

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 8-K/A

Amendment No. 1

CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934

Date of report (Date of earliest event reported): May 2, 2022

Enzo Biochem, Inc.

(Exact Name of Registrant as Specified in Its Charter)

New York

(State or Other Jurisdiction of Incorporation)

001-09974

(Commission File Number)

13-2866202

(IRS Employer
Identification No.)

**527 Madison Avenue
New York, New York**

(Address of Principal Executive Offices)

10022

(Zip Code)

(212) 583-0100

(Registrant's Telephone Number, Including Area Code)

(Former Name or Former Address, if Changed Since Last Report)

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

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

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

Title of Each Class	Trading Symbol	Name of Each Exchange on Which Registered
Common Stock, \$.01 par value	ENZ	The New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-1 of this chapter).

Emerging growth company

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

Explanatory Note

On April 27, 2022, Enzo Biochem, Inc. (the "Company") filed a Current Report on Form 8-K (the "Original Report") with the Securities and Exchange Commission. The Original Report reported that the Company's certificate of incorporation, as amended (the "Amended and Restated Certificate of Incorporation"), and the Company's amended and restated by-laws (the "Amended and Restated By-laws") became effective on April 25, 2022. However, the Amended and Restated Certificate of Incorporation and the Amended and Restated By-laws did not become effective until the Amended and Restated Certificate of Incorporation was accepted by the New York Secretary of State on May 2, 2022. Accordingly, this Amendment No. 1 to the Original Report is being filed to revise the effective date of the Amended and Restated Certificate of Incorporation and the Amended and Restated By-laws to May 2, 2022.

Other than the corrections described above, no other statement or information has been changed from those presented in the Original Report.

As previously disclosed, on April 8, 2022, at the reconvened 2021 Annual Meeting of Shareholders (the “Annual Meeting”) of the Company, the Company’s shareholders approved several amendments to the Amended and Restated Certificate of Incorporation. The Amended and Restated Certificate of Incorporation became effective on May 2, 2022.

The Company’s board of directors approved and adopted conforming amendments to the Amended and Restated By-laws, which became effective on May 2, 2022.

A description of the Amended and Restated Certificate of Incorporation and the general effect of the Amended and Restated Certificate of Incorporation and the Amended and Restated Bylaws upon the rights of the Company’s shareholders are included in the Company’s proxy statement, filed with the Securities and Exchange Commission on February 18, 2022, in the sections titled “PROPOSAL 1 - AMENDMENTS TO THE CERTIFICATE OF INCORPORATION”, which is incorporated herein by reference.

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

The disclosure set forth in Item 3.03 of this Report is incorporated into this Item 5.03 by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

The following exhibits are filed herewith:

3.1	Amended and Restated Certificate of Incorporation of Enzo Biochem, Inc.
3.2	Amended and Restated By-Laws of Enzo Biochem, Inc.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

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

ENZO BIOCHEM, INC.

Date: May 6, 2022

By: /s/ David Bench
David Bench
Chief Financial Officer, Senior Vice President, Treasurer, and
Corporate Secretary

RESTATED CERTIFICATE OF INCORPORATION
OF
ENZO BIOCHEM, INC.

Under Section 807 of the Business Corporation Law

The undersigned, for the purpose of restating the corporation's Certificate of Incorporation, pursuant to Section 807 of the Business Corporation Law of the State of New York, does hereby certify:

FIRST: The name under which the corporation was formed is Enzo Biochem, Inc.

SECOND: The original Certificate of Incorporation was filed with the Department of State of the State of New York on August 13, 1976.

THREE: The Certificate of Incorporation is amended to effect the following changes authorized by the Business Corporation Law of the State of New York:

(i) to change the purpose of the corporation in Article 2;

(ii) to change Article 13 to declassify the Board of Directors and to permit amendments to Article 13 by approval of a majority of the votes of the shares entitled to vote thereon;

(iii) to remove Article 7, which provided that the first accounting period for the Corporation ended on December 31, 1976;

(iv) to permit the corporation to merge, sell all or substantially all of its assets, and dissolve with the approval of a majority of the votes of the outstanding shares entitled to vote thereon, pursuant to new Article 8 below;

(v) to change Article 10 to permit amendments to the corporation's Certificate of Incorporation and by-laws by approval of a majority of the votes of the shares entitled to vote thereon; and

(vi) to change (a) the address to which the Secretary of State shall mail a copy of process against the corporation in Article 5, and (b) the county of the office of the corporation in Article 3.

FOURTH: The amendments to the Certificate of Incorporation set forth herein were authorized by a vote of a majority of the board of directors of the corporation (the "Board" or "Board of Directors") at a meeting held on January 17, 2022, and by the requisite number of outstanding shares of the corporation's common stock entitled to vote thereon at a meeting held on April 8, 2022.

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FIFTH: The Certificate of Incorporation is restated, as amended, in its entirety as follows:

1. The name of the corporation is Enzo Biochem, Inc.
2. The corporation is organized for the purpose of engaging in any lawful act or activity for which corporations may be organized under the Business Corporation Law of the State of New York, provided that the corporation is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained.
3. The office of the corporation is to be located in the County of Suffolk, State of New York.
4. The total number of shares of all classes of stock which the Corporation shall have authority to issue is one hundred million (100,000,000) shares, divided into twenty-five million (25,000,000) shares of Preferred Stock of one cent (\$.01) par value per share, and seventy-five million (75,000,000) shares of Common Stock of the par value of one cent (\$.01) per share. Each share of Common Stock shall be entitled to one vote. No shareholder shall have a preemptive right to acquire any shares or securities of any class, whether now or hereafter authorized which may at any time be issued, sold or offered for sale by the Corporation. The Preferred Stock may be divided into and issued from time to time in one or more series as may be fixed and determined by the Board of Directors. The relative rights and preferences of the Preferred Stock of each series shall be such as shall be stated in any resolution or resolutions adopted by the Board of Directors setting forth the designation of the series and fixing and determining the relative rights and preferences thereof, any such resolution or resolutions being herein called a "Directors' Resolution." The Board of Directors is hereby authorized to fix and determine such variations in the designations, preferences, and relative, participating, optional or other special rights (including, without limitation, special voting rights, of conversion into Common Stock or other securities, redemption provisions or sinking fund provisions) as between series and between the Preferred Stock or any series thereof and the Common Stock, and the qualifications, limitations or restrictions of such rights, all as shall be stated in a Directors' Resolution, and the shares of Preferred Stock or any series thereof may have full or limited voting powers, or be without voting powers, all as shall be stated in a Directors' Resolution.
5. The Secretary of State is designated as the agent of the corporation upon whom process against the corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him or her is 81 Executive Blvd, Suite 3, Farmingdale NY 11735.
6. The name of the corporation's registered agent, and such registered agent's address within the State of New York, are CT Corporation System, 28 Liberty Street, New York, NY 10005. The corporation's registered agent is to be the agent of the corporation upon whom process against it may be served.

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7. Any action required or permitted to be taken by the Board may be taken without a meeting if all members of the Board consent in writing to the adoption of a resolution authorizing the action and such written consents and resolutions are filed with the minutes of the proceedings of the Board.

