UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

Current Report
Pursuant to Section 13 or 15(d)
of The Securities Exchange Act of 1934

December 16, 2021
(Date of Report - Date of Earliest Event Reported)

FIRSTCASH HOLDINGS, INC.
(Exact name of registrant as specified in its charter)

Delaware	001-10960	75-2237318
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

1600 West 7th Street Fort Worth Texas 76102
(Address of principal executive offices, including zip code)

(817) 335-1100
(Registrant's telephone number, including area code)

NONE
(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:

☐ 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(s)	Name of each exchange on which registered
Common Stock, par value $.01 per share	**FCFS**	**The Nasdaq Stock Market**

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

Emerging growth company ☐

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

Explanatory Note

On October 27, 2021, FirstCash, Inc. ("FirstCash") announced plans to create a new public holding company, FirstCash Holdings, Inc. ("Holdings"), by implementing a holding company reorganization (the "Parent Merger") in connection with its proposed acquisition of American First Finance, Inc. Following the Parent Merger, Holdings, a Delaware corporation, became the successor issuer to FirstCash, a Delaware corporation. This Current Report on Form 8-K (the "Form 8-K") is being filed for the purpose of establishing Holdings as the successor issuer pursuant to Rule 12g-3(a) under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and to disclose certain related matters. Pursuant to Rule 12g-3(a) under the Exchange Act, shares of Holdings common stock, par value $0.01 per share (the "Holdings Shares"), as successor issuer, are deemed registered under Section 12(b) of the Exchange Act.

Item 1.01. Entry into a Material Definitive Agreement.

Adoption of Agreement and Plan of Merger and Consummation of Holding Company Reorganization

On December 16, 2021, FirstCash (now a wholly owned subsidiary of Holdings) implemented a holding company reorganization pursuant to the Agreement and Plan of Merger (the "Merger Agreement"), dated as of December 16, 2021, among FirstCash, Holdings and Atlantis Merger Sub, Inc., a Delaware corporation ("Merger Sub"), which resulted in Holdings owning all of the outstanding capital stock of FirstCash. Pursuant to the Parent Merger, Merger Sub, a direct, wholly owned subsidiary of Holdings and an indirect, wholly owned subsidiary of FirstCash, merged with and into FirstCash, with FirstCash surviving as a direct, wholly owned subsidiary of Holdings. Each share of FirstCash common stock, par value $0.01 per share (the "FirstCash Shares"), issued and outstanding immediately prior to the Parent Merger automatically converted into an equivalent corresponding share of Holdings Shares, having the same designations, rights, powers and preferences and the qualifications, limitations and restrictions as the corresponding FirstCash Shares being converted. Accordingly, upon consummation of the Parent Merger, FirstCash's stockholders immediately prior to the consummation of the Parent Merger became stockholders of Holdings. The stockholders of FirstCash will not recognize gain or loss for U.S. federal income tax purposes upon the conversion of their shares in the Parent Merger.

The Parent Merger was conducted pursuant to Section 251(g) of the General Corporation Law of the State of Delaware (the "DGCL"), which provides for the formation of a holding company without a vote of the stockholders of the constituent corporation. The conversion of stock occurred automatically, however, holders of physical stock certificates of FirstCash will be asked to exchange their physical stock certificates for stock certificates of Holdings via a letter of transmittal that will be delivered to such holders by Holdings' transfer agent. After the Parent Merger, unless exchanged, physical stock certificates that previously represented FirstCash Shares represent the right to receive the same number of Holdings Shares. Following the consummation of the Parent Merger, Holdings Shares will continue to trade on the NASDAQ Global Select Market ("NASDAQ") on an uninterrupted basis under the symbol "FCFS" with a new CUSIP number #33768G107. Immediately after consummation of the Parent Merger, Holdings has, on a consolidated basis, the same assets, businesses and operations as FirstCash had immediately prior to the consummation of the Parent Merger.

As a result of the Parent Merger, Holdings became the successor issuer to FirstCash pursuant to 12g-3(a) of the Exchange Act and as a result the Holdings Shares are deemed registered under Section 12(b) of the Exchange Act.

The foregoing descriptions of the Parent Merger and Merger Agreement do not purport to be complete and are qualified in their entirety by reference to the full text of the Merger Agreement, which is filed as Exhibit 2.1 and which is incorporated by reference herein.

Item 3.01. Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.

In connection with the Parent Merger, FirstCash notified NASDAQ that the Parent Merger had been completed and requested that trading of the FirstCash Shares be suspended prior to the market opening on December 17, 2021. On December 16, 2021, NASDAQ is expected to suspend trading of the FirstCash Shares after the close of business. On December 17, 2021, Holdings Shares are expected to commence trading on NASDAQ under the symbol "FCFS". In addition, NASDAQ will file with the U.S. Securities and Exchange Commission (the "Commission") an application on Form 25 to delist the FirstCash Shares from NASDAQ and deregister the FirstCash Shares under Section 12(b) of the Exchange Act. FirstCash intends to file a certificate on Form 15 requesting that FirstCash shares be deregistered under the Exchange Act, and that FirstCash's reporting obligations under Section 15(d) of the Exchange Act be suspended (except to the extent of the succession of Holdings to the Exchange Act Section 12(b) registration and reporting obligations of FirstCash).

As a result of the Parent Merger, Holdings became the successor issuer to FirstCash pursuant to Rule 12g-3(a) of the Exchange Act, and as a result, Holdings Shares are deemed registered under Section 12(b) of the Exchange Act as the common stock of the successor issue**.**

Item 3.03. Material Modification of Rights of Securityholders.

Upon consummation of the Parent Merger, each FirstCash Share issued and outstanding immediately prior to the Parent Merger automatically converted into an equivalent corresponding Holdings Share, having the same designations, rights, powers and preferences and the qualifications, limitations and restrictions as the corresponding FirstCash Share that was converted.

The information set forth in Item 1.01 and Item 5.03 is hereby incorporated by reference in this Item 3.03.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

The directors of Holdings and their committee memberships and titles, which are listed below, are the same as the directors of FirstCash immediately prior to the Parent Merger.

Directors

Name	Age	AC	CC	NCGC
Daniel R. Feehan	70	C		
Rick L. Wessel	62			
Daniel E. Berce	67		X	
Mikel D. Faulkner	71		X	X
Paula K. Garrett	60	X		
James H. Graves	72		C	X
Randel G. Owen	62	X		C

AC Audit Committee
CC Compensation Committee
NCGC Nominating and Corporate Governance Committee
C Committee Chairperson

Mr Feehan and Mr. Wessel will continue to serve as the Chairman and Vice Chairman, respectively, of the board of directors of Holdings. Biographical information about Holdings' directors is included in FirstCash's Schedule 14A for the 2021 Annual Meeting of Stockholders under "Election of Directors" and is incorporated by reference herein.

The executive officers of Holdings and their positions and titles, which are listed below, are the same as the executive officers of FirstCash immediately prior to the Parent Merger.

Executive Officers

Name	Position with Holdings
Rick L. Wessel	Chief Executive Officer and Vice-Chairman of the Board
T. Brent Stuart	President and Chief Operating Officer
R. Douglas Orr	Executive Vice President and Chief Financial Officer
Raul R. Ramos	Senior Vice President, Latin Operations

Biographical information about Holdings' executive officers is included in FirstCash's Schedule 14A for the 2021 Annual Meeting of Stockholders under "Executive Officers" and is incorporated by reference herein.

In connection with the Parent Merger, on December 16, 2021, FirstCash entered into an Assignment and Assumption Agreement with Holdings pursuant to which FirstCash assigned to Holdings, and Holdings assumed, all of FirstCash's rights and obligations under the First Cash Financial Services, Inc. 2011 Long-Term Incentive Plan and the FirstCash, Inc. 2019 Long-Term Incentive Plan, and any subplans, appendices or addendums thereunder (together, the "Equity Compensation Plans"), and all of FirstCash's rights and obligations pursuant to each stock option to purchase a share of FirstCash stock (a "Stock Option") and each right to acquire or vest in a share of FirstCash stock (a "Stock Unit" and together with the Stock Options, an "Equity Award") that was outstanding immediately prior to December 16, 2021 and issued under the Equity Compensation Plans and underlying grant agreements (each such grant agreement, an "Equity Award Agreement" and such grant agreements together with the Equity Compensation Plans, the "Equity Compensation Plans and Agreements"). Each such Equity Award was converted into (A) with respect to each Stock Unit, a right to acquire or vest in a Holdings Share or (B) with

respect to a Stock Option, an option to purchase a Holdings Share at an exercise price per share equal to the exercise price per share of FirstCash stock subject to such Stock Option immediately prior to December 16, 2021. Pursuant to the Assignment and Assumption Agreement, the Equity Compensation Plans and Agreements were automatically deemed to be amended, to the extent necessary or appropriate, to provide that references to FirstCash will be read to refer to Holdings.

The foregoing description of the Assignment and Assumption Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Assignment and Assumption Agreement, which is filed as Exhibit 10.1 and which is incorporated by reference herein.

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

In connection with the consummation of the Parent Merger, Holdings' Board of Directors approved the Amended and Restated Holdings Certificate of Incorporation (the "Holdings Charter") and adopted the Amended and Restated Bylaws of Holdings (the "Holdings Bylaws") that are each identical to those of FirstCash immediately prior to the consummation of the Parent Merger, except for the change of the name of the corporation as permitted by Section 251(g) of the DGCL. Prior to the consummation of the Parent Merger, the sole stockholder of Holdings approved the adoption of the Holdings Charter. The Holdings Charter was filed with the Delaware Secretary of State on December 16, 2021.

The foregoing descriptions of the Holdings Charter and the Holdings Bylaws do not purport to be complete and are qualified in their entirety by reference to the full text of the Holdings Charter and the Holdings Bylaws, which are filed as Exhibits 3.1 and 3.2 hereto, respectively, and each of which is incorporated by reference herein.

Item 8.01. Other Items.

Successor Issuer

In connection with the Parent Merger and by operation of Rule 12g-3(a) promulgated under the Exchange Act, Holdings is the successor issuer to FirstCash and has succeeded to the attributes of FirstCash as the registrant. Holdings Shares are deemed to be registered under Section 12(b) of the Exchange Act, and Holdings is subject to the informational requirements of the Exchange Act, and the rules and regulations promulgated thereunder. Holdings hereby reports this succession in accordance with Rule 12g-3(f) promulgated under the Exchange Act.

