

# NU SKIN ENTERPRISES INC (NUS)

## 10-Q

Quarterly report pursuant to sections 13 or 15(d)

Filed on 08/05/2011

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2011

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE TRANSITION PERIOD FROM \_\_\_\_\_ TO \_\_\_\_\_

Commission File Number: 001-12421



**NU SKIN ENTERPRISES, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction  
of incorporation or  
organization)

**75 WEST CENTER STREET  
PROVO UT 84601**

(Address of principal executive offices, including zip code)

**(801) 345-1000**

(Registrant's telephone number, including area code)

**87-0565309**

(IRS Employer  
Identification No.)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

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

As of July 31, 2011, 62,404,575 shares of the registrant's Class A common stock, \$.001 par value per share, were outstanding.

NU SKIN ENTERPRISES, INC.

2011 FORM 10-Q QUARTERLY REPORT – SECOND QUARTER

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Nu Skin, Pharmanex and ageLOC are trademarks of Nu Skin Enterprises, Inc. or its subsidiaries. The italicized product names used in this Quarterly Report on Form 10-Q are product names, and also, in certain cases, our trademarks.

**PART I. FINANCIAL INFORMATION**

**ITEM 1. FINANCIAL STATEMENTS**

**NU SKIN ENTERPRISES, INC.**  
**Consolidated Balance Sheets (Unaudited)**  
(U.S. dollars in thousands)

	<b>June 30, 2011</b>	<b>December 31, 2010</b>
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 233,403	\$ 230,337
Accounts receivable	32,885	25,701
Inventories, net	108,431	114,475
Prepaid expenses and other	58,831	52,013
	<u>433,550</u>	<u>422,526</u>
Property and equipment, net	138,981	133,722
Goodwill	112,446	112,446
Other intangible assets, net	75,317	78,270
Other assets	127,909	145,260
Total assets	<u>\$ 888,203</u>	<u>\$ 892,224</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 28,620	\$ 25,480
Accrued expenses	125,500	146,108
Current portion of long-term debt	27,972	27,865
Related party payable		16,995
	<u>182,092</u>	<u>216,448</u>
Long-term debt	118,287	133,013
Other liabilities	79,565	71,514
Total liabilities	<u>379,944</u>	<u>420,975</u>
Commitments and contingencies (Note 10)		
Stockholders' equity:		
Class A common stock – 500 million shares authorized, \$.001 par value, 90.6 million shares issued	91	91
Additional paid-in capital	271,957	256,505
Treasury stock, at cost – 28.5 million shares	(500,063)	(476,748)
Retained earnings	790,236	749,940
Accumulated other comprehensive loss	(53,962)	(58,539)
	<u>508,259</u>	<u>471,249</u>
Total liabilities and stockholders' equity	<u>\$ 888,203</u>	<u>\$ 892,224</u>

The accompanying notes are an integral part of these consolidated financial statements.

**NU SKIN ENTERPRISES, INC.**  
**Consolidated Statements of Income (Unaudited)**  
(U.S. dollars in thousands, except per share amounts)

	<b>Three Months Ended June 30,</b>		<b>Six Months Ended June 30,</b>	
	<b>2011</b>	<b>2010</b>	<b>2011</b>	<b>2010</b>
Revenue	\$ 424,426	\$ 388,362	\$ 820,271	\$ 752,486
Cost of sales	<u>71,168</u>	<u>67,937</u>	<u>171,822<sup>(1)</sup></u>	<u>132,770</u>
Gross profit	<u>353,258</u>	<u>320,425</u>	<u>648,449</u>	<u>619,716</u>
Operating expenses:				
Selling expenses	183,500	160,739	352,642	315,001
General and administrative expenses	<u>103,712</u>	<u>100,525</u>	<u>204,854</u>	<u>199,437</u>
Total operating expenses	<u>287,212</u>	<u>261,264</u>	<u>557,496</u>	<u>514,438</u>
Operating income	66,046	59,161	90,953	105,278
Other income (expense), net	<u>(127)</u>	<u>(7,287)</u>	<u>(549)</u>	<u>(6,673)</u>
Income before provision for income taxes	65,919	51,874	90,404	98,605
Provision for income taxes	<u>24,218</u>	<u>19,482</u>	<u>33,395</u>	<u>35,173</u>
Net income	<u>\$ 41,701</u>	<u>\$ 32,392</u>	<u>\$ 57,009</u>	<u>\$ 63,432</u>
Net income per share (Note 2):				
Basic	\$ 0.67	\$ 0.51	\$ 0.92	\$ 1.01
Diluted	\$ 0.65	\$ 0.50	\$ 0.89	\$ 0.98
Weighted-average common shares outstanding (000s):				
Basic	61,806	62,919	61,817	62,698
Diluted	64,193	65,072	64,177	64,904

(1) Includes a \$32.8 million non-cash charge related to an adverse decision in the Japan customs litigation. See Note 13.

The accompanying notes are an integral part of these consolidated financial statements.

**NU SKIN ENTERPRISES, INC.**  
**Consolidated Statements of Cash Flows (Unaudited)**  
(U.S. dollars in thousands)

	<b>Six Months Ended</b>	
	<b>June 30,</b>	
	<b>2011</b>	<b>2010</b>
Cash flows from operating activities:		
Net income	\$ 57,009	\$ 63,432
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	15,853	15,006
Japan customs expense	32,754	
Foreign currency (gains)/losses	(1,763)	4,308
Stock-based compensation	7,762	4,395
Deferred taxes	(7,580)	3,146
Changes in operating assets and liabilities:		
Accounts receivable	(6,423)	(4,054)
Inventories, net	7,943	(8,470)
Prepaid expenses and other	(1,882)	(1,158)
Other assets	(13,152)	(5,580)
Accounts payable	2,372	3,676
Accrued expenses	(23,571)	4,830
Other liabilities	11,466	7,621
Net cash provided by operating activities	<u>80,788</u>	<u>87,152</u>
Cash flows from investing activities:		
Purchases of property and equipment	<u>(16,440)</u>	<u>(18,053)</u>
Net cash used in investing activities	<u>(16,440)</u>	<u>(18,053)</u>
Cash flows from financing activities:		
Exercise of employee stock options	13,039	13,236
Payment of debt	(15,058)	(14,745)
Payment of cash dividends	(16,714)	(15,675)
Income tax benefit of options exercised	4,747	4,828
Payment of related party debt	(16,995)	
Repurchases of shares of common stock	<u>(33,817)</u>	<u>(39,261)</u>
Net cash used in financing activities	<u>(64,798)</u>	<u>(51,617)</u>
Effect of exchange rate changes on cash	<u>3,516</u>	<u>(2,853)</u>
Net increase in cash and cash equivalents	3,066	14,629
Cash and cash equivalents, beginning of period	<u>230,337</u>	<u>158,045</u>
Cash and cash equivalents, end of period	<u>\$ 233,403</u>	<u>\$ 172,674</u>

The accompanying notes are an integral part of these consolidated financial statements.

**1. THE COMPANY**

Nu Skin Enterprises, Inc. (the "Company") is a leading, global direct selling company that develops and distributes premium-quality, innovative personal care products and nutritional supplements that are sold worldwide under the Nu Skin and Pharmanex brands and a small number of other products and services. The Company reports revenue from five geographic regions: North Asia, which consists of Japan and South Korea; Greater China, which consists of Mainland China, Hong Kong, Macau and Taiwan; Americas, which consists of the United States, Canada and Latin America; South Asia/Pacific, which consists of Australia, Brunei, Indonesia, Malaysia, New Zealand, the Philippines, Singapore and Thailand; and Europe, which consists of several markets in Europe as well as Israel, Russia and South Africa (the Company's subsidiaries operating in these countries are collectively referred to as the "Subsidiaries").

The accompanying unaudited consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America for interim financial information and with the instructions to Form 10-Q and Rule 10-01 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by accounting principles generally accepted in the United States of America for complete financial statements. The unaudited consolidated financial statements include the accounts of the Company and its Subsidiaries. All significant intercompany accounts and transactions are eliminated in consolidation. In the opinion of management, the accompanying unaudited consolidated financial statements contain all adjustments, consisting of normal recurring adjustments, considered necessary for a fair statement of the Company's financial information as of June 30, 2011, and for the three- and six-month periods ended June 30, 2011 and 2010. The results of operations of any interim period are not necessarily indicative of the results of operations to be expected for the fiscal year. For further information, refer to the consolidated financial statements and accompanying footnotes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2010.

**2. NET INCOME PER SHARE**

Net income per share is computed based on the weighted-average number of common shares outstanding during the periods presented. Additionally, diluted earnings per share data gives effect to all potentially dilutive common shares that were outstanding during the periods presented. For the three-month periods ended June 30, 2011 and 2010, other stock options totaling 2.2 million and 0.1 million, respectively, and for the six-month periods ended June 30, 2011 and 2010, other stock options totaling 2.2 million and 0.1 million, respectively, were excluded from the calculation of diluted earnings per share because they were anti-dilutive.

**3. DIVIDENDS PER SHARE**

In February and May 2011, the Company's board of directors declared a quarterly cash dividend of \$0.135 per share for all shares of Class A common stock. These quarterly cash dividends totaling \$8.4 million each were paid on March 16, 2011 and June 15, 2011, to stockholders of record on February 25, 2011 and May 27, 2011, respectively. In July 2011, the Company's board of directors declared a quarterly cash dividend of \$0.160 per share for all shares of Class A common stock to be paid September 14, 2011 to stockholders of record on August 26, 2011.