8. To the fullest extent permitted by the Business Corporation Law of the State of New York, (a) a plan of merger or consolidation of the corporation, (b) a sale, lease, exchange or other disposition of all or substantially all the assets of a corporation, if not made in the usual or regular course of the business actually conducted by such corporation, and (c) the dissolution of the corporation, shall be authorized at a meeting of shareholders by a majority of the votes of the shares entitled to vote thereon.
9. The corporation shall, to the fullest extent permitted by the Business Corporation Law of the State of New York, indemnify any and all persons whom it shall have power to indemnify from and against any and all of the expenses, liabilities or other matter as provided under Article Seven of the Business Corporation Law of the State of New York.
10. (a) No contract or other transaction between the corporation and one or more of its directors, or between the corporation and any other corporation, firm, association or other entity, in which one or more of its directors are directors or officers, or are financially interested, shall be either void or voidable for this reason alone or by reason alone that such director or directors are present at the meeting of the Board or of a committee thereof, which authorizes such contract or transaction, or that his or their votes counted for such purposes:
 - (1) If the effect of such common directorship, officership, or financial interest is disclosed or known to the Board or committee, and the Board or committee authorizes such contract or transaction by a vote sufficient for such purpose without counting the vote or votes of such interested director or directors, or against;
 - (2) If such common directorship, officership or financial interest is disclosed or known to the shareholders entitled to vote thereon, and such contract or transaction is approved by vote of the shareholders. For this purpose, the shares of such interested director or directors shall not be shares entitled to vote; or
 - (3) If the contract or transaction is fair and reasonable as to the corporation at the time it is authorized by the Board, a committee or the shareholders.(b) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee which approves such contract or transaction.

11. No holder of any shares of stock of this corporation shall be entitled as of right to purchase or subscribe for any part of any shares of stock of the corporation authorized herein or of any additional shares of stock of any class to be issued by reason of any increase of the authorized capital stock of the corporation, or of any warrants, options or other instruments that shall confer upon the holders thereof the right to subscribe for or purchase or receive from the corporation any shares of stock of any class which the corporation may issue or sell, whether or not the same shall be exchangeable for any shares of stock of the corporation of any class, or to purchase or subscribe for any part of any bonds, certificates of indebtedness, debentures or other securities convertible or exchangeable into shares of stock of any class of the corporation, or to which shall be attached or appurtenant any options, warrants or other instruments that shall confer upon the holders of such obligations, options, warrants or other instruments the right to subscribe for or purchase or receive from the corporation any shares of its capital stock of any class or classes now or hereafter authorized, but any shares of stock authorized herein or any such additional authorized issue of any shares of stock or any other securities may be issued and disposed of by the Board of Directors to such persons, firms, corporations or associations, and upon such terms and conditions as the Board of Directors may in their discretion determine, without offering any thereof on the same term or on any terms to the shareholders then of record or to any class of shareholders.
12. No director of the corporation shall be liable to the corporation or its shareholders for damages for any breach of duty in such capacity, except as otherwise provided by law provided that nothing contained in this Article shall eliminate or limit the liability of a director (i) if a judgment or other final adjudication adverse to him establishes that his acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that he personally gained in fact a financial profit or other advantage to which he was not legally entitled or that his acts violated Section 710 of the Business Corporation Law of the State of New York or (ii) for any act or omission prior to July 8, 1988.
13. (a) Election of directors need not be by ballot unless the by-laws of the corporation so provide.
(b) Advance notice of shareholder nominations for the election of directors shall be given in the manner provided in the by-laws of the corporation.
(c) Newly created directorships resulting from any increase in the number of directors and any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other cause shall be filled by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board of Directors. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the class of directors in which the new directorship was created or the vacancy occurred and until such director's successor shall have been elected and qualified. No decrease in the number of directors, constituting the Board of Directors shall shorten the term of any incumbent director.

- (d) Subject to the rights of the holders of any series of Preferred Stock, any director may be removed from office only with cause and only by the affirmative vote of (i) the holders of at least 80% of the combined voting power of the then-outstanding shares of stock entitled to vote generally in the election of directors, voting together as a single class and (ii) a majority of such shares beneficially owned by persons not affiliated with an Interested Shareholder (as defined in Article 14 of this Certificate of Incorporation).
- (e) Notwithstanding any other provisions of this Certificate of Incorporation or the by-laws of the Corporation (and notwithstanding the fact that a lesser percentage may be specified by law, this Certificate of Incorporation or by-laws of the corporation), the affirmative vote of the holders of a majority of the combined voting power of the then-outstanding shares of stock entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, amend, adopt any provision inconsistent with or repeal this Article.
14. (1) In addition to any affirmative vote required by law or this certificate of incorporation, and except as otherwise expressly provided in Section (2) of this Article 14, a Business Combination (as hereinafter defined) shall require the affirmative vote of (i) the holders of at least 80% of the voting power of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (the "Voting Stock"), voting together as a single class, and (ii) a majority of such shares beneficially owned by persons not affiliated with the Interested Shareholder (as hereinafter defined). Such affirmative vote shall be required notwithstanding the fact that no vote may be required or that a lesser percentage may be specified, by law or in any agreement with any national securities exchange or otherwise.
(2) The provisions of Section (1) of this Article 14 shall not be applicable to any particular Business Combination, and such Business Combination shall require only such affirmative vote as is required by law and any other provisions of this certificate of incorporation, if all of the conditions specified in either of the

following paragraphs A and B are met or, in the case of a Business Combination not involving the payment of consideration to the holders of outstanding Voting Stock, if the condition specified in the following paragraph A is met:

(A) The Business Combination shall have been approved by a majority of the Continuing Directors (as hereinafter defined).

(B) All of the following conditions shall have been met:

(i) The aggregate amount of the cash and the Fair Market Value (as hereinafter defined) as of the date of the consummation of the Business Combination (the "Consummation Date") of consideration other than cash to be received per share by holders of common stock of the Corporation in such Business Combination shall be at least equal to the higher of the following:

(a) (if applicable) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Shareholder for any shares of common stock of the Corporation acquired by it (1) within the two-year period immediately prior to the first public announcement of the proposal of the Business Combination (the "Announcement Date") or (2) in the transaction in which it became an Interested Shareholder, whichever is higher; or

(b) the Fair Market Value per share of common stock of the Corporation on the Announcement Date or on the date on which the Interested Shareholder became an Interested Shareholder (such later date is referred to in this Article 14 as the "Determination Date"), whichever is higher.

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(ii) The aggregate amount of the cash and the Fair Market Value as of the Consummation Date of consideration other than cash to be received per share by holders of shares of any other class of outstanding Voting Stock shall be at least equal to the highest of the following (it being intended that the requirements of this paragraph (B)(ii) shall be required to be met with respect to every class of outstanding Voting Stock, whether or not the Interested Shareholder has previously acquired any shares of a particular class of Voting Stock):

(a) (if applicable) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Shareholder for any shares of such class of Voting Stock acquired by it (1) within the two-year period immediately prior to the Announcement Date or (2) in the transaction in which it became an Interested Shareholder, whichever is higher;

(b) (if applicable) the highest preferential amount per share to which the holders of shares of such class of Voting Stock are entitled in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation; and

(c) the Fair Market Value per share of such class of Voting Stock on the Announcement Date or on the Determination Date, whichever is higher.

(iii) The consideration to be received by holders of a particular class of outstanding Voting Stock shall be in cash or in the same form as the Interested Shareholder has previously paid for shares of such class of Voting Stock. If the Interested Shareholder has paid for shares of any class of Voting Stock with varying forms of consideration, the form of consideration for such class of Voting Stock shall be either cash or the form used to acquire the largest number of shares of such class of Voting Stock previously acquired by it.