The description of Holdings' capital stock provided in Exhibit 99.1, which is incorporated by reference herein, modifies and supersedes any prior description of Holdings' capital stock in any registration statement or report filed with the Securities and Exchange Commission (the "Commission") and will be available for incorporation by reference into certain of Holdings' filings with the Commission pursuant to the Securities Act of 1933, as amended, the Exchange Act, and the rules and forms promulgated thereunder.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
2.1	Agreement and Plan of Merger, dated December 16, 2021, by and among FirstCash Inc., FirstCash Holdings, Inc. and Atlantis Merger Sub, Inc.
3.1	Amended and Restated Certificate of Incorporation of FirstCash Holdings Inc., dated December 16, 2021
3.2	Amended and Restated Bylaws of FirstCash Holdings Inc., dated December 16, 2021
10.1	Assignment and Assumption Agreement, dated December 16, 2021 between FirstCash Inc. and FirstCash Holdings, Inc.
99.1	Description of Capital Stock
104	Cover Page Interactive Data File (embedded within the Inline XBRL document contained in Exhibit 101)

SIGNATURE

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.

FIRSTCASH HOLDINGS, INC.

By: /s/ R. Douglas Orr
Name: R. Douglas Orr
Title: Executive Vice President and Chief Financial Officer

Date: December 16, 2021

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (the "Agreement"), entered into as of December 16, 2021, by and among FirstCash, Inc., a Delaware corporation (the "Company"), FirstCash Holdings, Inc., a Delaware corporation ("New Parent") and a direct, wholly owned subsidiary of the Company, and Atlantis Merger Sub, Inc., a Delaware corporation ("Merger Sub") and a direct, wholly owned subsidiary of New Parent.

RECITALS

WHEREAS, on the date hereof, the Company has the authority to issue 100,000,000 shares, consisting of: (i) 90,000,000 shares of Common Stock, par value $0.01 per share (the "Company Common Stock"), of which 40,433,427 shares are issued and outstanding and 8,842,442 are held in treasury; and (ii) 10,000,000 shares of Preferred Stock, par value $0.01 per share (the "Company Preferred Stock"), of which no shares are issued and outstanding.

WHEREAS, as of the Effective Time (as defined below), New Parent will have the authority to issue 100,000,000 shares, consisting of: (i) 90,000,000 shares of Common Stock, par value $0.01 per share (the "New Parent Common Stock"); and (ii) 10,000,000 shares of Preferred Stock, par value $0.01 per share (the "New Parent Preferred Stock").

WHEREAS, as of the date hereof, Merger Sub has the authority to issue 1,000 shares of common stock, par value $0.01 per share (the "Merger Sub Common Stock"), of which 100 shares are issued and outstanding on the date hereof and owned by New Parent.

WHEREAS, as of the Effective Time, the designations, rights, powers and preferences, and the qualifications, limitations and restrictions of the New Parent Common Stock and New Parent Preferred Stock will be the same as those of the Company Common Stock and Company Preferred Stock, respectively.

WHEREAS, the Amended and Restated Certificate of Incorporation of New Parent (the "New Parent Charter") and the Amended and Restated Bylaws of New Parent (the "New Parent Bylaws"), which will be in effect immediately following the Effective Time, contain provisions identical to the Amended and Restated Certificate of Incorporation of the Company (the "Company Charter") and the Amended and Restated Bylaws of the Company (the "Company Bylaws"), in effect as of the date hereof and that will be in effect immediately prior to the Effective Time, respectively (other than as permitted by Section 251(g) of the General Corporation Law of the State of Delaware (the "DGCL")).

WHEREAS, New Parent and Merger Sub are newly formed corporations organized for the sole purpose of participating in the transactions herein contemplated and actions related thereto, own no assets (other than New Parent's ownership of Merger Sub and nominal capital) and have taken no actions other than those necessary or advisable to organize the corporations and to effect the transactions herein contemplated and actions related thereto.

WHEREAS, the Company desires to reorganize into a holding company structure pursuant to Section 251(g) of the DGCL, under which New Parent would become a holding company, by the merger of Merger Sub with and into the Company, and with each share of Company Common Stock being converted in the Merger (as defined below) into a share of New Parent Common Stock.

WHEREAS, on or about the date hereof, the Company and New Parent will enter or have entered into an Assignment and Assumption Agreement, pursuant to which, among other things, the Company will, at the Effective Time, assign to New Parent, and New Parent will assume, all of the Company's rights and obligations under the Company's Equity Plans (as defined below).

WHEREAS, the boards of directors of New Parent and the Company have approved and declared advisable this Agreement and the transactions contemplated hereby, including, without limitation, the Merger.

WHEREAS, the board of directors of Merger Sub has (i) approved and declared advisable this Agreement and the transactions contemplated hereby, including, without limitation, the Merger, (ii) resolved to submit the approval of the adoption of this Agreement and the transactions contemplated hereby, including, without limitation, the Merger, to its sole stockholder, and (iii) resolved to recommend to its sole stockholder that it approve the adoption of this Agreement and the transactions contemplated hereby, including, without limitation, the Merger.

WHEREAS, the parties intend, for United States federal income tax purposes, the Merger shall qualify as an exchange described in Section 351 of the Internal Revenue Code.

NOW, THEREFORE, in consideration of the premises and the covenants and agreements contained in this Agreement, and intending to be legally bound hereby, the Company, New Parent and Merger Sub hereby agree as follows:

1. THE MERGER. In accordance with Section 251(g) of the DGCL and subject to, and upon the terms and conditions of, this Agreement, Merger Sub shall be merged with and into the Company (the "Merger"), the separate corporate existence of Merger Sub shall cease, and the Company shall continue as the surviving corporation of the Merger (the "Surviving Corporation"). At the Effective Time, the effects of the Merger shall be as provided in this Agreement and in Section 259 of the DGCL.

2. EFFECTIVE TIME. As soon as practicable on or after the date hereof, the Company shall file a certificate of merger executed in accordance with the relevant provisions of the DGCL, with the Secretary of State of the State of Delaware (the "Secretary of State") and shall make all other filings or recordings required under the DGCL to effectuate the Merger. The Merger shall become effective at such time as the certificate of merger is duly filed with the Secretary of State or at such later date and time as the parties shall agree and specify in the certificate of merger (the date and time the Merger becomes effective being referred to herein as the "Effective Time").

3. CERTIFICATE OF INCORPORATION. At the Effective Time, the Company Charter shall be amended in the Merger to be substantially in the form as the current certificate of incorporation of New Parent, and as so amended, shall be the certificate of incorporation of the Surviving Corporation (the "Surviving Corporation Charter") until thereafter amended as provided therein or by the DGCL.

4. BYLAWS. From and after the Effective Time, the Company Bylaws shall be amended in the Merger to read in their entirety as the bylaws of Merger Sub, and as so amended shall constitute the Bylaws of the Surviving Corporation (the "Surviving Corporation Bylaws") until thereafter amended as provided therein or by applicable law.

5. DIRECTORS. The directors of Merger Sub in office immediately prior to the Effective Time shall be the directors of the Surviving Corporation and will continue to hold office from the Effective Time until the earlier of their resignation or removal or until their successors are duly elected or appointed and qualified in the manner provided in the Surviving Corporation Charter and Surviving Corporation Bylaws, or as otherwise provided by law.

6. OFFICERS. The officers of the Company in office immediately prior to the Effective Time shall be the officers of the Surviving Corporation and will continue to hold office from the Effective Time until the earlier of their resignation or removal or until their successors are duly elected or appointed and qualified in the manner provided in the Surviving Corporation Charter and Surviving Corporation Bylaws, or as otherwise provided by law.

7. ADDITIONAL ACTIONS. If, at any time after the Effective Time, the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation its right, title or interest in, to or under any of the rights, properties or assets of either Merger Sub or the Company acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger or otherwise to carry out this Agreement, the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and on behalf of each of Merger Sub and the Company, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of each of Merger Sub and the Company or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Surviving Corporation or otherwise to carry out this Agreement.

8. CONVERSION OF SECURITIES. At the Effective Time, by virtue of the Merger and without any action on the part of New Parent, Merger Sub, the Company or any holder of any securities thereof:

(a) Conversion of Company Common Stock. Each share of Company Common Stock issued and outstanding immediately prior to the Effective Time shall be converted into one validly issued, fully paid and nonassessable share of New Parent Common Stock.

(b) Conversion of Company Stock Held as Treasury Stock. Each share of Company Common Stock held in the Company's treasury shall be converted into one validly issued, fully paid and nonassessable share of New Parent Common Stock, to be held immediately after completion of the Merger in the treasury of New Parent.

(c) Conversion of Capital Stock of Merger Sub. Each share of Merger Sub Common Stock issued and outstanding immediately prior to the Effective Time shall be converted into one validly issued, fully paid and nonassessable share of Common Stock, par value $0.01 per share, of the Surviving Corporation.

(d) Rights of Certificate Holders. Upon conversion thereof in accordance with this Section 8, all shares of Company Common Stock shall no longer be outstanding and shall cease to exist, and each holder of a certificate representing any such shares of Company Common Stock (a "Certificate") shall cease to have any rights with respect to such shares of Company Common Stock, except, in all cases, as set forth in Section 9 herein. In addition, each outstanding book-entry that, immediately prior to the Effective Time, evidenced shares of Company Common Stock shall, from and after the Effective Time, be deemed and treated for all corporate purposes to evidence the ownership of the same shall, from and after the Effective Time, be deemed and treated for all corporate purposes to evidence the ownership of the same number of shares of New Parent Common Stock.

9. CERTIFICATES. From and after the Effective Time until thereafter surrendered to New Parent or its transfer agent for transfer or exchange, each Certificate shall be deemed for all purposes to evidence ownership of and to represent the shares of New Parent Common Stock into which the shares of Company Common Stock represented by such Certificate immediately prior to the Effective Time have been converted pursuant to this Agreement, and each such Certificate shall be so registered on the books and records of New Parent and its transfer agent. From and after the Effective Time, upon the surrender to New Parent or its transfer agent for transfer or exchange of any Certificate, New Parent shall issue or cause to be issued a new certificate representing the class and number of shares of New Parent Common Stock previously represented by such Certificate to the person or persons or entity or entities entitled thereto. If any Certificate shall have been lost, stolen, or destroyed, then, upon the making of an affidavit of such fact by the person or entity claiming such Certificate to be lost, stolen, or destroyed and the providing of an indemnity by such person or entity to New Parent, in form, substance, and amount reasonably satisfactory to New Parent, against any claim that may be made against it with respect to such Certificate, New Parent shall issue or cause to be issued to such person or entity, in exchange for such lost, stolen, or destroyed Certificate, a new certificate representing the class and number of shares of New Parent Common Stock into which the shares of Company Common Stock represented by such Certificate immediately prior to the Effective Time have been converted pursuant to this Agreement.