**4. DERIVATIVE FINANCIAL INSTRUMENTS**

At June 30, 2011, the Company held mark to market forward contracts designated as foreign currency cash flow hedges with notional amounts totaling 5.3 billion Japanese yen (\$65.8 million as of June 30, 2011) and 500,000 Euros (\$0.7 million as of June 30, 2011) to hedge forecasted foreign-currency-denominated intercompany transactions. For the six-month period ended June 30, 2011, the Company recorded a net unrealized gain of \$0.1 million in accumulated other comprehensive income. The Company did not hold any mark to market forward contracts as of June 30, 2010. The contracts held at June 30, 2011 have maturities through June 30, 2012 and accordingly, all unrealized gains and losses on foreign currency cash flow hedges included in accumulated other comprehensive income will be recognized in current earnings over the next 12 months. There were no pre-tax net (losses)/gains on foreign currency cash flow hedges recorded in current earnings for the year ended December 31, 2010. The pre-tax net (losses)/gains on foreign currency cash flow hedges recorded in current earnings were immaterial for the quarter ending June 30, 2011.



**5. REPURCHASES OF COMMON STOCK**

During the three- and six-month periods ended June 30, 2011, the Company repurchased approximately 0.4 million and 1.1 million shares of its Class A common stock under its open market repurchase plan for approximately \$11.8 million and \$33.8 million, respectively. During the three- and six-month periods ended June 30, 2010, the Company repurchased approximately 1.1 million and 1.5 million shares of its Class A common stock under its open market repurchase plan for approximately \$29.1 and \$39.3 million, respectively. At June 30, 2011, \$119.3 million was available for repurchases under the stock repurchase program.

**6. COMPREHENSIVE INCOME**

The components of comprehensive income, net of related tax, for the three- and six-month periods ended June 30, 2011 and 2010, were as follows (U.S. dollars in thousands):

	<b>Three Months Ended</b>		<b>Six Months Ended</b>	
	<b>June 30,</b>		<b>June 30,</b>	
	<b>2011</b>	<b>2010</b>	<b>2011</b>	<b>2010</b>
Net income	\$ 41,701	\$ 32,392	\$ 57,009	\$ 63,432
Other comprehensive income, net of tax:				
Foreign currency translation adjustment	2,129	(2,671)	4,537	(3,774)
Net unrealized (losses)/gains on foreign currency cash flow hedges	(826)		145	29
Less: Reclassification adjustment for realized gains in current earnings	(93)		(104)	(126)
Comprehensive income	<u>\$ 42,911</u>	<u>\$ 29,721</u>	<u>\$ 61,587</u>	<u>\$ 59,561</u>

**NU SKIN ENTERPRISES, INC.**  
**Notes to Consolidated Financial Statements**

**7. SEGMENT INFORMATION**

The Company operates in a single operating segment by selling products to a global network of independent distributors that operates in a seamless manner from market to market, except for its operations in Mainland China. In Mainland China, the Company utilizes an employed sales force, contractual sales promoters and direct sellers to sell its products through fixed retail locations. Selling expenses are the Company's largest expense comprised of the commissions and incentives paid to its worldwide independent distributors as well as remuneration to its Mainland China sales employees, promoters and direct sellers paid on product sales. The Company manages its business primarily by managing its global sales force. The Company does not use profitability reports on a regional or divisional basis for making business decisions. However, the Company does recognize revenue in five geographic regions: North Asia, Greater China, Americas, South Asia/Pacific and Europe.

Revenue generated in each of these regions is set forth below (U.S. dollars in thousands):

Revenue:	Three Months Ended June 30,		Six Months Ended June 30,	
	2011	2010	2011	2010
North Asia	\$ 183,097	\$ 164,105	\$ 362,531	\$ 334,966
Greater China	79,404	80,642	147,997	138,327
Americas	59,805	62,389	115,684	124,843
South Asia/Pacific	59,212	45,938	109,158	81,282
Europe (region)	42,908	35,288	84,901	73,068
Totals	<u>\$ 424,426</u>	<u>\$ 388,362</u>	<u>\$ 820,271</u>	<u>\$ 752,486</u>

Revenue generated by each of the Company's three product lines is set forth below (U.S. dollars in thousands):

Revenue:	Three Months Ended June 30,		Six Months Ended June 30,	
	2011	2010	2011	2010
Nu Skin	\$ 227,931	\$ 239,886	\$ 444,891	\$ 463,152
Pharmanex	194,104	145,801	370,301	283,917
Other	2,391	2,675	5,079	5,417
Totals	<u>\$ 424,426</u>	<u>\$ 388,362</u>	<u>\$ 820,271</u>	<u>\$ 752,486</u>

Additional information as to the Company's operations in its most significant geographic areas is set forth below (U.S. dollars in thousands):

Revenue:	Three Months Ended June 30,		Six Months Ended June 30,	
	2011	2010	2011	2010
Japan	\$ 115,067	\$ 113,295	\$ 226,900	\$ 221,988
South Korea	68,030	50,810	135,631	112,978
United States	49,621	52,738	96,851	105,780
Mainland China	38,110	20,558	69,166	40,939
Europe	37,126	29,156	72,757	60,521
Taiwan	28,999	28,633	54,211	52,776

Long-lived assets:	June 30,	December 31, 2010
	2011	
Japan	\$ 11,878	\$ 12,473
South Korea	12,255	9,396
United States	87,452	84,829
Europe	2,500	2,697
Mainland China	11,727	11,646
Taiwan	1,843	2,200

**8. DEFERRED TAX ASSETS AND LIABILITIES**

The Company accounts for income taxes in accordance with the Income Taxes Topic of the Financial Accounting Standards Codification. These standards establish financial accounting and reporting standards for the effects of income taxes that result from an enterprise's activities during the current and preceding years. The Company takes an asset and liability approach for financial accounting and reporting of income taxes. The Company pays income taxes in many foreign jurisdictions based on the profits realized in those jurisdictions, which can be significantly impacted by terms of intercompany transactions between the Company and its foreign affiliates. Deferred tax assets and liabilities are created in this process. As of June 30, 2011 the Company has net deferred tax assets of \$68.0 million. The Company has netted these deferred tax assets and deferred tax liabilities by jurisdiction. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts expected to be ultimately realized.

**9. UNCERTAIN TAX POSITIONS**

The Company files income tax returns in the U.S. federal jurisdiction, and in various state and foreign jurisdictions. The Company is currently under examination by the United States Internal Revenue Service (the "IRS") for the 2005 through 2008 tax years. With a few exceptions, the Company is no longer subject to U.S. federal, state and local income tax examination by tax authorities for years before 2005. In 2009, the Company entered into a voluntary program with the IRS called Compliance Assurance Process ("CAP"). The objective of CAP is to contemporaneously work with the IRS to achieve federal tax compliance and resolve all or most of the issues prior to filing of the tax return. The Company has elected to participate in the CAP program for 2011 and may elect to continue participating in CAP for future tax years; the Company may withdraw from the program at any time. In major foreign jurisdictions, the Company is no longer subject to income tax examinations for years before 2004. Along with the IRS examination, the Company is currently under examination in certain foreign jurisdictions; however, the outcomes of those reviews are not yet determinable.

The Company's unrecognized tax benefits relate to multiple foreign and domestic jurisdictions. Due to potential increases in unrecognized tax benefits from the multiple jurisdictions in which the Company operates, as well as the expiration of various statutes of limitation, it is reasonably possible that the Company's gross unrecognized tax benefits, net of foreign currency adjustments, may change within the next 12 months by a range of approximately \$8 to \$11 million. The amount of gross unrecognized tax benefits increased by \$0.5 million during the six months ended June 30, 2011, due mainly to the completion of a tax audit in Korea, current tax positions and changes in currency exchange rates.

**10. COMMITMENTS AND CONTINGENCIES**

The Company is subject to governmental regulations pertaining to product formulation, labeling and packaging, product claims and advertising and to the Company's direct selling system. The Company is also subject to the jurisdiction of numerous foreign tax and customs authorities. Any assertion or determination that either the Company or the Company's distributors are not in compliance with existing statutes, laws, rules or regulations could potentially have a material adverse effect on the Company's operations. In addition, in any country or jurisdiction, the adoption of new statutes, laws, rules or regulations or changes in the interpretation of existing statutes, laws, rules or regulations could have a material adverse effect on the Company and its operations. Although management believes that the Company is in compliance, in all material respects, with the statutes, laws, rules and regulations of every jurisdiction in which it operates, no assurance can be given that the Company's compliance with applicable statutes, laws, rules and regulations will not be challenged by foreign authorities or that such challenges will not have a material adverse effect on the Company's financial position or results of operations or cash flows. The Company and its Subsidiaries are defendants in litigation and proceedings involving various matters. Except as noted below, in the opinion of the Company's management, based upon advice of its counsel handling such litigation and proceedings, adverse outcomes, if any, will not likely result in a material effect on the Company's consolidated financial condition, results of operations or cash flows.

The Company is subject to regular audits by federal, state and foreign tax authorities. These audits may result in additional tax liabilities. The Company believes it has appropriately provided for income taxes for all years. Several factors drive the calculation of its tax reserves. Some of these factors include: (i) the expiration of various statutes of limitations; (ii) changes in tax law and regulations; (iii) issuance of tax rulings; and (iv) settlements with tax authorities. Changes in any of these factors may result in adjustments to the Company's reserves, which would impact its reported financial results.