(iv) After the Determination Date and prior to the consummation of such Business Combination; (a) except as approved by a majority of the Continuing Directors, there shall have been no failure to declare and pay at the regular date therefor any full quarterly dividends (whether or not cumulative) payable in accordance with the terms of any outstanding Voting Stock; (b) there shall have been (1) no reduction in the annual rate of dividends paid on the common stock of the Corporation (except as necessary to any subdivision of the common stock), except as approved by a majority of the Continuing Directors, and (2) an increase in such annual rate of dividends as necessary to reflect any reclassification (including any reverse stock split), recapitalization, reorganization or any similar transaction which has the effect of reducing the number of outstanding shares of common stock of the Corporation, unless the failure so to increase such annual rate is approved by a majority of the Continuing Directors; and (c) such Interested Shareholder shall have not become the beneficial owner of any additional shares of Voting Stock except as part of the transaction which results in such Interested Shareholder becoming an Interested Shareholder.

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(v) After the Determination Date, such Interested Shareholder shall not have received the benefit, directly or indirectly (except proportionately as a shareholder), of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by the Corporation, whether in anticipation of or in connection with such Business Combination or otherwise.

(vi) A proxy or information statement describing the proposed Business Combination and complying with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder (or any subsequent provisions replacing such Act, rules or regulations) shall be mailed to all shareholders of the Corporation at least 30 days prior to the documentation of such Business Combination (whether or not such proxy or information statement is required to be mailed pursuant to such Act or subsequent provisions).

(vii) Such Interested Shareholder shall not have made any major changes in the Corporation's business or equity capital structure without the approval of a majority of the Continuing Directors.

(3) For purposes of this Article 14:

(A) The term "Business Combination" shall mean any of the transactions or series of transactions which is referred to in any one or more of the clauses (i) through (v) below.

(i) any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with (a) any Interested Shareholder or (b) any other Corporation (whether or not itself an Interested Shareholder) which is, or after such merger or consolidation would be, an Affiliate (as hereinafter defined) of an Interested Shareholder; or

(ii) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with any Interested Shareholder or any Affiliate of any Interested Shareholder of any assets of the Corporation or any Subsidiary having an aggregate Fair

Market Value of \$1,000,000 or more; or

(iii) the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of transactions) of any securities of the Corporation or any Subsidiary to any Interested Shareholder or any Affiliate of any Interested Shareholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate Fair Market Value of \$1,000,000 or more; or

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(iv) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation proposed by or on behalf of an Interested Shareholder or any Affiliate of any Interested Shareholder; or

(v) any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any other transaction (whether or not with or into or otherwise involving an Interested Shareholder) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of the Corporation or any Subsidiary which is directly or indirectly owned by any Interested Shareholder or any Affiliate of any Interested Shareholder.

(B) A “person” shall mean any individual, firm, corporation or other entity.

(C) “Interested Shareholder” shall mean any person (other than the Corporation or any Subsidiary and other than any profit-sharing, employee stock ownership or other employee benefit plan of the Corporation or any Subsidiary or any trustee of or fiduciary with respect to any such plan when acting in such capacity) who or which:

(i) is the beneficial owner, directly or indirectly, of more than 9% of the voting power of the outstanding Voting Stock;

(ii) is an Affiliate or Associate (as hereinafter defined) of the Corporation and at any time within the two-year period immediately prior to the date in question was the beneficial owner, directly or indirectly, of 9% or more of the voting power of the then outstanding Voting Stock; or

(iii) is an assignee of or has otherwise succeeded to any shares of Voting Stock which were at any time within the two-year period immediately prior to the date in question beneficially owned by any Interested Shareholder, if such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933; provided, however, that the term “Interested Shareholder” shall not include any person who, but for this proviso, would be an Interested Shareholder on June 1, 1988.

(D) A person shall be a “beneficial owner” of any share of Voting Stock:

(i) which such person or any of its Affiliates or Associates beneficially owns, directly or indirectly;

(ii) which such person or any of its Affiliates or Associates has (a) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (b) the right to vote pursuant to any agreement, arrangement or understanding; or

(iii) which are beneficially owned, directly or indirectly, by any other person with which such person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of Voting Stock.

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(E) For the purposes of determining whether a person is an Interested Shareholder pursuant to paragraph (C) of this Section (3), the number of shares of Voting Stock deemed to be outstanding shall include shares deemed owned through application of paragraph (D) of this Section (3) but shall not include any other shares of Voting Stock which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(F) “Affiliate” or “Associate” shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on December 10, 1987.

(G) “Subsidiary” means any Corporation of which a majority of any class of equity security is owned, directly or indirectly, by the Corporation; PROVIDED, HOWEVER, that for the purposes of the definition of Interested Shareholder set forth in paragraph (C) of this Section (3), the term “Subsidiary” shall mean only a Corporation of which a majority of each class of equity security is owned, directly or indirectly, by the Corporation.

(H) “Continuing Director” means any member of the Board of Directors of the Corporation (the “Board”), while such person is a member of the Board, who is unaffiliated with the Interested Shareholder and was a member of the Board prior to the time that the Interested Shareholder, and any successor of a Continuing Director who is unaffiliated with the interested Shareholder and is recommended to succeed a Continuing Director by a majority of Continuing Directors then on the Board.

(I) “Fair Market Value” means (i) in the case of stock, the highest closing sale price during the 30-day period immediately preceding the date in question of a share of such stock on the Composite Tape for New York Stock Exchange-listed Stocks, or, if such stock is not quoted on the Composite Tape, on the New York Stock Exchange, or, if such stock is not listed on such Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which such stock is listed, or, if such stock is not listed on any such exchange, the highest closing sales price or bid quotation with respect to a share of such stock during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use, or if no such quotations are available, the fair market value on the date in question of a share of such stock as determined in good faith by a majority of the disinterested directors; and (ii) in the case of property other than cash or stock, the fair market value of such property on the date in question as determined in good faith by a majority of the Continuing Directors;

(J) In the event of any Business Combination in which the Corporation survives, the phrase “consideration other than cash to be received” as used in paragraph B(i) and (ii) of Section (2) of this Article 14 shall include the shares of common stock of the Corporation and/or the shares of any other class of outstanding Voting Stock retained by the holders of such shares.

(4) A majority of the Continuing Directors of the Corporation shall have the power and duty to determine for the purposes of this Article 14 on the basis of information known to them after reasonable inquiry, (A) whether a person is an Interested Shareholder, (B) the number of shares of Voting Stock beneficially owned by any person, (C) whether a person is an Affiliate or Associate of another, (D) whether a transaction or a series of transactions constitutes a Business Combination, and (E) whether the assets which are the subject of any Business Combination have, or the consideration to be received for the issuance or transfer of securities by the Corporation or any Subsidiary in any Business Combination has, an aggregate Fair Market Value of \$1,000,000 or more. Any such determination made in good faith shall be binding and conclusive on all parties.

(5) Nothing contained in this Article 14 shall be construed to relieve any Interested Shareholder from any fiduciary obligation imposed by law.

(6) The fact that any provision complies with paragraph (B) of Section (2) of this Article 14 shall not be construed to impose any fiduciary duty obligation or responsibility on the Board, or any member thereof, to approve such Business Combination or recommend its adoption or approval to the shareholders of the Corporation nor shall such compliance limit, prohibit or otherwise restrict in any manner the Board, or any member thereof, with respect to evaluations of actions and responses taken with respect to such Business Combination.

(7) Notwithstanding any other provisions of this certificate of incorporation or the by-laws of the Corporation (and notwithstanding the fact that a lesser percentage may be specified by law, this certificate of incorporation or by-laws of the Corporation), the affirmative vote of (a) the holders of 80% or more of the voting power of the then outstanding Voting Stock, voting together as a single class, and (b) a majority of such shares beneficially owned by persons not affiliated with the Interested Shareholder, shall be required to alter, amend or repeal, or adopt any provisions inconsistent with, this Article 14, provided, however, that this Section (7) shall not apply to any alteration, amendment, repeal or adoption unanimously recommended by the Board if all such directors are persons who would be eligible to serve as Continuing Directors within the meaning of Section (3), paragraph H of this Article 14.