10. ASSUMPTION OF EQUITY PLANS AND AWARDS.

At the Effective Time, pursuant to this Agreement and the Assignment and Assumption Agreement entered into between New Parent and the Company on or about the date hereof (the "Assignment and Assumption Agreement"), the Company will assign to New Parent, and New Parent will assume, all of the Company's rights and obligations under the Equity Plans. At the Effective Time, pursuant to this Merger Agreement and the Assignment and Assumption Agreement, the Company will transfer to New Parent, and New Parent will assume, its rights and obligations under each stock option to purchase a share of Company capital stock (each, a "Stock Option") and each right to acquire or vest in a share of Company capital stock (each, a "Stock Unit" and together with the Stock Options, the "Awards") issued under the Equity Plans that is outstanding and unexercised, unvested and not yet paid or payable immediately prior to the Effective Time, which Awards shall be converted into a stock option to purchase or a right to

acquire or vest in, respectively, a share of New Parent capital stock of the same class and with the same rights and privileges relative to New Parent that such share underlying such Stock Option or Stock Unit had relative to the Company immediately prior to the Effective Time on otherwise the same terms and conditions as were applicable immediately prior to the Effective Time, including, for Stock Options, at an exercise price per share equal to the exercise price per share for the applicable share of Company capital stock. For purposes of this Agreement, "Equity Plans" shall mean, collectively, the First Cash Financial Services, Inc. 2011 Long-Term Incentive Plan and the FirstCash, Inc. 2019 Long-Term Incentive Plan, and any and all subplans, appendices or addendums thereto, and any and all agreements evidencing Awards.

11. NEW PARENT SHARES. Prior to the Effective Time, the Company and New Parent shall take any and all actions as are necessary to ensure that each share of capital stock of New Parent that is owned by the Company immediately prior to the Effective Time shall be cancelled and cease to be outstanding at the Effective Time, and no payment shall be made therefor, and the Company, by execution of this Agreement, agrees to forfeit such shares and relinquish any rights to such shares.

12. NO APPRAISAL RIGHTS. In accordance with the DGCL, no appraisal rights shall be available to any holder of shares of Company Common Stock in connection with the Merger.

13. TERMINATION. This Agreement may be terminated, and the Merger and the other transactions provided for herein may be abandoned, whether before or after the adoption of this Agreement by the sole stockholder of Merger Sub, at any time prior to the Effective Time, by action of the board of directors of the Company. In the event of termination of this Agreement, this Agreement shall forthwith become void and have no effect, and neither the Company, New Parent, Merger Sub nor their respective stockholders, directors or officers shall have any liability with respect to such termination or abandonment.

14. AMENDMENTS. At any time prior to the Effective Time, this Agreement may be supplemented, amended or modified, whether before or after the adoption of this Agreement by the sole stockholder of Merger Sub, by the mutual consent of the parties to this Agreement by action by their respective boards of directors; provided, however, that, no amendment shall be effected subsequent to the adoption of this Agreement by the sole stockholder of Merger Sub that by law requires further approval or authorization by the sole stockholder of Merger Sub or the stockholders of the Company without such further approval or authorization. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by all of the parties hereto.

15. GOVERNING LAW. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws.

16. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original but all of which shall constitute one and the same agreement.

17. ENTIRE AGREEMENT. This Agreement, including the documents and instruments referred to herein, constitutes the entire agreement and supersedes all other prior agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof.

18. SEVERABILITY. The provisions of this Agreement are severable, and in the event any provision hereof is determined to be invalid or unenforceable, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company, New Parent and Merger Sub have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

FIRSTCASH, INC.

By: /s/ Rick L. Wessel
Name: Rick L. Wessel
Title: Chief Executive Officer

FIRSTCASH HOLDINGS, INC.

By: /s/ Rick L. Wessel
Name: Rick. L. Wessel
Title: Chief Executive Officer

ATLANTIS MERGER SUB, INC.

By: /s/ Rick L. Wessel
Name: Rick L. Wessel
Title: Chief Executive Officer

[Signature Page to Agreement and Plan of Merger]

AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION OF

FIRSTCASH HOLDINGS, INC.

FirstCash Holdings, Inc., a Delaware corporation (the "Corporation"), which is the name under which the corporation was originally incorporated by filing the original certificate of incorporation with the Secretary of State of the State of Delaware on October 21, 2021, hereby adopts the following Amended and Restated Certificate of Incorporation pursuant to Sections 242 and 245 of the Delaware General Corporation Law:

ARTICLE I

The name of the Corporation shall be FirstCash Holdings, Inc.

ARTICLE II

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

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law.

ARTICLE IV

The period of duration of the Corporation is perpetual.

ARTICLE V

The total number of shares of stock which the Corporation shall have authority to issue is 100,000,000 consisting of 90,000,000 shares of common stock, par value $.01 per share (the "Common Stock"), and 10,000,000 shares of preferred stock, par value $.01 per share (the "Preferred Stock").

Shares of Preferred Stock of the Corporation may be issued from time to time in one or more classes or series, each of which class or series shall have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated in such resolution or resolutions providing for the issue of such class or series of Preferred Stock as may be adopted from time to time by the board of directors prior to the issuance of any shares thereof pursuant to the authority hereby expressly vested in it, all in accordance with the laws of the State of Delaware.

ARTICLE VI

The business and affairs of the Corporation shall be managed by or under the direction of the board of directors consisting of not less than one nor more than 15 directors, the exact number of directors to be determined from time to time by resolution adopted by the board of directors. The directors of the Corporation shall be divided into three classes, designated Class I, Class II and Class III. Each class shall consist, as nearly as possible, of one-third of the total number of directors constituting the entire board of directors. The term of office of the Class III directors will expire at the annual meeting of stockholders next ensuing; the term of the Class II directors will expire one year thereafter; and the term of office of the Class I directors will expire two years thereafter. Beginning with the next annual meeting of stockholders, successors to the class of directors whose term expires at that annual meeting shall be elected for a three-year term. If the number of directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, and any additional directors of any class elected to fill a vacancy resulting from an increase in such class shall hold office for a term that shall coincide with the remaining term of that class, but in no case will a decrease in the number of directors shorten the term of any incumbent director. A director shall hold office until the annual meeting for the year in which his term expires and until his successor shall be elected and shall qualify, subject, however, to prior death, resignation, retirement, disqualification or removal from office. Any vacancy on the board of directors howsoever resulting, may be filled by a majority of the directors then in office, even if less than a quorum, or by the sole remaining director. Any director elected to fill a vacancy shall hold

office for a term that shall coincide with the term of the class to which such director shall have been elected.

Notwithstanding the foregoing, whenever the holders of any one or more classes or series of Preferred Stock issued by the Corporation shall have the right, voting separately by class or series, to elect directors at an annual or special meeting of stockholders, the election, term of office, filling vacancies and other features of such directorships shall be governed by the terms of this Certificate of Incorporation or the resolution or resolutions adopted by the board of directors pursuant to Article V hereof, and such directors so elected shall not be divided into classes pursuant to this Article VI, unless expressly provided by such terms.

Subject to the rights, if any, of the holders of shares of Preferred Stock then outstanding, any or all of the directors of the Corporation may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of a majority of the outstanding shares of the Corporation then entitled to vote generally in the election of directors, considered for purposes of this Article VI as one class.

The foregoing Article may be amended, altered, repealed or rescinded by the affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the outstanding stock of the Corporation entitled to vote.

ARTICLE VII

Any action required or permitted to be taken at any annual or special meeting of stockholders may be taken only upon the vote of the stockholders at an annual or special meeting duly noticed and called, as provided in the Bylaws of the Corporation, and may not be taken by a written consent of the stockholders pursuant to the Delaware General Corporation Law.

ARTICLE VIII

No director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty by such director as a director. Notwithstanding the foregoing sentence, a director shall be liable to the extent provided by applicable law (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which such director derived an improper personal benefit.

ARTICLE IX

(a) Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the 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 expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators: provided, however, that, except as provided in paragraph (b) hereof, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the board of directors of the Corporation. The right to indemnification conferred in this Article shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition: provided, however, that, if the 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 Article or otherwise. The Corporation may, by action of its board of directors, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of directors and officers.

(b) If a claim under paragraph (a) of this Article is not paid in full by the Corporation within thirty days after a written claim 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 standards of conduct which make it permissible under the 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 legal counsel, or its 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 Law, nor an actual determination by the Corporation (including its board of directors, independent legal counsel, or its 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.

(c) The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Article 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, bylaw, agreement, vote of stockholders or disinterested directors or otherwise.

(d) The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Law.

ARTICLE X

Whenever the Corporation shall be authorized to issue only one class of stock, each outstanding share shall entitle the holder thereof to notice of, and the right to vote at, any meeting of stockholders. Whenever the Corporation shall be authorized to issue more than one class of stock, no outstanding share of any class of stock which is denied voting power under the provisions of the Certificate of Incorporation shall entitle the holder thereof to the right to vote at any meeting of stockholders, except as the provisions of the Law shall otherwise require.

ARTICLE XI

The appraisal rights afforded by Section 262 of the Law, subject to the duties and limitations therein contained, shall attach to any proposed amendment of this Certificate of Incorporation which shall attempt to impose, directly or indirectly, personal liability for the debts of the Corporation on any stockholder or stockholders.

ARTICLE XII

Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under Section 279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class or creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

ARTICLE XIII

In furtherance of, and not in limitation of the powers conferred by statute, the board of directors is expressly authorized to adopt, repeal, alter, amend or rescind the Bylaws of the Corporation.

ARTICLE XIV

The Corporation reserves the right to repeal, alter, amend, or rescind any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred on stockholders herein are granted subject to this reservation.

ARTICLE XV

The foregoing Amended and Restated Certificate of Incorporation was proposed by the board of directors and adopted by the stockholders in the manner and by the vote prescribed by Section 242 of the Delaware General Corporation Law.

IN WITNESS WHEREOF, the undersigned Delaware corporation has caused this Amended and Restated Certificate of Amendment to be signed by its Chief Executive Officer this 16th day of December 2021.

FirstCash Holdings, Inc.

/s/ Rick L. Wessel
Rick L. Wessel
Chief Executive Officer

Exhibit 3.2

AMENDED AND RESTATED

BYLAWS

OF

FIRSTCASH HOLDINGS, INC.

(a Delaware corporation)

ARTICLE 1.

DEFINITIONS

1.1 Definitions. Unless the context clearly requires otherwise, in these Bylaws:

(a) "*Board*" means the board of directors of the Corporation.

(b) "*Bylaws*" means these bylaws as adopted by the Board and includes amendments subsequently adopted by the Board or by the Stockholders.

(c) "*Certificate of Incorporation*" means the Certificate of Incorporation of FirstCash Holdings, Inc. as filed with the Secretary of State of the State of Delaware and includes all amendments thereto and restatements thereof subsequently filed.

(d) "*Corporation*" means FirstCash Holdings, Inc.

(e) "*Section*" refers to sections of these Bylaws.

(f) "*Stockholder*" means the stockholders of the Corporation.

1.2. Offices. The title of an office refers to the person or persons who at any given time perform the duties of that particular office for the Corporation.

ARTICLE 2.

OFFICES

2.1. Principal Office. The Corporation may locate its principal office within or without the state of incorporation as the Board may determine.