**NU SKIN ENTERPRISES, INC.**  
**Notes to Consolidated Financial Statements**

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The Company is currently involved in a dispute with customs authorities in Japan with respect to duty assessments on several of the Company's Pharmanex nutritional products, which is separate and distinct from the dispute discussed in Note 13. The dispute relates to additional customs assessments made by Yokohama Customs for the period of October 2006 through September 2009 in connection with post-importation audits, as well as the disputed portion of the Company's import duties from October 2009 to the present, which the Company has or will hold in bond or pay under protest. The aggregate amount of these assessments and disputed duties was 3.8 billion Japanese yen as of June 30, 2011 (approximately \$46.8 million), net of any recovery of consumption taxes, and increases approximately \$3.5 million per quarter. The Company believes that additional assessments related to any prior period would be barred by applicable statutes of limitations. The issue in this second case is whether a US entity utilizing a commissionaire agent in Japan to import its products can use the manufacturer's invoice or must use another valuation method, and, if an alternative method must be used, what the allowable deductions would be in determining the proper valuation. Following the Company's review of the assessments and after consulting with the Company's legal and customs advisors, the Company believes that the additional assessments are improper and are not supported by applicable customs laws. The Company filed letters of protest with Yokohama Customs, which were rejected. The Company then appealed the matter to the Ministry of Finance in Japan. On May 13, 2011, the Company received notice that, as anticipated, the Ministry of Finance in Japan denied the Company's administrative appeal. The Company disagrees with the Ministry of Finance's administrative decision. The Company is preparing to pursue the matter through the court system in Japan, which the Company believes will provide a more independent determination of the matter. In addition, the Company is currently being required to post a bond or make a deposit equal to the difference between the Company's declared duties and the amount the customs authorities have determined the Company should be paying on all current imports. Because the Company believes that the higher rate determined by the customs authorities is an improper application of the regulations, the Company is currently expensing the portion of the duties the Company believes is supported under applicable customs law, and recording the additional deposit or payment as a receivable within long-term assets on its consolidated financial statements. To the extent that the Company is unsuccessful in recovering the amounts assessed and paid or held in bond, the Company will likely be required to record a non-cash expense for the full amount of the disputed assessments.

NU SKIN ENTERPRISES, INC.  
Notes to Consolidated Financial Statements

11. LONG-TERM DEBT

The Company currently has debt pursuant to various credit facilities and other borrowings. The Company's book value for both the individual and consolidated debt included in the table below approximates fair value. The following table summarizes the Company's long-term debt arrangements as of June 30, 2011:

Facility or Arrangement <sup>(1)</sup>	Original Principal Amount	Balance as of June 30, 2011 <sup>(2)</sup>	Interest Rate	Repayment terms
<b>2003 \$205.0 million multi-currency uncommitted shelf facility:</b>				
U.S. dollar denominated:	\$40.0 million	\$34.3 million	6.2%	Notes due July 2016, with annual principal payments that began in July 2010.
	\$20.0 million	\$17.1 million	6.2%	Notes due January 2017, with annual principal payments that began in January 2011.
Japanese yen denominated:	3.1 billion yen	1.3 billion yen (\$16.6 million as of June 30, 2011)	1.7%	Notes due April 2014, with annual principal payments that began in April 2008.
	2.3 billion yen	2.3 billion yen (\$28.1 million as of June 30, 2011)	2.6%	Notes due September 2017, with annual principal payments beginning September 2011.
	2.2 billion yen	1.9 billion yen (\$23.2 million as of June 30, 2011)	3.3%	Notes due January 2017, with annual principal payments that began in January 2011.
<b>2010 committed loan:</b>				
U.S. dollar denominated:	\$30.0 million	\$27.0 million	Variable 30 day: 1.25%	Amortizes \$1.5 million per quarter
<b>2004 \$25.0 million revolving credit facility</b>	N/A	None	N/A	Credit facility is due May 2014.
<b>2009 \$100.0 million uncommitted multi-currency shelf facility</b>	N/A	None	N/A	

(1) Each of the credit facilities and arrangements listed in the table are secured by guarantees issued by the Company's material domestic subsidiaries and by pledges of 65% of the outstanding stock of the Company's material foreign subsidiaries. The 2010 committed loan is also secured by deeds of trust with respect to the Company's corporate headquarters and distribution center in Provo, Utah.

(2) The current portion of our long-term debt (i.e. becoming due in the next 12 months) includes \$9.6 million of the balance of our Japanese yen-denominated debt under the 2003 multi-currency uncommitted shelf facility, \$12.4 million of the balance on our U.S. dollar denominated debt under the 2003 multi-currency uncommitted shelf facility and \$6.0 million of our 2010 committed loan.

**12. ACCOUNTING PRONOUNCEMENTS**

In May 2011, the FASB issued ASU 2011-04, *Fair Value Measurement (Topic 820): Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRS*. ASU 2011-04 provides a consistent definition of fair value and ensures that the fair value measurement and disclosure requirements are similar between U.S. GAAP and International Financial Reporting Standards. ASU 2011-04 changes certain fair value measurement principles and enhances the disclosure requirements particularly for level 3 fair value measurements. This guidance will be effective for interim and annual reporting periods beginning after December 15, 2011, and will be applied prospectively. The Company is currently evaluating the impact of adopting ASU 2011-04, but believes there will be no significant impact on its consolidated financial statements.

In June 2011, the FASB issued ASU 2011-05, *Presentation of Comprehensive Income*. ASU 2011-05 requires entities to present items of net income and other comprehensive income either in one continuous statement, referred to as the statement of comprehensive income, or in two separate, but consecutive, statements of net income and other comprehensive income. This guidance will be effective as of January 1, 2012 for the Company and is not expected to have a significant impact on its financial statements, other than presentation.

**13. COST OF SALES**

In March 2011, the Tokyo District Court upheld a disputed \$32.8 million customs assessment on certain of the Company's products imported into Japan during the period of October 2002 through July 2005. As a result of this decision, the Company recorded an expense for the full amount of the disputed assessments in the first quarter of 2011. The charge was a non-cash item, as the Company was previously required to pay the assessments under protest. The Company has appealed this decision.

**ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

The following Management's Discussion and Analysis should be read in conjunction with Management's Discussion and Analysis included in our Annual Report on Form 10-K for the year ended December 31, 2010 filed with the Securities and Exchange Commission ("SEC") on February 23, 2011, and our other filings, including Current Reports on Form 8-K, filed with the SEC through the date of this report.

**Overview**

Our revenue for both the three- and six-month periods ended June 30, 2011 increased 9% to \$424.4 million and \$820.3 million, when compared to the same periods in 2010, with foreign currency exchange rate fluctuations positively impacting revenue by 8% and 7%, respectively. Accelerated growth in our emerging markets, including Mainland China and South Asia, was partially offset by expected softness in the United States and Japan. Revenue growth was also driven by continued interest in our strong product portfolio, along with sustained sales force growth, with the number of active and executive distributors globally up 5% and 8%, respectively, compared to the prior-year period. We currently plan to introduce new *ageLOC* nutritional and personal care products in connection with our 2011 global convention in October.

Earnings per share for the second quarter of 2011 were \$0.65 compared to \$0.50 for the same period in 2010. Earnings per share for the first half of 2011 were \$0.89, or \$1.21 excluding non-cash charges of \$32.8 million associated with the first quarter Japan customs ruling, discussed below under Gross Profit, compared to \$0.98 for the same period in 2010. Excluding the Japan customs expense, earnings per share improved due largely to revenue growth coupled with continued efficiencies and controlled expenses. In addition, earnings per share for the second quarter of 2010 were negatively impacted by significant foreign currency translation losses. Earnings per share excluding Japan customs expense is a non-GAAP financial measure. See "Non-GAAP Financial Measures" below.

**Revenue**

North Asia. The following table sets forth revenue for the three- and six-month periods ended June 30, 2011 and 2010 for the North Asia region and its principal markets (U.S. dollars in millions):

	Three Months Ended June 30,			Six Months Ended June 30,		
	2011	2010	Change	2011	2010	Change
Japan	\$ 115.1	\$ 113.3	2%	\$ 226.9	\$ 222.0	2%
South Korea	68.0	50.8	34%	135.6	113.0	20%
North Asia total	<u>\$ 183.1</u>	<u>\$ 164.1</u>	12%	<u>\$ 362.5</u>	<u>\$ 335.0</u>	8%

Revenue in the region for the three- and six-month periods ended June 30, 2011 was positively impacted approximately 11% and 9% by foreign currency exchange rate fluctuations, due to the strengthening of both the Japanese yen and the South Korean won.

Local-currency revenue in Japan declined 10% and 8% for the three- and six-month periods ended June 30, 2011, compared to the same periods in 2010. We estimate that recent catastrophes in Japan negatively impacted second quarter revenue by approximately \$10 million, in line with our previous estimate. Continued weakness in our distributor numbers also contributed to the decline with our active and executive distributor counts decreasing 9% and 6%, respectively.

South Korea experienced local-currency revenue growth of 25% and 15% for the three- and six-month periods ended June 30, 2011, compared to the same periods in 2010. This revenue increase reflects continued strong distributor growth and interest generated by our *ageLOC* products and a recent restaging of our *TRA* weight loss products. The number of active and executive distributors in South Korea increased 18% and 27%, respectively, compared to the prior-year periods.

Greater China. The following table sets forth revenue for the three- and six-month periods ended June 30, 2011 and 2010 for the Greater China region and its principal markets (U.S. dollars in millions):

	Three Months Ended June 30,			Six Months Ended June 30,		
	2011	2010	Change	2011	2010	Change
Taiwan	\$ 29.0	\$ 28.6	1%	\$ 54.2	\$ 52.8	3%
Mainland China	38.1	20.6	85%	69.2	40.9	69%
Hong Kong	12.3	31.4	(61%)	24.6	44.6	(45%)
Greater China total	<u>\$ 79.4</u>	<u>\$ 80.6</u>	(2%)	<u>\$ 148.0</u>	<u>\$ 138.3</u>	7%

Revenue in Greater China declined due largely to the launch of our *ageLOC Transformation* skin care system in the second quarter of 2010, which increased revenue by approximately \$25 million and contributed to 53 percent revenue growth reported in the prior year. Individual market comparisons for the quarter were also impacted by regional convention sales in Hong Kong in the prior year. Foreign currency exchange rate fluctuations positively impacted revenue by approximately 6% in this region during both the three- and six-month periods ended June 30, 2011.