15. The Board of Directors is authorized to alter, repeal or adopt by-laws of the corporation. Any by-laws made by the directors under the powers conferred hereby may be altered, amended or repealed by the directors or by the shareholders.

IN WITNESS WHEREOF, the undersigned has hereunto subscribed this Restated Certificate of Incorporation on April 25, 2022.

By: /s/ David A Bench
Name: David A. Bench
Title: Chief Financial Officer

AMENDED AND RESTATED
BY-LAWS OF
ENZO BIOCHEM, INC.
(a New York Corporation)
(as amended and restated as of April 25, 2022)

ARTICLE I
MEETING OF SHAREHOLDERS

Section 1. Annual Meeting. The annual meeting of the shareholders of Enzo Biochem, Inc., (hereinafter called the “Corporation”) for the election of directors and for the transaction of such other business as may come before the meeting shall be held during the sixth month following the close of the Corporation’s fiscal year as designated by resolution of the Board of Directors of the Corporation. If the annual meeting shall not be held on the day hereinabove provided for, the Board shall call a special meeting for the election of directors, which meeting shall be held within two months after said day.

Section 2. Special Meetings. Special meetings of shareholders of the Corporation may be called only by the Board pursuant to a resolution approved by a majority of the entire Board (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board for adoption).

Section 3. Notice of Meetings. Notice of the place, date and time of the holding of each annual and special meeting of the shareholders and, in the case of a special meeting, the purpose or purposes thereof, shall be given personally or by mail in a postage prepaid envelope to each shareholder entitled to vote at such meeting, not less than ten nor more than fifty days before the date of such meeting, and, if mailed, it shall be directed to such shareholder at his address as it appears on the records of the Corporation, unless he shall have filed with the Secretary of the Corporation, a written request that notices to him be mailed to some other address, in which case, it shall be directed to him at such other address. Notice of any meeting of shareholders shall not be required to be given to any shareholder who shall attend such meeting in person or by proxy and shall not, at the beginning of such meeting, object to the transaction of any business because the meeting is not lawfully called or convened, or who shall, either before or after the meeting, submit a signed waiver of notice, in person or by proxy. Unless the Board shall fix after the adjournment a new record date for an adjourned meeting, notice of such adjourned meeting need not be given if the time and place to which the meeting shall be adjourned were announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record entitled to vote at the meeting.

Section 4. Notice of Business to be Brought before a Meeting

- (a) The provisions of this Section 4 shall be in effect for annual meetings occurring after the 2011 Annual Meeting of Shareholders.
- (b) At an annual meeting of the shareholders, only such business shall be conducted as shall have been properly brought before the annual meeting. To be properly brought before an annual meeting, business must be (i) brought before the annual meeting by the Corporation and specified in the notice of annual meeting given by or at the direction of the Board, (ii) brought before the annual meeting by or at the direction of the Board, or (iii) otherwise properly brought before the annual meeting by a shareholder who (A) was a shareholder of record (and, with respect to any beneficial owner, if different, on whose behalf such business is proposed, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time of giving the notice provided for in this Section 4 and at the time of the annual meeting, (B) is entitled to vote at the annual meeting, and (C) has complied with this Section 4 as to such business.
- (c) Without qualification, for business to be properly brought before an annual meeting by a shareholder, the shareholder must (i) provide Timely Notice (as defined below) thereof in writing and in proper form (as specified below in clause (c) of this Section 4) to the Secretary of the Corporation and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Section 4. To be timely, a shareholder’s notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the one-year anniversary of the preceding year’s annual meeting; provided, however, that if no annual meeting was held in the previous year or the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after the anniversary date of the preceding year’s annual meeting, notice by the shareholder to be timely must be so delivered, or mailed and received, not later than the ninetieth (90th) day prior to such annual meeting or, if later, the tenth (10th) day following the day on which public disclosure of the date of such annual meeting was first made (such notice within such time periods, “Timely Notice”). In no event shall any adjournment of an annual meeting or the announcement thereof commence a new time period for the giving of Timely Notice as described above.
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- (d) To be in proper form for purposes of this Section 4, a shareholder’s notice to the Secretary shall set forth:
- (i) As to each Proposing Person (as defined below), (A) the name and address of such Proposing Person (including, if applicable, the name and address that appear on the Corporation’s books and records); and (B) the class or series and number of shares of the Corporation that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by such Proposing Persons, except that such Proposing Person shall in all events be deemed to beneficially own any shares of any class or series of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future (the disclosures to be made pursuant to the foregoing clauses (A) and (B) are referred to as “Shareholder Information”); and
- (ii) As to each item of business that the shareholder proposes to bring before the annual meeting, (A) a reasonably brief description of the business desired to be brought before the annual meeting, the reasons for conducting such business at the annual meeting and any material interest in such business of each Proposing Person, (B) the text of the proposal or business (including the text of any resolutions proposed for consideration), and (C) a reasonably detailed description of all agreements, arrangements and understandings (x) between or among any of the Proposing Persons or (y) between or among any Proposing Person and any other person or entity (including their names) in connection with the proposal of such business by such shareholder and (D) a representation as to whether any Proposing Person intends or is part of a group which intends to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation’s outstanding capital stock required to approve or adopt the proposal or otherwise to solicit proxies from shareholders in support of such proposal.

For purposes of this Section 4, the term “Proposing Person” shall mean (i) the shareholder providing the notice of business proposed to be brought before an annual meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the annual meeting is made, and (iii) any affiliate or associate (each within the meaning of Rule 12b-2 under the Exchange Act for purposes of these By-Laws) of such shareholder or beneficial owner.

- (e) A shareholder providing notice of business proposed to be brought before an annual meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 4 shall be true and correct as of the record date for the annual meeting and as of the date that is ten (10) business days prior to the annual meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for the annual meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight (8) business days prior to the date for the annual meeting or any adjournment or postponement thereof, if practicable (or, if not practicable, on the first practicable date prior thereto) (in the case of the update and supplement required to be made as of ten (10) business days prior to the annual meeting or any adjournment or postponement thereof).

Section 5. Place of Meetings. Meetings of the shareholders may be held at such place, within or without the State of incorporation, as the Board or other officer calling the same shall specify in the notice of such meeting, or in a duly executed waiver of notice thereof.

Section 6. Quorum. At all meetings of the shareholders the holders of a majority of the votes of the shares of stock of the Corporation issued and outstanding and entitled to vote shall be present in person or by proxy to constitute a quorum for the transaction of any business, except when shareholders are required to vote by class, in which event a majority of the issued and outstanding shares of the appropriate class shall be present in person or by proxy, or except as otherwise provided by statute or in the Certificate of Incorporation. In the absence of a quorum, the holders of a majority of the votes of the shares of stock present in person or by proxy and entitled to vote, or if no shareholder entitled to vote is present, then any officer of the Corporation may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum may be present any business may be transacted which might have been transacted at the meeting as originally called.

Section 7. Organization. At each meeting of the shareholders of the Corporation, the Chairman of the Board, or in his absence or inability to act, the Vice Chairman of the Board, or in the absence or inability to act of the Chairman of the Board and the Vice Chairman of the Board, the President, or in the absence or inability to act of the Chairman of the Board, the Vice Chairman of the Board and the President, a Vice President, or in the absence of all of the foregoing, any person chosen by a majority of those shareholders present, shall act as chairman of the meeting. The Secretary, or, in his absence or inability to act, the Assistant Secretary or any person appointed by the chairman of the meeting, shall act as secretary of the meeting and keep the minutes thereof.