2.2. Registered Office. The registered office of the Corporation required by law to be maintained in the state of incorporation may be, but need not be, the same as the principal place of business of the Corporation. The Board may change the address of the registered office from time to time.

2.3. Other Offices. The Corporation may have offices at such other places, either within or without the state of incorporation, as the Board may designate or as the business of the Corporation may require from time to time.

ARTICLE 3.

MEETINGS OF STOCKHOLDERS

3.1. Annual Meetings. The Stockholders of the Corporation shall hold their annual meetings for the purpose of electing directors and for the transaction of such other proper business as may come before such meetings at such time, date and place as the Board shall determine by resolution.

3.2. Special Meetings. The Board, the Chairman of the Board, the Vice Chairman, the Chief Executive Officer or a committee of the Board duly designated and whose powers and authority include the power to call meetings may call special meetings of the Stockholders of the Corporation at any time for any purpose or purposes. Special meetings of the Stockholders of the Corporation may not be called by any other person or persons. The only business which may be conducted at a special meeting, other than procedural matters and matters relating to the conduct of the meeting, shall be the matter or matters described in the notice of the meeting.

3.3. Place of Meetings. The Stockholders shall hold all meetings at such places, within or without the State of Delaware, as the Board or a committee of the Board shall specify in the notice or waiver of notice for such meetings.

3.4. Notice of Meetings. Except as otherwise required by law, the Board or a committee of the Board shall give notice of each meeting of Stockholders, whether annual or special, not less than 10 nor more than 60 days before the date of the meeting. The Board or a committee of the Board shall deliver a notice to each Stockholder entitled to vote at such meeting by delivering a typewritten or printed notice thereof to him personally, or by depositing such notice in the United States mail, in a postage prepaid envelope, directed to him at his address as it appears on the records of the Corporation, or by transmitting a notice thereof to him at such address by telegraph, telecopy, cable or wireless. If mailed, notice is given on the date deposited in the United States mail, postage prepaid, directed to the Stockholder at his address as it appears on the records of the Corporation. An affidavit of the Secretary or an Assistant Secretary or of the Transfer Agent of the Corporation that he has given notice shall constitute, in the absence of fraud, prima facie evidence of the facts stated therein.

Every notice of a meeting of the Stockholders shall state the place, date and hour of the meeting and, in the case of a special meeting, also shall state the purpose or purposes of the meeting. Furthermore, if the Corporation will maintain the list at a place other than where the meeting will take place, every notice of a meeting of the Stockholders shall specify where the Corporation will maintain the list of Stockholders entitled to vote at the meeting.

3.5. Stockholder Proposals and Nominations.

(a) No proposal for a vote at a meeting of the Stockholders (other than a proposal that appears in the Corporation's proxy statement after compliance with the procedures set forth in Securities and Exchange Commission Rule 14a-8 or any successor provision) shall be submitted by a Stockholder (a *"Stockholder Proposal")* to the Stockholders unless the Stockholder submitting such proposal (the *"Proponent")* shall have filed a written notice setting forth with particularity:

(i) the names and business addresses of the Proponent and all natural persons, corporations, partnerships, trusts or any other type of legal entity or recognized ownership vehicle (collectively, a *"Person")* acting in concert with the Proponent, including any beneficial owner on whose behalf the proposal is being made;

(ii) the name and address of the Proponent and the Persons identified in clause (i), if any, as they appear on the Corporation's books;

(iii) the class and number of shares of the Corporation which are, directly or indirectly, beneficially owned by the Proponent and by each Person identified in clause (i);

(iv) a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend these Bylaws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such Proponent and each Person identified in clause (i), if any;

(v) a description of 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, whether or not such instrument or right shall be subject to settlement in the underlying class or series of shares of the Corporation or otherwise (a *"Derivative Instrument")*, directly or indirectly owned beneficially by such Proponent and each Person identified in clause (i), if any, 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;

(vi) a description of any proxy, contract, arrangement, understanding, or relationship pursuant to which such Proponent and each Person identified in clause (i), if any, has a right to vote any shares of any security of the Corporation;

(vii) a description of any short interest in any security of the Corporation held by the Proponent and each Person identified in clause (i), if any (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);

(viii) a description of any rights to dividends on the shares of the Corporation owned beneficially by such Proponent and each Person identified in clause (i), if any, that are separated or separable from the underlying shares of the Corporation;

(ix) a description of any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such Proponent and such Person identified in clause (i), if any, is a general partner or, directly or indirectly, beneficially owns an interest in a general partner;

(x) a description of any performance-related fees (other than an asset-based fee) that such Proponent and such Person identified in clause (i), if any, is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any; and

(xi) such other information as the Board reasonably determines is necessary or appropriate to enable the Board and Stockholders to consider the Stockholder Proposal,

all such information (A) is to be provided as of the date of such notice, including, without limitation, any such interests held by members of the immediate family (sharing the same household) of such Proponent and such Person identified in clause (i), if any, and (B) shall be supplemented by such Proponent and such Person identified in clause (i), if any, not later than ten (10) days after the record date for the meeting to disclose such ownership as of the record date.

Such notice also shall include a representation (A) that such Proponent is a holder of record of capital stock of the Corporation entitled to vote at such meeting, (B) that such Proponent intends to appear in person or by proxy at the annual meeting to bring such business before the meeting, (C) that such Proponent will notify the Corporation in writing of the number of shares of capital stock of the Corporation owned of record and beneficially

by such Proponent and such Person identified in clause 3.5(a)(i), if any, as of the record date for the meeting within five (5) business days following the later of the record date or the date notice of the record date is first publicly disclosed, and (D) as to whether such Proponent and such Person identified in clause 3.5(a)(i), if any, intends or is part of a group which intends (1) 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 adopt or approve the proposal and/or (2) otherwise to solicit proxies from Stockholders in support of such proposal.

(b) If the Proponent does not appear or send a qualified representative to present the Stockholder Proposal at the relevant meeting, the Corporation need not present such proposal for a vote at such meeting, notwithstanding that proxies in respect of such vote may have been received by the Corporation. The presiding officer or director at any Stockholders' meeting may determine that any Stockholder Proposal was not made in accordance with the procedures prescribed in these Bylaws or is otherwise not in accordance with law, and if it is so determined, such officer or director shall so declare at the meeting and the Stockholder Proposal shall be disregarded.

(c) Only persons who are selected and recommended by the Board or the committee of the Board designated to make nominations, or who are nominated by Stockholders in accordance with this Section 3.5, shall be eligible for election, or qualified to serve, as directors. Nominations of individuals for election to the Board at any annual meeting or any special meeting of Stockholders at which directors are to be elected may be made by any Stockholder entitled to vote for the election of directors at that meeting by compliance with the procedures set forth in this Section 3.5. Nominations by Stockholders shall be made by written notice (a "Nomination Notice"), which shall set forth:

(i) As to the Stockholder and the beneficial owner, if any, on whose behalf a nomination is made (A) the name and record address of such Stockholder, as they appear on the Corporation's books, and of such beneficial owner, if any, (B) the class or series and number of shares of capital stock of the Corporation which are, directly or indirectly, owned beneficially or of record by such Stockholder and such beneficial owner, if any, (C) a description of any Derivative Instrument, directly or indirectly owned beneficially by such Stockholder and such beneficial owner, if any, 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, (D) a description of any proxy, contract, arrangement, understanding, or relationship pursuant to which such Stockholder and such beneficial owner, if any, has a right to vote any shares of any security of the Corporation, (E) any short interest in any security of the Corporation held by the Stockholder (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), (F) any rights to dividends on the shares of the Corporation owned beneficially by such Stockholder and such beneficial owner, if any, that are separated or separable from the underlying shares of the Corporation, (G) 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, if any, is a general partner or, directly or indirectly, beneficially owns an interest in a general partner, (H) any performance-related fees (other than an asset-based fee) that such Stockholder and such beneficial owner, if any, is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, all such information to be provided as of the date of such notice, including, without limitation, any such interests held by members of such Stockholder's and such beneficial owner's, if any, immediate family sharing the same household, and (I) all other information relating to such Stockholder and such beneficial owner, if any, that would be required to be disclosed, whether in a proxy statement, other filings required to be made in connection with solicitations of proxies for election of directors in a contested election, or otherwise, in each case pursuant to Section 14 of the of the Securities Exchange Act of 1934 (the "Exchange Act") and the rules and regulations promulgated thereunder;

(ii) As to each person whom the Stockholder proposes to nominate for election or reelection as a director at such meeting (A) all information relating to such person that would be required to be disclosed, whether in a proxy statement, other filings required to be made in connection with solicitations of proxies for election of directors in a contested election, or otherwise, in each case pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder, (B) such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected, (C) a description of all direct and indirect compensation and other material monetary agreements, arrangements

and understandings during the past three (3) years, and any other material relationships, between or among such Stockholder and beneficial owner, if any, and their respective affiliates and associates, or any other person or persons (including their names) acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or any other person or persons (including their names) acting in concert therewith, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 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, (D) any information that such person would be required to disclose pursuant to clause (i) of this Section 3.5(c) if such person were a Stockholder making a nomination, (E) an undertaking from such nominee to notify the Corporation in writing of any change in the information called for by the foregoing clauses (A), (B), (C) and (D) as of the record date for such meeting, by notice received by the Secretary at the principal executive offices of the Corporation not later than the tenth (10th) day following such record date, and (F) a completed and signed questionnaire, representation and agreement required by Section 3.5(d);

(iii) an undertaking by the Stockholder and beneficial owner, if any, to notify the Corporation in writing of any change in the information called for by clauses (i) and (ii) as of the record date for such meeting, by notice received by the Secretary at the principal executive offices of the Corporation not later than the tenth (10th) day following such record date; and

(iv) a representation (A) that the Stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination and (B) whether the Stockholder or the beneficial owner, if any, intends or is part of a group which intends (x) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (y) otherwise to solicit proxies or votes from Stockholders in support of such proposal or nomination.

(d) To be eligible to be a nominee for election or reelection as a director of the Corporation, a person must deliver (in accordance with the time periods prescribed for delivery of a Nomination Notice under Section 3.5(g)) 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 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 (i) is not and will not become a party to (x) 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 or issues or questions generally (a "Voting Commitment") 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; (ii) 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 that has not been disclosed therein; and (iii) 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 law and with the Corporation's Corporate Governance Guidelines and Code of Business Conduct and Ethics applicable to members of the Board, as well as all other applicable publicly disclosed corporate governance, ethics, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation.

(e) The Corporation may also, as a condition of any such nomination being deemed properly brought before a meeting, require any proposed nominee to furnish (i) any information required pursuant to any undertaking delivered pursuant to Section 3.5(c) and (ii) 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 (consistent with the rules of the Securities and Exchange Commission and with any director independence standards set forth in the Corporation's Corporate Governance Guidelines) or that could be material to a reasonable Stockholder's understanding of the independence, or lack thereof, of such nominee.