On a local-currency basis, revenue in Mainland China increased 77% and 62% in the three- and six-month periods ended June 30, 2011, compared to the same periods in 2010. This continued growth is largely due to significant sales force growth, driven by strong interest in our product portfolio and sales force incentives, as reflected by a 37% increase in preferred customers and 35% increase in sales representatives, compared to the prior-year period. In addition, revenue in Mainland China for the second quarter of 2010 was negatively impacted by substantial sales at the Greater China Regional Convention in Hong Kong.

Compared to the same prior-year periods, local-currency revenue for the three- and six-month periods ended June 30, 2011 in Taiwan was down 8% and 6%, respectively. This decrease was due largely to the launch of our *ageLOC Transformation* skin care system in the prior year. Compared to the same prior-year periods, local-currency revenue for the three- and six-month periods ended June 30, 2011 in Hong Kong was down 61% and 45%, respectively. Revenue comparisons for Hong Kong reflect substantial sales to non-Hong Kong distributors attending the Greater China Regional Convention in May 2010. Decreased revenue in both Taiwan and Hong Kong is also due in part to the regional focus on growth in Mainland China.

Second quarter executive distributors in Taiwan were down 4% and active distributors were level when compared to the prior-year period, while active and executive distributors in Hong Kong were down 2% and 9%, respectively.

Americas. The following table sets forth revenue for the three- and six-month periods ended June 30, 2011 and 2010 for the Americas region and its principal markets (U.S. dollars in millions):

	Three Months Ended June 30,			Six Months Ended June 30,		
	2011	2010	Change	2011	2010	Change
United States	\$ 49.6	\$ 52.7	(6%)	\$ 96.8	\$ 105.8	(9%)
Canada	5.5	6.0	(8%)	10.6	11.9	(11%)
Latin America	4.7	3.7	27%	8.3	7.1	17%
Americas total	<u>\$ 59.8</u>	<u>\$ 62.4</u>	(4%)	<u>\$ 115.7</u>	<u>\$ 124.8</u>	(7%)

Revenue in the United States for the three- and six-month periods ended June 30, 2011 decreased by 6% and 8%, compared to the prior-year periods. This decline reflects continued weakness in our distributor numbers with our active and executive distributor counts decreasing 1% and 6%, respectively. We currently expect continued softness in the United States in the third quarter of 2011, followed by growth in the fourth quarter in connection with our global convention in October. The opening of Argentina in the second quarter contributed to revenue growth in Latin America.



South Asia/Pacific. The following table sets forth revenue for the three- and six-month periods ended June 30, 2011 and 2010 for the South Asia/Pacific region and its principal markets (U.S. dollars in millions):

	Three Months Ended June 30,			Six Months Ended June 30,		
	2011	2010	Change	2011	2010	Change
Singapore/Malaysia/Brunei	\$ 26.6	\$ 21.3	25%	\$ 47.5	\$ 35.0	36%
Thailand	16.2	13.6	19%	31.0	25.6	21%
Australia/New Zealand	7.2	4.6	57%	13.3	9.0	48%
Indonesia	5.5	3.7	49%	10.2	6.8	50%
Philippines	3.7	2.7	37%	7.2	4.9	47%
South Asia/Pacific total	<u>\$ 59.2</u>	<u>\$ 45.9</u>	29%	<u>\$ 109.2</u>	<u>\$ 81.3</u>	34%

Foreign currency exchange rate fluctuations in South Asia/Pacific impacted revenue positively 11% in both the three- and six-month periods ended June 30, 2011, compared to the same prior-year periods. Local currency revenue growth in this region was driven primarily by robust distributor growth and activity, along with continued interest in our strong product portfolio, including our ageLOC and TRA weight loss products. Executive distributors in the region increased 24% while active distributors increased 23% compared to the prior year.

Europe. The following table sets forth revenue for the three- and six-month periods ended June 30, 2011 and 2010 for the Europe region (U.S. dollars in millions):

	Three Months Ended June 30,			Six Months Ended June 30,		
	2011	2010	Change	2011	2010	Change
Europe	\$ 42.9	\$ 35.3	22%	\$ 84.9	\$ 73.1	16%

Growth in this region was driven largely by continued interest in our strong product portfolio, including our ageLOC products. Revenue in the region for the three- and six-month periods ended June 30, 2011 was positively impacted approximately 14% and 6%, respectively, by foreign currency exchange rate fluctuations. Our active and executive distributor counts in our Europe region both increased by 8% and 7%, compared to the prior year.

#### Gross profit

Gross profit as a percentage of revenue was 83.2% for the second quarter of 2011, compared to 82.5% for the same prior-year period. Gross profit as a percentage of revenue was 79.1% and 82.4% for the first half of 2011 and 2010, respectively. In March 2011, the Tokyo District Court upheld a disputed \$32.8 million customs assessment on certain of our products imported into Japan. As a result of this decision, we recorded an expense within cost of sales for the full amount of the disputed assessments in the first quarter of 2011. The charge is a non-cash item, as we were previously required to pay the assessments under protest. We have appealed this decision. Excluding this \$32.8 million non-cash charge, gross profit as a percentage of revenue for the first half of 2011 was 83.0%. These improvements reflect continued supply chain improvements and foreign currency benefits. Gross profit excluding Japan customs expense is a non-GAAP financial measure. See "Non-GAAP Financial Measures" below.

### **Selling expenses**

Selling expenses as a percentage of revenue increased to 43.2% and 43.0% for the three- and six-month periods ended June 30, 2011 from 41.4% and 41.9% for the same periods in 2010. This increase reflects growth in the number of independent distributors qualifying for various promotional sales incentives, as well as temporary commission subsidies for distributors in the region of Japan most impacted by recent catastrophes. In addition, selling expenses in the prior year were unusually low due to non-commissionable convention fees and sales aid revenue.

### **General and administrative expenses**

As a percentage of revenue, general and administrative expenses decreased to 24.4% and 25.0% for the three- and six-month periods ended June 30, 2011 from 25.9% and 26.5% for the same periods in 2010, primarily as a result of increased revenue and controlled expenses.

### **Other income (expense), net**

Other income (expense), net for the three- and six-month periods ended June 30, 2011 was \$0.1 million and \$0.5 million of expense compared to \$7.3 million and \$6.7 million of expense for the same periods in 2010. This decrease in expense is due primarily to the impact of fluctuations in foreign currency exchange rates.

### **Provision for income taxes**

Provision for income taxes for the three- and six-month periods ended June 30, 2011 was \$24.2 million and \$33.4 million compared to \$19.5 million and \$35.2 million for the same periods in 2010. The effective tax rate was 36.7% and 36.9% of pre-tax income during the three- and six-month periods ended June 30, 2011, compared to rates of 37.6% and 35.7% in the same prior-year periods.

### **Net income**

As a result of the foregoing factors, net income for the second quarter of 2011 was \$41.7 million compared to \$32.4 million for the same period in 2010. Net income for the first half of 2011 was \$57.0 million, or \$77.7 million excluding \$32.8 million (\$20.7 million, net of tax) in Japan customs expense, compared to \$63.4 million for the first half of 2010. Net income excluding Japan customs expense is a non-GAAP financial measure. See "Non-GAAP Financial Measures" below.

### **Liquidity and Capital Resources**

Historically, our principal uses of cash have included operating expenses, particularly selling expenses, and working capital (principally inventory purchases), as well as capital expenditures, stock repurchases, dividends, debt repayment and the development of operations in new markets. We have generally relied on cash flow from operations to fund operating activities, and we have at times incurred long-term debt in order to fund strategic transactions and stock repurchases.

We typically generate positive cash flow from operations due to favorable gross margins and the variable nature of selling expenses, which constitute a significant percentage of operating expenses. We generated \$80.8 million in cash from operations during the first half of 2011, compared to \$87.2 million during the same period in 2010.

As of June 30, 2011, working capital was \$251.5 million, compared to \$206.1 million as of December 31, 2010. Cash and cash equivalents at June 30, 2011 and December 31, 2010 were \$233.4 million and \$230.3 million, respectively. The increase in working capital was primarily due to the payment of taxes and the payment of related party debt in the first half of 2011, while generating strong cash flows from operations.

Capital expenditures in the first six months of 2011 totaled \$16.4 million, and we anticipate additional capital expenditures of approximately \$40 million to \$45 million for the remainder of 2011. These capital expenditures are primarily related to:

- planning and construction of a new innovation center on our Provo campus and a new Greater China regional headquarters in Shanghai, China, and related real estate acquisitions;
- the build-out and upgrade of leasehold improvements in our various markets, including retail stores in China; and
- purchases of computer systems and software, including equipment and development costs.