Section 8. Order of Business. The order of business at all meetings of the shareholders shall be as determined by the chairman of the meeting. The Board may adjourn or postpone any shareholder meeting from time to time whether or not a quorum is present at such meeting.

Section 9. Voting. Except as otherwise provided by statute, the Certificate of Incorporation, or any certificate duly filed in the office of the Department of State of the State of incorporation, each holder of record of shares of stock of the Corporation having voting power shall be entitled at each meeting of the shareholders to one vote for every share of such stock standing in his name on the record of shareholders of the Corporation on the date fixed by the Board as the record date for the determination of the shareholders who shall be entitled to notice of and to vote at such meeting; or if such record date shall not have been so fixed, then at the close of business on the day next preceding the day on which notice thereof shall be given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; or each shareholder entitled to vote at any meeting of the shareholders may authorize another person or persons to act for him by a proxy signed by such shareholder or his attorney-in-fact. Any such proxy shall be delivered to the secretary of such meeting at or prior to the time designated in the order of business for so delivering such proxies. No proxy shall be valid after the expiration of three years from the date thereof, unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the shareholder executing it, except in those cases where an irrevocable proxy is permitted by law. Except as otherwise provided by statute, these By-Laws, or the Certificate of Incorporation, any corporate action to be taken by vote of the shareholders shall be authorized by a majority of the total votes, or when shareholders are required to vote by class by a majority of the votes of the appropriate class, cast at a meeting of shareholders by the holders of shares present in person or represented by proxy and entitled to vote on such action. Each director of the Corporation to be elected by shareholders shall be elected by the vote of a majority of the votes cast with respect to such director by the shares present in person or represented by proxy and entitled to vote on the election of directors at any meeting of shareholders duly called for that purpose at which a quorum is present; provided, however, that directors shall be elected by a plurality of the votes cast in a contested election. An election shall be considered contested if, as of the date that this 10 days prior to the filing of the definitive proxy materials for such election, the number of nominees for election as a member of the Board exceeds the number of directors to be elected. A "majority of votes cast" means that the number of shares voted "for" a nominee for election as a member of the Board exceeds the number of shares voted "against" the election of such nominee. Abstentions and broker non-votes shall not constitute votes "for" or "against". Any incumbent director nominee who fails to receive a majority of the votes cast in an election that is not a contested election shall promptly tender his or her resignation to the Board with such resignation expressly stating that it is contingent upon the acceptance of the resignation by the Board in accordance with this Section 9. The Nominating/Governance Committee of the Board, or such other committee designated by the Board pursuant to these By-Laws, shall recommend to the Board whether to accept or reject the tendered resignation, or whether other action should be taken. The Board shall act on the resignation, taking into account the Nominating/Governance Committee's recommendation, and publicly disclose on a Form 8-K its decision regarding the resignation and, if such resignation is rejected, the rationale behind the decision, within ninety (90) days following certification of the election results. The Nominating/Governance Committee in making its recommendation, and the Board in making its decision, each may consider any factors and other information that they consider appropriate and relevant. The director who has tendered their resignation pursuant to this Section 9 shall not participate in the Nominating/Governance Committee's or the Board's deliberations or decision with respect to the tendered resignation. If the board of directors accepts a director's resignation pursuant to this Section 9, then the Board may fill the resulting vacancy pursuant to these By-Laws and the Certificate of Incorporation. Unless required by statute, or determined by the chairman of the meeting to be advisable, the vote on any question need not be by written ballot. On a vote by written ballot, each ballot shall be signed by the shareholder voting, or by his proxy, if there be such proxy, and shall state the number of shares voted.

Section 10. List of Shareholders. The officer who has charge of the stock ledger of the Corporation, or the transfer agent of the Corporation's stock, if there be one then acting, shall prepare and make, at least ten days before every meeting of shareholders, a complete list of the shareholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each shareholder and the number of shares registered in the name of each shareholder. Such list shall be open to the examination of any shareholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, at the place where the meeting is to be held, or at the office of the transfer agent. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any shareholder who is present.

Section 11. Inspectors. The Board may, in advance of any meeting of shareholders, appoint one or more inspectors to act at such meeting or any adjournment thereof. If the inspectors shall not be so appointed or if any of them shall fail to appear or act, the chairman of the meeting may, and on the request of any shareholder entitled to vote thereat shall, appoint inspectors. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability. The inspectors shall determine the number of shares outstanding and the voting power of each, the number of shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all shareholders. On request of the chairman of the meeting or any shareholder entitled to vote thereat, the inspectors shall make a report in writing of any challenge, request or matter determined by them and shall execute a certificate of any fact found by them. No director or candidate for the office of director shall act as inspector or an election of directors. Inspectors need not be shareholders.

Section 12. Consent of Shareholders in Lieu of Meeting. To the extent permitted by law, the meeting and vote of shareholders can be dispensed with if all of the shareholders who would have been entitled to vote upon the action if such meeting were held shall consent in writing to such corporate action being taken.

ARTICLE II
BOARD OF DIRECTORS

Section 1. General Powers. The business and affairs of the Corporation shall be managed by the Board. The Board may exercise all such authority and powers of the Corporation and do all such lawful acts and things as are not by statute or the Certificate of Incorporation directed or required to be exercised or done by the shareholders.

Section 2. Number, Election and Terms. The number of directors constituting the Board shall be fixed at five (5). The number of directors may be increased or decreased by the affirmative vote of a majority of the entire Board of Directors. At each annual meeting of the shareholders of the Corporation, the directors whose term expires at the meeting shall be elected to hold office for a term expiring at the next annual meeting of shareholders. Directors need not be residents of the State of New York, shareholders of the Corporation or citizens of the United States. Unless provided otherwise by law, any director may be removed at any time, with or without cause, at a special meeting of the shareholders called for that purpose.

Section 3. Place of Meetings. Meetings of the Board may be held at such place, within or without the State of incorporation, as the Board may from time to time determine or as shall be specified in the notice or waiver of notice of such meeting.

Section 4. Annual Meeting. The Board shall meet for the purpose of organization, the election of officers and the transaction of other business, as soon as practicable after each annual meeting of the shareholders, on the same day and at the same place where such annual meeting shall be held. Notice of such meeting need not be given. Such meeting may be held at any other time or place (within or without the State of incorporation) which shall be specified in a notice thereof given as hereinafter provided in Section 7 of this Article II.

Section 5. Regular Meetings. Regular meetings of the Board shall be held at such time and place as the Board may from time to time determine. If any day fixed for a regular meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting which would otherwise be held on that day shall be held at the same hour on the next succeeding business day. Notice of regular meetings of the Board need not be given except as otherwise required by statute or these By-Laws.

Section 6. Special Meetings. Special meetings of the Board may be called by two or more directors of the Corporation or by the Chairman of the Board, the Vice Chairman of the Board, the Lead Independent Director or the Chief Executive Officer.

Section 7. Notice of Meetings. Notice of each special meeting of the Board (and of each regular meeting for which notice shall be required) shall be given by the Secretary as hereinafter provided in this Section 7, in which notice shall be stated the time and place (within or without the State of incorporation) of the meeting. Notice of each such meeting shall be delivered to each director either personally or by telephone or electronic transmission, at least twenty-four hours before the time at which such meeting is to be held or by first-class mail, postage prepaid, addressed to him at his residence, or usual place of business, at least three days before the day on which such meeting is to be held. Notice of any such meeting need not be given to any director who shall, either before or after the meeting, submit a signed waiver of notice or who shall attend such meeting without protesting, prior to or at its commencement, the lack of notice to him. Except as otherwise specifically required by these By-Laws, a notice or waiver of notice of any regular or special meeting need not state the purpose of such meeting.