(f) If the nominating Stockholder does not appear or send a qualified representative to present the nomination proposal at the relevant meeting, the Corporation need not present

such proposal for a vote at such meeting, notwithstanding that proxies in respect of such vote may have been received by the Corporation. If the presiding officer or director at any Stockholders' meeting determines that a nomination was not made in accordance with the procedures prescribed by these Bylaws, he or she shall so declare to the meeting and the defective nomination shall be disregarded. A Stockholder seeking to nominate a person to serve as a director must 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 section.

(g) If a Stockholder Proposal or Nomination Notice is to be submitted at an annual Stockholders' meeting, it shall be delivered to, or mailed and received by, the Secretary at the principal executive office of the Corporation no later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the anniversary of the date on which the Corporation filed its definitive proxy materials (regardless of whether or not thereafter revised or supplemented) with the Securities and Exchange Commission for the prior year's annual meeting of Stockholders; provided, however, that in the event that the date of the annual meeting is advanced by more than thirty (30) days or delayed (other than as a result of adjournment) by more than sixty (60) days from the anniversary of the previous year's annual meeting, a Stockholder Proposal or Nomination Notice must be so received no later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made. Subject to Section 3.2 as to matters that may be acted upon at a special meeting of the Stockholders, if the Board has determined that directors are to be elected at a special meeting, and one or more director elections are included in the Corporation's notice of

meeting, in order to be timely, any Nomination Notice submitted for such special meeting of the Stockholders must be delivered to, or mailed and received by, the Secretary of the Corporation at the principal executive office of the Corporation not more than 120 days prior to the date of the meeting and not later than the close of business on the later of the 90th day prior to the meeting or the 10th day following the last to occur of (i) the day on which public disclosure of the date of such special meeting was first made by the Corporation and (ii) the day on which public disclosure of the nominees proposed by the Board to be elected at such meeting was first made by the Corporation. Notwithstanding anything in the forgoing to the contrary, in the event that the number of directors to be elected to the Board at the annual meeting of Stockholders is increased effective after the time period for which nominations would otherwise be due for such annual meeting, and there is no public disclosure by the Corporation naming all of the nominees for the additional directorships at least 100 days prior to the first anniversary of the date on which the Corporation filed its definitive proxy materials (regardless of whether or not thereafter revised or supplemented) with the Securities and Exchange Commission for the preceding year's annual meeting, a Stockholder's notice required by this Section 3.5 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 10th day following the day on which such public disclosure is first made by the Corporation. In no event shall the adjournment or postponement of an annual or special meeting (or any public announcement thereof) commence a new time period (or extend any time period) for the giving of a Stockholder's notice as described above. For purposes of this section, "*public disclosure*" or "*public announcement*" shall mean disclosure in a Current Report on Form 8-K (or any successor form), in another public filing with the Securities and Exchange Commission, or in a press release distributed through a widely circulated news or wire service, such as Dow Jones, Bloomberg, Business Wire, GlobeNewswire, or PR Newswire.

3.6. Waiver of Notice. Whenever these Bylaws require written notice, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall constitute the equivalent of notice. Attendance of a person at any meeting shall constitute a waiver of notice of such meeting, except when the person attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. No written waiver of notice need specify either the business to be transacted at, or the purpose or purposes of any regular or special meeting of the Stockholders, directors or members of a committee of the Board.

3.7. Adjournment of Meeting. Any meeting of the Stockholders, whether or not a quorum is present, may be adjourned or recessed from time to time to some other time by the chairman of the meeting. When the chairman of the meeting or the Stockholders adjourn a meeting to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Stockholders may transact any business which they may have transacted at the original meeting. If the adjournment is for more than 30 days or, if after the adjournment, the Board or a committee of the Board fixes a new record date for the adjourned meeting, the Board or a committee of the Board shall give notice of the adjourned meeting to each Stockholder of record entitled to vote at the meeting.

3.8. Quorum. Except as otherwise required by law, the holders of a majority of all of the shares of the stock entitled to vote at the meeting, present in person or by proxy, shall constitute a quorum for all purposes at any meeting of the Stockholders. In the absence of a quorum at any meeting or any adjournment thereof, the holders of a majority of the shares of stock entitled to vote who are present, in person or by proxy, may adjourn such meeting to another place, date or time. If the chairman of the meeting gives notice of any adjourned special meeting of Stockholders to all Stockholders entitled to vote thereat, stating that the minimum percentage of Stockholders for a quorum as provided by Delaware law shall constitute a quorum, then, except as otherwise required by law, that percentage at such adjourned meeting shall constitute a quorum and a majority of the votes cast at such meeting shall determine all matters.

3.9. Organization. Such person as the Board may have designated or, in the absence of such a person, the highest ranking officer of the Corporation who is present shall call to order any meeting of the Stockholders, determine the presence of a quorum, and act as chairman of the meeting. In the absence of the Secretary or an Assistant Secretary of the Corporation, the chairman shall appoint someone to act as the secretary of the meeting.

3.10. Conduct of Business. The chairman of any meeting of Stockholders shall determine the order of business and the rules, regulations and procedures for the conduct at the meeting, including such regulations of the manner of voting and the conduct of discussion as he deems in order.

3.11. List of Stockholders. At least 10 days before every meeting of Stockholders, the Secretary shall prepare a list of the Stockholders entitled to vote at the meeting or any adjournment thereof, arranged in alphabetical order, showing the address of each Stockholder and the number of shares registered in the name of each Stockholder. The Corporation shall make the list available for examination by any Stockholder for any purpose germane to the meeting, during ordinary business hours, for a period of at least 10 days prior to the meeting, either at a place within the city where the meeting will take place or at the place designated in the notice of the meeting.

The Secretary shall produce and keep the list at the time and place of the meeting during the entire duration of the meeting, and any Stockholder who is present may inspect the list at the meeting. The list shall constitute presumptive proof of the identity of the Stockholders entitled to vote at the meeting and the number of shares each Stockholder holds.

A determination of Stockholders entitled to vote at any meeting of Stockholders pursuant to this Section shall apply to any adjournment thereof.

3.12. Fixing of Record Date. For the purpose of determining Stockholders entitled to notice of or to vote at any meeting of Stockholders or any adjournment thereof, or Stockholders entitled to receive payment of any dividend, or in order to make a determination of Stockholders for any other proper purpose, the Board or a committee of the Board may fix in advance a date as the record date for any such determination of Stockholders. However, the Board shall not fix such date, in any case, more than 60 days nor less than 10 days prior to the date of the particular action. If the Board or a committee of the Board does not fix a record date for the determination of Stockholders entitled to notice of or to vote at a meeting of Stockholders, the record date shall be at the close of business on the day next 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 or the date on which the Board adopts the resolution declaring a dividend.

3.13. Voting of Shares. Each Stockholder shall have one vote for every share of stock having voting rights registered in his name on the record date for the meeting. The Corporation shall not have the right to vote treasury stock of the Corporation, nor shall another corporation have the right to vote its stock of the Corporation if the Corporation holds, directly or indirectly, a majority of the shares entitled to vote in the election of directors of such other corporation. Persons holding stock of the Corporation in a fiduciary capacity shall have the right to vote such stock. Persons who have pledged their stock of the Corporation shall have the right to vote such stock unless in the transfer on the books of the Corporation the pledgor expressly empowered the pledgee to vote such stock. In that event, only the pledgee, or his proxy, may represent such stock and vote thereon.

A plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote shall determine all elections and, except when the law or Certificate of Incorporation requires otherwise, the affirmative vote of a majority of the shares present in person or represented by proxy at the meeting and entitled to vote on such matter shall determine all other matters.

Where a separate vote by a class or classes is required, a majority of the outstanding shares of such class or classes, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter and the affirmative vote of the majority of shares of such class or classes present in person or represented by proxy at the meeting shall be the act of such class.

The Stockholders may vote by voice vote on all matters. Upon demand by a Stockholder entitled to vote, or his proxy, the Stockholders shall vote by ballot. In that event, each ballot shall state the name of the Stockholder or proxy voting, the number of shares voted and such other information as the Corporation may require under the procedure established for the meeting.

3.14. Inspectors. At any meeting in which the Stockholders vote by ballot, the chairman may appoint one or more inspectors. Each inspector shall take and sign an oath to execute the duties of inspector at such meeting faithfully, with strict impartiality, and according to the best of his ability. The inspectors shall ascertain the number of shares outstanding and the voting power of each; determine the shares represented at a meeting and the validity of proxies and ballots; count all votes and ballots; determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots. The certification required herein shall take the form of a subscribed, written report prepared by the inspectors and delivered to the Secretary of the Corporation. An inspector need not be a Stockholder of the Corporation, and any officer of the Corporation may be an inspector on any question other than a vote for or against a proposal in which he has a material interest.

3.15. Proxies. A Stockholder may exercise any voting rights in person or by his proxy appointed by an instrument in writing, which he or his authorized attorney-in-fact has subscribed and which the proxy has delivered to the secretary of the meeting pursuant to the manner prescribed by law.

A proxy is not valid after the expiration of three years after the date of its execution, unless the person executing it specifies thereon the length of time for which it is to continue in force (which length may exceed three years) or limits its use to a particular meeting. Each proxy is irrevocable if it expressly states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power.

The attendance at any meeting of a Stockholder who previously has given a proxy shall not have the effect of revoking the same unless he notifies the Secretary in writing prior to the voting of the proxy.

ARTICLE 4.

BOARD OF DIRECTORS

4.1. General Powers. The Board shall manage the property, business and affairs of the Corporation.

4.2. Number. The number of directors who shall constitute the Board shall equal not less than one nor more than 15, as the Board may determine by resolution from time to time.

4.3. Classification. The Board of Directors shall be divided into classes pursuant to the terms and provisions of the Certificate of Incorporation.

4.4. Election of Directors and Term of Office. The Stockholders of the Corporation shall elect the directors up for election at the annual or adjourned annual meeting (except as otherwise provided herein for the filling of vacancies). Each director shall hold office until his death, resignation, retirement, removal, or disqualification, or until his successor shall have been elected and qualified.

4.5. Resignations. Any director of the Corporation may resign at any time by giving written notice to the Board or to the Secretary of the Corporation. Any resignation shall take effect upon receipt or at the time specified in the notice.

Unless the notice specifies otherwise, the effectiveness of the resignation shall not depend upon its acceptance.

4.6. Removal. Stockholders holding a majority of the outstanding shares entitled to vote at an election of directors may remove any director at any time but only for cause.

4.7. Vacancies. A majority of the remaining directors, although less than a quorum, or a sole remaining director may fill any vacancy on the Board, whether because of death, resignation, disqualification, an increase in the number of directors, or any other cause. Any director elected to fill a vacancy shall hold office until his death, resignation, retirement, removal, or disqualification, or until his successor shall have been elected and qualified.

