. Election Out of Section 203. The corporation expressly elects not to be governed by Section 203

of the Delaware General Corporation Law. The Bylaw amendment adopting this provision shall not be further amended by the Board of Directors of the corporation.

Section 11. Forum Selection Bylaw. Unless the corporation consents in writing to the selection of an alternative forum, the Court of Chancery (the “Court of Chancery”) of the State of Delaware (or, in the event that the Court of Chancery does not have jurisdiction, the federal district court for the District of Delaware or other state courts of the State of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for any stockholder (including a beneficial owner) to bring (1) any derivative action or proceeding brought on behalf of the corporation, (2) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer or other employee of the corporation to the corporation or the corporation’s stockholders, (3) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, the Certificate of Incorporation or these Bylaws, or (4) any action asserting a claim governed by the internal affairs doctrine, except as to each of (1) through (4) above, for 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). Any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the corporation shall be deemed to have notice of and consented to the provisions of this Section 11.

ARTICLE X AMENDMENTS

These Bylaws may be amended, altered, or repealed and new Bylaws adopted at any meeting of the Board of Directors by a majority vote; provided, that these Bylaws and any other Bylaws amended or adopted by the Board of Directors may be amended, may be reinstated, and new Bylaws may be adopted, by the stockholders of the corporation entitled to vote at the time for the election of directors; provided, that notice of the proposed change was given in the corporation’s notice of meeting.

Rule 13a-14(a)/15d-14(a) Certification

I, Gerry P. Smith, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of The ODP Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ GERRY P. SMITH

Name: Gerry P. Smith
Title: Chief Executive Officer (Principal Executive Officer)
Date: August 7, 2024

Rule 13a-14(a)/15d-14(a) Certification

I, D. Anthony Scaglione, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of The ODP Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ D. ANTHONY SCAGLIONE

Name: D. Anthony Scaglione
Title: Executive Vice President and Chief Financial Officer
(Principal Financial Officer)
Date: August 7, 2024

The ODP Corporation**Certification of Principal Executive Officer and Principal Financial Officer Pursuant to
18 U.S.C. Section 1350, as Adopted Pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Quarterly Report on Form 10-Q (the "Report") of The ODP Corporation (the "Company") for the quarter ended June 29, 2024, as filed with the U.S. Securities and Exchange Commission on the date hereof, Gerry P. Smith, as Chief Executive Officer of the Company, and D. Anthony Scaglione, as Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to each officer's knowledge:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ GERRY P. SMITH

Name: Gerry P. Smith
Title: Chief Executive Officer (Principal Executive Officer)
Date: August 7, 2024

/s/ D. ANTHONY SCAGLIONE

Name: D. Anthony Scaglione
Title: Chief Financial Officer (Principal Financial Officer)
Date: August 7, 2024

A signed original of this certification required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the U.S. Securities and Exchange Commission or its staff upon request.

The foregoing certification is being furnished as an exhibit to the Report pursuant to Item 601(b)(32) of Regulation S-K and Section 1350 of Title 18 of the United States Code and, accordingly, is not being filed with the U.S. Securities and Exchange Commission as part of the Report and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933 or the Securities Exchange Act of 1934 (whether made before or after the date of the Report, irrespective of any general incorporation language contained in such filing).