We currently have long-term debt pursuant to various credit facilities and other borrowings. The following table summarizes these long-term debt arrangements as of June 30, 2011:

Facility or Arrangement <sup>(1)</sup>	Original Principal Amount	Balance as of June 30, 2011 <sup>(2)</sup>	Interest Rate	Repayment terms
<b>2003 \$205.0 million multi-currency uncommitted shelf facility:</b>				
U.S. dollar denominated:	\$40.0 million	\$34.3 million	6.2%	Notes due July 2016, with annual principal payments that began in July 2010.
	\$20.0 million	\$17.1 million	6.2%	Notes due January 2017, with annual principal payments that began in January 2011.
Japanese yen denominated:	3.1 billion yen	1.3 billion yen (\$16.6 million as of June 30, 2011)	1.7%	Notes due April 2014, with annual principal payments that began in April 2008.
	2.3 billion yen	2.3 billion yen (\$28.1 million as of June 30, 2011)	2.6%	Notes due September 2017, with annual principal payments beginning September 2011.
	2.2 billion yen	1.9 billion yen (\$23.2 million as of June 30, 2011)	3.3%	Notes due January 2017, with annual principal payments that began in January 2011.
<b>2010 committed loan:</b>				
U.S. dollar denominated:	\$30.0 million	\$27.0 million	Variable 30 day: 1.25%	Amortizes \$1.5 million per quarter
<b>2004 \$25.0 million revolving credit facility</b>	N/A	None	N/A	Credit facility is due May 2014.
<b>2009 \$100.0 million uncommitted multi-currency shelf facility</b>	N/A	None	N/A	

(1) Each of the credit facilities and arrangements listed in the table are secured by guarantees issued by the Company's material domestic subsidiaries and by pledges of 65% of the outstanding stock of the Company's material foreign subsidiaries. The 2010 committed loan is also secured by deeds of trust with respect to our corporate headquarters and distribution center in Provo, Utah.

(2) The current portion of the Company's long-term debt (i.e. becoming due in the next 12 months) includes \$9.6 million of the balance of its Japanese yen-denominated debt under the 2003 multi-currency uncommitted shelf facility, \$12.4 million of the balance on its U.S. dollar denominated debt under the 2003 multi-currency uncommitted shelf facility and \$6.0 million of its 2010 committed loan.

Our board of directors has approved a stock repurchase program authorizing us to repurchase our outstanding shares of Class A common stock on the open market or in private transactions. The repurchases are used primarily to offset dilution from our equity incentive plans and for strategic initiatives. During the first half of 2011, we repurchased 1.1 million shares of Class A common stock under this program for \$33.8 million. At June 30, 2011, \$119.3 million was available for repurchases under the stock repurchase program.

In February 2011 and May 2011, our board of directors declared a quarterly cash dividend of \$0.135 per share for all shares of Class A common stock. These quarterly cash dividends each totaling \$8.4 million each were paid on March 16, 2011 and June 15, 2011, to stockholders of record on February 25, 2011 and May 27, 2011, respectively. In July 2011, our board of directors declared a quarterly cash dividend of \$0.160 per share for all shares of Class A common stock to be paid September 14, 2011 to stockholders of record on August 26, 2011. Currently, we anticipate that our board of directors will continue to declare quarterly cash dividends and that the cash flows from operations will be sufficient to fund our future dividend payments. However, the continued declaration of dividends is subject to the discretion of our board of directors and will depend upon various factors, including our net earnings, financial condition, cash requirements, future prospects and other factors deemed relevant by our board of directors.

We believe we have sufficient liquidity to be able to meet our obligations on both a short- and long-term basis. We currently believe that existing cash balances, future cash flows from operations and existing lines of credit will be adequate to fund our cash needs on both a short- and long-term basis. The majority of our historical expenses have been variable in nature and as such, a potential reduction in the level of revenue would reduce our cash flow needs. In the event that our current cash balances, future cash flow from operations and current lines of credit are not sufficient to meet our obligations or strategic needs, we would consider raising additional funds in the debt or equity markets or restructuring our current debt obligations. Additionally, we would consider realigning our strategic plans, including a reduction in capital spending, stock repurchases or dividend payments.

## Contingent Liabilities

We are currently involved in a dispute with customs authorities in Japan with respect to duty assessments on several of our Pharmanex nutritional products, which is separate and distinct from the dispute discussed above under Gross Profit. The dispute relates to additional customs assessments made by Yokohama Customs for the period of October 2006 through September 2009 in connection with post-importation audits, as well as the disputed portion of our import duties from October 2009 to the present, which we have or will hold in bond or pay under protest. The aggregate amount of these assessments and disputed duties was 3.8 billion Japanese yen as of June 30, 2011 (approximately \$46.8 million), net of any recovery of consumption taxes, and increases approximately \$3.5 million per quarter. We believe that additional assessments related to any prior period would be barred by applicable statutes of limitations. The issue in this second case is whether a US entity utilizing a commissionaire agent in Japan to import its products can use the manufacturer's invoice or must use another valuation method, and, if an alternative method must be used, what the allowable deductions would be in determining the proper valuation. Following our review of the assessments and after consulting with our legal and customs advisors, we believe that the additional assessments are improper and are not supported by applicable customs laws. We filed letters of protest with Yokohama Customs, which were rejected. We then appealed the matter to the Ministry of Finance in Japan. On May 13, 2011, we received notice that, as we had anticipated, the Ministry of Finance in Japan denied our administrative appeal. We disagree with the Ministry of Finance's administrative decision. We are preparing to pursue the matter through the court system in Japan, which we believe will provide a more independent determination of the matter. In addition, we are currently being required to post a bond or make a deposit equal to the difference between our declared duties and the amount the customs authorities have determined we should be paying on all current imports. Because we believe that the higher rate determined by the customs authorities is an improper application of the regulations, we are currently expensing the portion of the duties we believe is supported under applicable customs law, and recording the additional deposit or payment as a receivable within long-term assets on our consolidated financial statements. To the extent that we are unsuccessful in recovering the amounts assessed and paid or held in bond, we will likely record a non-cash expense for the full amount of the disputed assessments.

## Critical Accounting Policies

The following critical accounting policies and estimates should be read in conjunction with our audited Consolidated Financial Statements and related Notes thereto. Management considers our critical accounting policies to be the recognition of revenue, accounting for income taxes, accounting for intangible assets and accounting for stock-based compensation. In each of these areas, management makes estimates based on historical results, current trends and future projections.

**Revenue.** We recognize revenue when products are shipped, which is when title and risk of loss pass to our independent distributors and preferred customers who are our customers. With some exceptions in various countries, we offer a return policy whereby distributors can return unopened and unused product for up to 12 months subject to a 10% restocking fee. Reported revenue is net of returns, which have historically been less than 5% of annual revenue. A reserve for product returns is accrued based on historical experience. We classify selling discounts as a reduction of revenue. Our selling expenses are computed pursuant to our global compensation plan for our distributors, which is focused on remunerating distributors based primarily upon the selling efforts of the distributors and the volume of products purchased by their downlines, and not their personal purchases.

**Income Taxes.** We account for income taxes in accordance with the Income Taxes Topic of the Financial Accounting Standards Codification. These standards establish financial accounting and reporting standards for the effects of income taxes that result from an enterprise's activities during the current and preceding years. We take an asset and liability approach for financial accounting and reporting of income taxes. We pay income taxes in many foreign jurisdictions based on the profits realized in those jurisdictions, which can be significantly impacted by terms of intercompany transactions among our affiliates around the world. Deferred tax assets and liabilities are created in this process. As of June 30, 2011, we had net deferred tax assets of \$68.0 million. These net deferred tax assets assume sufficient future earnings will exist for their realization, as well as the continued application of current tax rates. In certain foreign jurisdictions valuation allowances have been recorded against the deferred tax assets specifically related to use of net operating losses. When we determine that there is sufficient taxable income to utilize the net operating losses, the valuation allowances will be released. In the event we were to determine that we would not be able to realize all or part of our net deferred tax assets in the future, an adjustment to the deferred tax assets would be charged to earnings in the period such determination was made.

We file income tax returns in the U.S. federal jurisdiction, and various state and foreign jurisdictions. We are currently under examination by the United States Internal Revenue Service (the "IRS") for the 2005 through 2008 tax years. With a few exceptions, we are no longer subject to U.S. federal, state and local income tax examination by tax authorities for years before 2005. For the tax year 2009, we entered into a voluntary program with the IRS called Compliance Assurance Process ("CAP"). The objective of CAP is to contemporaneously work with the IRS to achieve federal tax compliance and resolve all or most of the issues prior to filing of the tax return. We have elected to continue participating in CAP for 2011 and may elect to continue participating in future tax years; we may withdraw from the program at any time. In major foreign jurisdictions, we are no longer subject to income tax examinations for years before 2004. Along with the IRS examination, we are currently under examination in certain foreign jurisdictions; however, the outcomes of these reviews are not yet determinable.

We are subject to regular audits by federal, state and foreign tax authorities. These audits may result in additional tax liabilities. We account for such contingent liabilities in accordance with relevant accounting standards and believe we have appropriately provided for income taxes for all years. Several factors drive the calculation of our tax reserves. Some of these factors include: (i) the expiration of various statutes of limitations; (ii) changes in tax law and regulations; (iii) issuance of tax rulings; and (iv) settlements with tax authorities. Changes in any of these factors may result in adjustments to our reserves, which would impact our reported financial results.

**Intangible Assets.** Acquired intangible assets may represent indefinite-lived assets, determinable-lived intangibles, or goodwill. Of these, only the costs of determinable-lived intangibles are amortized to expense over their estimated life. The value of indefinite-lived intangible assets and residual goodwill is not amortized, but is tested at least annually for impairment. Our impairment testing for goodwill is performed separately from our impairment testing of indefinite-lived intangibles. We test goodwill for impairment, at least annually, by reviewing the book value compared to the fair value at the reportable unit level. We test individual indefinite-lived intangibles at least annually by reviewing the individual book values compared to the fair value. Considerable management judgment is necessary to measure fair value. We did not recognize any impairment charges for goodwill or intangible assets during the periods presented.