4.8. Chairman and Vice Chairman of the Board. At the initial and annual meeting of the Board, the directors may elect from their number a Chairman of the Board of Directors. The Chairman shall preside at all meetings of the Board and shall perform such other duties as the Board may direct. The Board also may elect a Vice Chairman and other officers of the Board, with such powers and duties as the Board may designate from time to time. The Vice Chairman shall assume the duties of the Chairman, including presiding at all meetings of the Board, in his absence. The Chairman shall set the agendas at the meetings of the Board in consultation with the Vice Chairman and the Chief Executive Officer.

4.9. Compensation. The Board may compensate directors for their services and may provide for the payment of all expenses the directors incur by attending meetings of the Board or otherwise.

ARTICLE 5.

MEETINGS OF DIRECTORS

5.1. Regular Meetings. The Board may hold regular meetings at such places, dates and times as the Board shall establish by resolution. If any day fixed for a meeting falls on a legal holiday, the Board shall hold the meeting at the same place and time on the next succeeding business day. The Board need not give notice of regular meetings.

5.2. Place of Meetings. The Board may hold any of its meetings in or out of the State of Delaware, at such places as the Board may designate, at such places as the notice or waiver of notice of any such meeting may designate, or at such places as the persons calling the meeting may designate.

5.3. Meetings by Telecommunications. The Board or any committee of the Board may hold meetings by means of conference telephone or similar telecommunications equipment that enable all persons participating in the meeting to hear each other. Such participation shall constitute presence in person at such meeting.

5.4. Special Meetings. The Chairman of the Board, the Vice Chairman, the Chief Executive Officer or one-half of the directors then in office may call a special meeting of the Board. The person or persons authorized to call special meetings of the Board may fix any place, either in or out of the State of Delaware as the place for the meeting.

5.5. Notice of Special Meetings. The person or persons calling a special meeting of the Board shall give written notice to each director of the time, place, date and purpose of the meeting of not less than three business days if by mail and not less than 24 hours if by electronic transmission or in person before the date of the meeting. If mailed, notice is given on the date deposited in the United States mail, postage prepaid, to such director. A director may waive notice of any special meeting, and any meeting shall constitute a legal meeting without notice if all the directors are present or if those not present sign either before or after the meeting a written waiver of notice, a consent to such meeting, or an approval of the minutes of the meeting. A notice or waiver of notice need not specify the purposes of the meeting or the business which the Board will transact at the meeting.

5.6. Waiver by Presence. Except when expressly for the purpose of objecting to the legality of a meeting, a director's presence at a meeting shall constitute a waiver of notice of such meeting.

5.7. Quorum. A majority of the directors then in office shall constitute a quorum for all purposes at any meeting of the Board. In the absence of a quorum, a majority of directors present at any meeting may adjourn the meeting to another place, date or time without further notice. No proxies shall be given by directors to any person for purposes of voting or establishing a quorum at a directors meeting.

5.8. Conduct of Business. The Board shall transact business in such order and manner as the Board may determine. Except as the law requires otherwise, the Board shall determine all matters by vote of a majority of the directors present at a meeting at which a quorum is present. The directors shall act as a Board, and the individual directors shall have no power as such.

5.9. Action by Consent. The Board or a committee of the Board may take any required or permitted action without a meeting if all members of the Board or committee consent thereto in writing and file such consent with the minutes of the proceedings of the Board or committee.

ARTICLE 6.

COMMITTEES

6.1. Committees of the Board. The Board may designate, by a vote of a majority of the directors then in office, committees of the Board. The committees shall serve at the pleasure of the Board and shall possess such lawfully delegable powers and duties as the Board may confer.

6.2. Selection of Committee Members. The Board shall elect by a vote of a majority of the directors then in office a director or directors to serve as the member or members of a committee. By the same vote, the Board may designate other directors as alternate members who may replace any absent or disqualified member at any meeting of a committee. In the absence or disqualification of any member of any committee and any alternate member in his place, the member or members of the committee present at the meeting and not disqualified from voting, whether or not he or they constitute a quorum, may appoint by unanimous vote another member of the Board to act at the meeting in the place of the absent or disqualified member.

6.3. Conduct of Business. Each committee may determine the procedural rules for meeting and conducting its business and shall act in accordance therewith, except as the law or these Bylaws require otherwise. Each committee shall make adequate provision for notice of all meetings to members. A majority of the members of the committee shall constitute a quorum, unless the committee consists of one or two members. In that event, one member shall constitute a quorum. A majority vote of the members present shall determine all matters. A committee may take action without a meeting if all the members of the committee consent in writing and file the consent or consents with the minutes of the proceedings of the committee.

6.4. Authority. Any committee, to the extent the Board provides, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the affixation of the Corporation's seal to all instruments which may require or permit it. However, no committee shall have any power or authority with regard to amending the Certificate of Incorporation, adopting an agreement of merger or consolidation, recommending to the Stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommending to the Stockholders a dissolution of the Corporation or a revocation of a dissolution of the Corporation, or amending these Bylaws of the Corporation. Unless a resolution of the Board expressly provides, no committee shall have the power or authority to declare a dividend, to authorize the issuance of stock, or to adopt a certificate of ownership and merger.

6.5. Minutes. Each committee shall keep regular minutes of its proceedings and report the same to the Board when required.

ARTICLE 7.

OFFICERS

7.1. Officers of the Corporation. The officers of the Corporation shall consist of a Chief Executive Officer, a President, a Secretary, a Treasurer and such Vice Presidents, Assistant Secretaries, Assistant Treasurers, and other officers as the Board may designate and elect from time to time, including a Chief Financial Officer and a Chief Operating Officer. The same person may hold at the same time any two or more offices.

7.2. Election and Term. The Board shall elect the officers of the Corporation. Each officer shall hold office until his death, resignation, retirement, removal or disqualification, or until his successor shall have been elected and qualified.

7.3. Compensation of Officers. The Board shall fix the compensation of all officers of the Corporation. No officer shall serve the Corporation in any other capacity and receive compensation, unless the Board authorizes the additional compensation.

7.4. Removal of Officers and Agents. The Board may remove any officer or agent it has elected or appointed at any time, with or without cause.

7.5. Resignation of Officers and Agents. Any officer or agent the Board has elected or appointed may resign at any time by giving written notice to the Board, the Chairman of the Board, the Vice Chairman, the Chief Executive Officer, or the Secretary of the Corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified. Unless otherwise specified in the notice, the Board need not accept the resignation to make it effective.

7.6. Bond. The Board may require by resolution any officer, agent, or employee of the Corporation to give bond to the Corporation, with sufficient sureties conditioned on the faithful performance of the duties of his respective office or agency. The Board also may require by resolution any officer, agent or employee to comply with such other conditions as the Board may require from time to time.

7.7. Chief Executive Officer. The Chief Executive Officer shall be the principal executive officer of the Corporation and, subject to the Board's control, shall supervise, direct and have general charge and control over all of the business, property and affairs of the Corporation. The Chief Executive Officer shall also be responsible for driving the strategic objectives of the Corporation, subject to the authority of the Board. Except as may be specified by the Board, the Chief Executive Officer shall have the power to enter into contracts and make commitments on behalf of the Corporation and shall have the right to execute deeds, mortgages, bonds, contracts and other instruments necessary or proper to be executed in connection with the Corporation's regular business and may authorize any other officer of the Corporation, to sign, execute and acknowledge such documents and instruments in his place and stead. However, the Chief Executive Officer shall not sign any instrument which the law, these Bylaws, or the Board expressly require some other officer or agent of the Corporation to sign and execute. In general, the Chief Executive Officer shall perform all duties incident to the office of the Corporation's principal executive officer and such other duties as the Board may prescribe from time to time.

7.8. President. The President shall be an executive officer reporting on a straight line to the Chief Executive Officer. The President shall have such authority as designated by the Chief Executive Officer or the Board and shall otherwise assist the Chief Executive Officer in the supervision, direction and active management of the business, property and affairs of the Corporation. In the absence of the Chief Executive Officer or in the event of his death, inability of refusal to act, the President, unless the Board determines otherwise, shall perform the duties of the Chief Executive Officer.

7.9. Vice Presidents. A Vice President shall perform such duties as the Chief Executive Officer or the Board may assign to him from time to time.

7.10. Secretary. The Secretary shall (a) keep the minutes of the meetings of the Stockholders and of the Board in one or more books for that purpose, (b) give all notices which these Bylaws or the law requires, (c) serve as custodian of the records and seal of the Corporation, (d) affix the seal of the Corporation to all documents which the Board has authorized execution on behalf of the Corporation under seal, (e) maintain a register of the address of each Stockholder of the Corporation, (f) sign, with the Chief Executive Officer, President, a Vice President, or any other officer or agent of the Corporation which the Board has authorized, certificates for shares of the Corporation, (g) have charge of the stock transfer books of the Corporation, and (h) perform all duties which the Chief Executive Officer or the Board may assign to him from time to time.

7.11. Assistant Secretaries. In the absence of the Secretary or in the event of his death, inability or refusal to act, the Assistant Secretaries in the order of their length of service as Assistant Secretary, unless the Board determines otherwise, shall perform the duties of the Secretary. When acting as the Secretary, an Assistant Secretary shall have the powers and restrictions of the Secretary. An Assistant Secretary shall perform such other duties as the Chief Executive Officer, Secretary or Board may assign from time to time.

7.12. Treasurer. The Treasurer (or if there is one, the Chief Financial Officer) shall (a) have responsibility for all funds and securities of the Corporation, (b) receive and give receipts for moneys due and payable to the Corporation from any source whatsoever, (c) deposit all moneys in the name of the Corporation in depositories which the Board selects, and (d) perform all of the duties which the Chief Executive Officer or the Board may assign to him from time to time.

7.13. Assistant Treasurers. In the absence of the Treasurer or in the event of his death, inability or refusal to act, the Assistant Treasurers in the order of their length of service as Assistant Treasurer, unless the Board determines otherwise, shall perform the duties of the Treasurer. When acting as the Treasurer, an Assistant Treasurer shall have the powers and restrictions of the Treasurer. An Assistant Treasurer shall perform such other duties as the Treasurer, the Chief Executive Officer, or the Board may assign to him from time to time.

7.14. Delegation of Authority. Notwithstanding any provision of these Bylaws to the contrary, the Board may delegate the powers or duties of any officer to any other officer or agent.

7.15. Action with Respect to Securities of Other Corporations. Unless the Board directs otherwise, the Chief Executive Officer shall have the power to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of Stockholders of or with respect to any action of Stockholders of any other corporation in which the Corporation holds securities. Furthermore, unless the Board directs otherwise, the Chief Executive Officer shall exercise any and all rights and powers which the Corporation possesses by reason of its ownership of securities in another corporation.