Section 8. Quorum and Manner of Acting. A majority of the entire Board shall be present in person at any meeting of the Board in order to constitute a quorum for the transaction of business at such meeting, and, except as otherwise expressly required by statute or the Certificate of Incorporation, the act of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board. In the absence of a quorum at any meeting of the Board, a majority of the directors present thereat, or if no director be present, the Secretary, may adjourn such meeting to another time and place, or such meeting, unless it be the annual meeting of the Board, need not be held. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called. Except as provided in Article III of these By-Laws, the directors shall act only as a Board and the individual directors shall have no power as such.

Section 9. Organization. The Chairman of the Board shall act as chairman of and preside at all meetings of the Board at which he is present. If the Chairman of the Board shall be absent from any meeting of the Board, the duties otherwise provided in this Section 9 of Article II to be performed by him at such meeting shall be performed at such meeting by the individual elected by the Board to act as Lead Independent Director. If the Chairman of the Board shall be absent from any meeting of the Board, and if no Lead Independent Director has been elected or if the Lead Independent Director is not present at the meeting, the Vice Chairman of the Board shall act as chairman of and preside at such meeting. If the Chairman of the Board shall be absent from any meeting of the Board, and if no Lead Independent Director or Vice Chairman of the Board has been elected or if the Lead Independent Director and the Vice Chairman of the Board are not present at the meeting, the President shall act as chairman of and preside at such meeting. If the Chairman of the Board shall be absent from any meeting of the Board, and if no Lead Independent Director or Vice Chairman of the Board has been elected and no President has been appointed or if the Lead Independent Director, the Vice Chairman of the Board and the President are not present at the meeting, another director chosen by a majority of the directors present shall act as chairman of and preside at such meeting. The Secretary (or, in his absence or inability to act, any person appointed by the chairman) shall act as secretary of the meeting and keep the minutes thereof.

Section 10. Resignations. Any director of the Corporation may resign at any time by giving written notice of his resignation to the Board or Chairman of the Board or the President or the Secretary. Any such resignation shall take effect at the time specified therein, or, if the time when it shall become effective shall not be specified therein, immediately upon its receipt; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 11. Newly Created Directorships and Vacancies. Except as otherwise provided for or fixed by or pursuant to the provisions of Article 4 of the Certificate of Incorporation relating to the rights of the holders of any class or series of stock having a preference over another class or series of stock as to dividends or upon liquidation to elect directors under specified circumstances, newly created directorships resulting from any increase in the number of directors and any vacancies on the Board resulting from death, resignation, disqualification, removal or other cause shall be filled by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the class of directors in which the new directorship was created or the vacancy occurred and until such director's successor shall have been elected and qualified. No decrease in the number of directors constituting the Board shall shorten the term of any incumbent director.

Section 12. Removal of Directors. Subject to the rights of any class or series of stock having a preference over another class or series of stock as to dividends or upon liquidation to elect directors under specified circumstances, any director may be removed from office, only with cause and only by the affirmative vote of (i) the holders of 80% of the combined voting power of the then outstanding shares of stock entitled to vote generally in the election of directors, voting together as a single class and (ii) a majority of such shares beneficially owned by the persons not affiliated with an Interested Shareholder (as defined in Article 14 of the Certificate of Incorporation).

Section 13. Compensation. The Board shall have authority to fix the compensation, including fees and reimbursement of expenses, of directors for services to the Corporation in any capacity, provided no such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefore.

Section 14. Action by the Board. Any member of the Board or of any Committee thereof may participate in a meeting of the Board or such committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each of them at the same time. Participation by such means shall constitute presence in person at a meeting. To the extent permitted under the laws of the State of incorporation, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board, or committee.

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Section 15. Advance Notice of Nominations for Election of Directors at a Meeting Subject to the rights of holders of any class or series of stock having a preference over another class or series of stock as to dividends or upon liquidation to elect additional directors under specified circumstances, nominations for the election of directors may be made by the Board or a proxy committee appointed by the Board or by any shareholder entitled to vote in the election of directors generally. However, any shareholder entitled to vote in the election of directors generally may nominate one or more persons for election as directors at a meeting only if written notice of such shareholder's intent to make such nomination or nominations has been given, either by personal delivery or by United States mail, postage prepaid, to the Secretary of the Corporation (i) with respect to an election to be held at an annual meeting of shareholders, not less than ninety (90) days nor more than one hundred twenty (120) days prior to the earlier of the date of the meeting or the corresponding date on which the immediately preceding year's annual meeting of shareholders was held, and (ii) with respect to an election to be held at a special meeting of shareholders for the election of directors, the close of business on the seventh day following the date on which notice of such meeting is first given to shareholders. Each such notice shall set forth: (a) the name and address of the shareholder who intends to make the nomination and the person or persons to be nominated; (b) a representation that the shareholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice; (c) a description of all arrangements or understandings between the shareholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the shareholder; (d) such other information regarding each nominee proposed by such shareholder as would be required to be included in a proxy statement filed pursuant to the proxy rules of the Securities and Exchange Commission, had the nominee been nominated, or intended to be nominated, by the Board; and (e) the consent of each nominee to serve as a director of the Corporation if so elected. The chairman of the meeting may refuse to acknowledge the nomination of any person not made in compliance with the foregoing procedure.

Section 16. The Lead Independent Director. The Board may from time to time elect a director to serve as Lead Independent Director, which shall be an "independent director" in accordance with the Exchange Act and the applicable rules of the New York Stock Exchange. The Lead Independent Director, if one be elected, shall, if present, preside at each meeting of the Board in the case of the absence or inability to act of the Chairman of the Board, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the Chairman of the Board, and shall coordinate the activities of the independent directors and have such other authority and powers as the Board may from time to time prescribe.

Section 17. Term Limits. Notwithstanding anything herein to the contrary, the total cumulative length of time that any Outside Director may serve on the Board shall be limited to a maximum of nine terms, whether consecutively or in total, plus any portion of an earlier term that such Outside Director may have been appointed to serve. Notwithstanding the foregoing, the Board may extend by unanimous agreement the term limit as set forth above for an Outside Director for up to an additional three terms. An "Outside Director" shall mean a member of the Corporation's Board who is not an officer or employee of the Corporation.

ARTICLE III

EXECUTIVE AND OTHER COMMITTEES

Section 1. Executive and other Committees. The Board may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of two or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in the resolution shall have and may exercise the powers of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; provided, however, that in the absence or disqualification of any member of any such committee or committees, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Each committee shall keep minutes of its proceedings and shall report such minutes to the Board when required. All such proceedings shall be subject to revision or alteration by the Board; provided, however, that third parties shall not be prejudiced by such revision or alteration.

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Section 2. General. A majority of any committee may determine its action and fix the time and place of its meetings, unless the Board shall otherwise provide. Notice of such meetings shall be given to each member of the committee in the manner provided for in Article II, Section 7. The Board shall have the power at any time to fill vacancies in, to change the membership of, or to dissolve any such committee. Nothing herein shall be deemed to prevent the Board from appointing one or more committees consisting in whole or in part of persons who are not directors of the Corporation; provided, however, that no such committee shall have or may exercise any authority of the Board.