**Stock-Based Compensation.** All share-based payments to employees are recognized in the financial statements based on their fair values using an option-pricing model at the date of grant. We use a Black-Scholes-Merton option-pricing model to calculate the fair value of options. Stock based compensation expense is recognized net of any estimated forfeitures on a straight-line basis over the requisite service period of the award.

#### **Seasonality and Cyclicity**

In addition to general economic factors, we are impacted by seasonal factors and trends such as major cultural events and vacation patterns. For example, most Asian markets celebrate their respective local New Year in the first quarter, which generally has a negative impact on that quarter. We believe that direct selling in Japan, the United States and Europe is also generally negatively impacted during the third quarter, when many individuals, including our distributors, traditionally take vacations.

We have experienced rapid revenue growth in certain new markets following commencement of operations. This initial rapid growth has often been followed by a short period of stable or declining revenue, then followed by renewed growth fueled by product introductions, an increase in the number of active distributors and increased distributor productivity. The contraction following initial rapid growth has been more pronounced in certain new markets, due to other factors such as business or economic conditions or distributor distractions outside the market.

#### Distributor Information

The following table provides information concerning the number of active and executive distributors as of the dates indicated. Active distributors are those distributors and preferred customers who were resident in the countries in which we operated and purchased products for resale or personal consumption directly from us during the three months ended as of the date indicated. Executive distributors are active distributors who have achieved required monthly personal and group sales volumes as well as sales representatives in China who have completed a qualification process.

Region:	As of June 30, 2011		As of June 30, 2010	
	Active	Executive	Active	Executive
North Asia	331,000	15,127	327,000	14,286
Greater China	130,000	9,580	114,000	8,398
Americas	65,000	5,185	169,000	5,528
South Asia/Pacific	91,000	4,499	74,000	3,630
Europe	110,000	3,917	102,000	3,664
Total	<u>827,000</u>	<u>38,308</u>	<u>786,000</u>	<u>35,506</u>

#### Currency Risk and Exchange Rate Information

A majority of our revenue and many of our expenses are recognized outside of the United States, except for inventory purchases, which are primarily transacted in U.S. dollars from vendors in the United States. The local currency of each of our subsidiaries' primary markets is considered the functional currency. All revenue and expenses are translated at weighted-average exchange rates for the periods reported. Therefore, our reported revenue and earnings will be positively impacted by a weakening of the U.S. dollar and will be negatively impacted by a strengthening of the U.S. dollar. Given the large portion of our business derived from Japan, any weakening of the yen negatively impacts reported revenue and profits, whereas a strengthening of the yen positively impacts our reported revenue and profits. Given the uncertainty of exchange rate fluctuations, it is difficult to predict the effect of these fluctuations on our future business, product pricing and results of operation or financial condition. However, based on current exchange rate levels, we currently anticipate that foreign currency fluctuations will have a slightly positive impact on reported revenue in 2011.

We may seek to reduce our exposure to fluctuations in foreign currency exchange rates through the use of foreign currency exchange contracts, through intercompany loans of foreign currency and through our Japanese yen-denominated debt. We do not use derivative financial instruments for trading or speculative purposes. We regularly monitor our foreign currency risks and periodically take measures to reduce the impact of foreign exchange fluctuations on our operating results. At June 30, 2011, we held forward contracts designated as foreign currency cash flow hedges with notional amounts totaling approximately 5.3 billion Japanese yen (\$65.8 million as of June 30, 2011) and 500,000 Euros (\$0.7 million as of June 30, 2011). At June 30, 2010, we did not hold any forward contracts to hedge foreign-currency-denominated debt payments.

#### Note Regarding Forward-Looking Statements

This report contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. All statements other than statements of historical fact are "forward-looking statements" for purposes of federal and state securities laws, including any projections of earnings, revenue or other financial items; any statements of the plans, strategies and objectives of management for future operations; any statements regarding future economic conditions or performance; any statements of belief; and any statements of assumptions underlying any of the foregoing. Forward-looking statements may include the words "may," "will," "estimate," "intend," "plan," "continue," "believe," "expect" or "anticipate" and any other similar words.

We wish to caution readers that although we believe that the expectations reflected in our forward-looking statements are reasonable, actual results could differ materially from those projected or assumed in our forward-looking statements. We also wish to advise readers not to place any undue reliance on the forward-looking statements contained in this report, which reflect our beliefs and expectations only as of the date of this report. We assume no obligation to update or revise these forward-looking statements to reflect new events or circumstances or any changes in our beliefs or expectations, except as required by law. Our future financial condition and results of operations, as well as any forward-looking statements, are subject to change and to inherent risks and uncertainties, such as those disclosed or incorporated by reference in our filings with the Securities and Exchange Commission. Some of the risks and uncertainties that could cause our actual results, performance and achievements, or industry results to differ materially from estimates or projections contained in our forward-looking statements include, among others, the following:

(a) Global economic conditions continue to be challenging. Although there are modest signs of economic recovery, it is not possible for us to predict the extent and timing of any improvement in global economic conditions. Even with continued growth in many of our markets during this period, the economic downturn could adversely impact our business in the future by causing a decline in demand for our products, particularly if the economic conditions are prolonged or worsen. In addition, such economic conditions may adversely impact access to capital for us and our suppliers, may decrease our distributors' ability to obtain or maintain credit cards, and may otherwise adversely impact our operations and overall financial condition.

(b) Due to the international nature of our business, we are exposed to the fluctuations of numerous currencies. We purchase inventory primarily in the United States in U.S. dollars. In preparing our financial statements, we translate revenue and expenses in our markets outside the United States from their local currencies into U.S. dollars using weighted average exchange rates. Our results could be negatively impacted if the U.S. dollar strengthens relative to these currencies. In addition, our business may be negatively impacted by inflation, currency exchange restrictions, pricing controls and currency devaluation, especially in countries such as Venezuela.

(c) We have experienced revenue declines in Japan over the last several years and continue to face challenges in this market. If we are unable to stabilize or renew growth in this market our results could be harmed. Factors that could impact our results in the market include:

- risks related to general disruption and market conditions following the recent disasters in Japan and the risk that the resulting impact on our operations in that market and on the ability of our independent distributors to maintain or reestablish their business and sponsoring activities may negatively impact our revenues more than anticipated;
- continued or increased levels of regulatory and media scrutiny and any regulatory actions taken by regulators, or any adoption of more restrictive regulations, in response to such scrutiny;
- any weakening of the Japanese yen;
- regulatory constraints with respect to the claims we can make regarding the efficacy of products and tools, which could limit our ability to effectively market them;



- risks that the initiatives we have implemented in Japan, which are patterned after successful initiatives implemented in other markets, will not have the same level of success in Japan, may not generate renewed growth or increased productivity among our distributors, and may cost more or require more time to implement than we have anticipated;
- inappropriate activities by our distributors and any resulting regulatory actions;
- any increased weakness in the economy or consumer confidence; and
- competitive pressures from other direct selling companies and their distributors who actively seek to solicit our distributors to join their businesses.

(d) Distributor activities that violate applicable laws or regulations could result in government or third party actions against us. We have experienced an increased level of general inquiries regarding our company and complaints to consumer protection centers in Japan and have taken steps to try to resolve these issues. We have received warnings from consumer centers in certain prefectures raising concerns about the number of general inquiries and complaints regarding our company. Although we continue to implement additional steps to reinforce our distributor compliance, education and training efforts in Japan, we cannot be sure that such efforts will be successful. If consumer complaints and inquiries escalate to a government review or if the current level of complaints and inquiries does not improve, there is an increased likelihood that regulators could take action against us, including a suspension of our sponsoring activities, or we could receive negative media attention, either of which could harm our business.

(e) Our operations in China are subject to significant regulatory scrutiny, and we have experienced challenges in the past, including interruption of sales activities at certain stores and fines being paid in some cases. Even though we have obtained direct selling licenses in a limited number of provinces, government regulators continue to scrutinize our activities and the activities of our employed sales representatives, contractual sales promoters and direct sellers to monitor our compliance with applicable regulations as we integrate direct selling into our business model. Any determination that our operations or activities, or the activities of our employed sales representatives, contractual sales promoters or direct sellers, are not in compliance with applicable regulations, could result in the imposition of substantial fines, extended interruptions of business, termination of necessary licenses and permits, including our direct selling licenses, or restrictions on our ability to open new stores or obtain approvals for service centers or expand into new locations, all of which could harm our business.

(f) The direct selling regulations in China are restrictive and there continues to be some confusion and uncertainty as to the meaning of the regulations and the specific types of restrictions and requirements imposed under them. It is also difficult to predict how regulators will interpret and enforce these regulations. Our business and our growth prospects may be harmed if Chinese regulators interpret the anti-pyramiding regulations or direct selling regulations in such a manner that our current method of conducting business through the use of employed sales representatives, contractual sales promoters and direct sellers violates these regulations. In particular, our business would be harmed by any determination that our current method of compensating our employed sales representatives and contractual sales promoters, including our use of the sales productivity of an individual and the group of individuals whom he or she trains and supervises in establishing salary and compensation, violates the restriction on multi-level compensation under the rules. Our business could also be harmed if regulators inhibit our ability to concurrently operate our business model, which includes retail stores, employed sales representatives, contractual sales promoters and direct sellers.