7.16. Vacancies. The Board may fill any vacancy in any office because of death, resignation, removal, disqualification or any other cause in the manner which these Bylaws prescribe for the regular appointment to such office.

ARTICLE 8.

CONTRACTS, LOANS, DRAFTS,

DEPOSITS AND ACCOUNTS

8.1. Contracts. The Board may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation. The Board may make such authorization general or special.

8.2. Loans. Unless the Board has authorized such action, no officer or agent of the Corporation shall contract for a loan on behalf of the Corporation or issue any evidence of indebtedness in the Corporation's name.

8.3. Drafts. The Chief Executive Officer, the President, any Vice President, the Treasurer, any Assistant Treasurer, and such other persons as the Board shall determine shall issue all checks, drafts and other orders for the payment of money, notes and other evidences of indebtedness issued in the name of or payable by the Corporation.

8.4. Deposits. The Treasurer shall deposit all funds of the Corporation not otherwise employed in such banks, trust companies, or other depositories as the Board may select or as any officer, assistant, agent or attorney of the Corporation to whom the Board has delegated such power may select. For the purpose of deposit and collection for the account of the Corporation, the Chief Executive Officer, the President or the Treasurer (or any other officer, assistant, agent or attorney of the Corporation whom the Board has authorized) may endorse, assign and deliver checks, drafts and other orders for the payment of money payable to the order of the Corporation.

8.5. General and Special Bank Accounts. The Board may authorize the opening and keeping of general and special bank accounts with such banks, trust companies, or other depositories as the Board may select or as any officer, assistant, agent or attorney of the Corporation to whom the Board has delegated such power may select. The Board 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.

ARTICLE 9.

CERTIFICATES FOR SHARES AND THEIR TRANSFER

9.1. Certificates for Shares. Every owner of stock of the Corporation shall have the right to receive a certificate or certificates, certifying to the number and class of shares of the stock of the Corporation which he owns. The Board shall determine the form of the certificates for the shares of stock of the Corporation. The Secretary, transfer agent, or registrar of the Corporation shall number the certificates representing shares of the stock of the Corporation in the order in which the Corporation issues them. The President or any Vice President and the Secretary or any Assistant Secretary shall sign the certificates in the name of the Corporation. Any or all certificates may contain facsimile signatures. In case any officer, transfer agent, or registrar who has signed a certificate, or whose facsimile signature appears on a certificate, ceases to serve as such officer, transfer agent, or registrar before the Corporation issues the certificate, the Corporation may issue the certificate with the same effect as though the person who signed such certificate, or whose facsimile signature appears on the certificate, was such officer, transfer agent, or registrar at the date of issue. The Secretary, transfer agent, or registrar of the Corporation shall keep a record in the stock transfer books of the Corporation of the names of the persons, firms or corporations owning the stock represented by the certificates, the number and class of shares represented by the certificates and the dates thereof and, in the case of cancellation,

the dates of cancellation. The Secretary, transfer agent, or registrar of the Corporation shall cancel every certificate surrendered to the Corporation for exchange or transfer. Except in the case of a lost, destroyed, stolen or mutilated certificate, the Secretary, transfer agent, or registrar of the Corporation shall not issue a new certificate in exchange for an existing certificate until he has cancelled the existing certificate.

9.2. Transfer of Shares. A holder of record of shares of the Corporation's stock, or his attorney-in-fact authorized by power of attorney duly executed and filed with the Secretary, transfer agent or registrar of the Corporation, may transfer his shares only on the stock transfer books of the Corporation. Such person shall furnish to the Secretary, transfer agent, or registrar of the Corporation proper evidence of his authority to make the transfer and shall properly endorse and surrender for cancellation his exiting certificate or certificates for such shares. Whenever a holder of record of shares of the Corporation's stock makes a transfer of shares for collateral security, the Secretary, transfer agent, or registrar of the Corporation shall state such fact in the entry of transfer if the transferor and the transferee request.

9.3. Lost Certificates. The Corporation may direct the Secretary, transfer agent, or registrar of the Corporation to issue a new certificate to any holder of record of shares of the Corporation's stock claiming that he has lost such certificate, or that someone has stolen, destroyed or mutilated such certificate, upon the receipt of an affidavit from such holder to such fact. When authorizing the issue of a new certificate, the Corporation, in its discretion may require as a condition precedent to the issuance that the owner of such certificate give the Corporation a bond of indemnity in such form and amount as the Board may direct.

9.4. Regulations. The Board may make such rules and regulations, not inconsistent with these Bylaws, as it deems expedient concerning the issue, transfer and registration of certificates for shares of the stock of the Corporation. The Board may appoint or authorize any officer or officers to appoint one or more transfer agents, or one or more registrars, and may require all certificates for stock to bear the signature or signatures of any of them.

9.5. Holder of Record. The Corporation may treat as absolute owners of shares the person in whose name the shares stand of record as if that person had full competency, capacity and authority to exercise all rights of ownership, despite any knowledge or notice to the contrary or any description indicating a representative, pledge or other fiduciary relation, or any reference to any other instrument or to the rights of any other person appearing upon its record or upon the share certificate. However, the Corporation may treat any person furnishing proof of his appointment as a fiduciary as if he were the holder of record of the shares.

9.6. Treasury Shares. Treasury shares of the Corporation shall consist of shares which the Corporation has issued and thereafter acquired but not retired. Treasury shares shall not carry voting or dividend rights.

ARTICLE 10.

INDEMNIFICATION

10.1. Actions Other Than by or In the Right of the Corporation. The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was a Stockholder, director, officer, employee or agent of the Corporation,

or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not create, of itself, a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.

10.2. Actions By or In the Right of the Corporation. The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a Stockholder, director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a Stockholder, director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or as a member or any committee or similar body, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Corporation, except

that the Corporation shall make no indemnification in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

10.3. Determination of Right to Indemnification. The Corporation shall not indemnify any person under Section 10.01 or Section 10.02, in the absence of a court order, unless authorized in the specific case upon a determination that the director, officer, employee or agent has met the applicable standard of conduct set forth in Section 10.01 or Section 10.02. One of the following shall make the determination: (a) the Board, by a majority vote of a quorum of directors not a party to the action, suit or proceeding; (b) absent a quorum or at the direction of a quorum of disinterested directors, independent legal counsel, by a written opinion; or (c) the Stockholders.

10.4. Indemnification Against Expenses of Successful Party. Notwithstanding the other provisions of this Article 10, to the extent that a Stockholder, director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 10.01 or Section 10.02 of these Bylaws, or in defense of any claim, issue or matter therein, the Corporation shall indemnify him against expenses (including attorneys' fees) which he actually and reasonably has incurred in connection therewith.

10.5. Advance of Expenses. If the Corporation ultimately determines that the Corporation should not indemnify any person pursuant to the provisions of this Article 10, the Corporation nevertheless may pay his expenses incurred in defending an action or proceeding in advance of the final disposition of such action or proceeding upon specific authorization by the Board and upon his delivery to the Board of an undertaking to repay such amount.

10.6. Other Rights and Remedies. The indemnification provided by this Article 10 shall not be deemed exclusive and is declared expressly to be nonexclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of Stockholders or disinterested directors or otherwise, both as to actions in his official capacity and as to actions in another capacity while holding such office. In addition, the indemnification, provided by this Article 10 shall continue as to any person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

10.7. Insurance. Upon resolution passed by the Board, the Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a Stockholder, director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or as a member of any committee or similar body, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provision of this Article 10.

10.8. Constituent Corporations. For the purposes of this Article 10, references to "the Corporation" 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 or as a member of any committee or similar body, shall stand in the same position under the provisions of this Article 10 with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its existence had continued.

10.9. Other Insurance. The Corporation shall reduce the amount of the indemnification of any person pursuant to the provisions of this Article 10 by the amount which such person collects as indemnification (a) under any policy of insurance which the Corporation purchased and maintained on his behalf or (b) from another corporation, partnership, joint venture, trust or other enterprise.

10.10. Public Policy. Nothing contained in this Article 10, or elsewhere in these Bylaws, shall operate to indemnify any director or officer if such indemnification is contrary to law, either as a matter of public policy, or under the provisions of the Federal Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, or any other applicable state or Federal law.

ARTICLE 11.

TAKEOVER OFFERS

In the event the Corporation receives a takeover offer, the Board of Directors shall consider all relevant factors in evaluating such offer, including, but not limited to, the terms of the offer, and the potential economic and social impact of such offer on the Corporation's Stockholders, employees, customers, creditors and community in which it operates.

ARTICLE 12.

NOTICES

12.1. General. Whenever these Bylaws require notice to any Stockholder, director, officer or agent, such notice does not mean personal notice. A person may give effective notice under these Bylaws in every case by depositing a writing in a post office or letter box in a postpaid, sealed wrapper, or by dispatching a prepaid telegram or an electronic transmission (in the case of a Stockholder to the extent such Stockholder has consented to receive such notice by electronic transmission) addressed to such Stockholder, director, officer or agent at his address on the books of the Corporation. Unless these Bylaws expressly provide to the contrary, the time when the person sends notice shall constitute the time of the giving of notice.

12.2. Waiver of Notice. Whenever the law or these Bylaws require notice, the person entitled to said notice may waive such notice in writing, either before or after the time stated therein.

ARTICLE 13.

MISCELLANEOUS

13.1. Facsimile Signatures. In addition to the use of facsimile signatures which these Bylaws specifically authorize, the Corporation may use such facsimile signatures of any officer or officers, agents or agent, of the Corporation as the Corporation may authorize.

13.2. Corporate Seal. The Board may provide for a suitable seal containing the name of the Corporation, of which the Secretary shall be in charge. The Treasurer, any Assistant Secretary, or any Assistant Treasurer may keep and use the seal or duplicates of the seal if and when the Board or a committee of the Board so directs.

13.3. Fiscal Year. The Board shall have the authority to fix and change the fiscal year of the Corporation.

ARTICLE 14.

AMENDMENTS

Subject to the provisions of the Certificate of Incorporation, the Stockholders or the Board may amend or repeal these Bylaws at any meeting.

Exhibit 10.1

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Agreement") is made as of December 16, 2021, by and between FirstCash, Inc., a Delaware corporation ("Assignor"), and FirstCash Holdings, Inc., a Delaware corporation and newly-formed parent company of Assignor ("Assignee").