ARTICLE IV

OFFICERS

Section 1. Number and Qualifications. The officers of the Corporation may include the President, one or more Vice Presidents (one or more of whom may be designated Executive Vice President or Senior Vice President), the Treasurer and the Secretary. Any two or more offices may be held by the same person. Such officers shall be elected from time to time by the Board, each to hold office until his successor shall have been duly elected and shall have qualified, or until his death, or until he shall have resigned, or have been removed, as hereinafter provided in these By-Laws. The Board may from time to time elect a Chairman of the Board and a Vice Chairman of the Board, and the Board may from time to time elect, or the Chairman of the Board, or the President may appoint, such other officers (including one or more Assistant Vice Presidents, Assistant Secretaries, and Assistant Treasurers), and such agents, as may be necessary or desirable for the business of the Corporation. Such other officers and agents shall have such duties and shall hold their offices for such terms as may be prescribed by the Board of by the appointing authority.

Section 2. Resignations. Any officer of the Corporation may resign at any time by giving written notice of his resignation to the Board, the Chairman of the Board, the President or the Secretary. Any such resignation shall take effect at the time specified therein, or, if the time when it shall become effective shall not be specified therein, immediately upon its receipt; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 3. Removal. Any officer or agent of the Corporation may be removed, either with or without cause, at any time, by the vote of the majority of the entire Board at any meeting of the Board, or, except in the case of an officer or agent elected or appointed by the Board, by the Chairman of the Board or the President. Such removal shall be

without prejudice to the contractual rights, if any, of the person so removed.

Section 4. Vacancies. A vacancy in any office, whether arising from death, resignation, removal or any other cause, may be filled for the unexpired portion of the term of the office which shall be vacant, in the manner prescribed in these By-Laws for the regular election or appointment to such office.

Section 5. The Chairman of the Board. (a) The Chairman of the Board, if one be elected, shall, if present, preside at each meeting of the shareholders and of the Board. The Chairman of the Board shall perform all duties incident to the office of Chairman of the Board or as may be assigned by the Board or these By-Laws.

- (b) The Vice Chairman of the Board. The Vice Chairman of the Board, if one be elected, shall, if present, preside at each meeting of the shareholders in the case of the absence or inability to act of the Chairman of the Board, and shall, if present, preside at each meeting of the Board in the case of the absence or inability to act of the Chairman of the Board and the Lead Independent Director, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the Chairman of the Board, and shall have such other authority and powers and perform all such duties as from time to time may be assigned to him by the Board or the Chairman of the Board.

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Section 6. (a) Chief Executive Officer. The Chief Executive Officer shall be the chief executive officer of the Corporation and shall have general and active supervision and direction over the business and affairs of the Corporation and over its subordinate officers (including the President), subject, however, to the direction of the Chairman of the Board and the control of the Board. He shall, if present, preside at each meeting of the shareholders in the case of the absence or inability to act of the Chairman of the Board and the Vice Chairman of the Board, and shall, if present, preside at each meeting of the Board in the case of the absence or inability to act of the Chairman of the Board, the Lead Independent Director, and the Vice Chairman of the Board, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the Chairman of the Board. He shall perform all duties incident to the office of Chief Executive Officer and such other duties as from time to time may be assigned to him by the Board, the Chairman of the Board, or these By-Laws.

- (b) President. The President shall be the chief operating officer of the Corporation and shall have general and active supervision and direction over the business and affairs of the Corporation and over his subordinate officers, subject, however, to the direction of the Chairman of the Board and the Chief Executive Officer and the control of the Board. He shall, if present, preside at each meeting of the shareholders in the case of the absence or inability to act of the Chairman of the Board, the Vice Chairman of the Board, and the Chief Executive Officer, and shall, if present, preside at each meeting of the Board in the case of the absence or inability to act of the Chairman of the Board, the Lead Independent Director, the Chief Executive Officer, and the Vice Chairman of the Board, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the Chairman of the Board. He shall perform all duties incident to the office of President and such other duties as from time to time may be assigned to him by the Board, the Chairman of the Board, the Chief Executive Officer, or these By-Laws.

Section 7. Vice-Presidents. Each Executive Vice-President, each Senior Vice-President and each Vice-President shall have such powers and perform all such duties as from time to time may be assigned to him by the Board, the Chairman of the Board or the President.

Section 8. The Treasurer. The Treasurer shall be the chief financial officer of the Corporation and shall exercise general supervision over the receipt, custody and disbursement of Corporate funds. He shall have such further powers and duties as may be conferred upon him from time to time by the President or the Board of Directors. He shall perform the duties of controller if no one is elected to that office.

Section 9. The Secretary. The Secretary shall:

- (a) keep or cause to be kept in one or more books provided for the purpose, the minutes of all meetings of the Board, the committees of the Board and the shareholders;
- (b) see that all notices are duly given in accordance with the provisions of these By-Laws and as required by law;
- (c) be custodian of the records and the seal of the Corporation and affix and attest the seal to all stock certificates of the Corporation (unless the seal of the Corporation on such certificates shall be a facsimile, as hereinafter provided) and affix and attest the seal to all other documents to be executed on behalf of the Corporation under its seal;
- (d) see that the books, reports, statements, certificates and other documents and records required by law to be kept and filed are properly kept and filed; and
- (e) in general, perform all the duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the Board, the Chairman of the Board, or the President.

Section 10. Officers' Bonds or Other Security. If required by the Board, any officer of the Corporation shall give a bond or other security for the faithful performance of his duties, in such amount and with such surety or sureties as the Board may require.

Section 11. Compensation. The compensation of the officers of the Corporation for their services as such officers shall be fixed from time to time by the Board; provided, however, that the Board may delegate to the Chairman of the Board or the President the power to fix the compensation of officers and agents appointed by the Chairman of the Board or the President, as the case may be. An officer of the Corporation shall not be prevented from receiving compensation by reason of the fact that he is also a director of the Corporation, but any such officer who shall also be a director shall not have any vote in the determination of the amount of compensation paid to him.

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ARTICLE V

INDEMNIFICATION

The Corporation shall, to the fullest extent permitted by the laws of the State of incorporation, indemnify any and all persons whom it shall have power to indemnify against any and all of the costs, expenses, liabilities or other matters incurred by them by reason of having been officers or directors of the Corporation, any subsidiary of the Corporation or of any other corporation for which he acted as officer or director at the request of the Corporation.

ARTICLE VI

CONTRACTS, CHECKS, DRAFTS, BANK ACCOUNTS, ETC.

Section 1. Execution of Contracts. Except as otherwise required by statute, the Certificate of Incorporation or these By-Laws, any contracts or other instruments may

be executed and delivered in the name and on behalf of the Corporation by such officer or officers (including any assistant officer) of the Corporation as the Board may from time to time direct. Such authority may be general or confined to specific instances as the Board may determine. Unless authorized by the Board or expressly permitted by these By-Laws, an officer or agent or employee shall not have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it pecuniarily liable for any purpose or to any amount.

Section 2. Loans. Unless the Board shall otherwise determine either (a) the Chairman of the Board, the Vice-Chairman of the Board or the President, singly, or (b) a Vice-President, together with the Treasurer, may effect loans and advances at any time for the Corporation or guarantee any loans and advances to any subsidiary of the Corporation, from any bank, trust company or other institution, or from any firm, corporation or individual, and for such loans and advances may make, execute and deliver promissory notes, bonds or other certificates or evidences of indebtedness of the Corporation, or guarantee of indebtedness of subsidiaries of the Corporation, but no officer or officers shall mortgage, pledge, hypothecate or transfer any securities or other property of the Corporation, except when authorized by the Board.