(g) Our ability to retain key and executive level distributors or to sponsor new executive distributors is critical to our success. Because our products are distributed exclusively through our distributors and we compete with other direct selling companies in attracting distributors, our operating results could be adversely affected if our existing and new business opportunities and incentives, products, business tools and other initiatives do not generate sufficient enthusiasm and economic incentive to retain our existing distributors or to sponsor new distributors on a sustained basis. In addition, in our more mature markets, one of the challenges we face is keeping distributor leaders with established businesses and high income levels motivated and actively engaged in business building activities and in developing new distributor leaders. There can be no assurance that our initiatives will continue to generate excitement among our distributors in the long-term or that planned initiatives will be successful in maintaining distributor activity and productivity or in motivating distributor leaders to remain engaged in business building and developing new distributor leaders. For example, over the last several months we have experienced some softness in our active and executive distributor numbers in the United States. If our initiatives for 2011 do not drive growth in our distributor numbers, particularly in the United States and Japan where our distributors numbers have been down, our operating results could be harmed.

(h) There have been a series of third party actions and governmental actions involving some of our competitors in the direct selling industry. These actions have generated negative publicity for the industry and likely have resulted in increased regulatory scrutiny of other companies in the industry. In addition, Belgium authorities have alleged that we violated anti-pyramid regulations in that market. Adverse rulings in any of these cases could harm our business if they create adverse publicity or interpret laws in a manner inconsistent with our current business practices.

(i) The network marketing and nutritional supplement industries are subject to various laws and regulations throughout our markets, many of which involve a high level of subjectivity and are inherently fact-based and subject to interpretation. Negative publicity concerning supplements with controversial ingredients has spurred efforts to change existing regulations or adopt new regulations in order to impose further restrictions and regulatory control over the nutritional supplement industry. If our existing business practices or products, or any new initiatives or products, are challenged or found to contravene any of these laws by any governmental agency or other third party, or if there are any new regulations applicable to our business that limit our ability to market such products or impose additional requirements on us, our revenue and profitability may be harmed.

(j) Production difficulties and quality control problems could harm our business, in particular our reliance on third party suppliers to deliver quality products in a timely manner. Occasionally, we have experienced production difficulties with respect to our products, including the delivery of products that do not meet our quality control standards. These quality problems have resulted in the past, and could result in the future, in stock outages or shortages in our markets with respect to such products, harming our sales and creating inventory write-offs for unusable products. In addition, if we are not able to accurately forecast sales levels on a market by market basis, or are unable to produce a sufficient supply to meet such demand globally, we could have stock outs which could negatively impact enthusiasm of our distributors.

(k) Historically, most of our products have been imported from the United States into the countries in which they are ultimately sold. These countries impose various legal restrictions on imports and typically impose duties on our products. We may be subject to prospective or retrospective increases in duties on our products imported into our markets outside of the United States, which could adversely impact our results. As discussed above under the heading "Liquidity and Capital Resources," we are currently appealing assessments of duties by Yokohama Customs in Japan. In addition, we are currently required to pay duties in excess of what we believe are supported by applicable customs law, and we record the additional payment as a long-term asset. If we are not able to resolve these assessments and ongoing duties, we could be required to take large charges to our earnings.

#### **Non-GAAP Financial Measures**

Regulation G, Conditions for Use of Non-GAAP Financial Measures, and other SEC regulations define and prescribe the conditions for use of certain non-GAAP financial information. Our measures of earnings per share, gross profit and net income, each excluding the Japan customs expense, meet the definition of non-GAAP financial measures. Earnings per share, gross profit and net income, each excluding the Japan customs expense, are used in addition to and in conjunction with results presented in accordance with GAAP and should not be relied upon to the exclusion of GAAP financial measures.

Management believes these non-GAAP financial measures assist management and investors in evaluating, and comparing from period to period, results from ongoing operations in a more meaningful and consistent manner while also highlighting more meaningful trends in the results of operations.

The following is a reconciliation of gross profit, as reported, to gross profit excluding Japan customs expenses for the six months ended June 30, 2011 and 2010 (in thousands):

	<b>Six Months Ended</b>	
	<b>June 30,</b>	
	<u>2011</u>	<u>2010</u>
Revenue	\$820,271	\$752,486
Gross profit	\$648,449	\$619,716
Japan customs expense	32,754	
Gross profit, excluding Japan customs expense	<u>\$681,203</u>	<u>\$619,716</u>
Gross profit, excluding Japan customs expense, as a % of revenue	83.0%	
Gross profit as a % of revenue	79.1%	82.4%

The following is a reconciliation of net income and diluted earnings per share, as reported, to net income and diluted earnings per share excluding Japan customs expenses for the six months ended June 30, 2011 and 2010 (in thousands):

	<b>Six Months Ended</b>	
	<b>June 30,</b>	
	<u>2011</u>	<u>2010</u>
Net income	\$ 57,009	\$63,432
Japan customs expense	32,754	
Tax effect of Japan customs expense	(12,099)	
Net income, excluding Japan customs expense	<u>\$ 77,664</u>	<u>\$63,432</u>
Diluted earnings per share, excluding Japan customs expense \$	1.21	
Diluted earnings per share	\$ 0.89	\$ 0.98

### **ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

The information required by Item 3 of Part I of Form 10-Q is incorporated herein by reference from the section entitled "Currency Risk and Exchange Rate Information" in "Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operation" of Part I and also in Note 4 to the Financial Statements contained in Item 1 of Part I of this Quarterly Report on Form 10-Q.

### **ITEM 4. CONTROLS AND PROCEDURES**

#### **Evaluation of disclosure controls and procedures.**

As of the end of the period covered by this report, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act")). Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, our disclosure controls and procedures were effective as of June 30, 2011.

## Changes in internal controls over financial reporting.

There have been no changes in our internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) during the most recent fiscal quarter covered by this report, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II. OTHER INFORMATION

### ITEM 1. LEGAL PROCEEDINGS

Please refer to our recent SEC filings, including our Annual Report on Form 10-K for the 2010 fiscal year and subsequent Quarterly Report on Form 10-Q, for information regarding the status of certain legal proceedings that have been previously disclosed.

On May 13, 2011, we received notice that, as we had anticipated, the Ministry of Finance in Japan denied our administrative appeal of additional customs assessments made by Yokohama Customs for the period of October 2006 through September 2009 in connection with post-importation audits, as well as the disputed portion of the Company's import duties from October 2009 to the present. We disagree with the Ministry of Finance's administrative decision. We are preparing to pursue the matter through the court system in Japan, which we believe will provide a more independent determination of the matter.

### ITEM 1A. RISK FACTORS

The information presented below supplements and should be read in conjunction with the detailed discussion of risks associated with our business in our recent SEC filings, including our Annual Report on Form 10-K for the 2010 fiscal year and subsequent Quarterly Report on Form 10-Q.

#### New regulations governing the marketing and sale of nutritional supplements could harm our business.

There has been an increasing movement in the United States and other markets to increase the regulation of dietary supplements, which could impose additional restrictions or requirements in the future. In the United States, for example, some legislators and industry critics continue to push for increased regulatory authority by the FDA over nutritional supplements. Our business could be harmed if more restrictive legislation is successfully introduced and adopted in the future. For example, the FDA has recently proposed draft guidance for the industry to clarify the FDA's interpretation of the new dietary ingredient notification requirements. This draft guidance is not final but appears to indicate that the FDA is expanding its definition of what is considered a "new dietary ingredient" in the United States. The industry is providing comments and working with the FDA to modify this guidance, however, if enacted in final form as proposed this guidance could impose new and significant regulatory barriers for our nutritional supplement products, many of which could delay or inhibit our ability to formulate, introduce and sell nutritional supplements as we have in the past. We face similar pressures in our other markets, including Europe, which is expected to adopt additional regulations setting new limits on acceptable maximum levels of vitamins and minerals. In the United States, effective December 1, 2009, the FTC approved revisions to its Guides Concerning the Use of Endorsements and Testimonials in Advertising, or Guides, that require disclosure of material connections between an endorser and the company they are endorsing and do not allow marketing using atypical results. The requirements and restrictions of the revised Guides may diminish the impact of our marketing efforts and negatively impact our sales results. If we or our distributors fail to comply with these Guides, the FTC could bring an enforcement action against us and we could be fined and/or forced to alter our operations. Our operations also could be harmed if new laws or regulations are enacted that restrict our ability to market or distribute nutritional supplements or impose additional burdens or requirements on nutritional supplement companies or require us to reformulate our products.

### ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

#### Issuer Purchases of Equity Securities

Period	(a)	(b)	(c)	(d)
	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs (in millions) <sup>(1)</sup>
April 1 – 30, 2011	217,600	\$ 29.44	217,600	\$ 145.9
May 1 – 31, 2011	40,000	\$ 33.46	40,000	\$ 141.0
June 1 – 30, 2011	112,314	\$ 36.62	112,100	\$ 119.3
Total	<u>369,914<sup>(2)</sup></u>			

(1) In August 1998, our board of directors approved a plan to repurchase \$10.0 million of our Class A common stock on the open market or in private transactions. Our board has from time to time increased the amount authorized under the plan and a total amount of approximately \$485.0 million is currently authorized. As of June 30, 2011, we had repurchased approximately \$365.7 million of shares under the plan. There has been no termination or expiration of the plan since the initial date of approval.

(2) We have authorized the repurchase of shares acquired by our employees and distributors in certain foreign markets because of regulatory and other issues that make it difficult or costly for these persons to sell such shares in the open market. These shares were awarded or acquired in connection with our initial public offering in 1996. Of the shares listed in this column, 214 relate to repurchases from such employees and distributors at an average price per share of \$37.84.



**ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

None.