RECITALS

Pursuant to a Business Combination Agreement dated as of the date hereof (the "Agreement"), among Assignor, Assignee, Atlantis Merger Sub, Inc., a direct wholly-owned subsidiary of Assignee ("Merger Sub"), American First Finance Inc. and the seller parties (as defined in the Agreement), Assignor has created a new holding company structure by merging Merger Sub with and into Assignor with Assignor being the surviving corporation and a direct wholly-owned subsidiary of Assignee, and converting the capital stock of Assignor into the capital stock of Assignee (the "Merger"). In connection with the Merger, Assignor has agreed to assign to Assignee, and Assignee has agreed to assume from Assignor, all of Assignor's equity incentive plans and related agreements.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, the receipt and sufficiency of which is acknowledged by the parties hereto, the parties intending to be legally bound, agree as follows:

1. Assignment. Effective immediately following the consummation of the Merger (the "Effective Time"), Assignor hereby assigns to Assignee all of its rights and obligations under all of its equity incentive plans and related agreements, including but not limited to those listed on Exhibit A hereto, together with any and all amendments thereto (collectively, the "Assumed Plans and Agreements").

2. Assumption. Effective immediately following the Effective Time, Assignee hereby, assumes all of the rights and obligations of Assignor under the Assumed Plans and Agreements, and agrees to abide by and perform all terms, covenants and conditions of Assignor under such Assumed Plans and Agreements. In consideration of the assumption by Assignee of all of the rights and obligations of Assignor under the Assumed Plans and Agreements, Assignor agrees to pay (i) all expenses incurred by Assignee in connection with the assumption of the Assumed Plans and Agreements pursuant to this Agreement and (ii) all expenses incurred by Assignee in connection with the filing by Assignee of post-effective amendments to the registration statements on Form S-8 of Assignor to expressly adopt such registration statements as its own, including, without limitation, registration fees imposed by the Securities and Exchange Commission. As of the Effective Time, the Assumed Plans and Agreements shall each be automatically amended without any further action by either party as necessary to provide that references to the Assignor in such agreements shall be read to refer to Assignee from and after the effective time of the merger.

3. Further Assurances. Subject to the terms of this Agreement, the parties hereto shall take all reasonable and lawful action as may be necessary or appropriate to cause the intent of this Agreement to be carried out, including, without limitation, entering into amendments to the Assumed Plans and Agreements and notifying other parties thereto of such assignment and assumption.

4. Successors and Assigns. This Agreement shall be binding upon Assignor and Assignee, and their respective successors and assigns. The terms and conditions of this Agreement shall survive the consummation of the transfers provided for herein.

5. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to conflicts of law principles.

6. Entire Agreement. This Agreement, including Exhibit A attached hereto, constitute the entire agreement and supersede all other agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof. This Agreement may not be modified or amended except by a writing executed by the parties hereto.

7. Severability. The provisions of this Agreement are severable, and in the event any provision hereof is determined to be invalid or unenforceable, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

8. Third Party Beneficiaries. The parties to the various equity incentive awards and other agreements included in the Assumed Plans and Agreements are intended to be third party beneficiaries to this Agreement.

9. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original.

[Remainder of page intentionally left blank.]

This Assignment and Assumption Agreement is signed as of the date first written above.

Assignor

FIRSTCASH, INC.

By: /s/ R. Douglas Orr
R. Douglas Orr
Executive Vice President and
Chief Financial Officer

Assignee

FIRSTCASH HOLDINGS, INC.

By: /s/ R. Douglas Orr
R. Douglas Orr
Executive Vice President and
Chief Financial Officer

Exhibit A

Assumed Plans and Agreements

First Cash Financial Services, Inc. 2011 Long-Term Incentive Plan (“2011 Incentive Plan”)

FirstCash, Inc. 2019 Long-Term Incentive Plan (“2019 Incentive Plan”)

All agreements relating to stock options, stock appreciation rights, restricted stock, restricted stock unit, deferred stock unit, performance awards and any other awards granted pursuant to the 2011 Incentive Plan and the 2019 Incentive Plan

Exhibit 99.1

DESCRIPTION OF CAPITAL STOCK

The following description of the common stock, $0.01 par value per share, of FirstCash Holdings, Inc. (the "Company," "us," "we," or "our"), is a summary and does not purport to be complete. It is subject to and qualified in its entirety by reference to our amended and restated certificate of incorporation and our amended and restated bylaws, which are filed as exhibits to our Current Report on Form 8-K filed with the SEC on December 16, 2021 and are incorporated by reference herein, as well as the applicable provisions of the Delaware General Corporation Law. We encourage you to carefully review our amended and restated certificate of incorporation, our amended and restated bylaws and the applicable provisions of the Delaware General Corporation Law, for additional information.

General

Our authorized capital stock consists of 90,000,000 shares of common stock, par value $0.01 per share, and 10,000,000 shares of preferred stock, par value $0.01 per share.

Voting Rights

Each share of our common stock is entitled to one vote per share of record on all matters to be voted upon by our stockholders. Generally, a matter submitted for stockholder action shall be decided by the affirmative vote of a majority of the shares present in person or represented by proxy at the meeting and entitled to vote thereon. Other than in a contested election where directors are elected by a plurality vote, each nominee for director shall be elected by the vote of the majority of the votes cast, in person or by proxy, with respect to the director nominee at the meeting.

Dividends

Subject to the preferential rights of the holders of any preferred stock that may at the time be outstanding, each share of common stock will entitle the holder of that share to an equal and ratable right to receive dividends or other distributions if declared from time to time by our board of directors and if there are sufficient funds to legally pay a dividend.

Rights Upon Liquidation

In the event of the Company's liquidation, dissolution or winding up, whether voluntary or involuntary, the holders of our common stock will be entitled to share ratably in all assets remaining after payments to creditors and after satisfaction of the liquidation preference, if any, of the holders of any preferred stock that may at the time be outstanding.

Other Rights

Holders of our common stock have no preemptive or redemption rights and will not be subject to further calls or assessments by the Company.

Preferred Stock

The authorized preferred stock will be available for issuance from, time to time, at the discretion of our board of directors without stockholder approval. Our board of directors has the authority to prescribe for each series of preferred stock it establishes the number of shares in that series, the number of votes, if any, to which the shares in that series are entitled, the consideration for the shares in that series and the powers, designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, of the shares in that series. Depending upon the rights prescribed for a series of preferred stock, the issuance of preferred stock could have an adverse effect on the voting power of the holders of our common stock and could adversely affect holders of our common stock by delaying or preventing a change in control of the Company, making removal of the Company's management more difficult or imposing restrictions upon the payment of dividends and other distributions to the holders of our common stock.

Certain Provisions That May Have an Anti-Takeover Effect

Certain other provisions of our amended and restated certificate of incorporation and amended and restated bylaws may delay or make more difficult unsolicited acquisitions or changes of control of the Company. These provisions could have the effect of discouraging third parties from making proposals involving an unsolicited acquisition or change in control of the Company, although these proposals, if made, might be considered desirable by a majority of the Company's stockholders. These provisions may also have the effect of making it more difficult for third parties to cause the replacement of the current management without the concurrence of our board of directors. These provisions include:

- The division of our board of directors into three classes serving staggered terms of office of three years. With a classified board of directors, it would generally take a majority stockholder two annual meetings of stockholders to elect a majority of the board of directors. As a result, a classified board may discourage proxy contests for the election of directors or purchases of a substantial block of stock because it could operate to prevent obtaining control of the board in a relatively short period of time.
- A prohibition of stockholder action by written consent of stockholders. Action by written consent may, in some circumstances, permit the taking of stockholders' action opposed by the board of directors more rapidly than would be possible if a meeting of stockholders were required. The prohibition contained in the amended and restated certificate of incorporation will restrict the ability of controlling stockholders to take action at any time other than at an annual meeting and will generally force a takeover bidder to negotiate directly with the board of directors.
- Permitting only the Company's board of directors, a duly authorized committee of the board of directors, the chairman or the vice chairman of our board of directors or the chief executive officer to call a special meeting of the Company's stockholders. This provision could prevent a stockholder from, among other things, calling a special meeting of stockholders to consider the stockholder's proposed slate of directors or a transaction that might result in a change of control of the corporation.

- An advance notice procedure with regard to stockholder nomination of candidates for election as directors and other business to be brought before an annual meeting of our stockholders. Although our amended and restated bylaws will not give our board of directors any power to approve or disapprove stockholder nominations for the election of directors or other proposals for action, these advance notice procedures may have the effect of precluding a contest for the election of directors or the consideration of other stockholder proposals if the established procedures are not followed and of discouraging or deterring a third party from conducting a solicitation of proxies to elect its own slate of directors or to approve another proposal without regard to whether consideration of those nominees or proposals might be harmful or beneficial to the Company and our stockholders.
- Elimination, subject to certain exceptions, of the personal liability of directors of the Company for monetary damages for breaches of fiduciary duty by such directors. The amended and restated certificate of incorporation will not provide for the elimination of or any limitation on the personal liability of a director for (i) any breach of the director's duty of loyalty to the Company or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) unlawful corporate distributions, or (iv) any transaction from which such director derives an improper personal benefit. This provision of the amended and restated certificate of incorporation will limit the remedies available to a stockholder who is dissatisfied with a decision of the board of directors protected by this provision, and such stockholder's only remedy in that circumstance may be to bring a suit to prevent the action of the board. In many situations, this remedy may not be effective, as for example when stockholders are not aware of a transaction or an event prior to board action in respect of such transaction or event. In these cases, the stockholders and the corporation could be injured by the board's decision and have no effective remedy.
- Permitting the removal of directors only for cause by a vote of the holders of a majority of the outstanding shares of stock entitled to vote in an election of directors.
- Permitting the board of directors, in evaluating any takeover offer, to consider all relevant factors, including the potential economic and social impact of the offer on our stockholders, employees, customers, creditors, the communities in which the Company operates and any other factors the directors consider pertinent. Once the board, in exercising its business judgment, has determined that a proposed action is not in the best interests of the Company, it has no duty to remove any barriers to the success of the action, including a shareholder rights plan.

Section 203 of the Delaware General Corporation Law

The Company is subject to Section 203 ("Section 203") of the DGCL, which, subject to certain exceptions, prohibits a Delaware corporation from engaging in any business combinations with any interested stockholder for a period of three years following the date that such stockholder became an interested stockholder, unless (i) before such date the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder, (ii) upon consummation of the transaction that

resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding those shares owned (x) by persons who are directors and also officers and (y) by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer, or (iii) on or after such date the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock which is not owned by the interested stockholder.

Section 203 defines business combination to include (i) any merger or consolidation involving the corporation and the interested stockholder, (ii) any sale, lease, exchange, mortgage, transfer, pledge or other disposition involving the interested stockholder of 10% or more of assets of the corporation, (iii) subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder, (iv) any transaction involving the corporation that has the effect of increasing the proportionate share of the stock of any class or series of the corporation beneficially owned by the interested stockholder or (v) the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation. In general, Section 203 defines an interested stockholder as any entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation and any entity or person affiliated with or controlling or controlled by such an entity or person.

Section 203 may delay, prevent or make more difficult certain unsolicited acquisitions, tender offers or changes of control of the Company and also may have the effect of preventing changes in our management. It is possible that these provisions could make it more difficult to accomplish transactions which our stockholders may otherwise deem to be in their best interest.