Section 3. Checks, Drafts, etc. All checks, drafts, bills of exchange or other orders for the payment of money out of the funds of the Corporation, and all notes or other evidences of indebtedness of the Corporation, shall be signed in the name and on behalf of the Corporation by such persons and in such manner as shall from time to time be authorized by the Board.

Section 4. Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may from time to time designate or as may be designated by any officer or officers of the Corporation to whom such power of designation may from time to time be delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of the Corporation, checks, drafts and other orders for the payment of money which are payable to the order of the Corporation may be endorsed, assigned and delivered by any officer or agent of the Corporation, or in such other manner as the Board may determine by resolution.

Section 5. General and Special Bank Accounts. The Board may from time to time authorize the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as the Board may designate or as may be designated by any officer or officers of the Corporation to whom such power of designation may from time to time be delegated by the Board. The Board may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these By-Laws, as it may deem expedient.

Section 6. Proxies in Respect of Securities of Other Corporations. Unless otherwise provided by resolution adopted by the Board of Directors, the Chairman of the Board, the President, or a Vice-President may from time to time appoint an attorney or attorneys or agent or agents, of the Corporation, in the name and on behalf of the Corporation to cast the votes which the Corporation may be entitled to cast as the holder of stock or other securities in any other corporation, any of whose stock or other securities may be held by the Corporation, at meetings of the holders of the stock or other securities of such other corporation, or to consent in writing, in the name of the Corporation as such holder, to any action by such other corporation, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent, and may execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal, or otherwise, all such written proxies or other instruments as he may deem necessary or proper in the premises.

ARTICLE VII

SHARES, ETC.

Section 1. Shares of Stock. Shares of capital stock of the Corporation may be certificated or uncertificated, as provided under the New York Business Corporation Law. Each holder of shares of stock of the Corporation shall be entitled to have a certificate, upon request, in such form as shall be approved by the Board, certifying the number of shares of the Corporation owned by him. The certificates representing shares of stock shall be signed in the name of the Corporation by the Chairman of the Board or the President or a Vice-President and by the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer and sealed with the seal of the Corporation (which seal may be a facsimile, engraved or printed); provided, however, that where any such certificate is countersigned by a transfer agent other than the Corporation or its employee, or is registered by a registrar other than the Corporation or one of its employees, the signature of the officers of the Corporation upon such certificates may be facsimiles, engraved or printed. In case any officer who shall have signed or whose facsimile signature has been placed upon such certificates shall have ceased to be such officer before such certificates shall be issued, they may nevertheless be issued by the Corporation with the same effect as if such officer were still in office at the date of their issue.

Section 2. Books of Account and Record of Shareholders. The books and records of the Corporation may be kept at such places within or without the State of incorporation as the Board of Directors may from time to time determine. The stock record books and the blank stock certificate books shall be kept by the Secretary or by any other officer or agent designated by the Board of Directors.

Section 3. Transfer of Shares. Stock of the Corporation shall be transferable in the manner prescribed by applicable law and in these By-Laws. Transfers of shares of stock of the Corporation shall be made on the stock records of the Corporation, and in the case of certificated shares of stock, only upon authorization by the registered holder thereof, or by his attorney thereunto authorized by power of attorney duly executed and filed with the Secretary or with a transfer clerk, and on surrender of the certificate or certificates for such shares properly endorsed or accompanied by a duly executed stock transfer power and the payment of all taxes thereon; or, in the case of uncertificated shares of stock, upon receipt of proper transfer instructions from the registered holder of the shares or by such person's attorney lawfully constituted in writing, and upon payment of all necessary transfer taxes and compliance with appropriate procedures for transferring shares in uncertificated form. Except as otherwise provided by law, the Corporation shall be entitled to recognize the exclusive right of a person in whose name any share or shares stand on the record of shareholders as the owner of such share or shares for all purposes, including, without limitation, the rights to receive dividends or other distributions, and to vote as such owner, and the Corporation may hold any such shareholder of record liable for calls and assessments and the Corporation shall not be bound to recognize any equitable or legal claim to or interesting any such share or shares on the part of any other person whether or not it shall have express or other notice thereof. Whenever any transfers of shares shall be made for collateral security and not absolutely, and both the transferor and transferee request the Corporation to do so, such fact shall be stated in the entry of the transfer.

Section 4. Regulations. The Board may make such additional rules and regulations, not inconsistent with these By-Laws, as it may deem expedient concerning the issue, transfer and registration of certificates for shares of stock of the Corporation. It may appoint, or authorize any officer or officers to appoint, one or more transfer agents or one or more transfer clerks and one or more registrars and may require all certificates for shares of stock to bear the signature or signatures of any of them.

Section 5. Lost, Destroyed or Mutilated Certificates. The holder of any certificate representing the shares of stock of the Corporation shall immediately notify the Corporation of any loss, destruction or mutilation of such certificate, and the Corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it which the owner thereof shall allege to have been lost, stolen, or destroyed or which shall have been mutilated, and the Board may, in its discretion, require such owner or his legal representatives to give to the Corporation a bond in such sum, limited or unlimited, and in such form and with such surety or sureties as the Board in its absolute discretion shall determine, to indemnify the Corporation against any claim that may be made against it on account of the alleged loss, theft, or destruction of any such certificate, or the issuance of a new certificate. Anything herein to the contrary notwithstanding, the Board, in its absolute discretion, may refuse to issue any such new certificate, except pursuant

to legal proceedings under the laws of the State of incorporation.

Section 6. Fixing of Record Date. In order that the Corporation may determine the shareholders entitled to notice of, or to vote at, any meeting of shareholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix, in advance, a record date, which shall not be more than sixty nor less than ten days before the date of such meeting, nor more than sixty days prior to any other action. A determination of shareholders of record entitled to notice of, or to vote at, a meeting of shareholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

ARTICLE VIII

OFFICE

Section 1. Principal or Registered Office. The principal or registered office of the Corporation shall be at such place as may be specified in the Certificate of Incorporation of the Corporation or other certificate filed pursuant to law, or if none be so specified, at such place as may from time to time be fixed by the Board.

Section 2. Other Offices. The Corporation also may have an office or offices other than said principal or registered office, at such place or places either within or without the State of incorporation.

ARTICLE IX

FISCAL YEAR

The fiscal year of the Corporation shall be determined by the Board.

ARTICLE X

SEAL

The board shall provide a corporate seal which shall contain the name of the Corporation, the words "Corporate Seal" and the year and State of incorporation.

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ARTICLE XI

AMENDMENTS

These By-Laws may be amended or repealed, or new By-Laws may be adopted, at any annual or special meeting of the shareholders, by a majority of the total votes of the shareholders or when shareholders are required to vote by class by a majority of the appropriate class, present in person or represented by proxy and entitled to vote on such action (unless the act of a greater number of votes is required by law, Certificate of Incorporation of the Corporation, or these By-Laws); provided, however, that the notice of such meeting shall have been given as provided in these By-Laws, which notice shall mention that amendment or repeal of these By-Laws, or the adoption of new By-Laws, is one of the purposes of such meeting. These By-Laws may also be amended or repealed, or new By-Laws may be adopted, by the Board at any meeting thereof (unless the act of a greater number of votes is required by law, Certificate of Incorporation of the Corporation, or these By-Laws); provided, however, that notice of such meeting shall have been given as provided in these By-Laws, which notice shall mention that amendment or repeal of the By-Laws, or the adoption of new By-Laws, is one of the purposes of such meetings; and provided, further, that By-Laws adopted by the Board may be amended or repealed by the shareholders as hereinabove provided.

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