**ITEM 4. (REMOVED AND RESERVED)**

**ITEM 5. OTHER INFORMATION**

- (a) As previously reported in a Form 8-K filed May 31, 2011, at our Annual Meeting of Stockholders on May 24, 2011, a plurality of our stockholders voted in favor of one year as the frequency of stockholder advisory votes on our executive compensation. Accordingly, until the next stockholder advisory vote on the frequency of stockholder advisory votes on our executive compensation, we intend to hold a stockholder advisory vote on our executive compensation annually.
- (b) As previously reported in a Form 8-K filed July 22, 2011, on July 18, 2011 our Board of Directors adopted an amendment and restatement of our bylaws (the "Second Amended and Restated Bylaws"), which, among other amendments, modified provisions regarding advance notice requirements for stockholders to make director nominations, including shortening the advance notice period from 120 days to 90 days for nominations not included in our proxy statement and identifying specific information that must be provided by the nominating stockholder. The Second Amended and Restated Bylaws are filed as Exhibit 3.1 to this quarterly report on Form 10-Q and are incorporated by reference.

**ITEM 6. EXHIBITS**

**Exhibits  
Regulation S-K  
Number**

**Description**

3.1	Second Amended and Restated Bylaws of Nu Skin Enterprises, Inc.
31.1	Certification by M. Truman Hunt, President and Chief Executive Officer, pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification by Ritch N. Wood, Chief Financial Officer, pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification by M. Truman Hunt, President and Chief Executive Officer, pursuant to Section 1350, Chapter 63 of Title 18, United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certification by Ritch N. Wood, Chief Financial Officer, pursuant to Section 1350, Chapter 63 of Title 18, United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

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**SIGNATURE**

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

August 4, 2011

**NU SKIN ENTERPRISES, INC.**

By: /s/ Ritch N. Wood  
Ritch N. Wood  
Its: Chief Financial Officer  
(Duly Authorized Officer and Principal  
Financial and Accounting Officer)





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**SECOND AMENDED AND RESTATED**

**BYLAWS**

**OF**

**NU SKIN ENTERPRISES, INC.**

**ARTICLE 1**

**STOCKHOLDERS**

1.1 Place of Meetings. Meetings of stockholders shall be held: (i) at such place within or without the State of Delaware as may be designated by or in the manner provided in the Certificate of Incorporation of the Corporation, as amended from time to time (the "Certificate of Incorporation") or these Second Amended and Restated Bylaws, as amended from time to time (the "Bylaws"), or if not so designated, as determined by the Board of Directors; (ii) solely by such means of remote communications as may be designated from time to time by the Board of Directors in its sole discretion, which means shall meet the requirements of the Delaware General Corporation Law (the "DGCL"); or (iii) if not otherwise designated, at the registered office of the Corporation.

1.2 Annual Meeting. The annual meeting of stockholders for the election of directors and for the transaction of such other business as may properly be brought before the annual meeting of stockholders shall be held each year on such date and at such time as the Board of Directors shall determine. If the date so determined by the Board of Directors shall fall upon a legal holiday at the place of the annual meeting of stockholders, then such meeting shall be held on the next succeeding business day at the same hour. If no annual meeting of stockholders is held in accordance with the foregoing provisions, the Board of Directors shall cause the annual meeting of stockholders to be held as soon thereafter as convenient.

1.3 Remote Communication. The Board of Directors may permit the stockholders and their proxy holders to participate in meetings of the stockholders (whether such meetings are held at a designated place or solely by means of remote communication) using one or more methods of remote communication that satisfy the requirements of the DGCL. The Board of Directors may adopt such guidelines and procedures applicable to participation in stockholders' meetings by means of remote communication as it deems appropriate. Participation in a stockholders' meeting by means of a method of remote communication permitted by the Board of Directors, in accordance with the DGCL, shall constitute presence in person at such meeting.

1.4 Notice of Meetings. Notice of the place, if any, date and hour of any meeting of stockholders shall be given to each stockholder entitled to vote at such meeting. The notice of a meeting of stockholders shall state the means of remote communication, if any, by which stockholders and proxy holders may be deemed present in person and vote at such meeting. The notice shall also state the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining the stockholders entitled to notice of the meeting. If the voting list for a meeting of stockholders is to be made available by means of an electronic network or if such meeting is to be held solely by remote communication, the notice shall include the information required to access the reasonably accessible electronic network on which the Corporation will make its voting list available either prior to such meeting or, in the case of a meeting of stockholders held solely by remote communication, during such meeting. Notice of a special meeting of stockholders shall also state the purpose or purposes for which such meeting has been called. Unless otherwise provided in the DGCL or the Certificate of Incorporation, notice of a meeting of stockholders shall be given at least 10 days but not more than 60 days before the date of such meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting. Without limiting the manner by which notice may otherwise be given, notice may be given by a form of electronic transmission that satisfies the requirements of the DGCL and has been consented to by the stockholder to whom notice is given. If mailed, notice shall be deemed given when deposited in the United States mail, postage prepaid, directed to the stockholder's address as it appears in the Corporation's records. If given by a form of electronic transmission consented to by the stockholder to whom notice is given, notice shall be deemed given at the times specified with respect to the giving of notice by electronic transmission in the DGCL. An affidavit of the Corporation's Secretary, Assistant Secretary or the transfer agent or other agent of the Corporation that notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated in the affidavit.

1.5 Voting List. At least 10 days before a meeting of stockholders, the Secretary of the Corporation shall prepare a complete alphabetical list of the stockholders entitled to vote at such meeting showing each stockholder's address and the number of shares registered in his or her name; provided, however, if the record date for determining the stockholders entitled to vote is less than 10 days before the meeting date, the list shall reflect the stockholders entitled to vote as of the 10<sup>th</sup> day before the meeting date. This voting list need not include electronic mail addresses or other electronic contact information for any stockholder. For a period of at least 10 days before a meeting of stockholders, the voting list shall be open to the examination of any stockholder for any purpose germane to such meeting either on a reasonably accessible electronic network (provided that the information required to gain access to the list is provided with the notice of the meeting) or during ordinary business hours at the Corporation's principal place of business. If the list is made available on an electronic network, the Corporation may take reasonable steps to ensure that it is available only to stockholders. If the meeting of stockholders is held at a place, the voting list shall be produced and kept at that place for the entire duration of such meeting. If the meeting of stockholders is held solely by means of remote communications, the voting list shall be made available for inspection on a reasonably accessible electronic network for the entire duration of such meeting. In either case, any stockholder may inspect the voting list at any time during the meeting of stockholders. The list shall presumptively determine (i) the identity of the stockholders entitled to examine such stock list and to vote at the meeting and (ii) the number of shares held by each of them.

1.6 Quorum. Unless a larger number is required by the DGCL, the Certificate of Incorporation, these Bylaws, or the rules of any stock exchange upon which the Corporation's securities are listed, at any meeting of stockholders, the holders of a majority of the voting power of all of the shares of the capital stock of the Corporation issued and outstanding and entitled to vote at the meeting of stockholders, present in person or represented by proxy, shall constitute a quorum for the transaction of business. Where a separate vote by a class or classes or series is required, a majority of the voting power of the shares of such class or classes or series present in person or represented by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter. If a quorum shall fail to attend any meeting, the chairman of the meeting may adjourn the meeting to another place, if any, date, or time.

1.7 Adjournments. Any meeting of stockholders may be adjourned by the holders of a majority of the voting power of the stock present, in person or by proxy, and entitled to vote at the meeting, or by any officer of the Corporation entitled to preside at or to act as secretary of such meeting. At any adjourned meeting of stockholders, the stockholders may transact any business that they might have transacted at the original meeting of stockholders. Notice of an adjourned meeting of stockholders need not be given if the time and place, if any, and/or means of remote communications, if any, by which stockholders and proxy holders may be deemed to present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; provided, however, that if the date of any adjourned meeting is more than 30 days after the date for which the meeting was originally noticed, notice of the place, if any, date, and time of the adjourned meeting and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting, shall be given to each stockholder in conformity herewith. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix a new record date for notice of such adjourned meeting, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and, except as otherwise required by law, shall not be more than 60 nor less than 10 days before the date of such adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

1.8 Voting and Proxies. Each stockholder shall have one vote for each share of capital stock entitled to vote that is held of record by such stockholder and a proportionate vote for each fractional share so held, unless otherwise provided in the Certificate of Incorporation. Each stockholder of record entitled to vote at a meeting of stockholders may vote in person or by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting. Any copy, facsimile, telecommunication, or other reliable reproduction of the writing or transmission created pursuant to this Section 1.8 may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile, telecommunication, or other reproduction shall be a complete reproduction of the entire original writing or transmission. No such proxy shall be voted or acted upon after three years from the date of its execution, unless the proxy expressly provides for a longer period.

1.9 Action at Meeting. In all matters other than the election of directors, when a quorum is present at any meeting, a majority of the votes cast affirmatively or negatively shall decide any matter to be voted upon by the stockholders at such meeting, except when a different vote is required by express provision of the DGCL, the Certificate of Incorporation, these Bylaws, or the rules of any stock exchange upon which the Corporation's securities are listed. All elections of directors by the stockholders shall be determined by a plurality of the votes cast by the stockholders entitled to vote at the election. Any action required or permitted to be taken by the stockholders may be effected without a meeting by a written consent in accordance with Section 8.1 of the Certificate of Incorporation.

1.10 Advance Notice of Stockholder Business or Director Nominations. Nominations of persons for election to the Board of Directors and the proposal of business to be transacted by the stockholders may be made at an annual meeting of stockholders (i) pursuant to the Corporation's proxy materials, (ii) by or at the direction of the Board of Directors (or any duly authorized committee thereof), or (iii) by any stockholder of record (the "Record Stockholder") of the Corporation at the time of the giving of the notice required in this Section 1.10 and in Section 1.11 hereof who is entitled to vote at the meeting and who has complied with the notice procedures set forth in this Section 1.10 and in Section 1.11 hereof. For the avoidance of doubt, the foregoing clause (iii) shall be the exclusive means for a stockholder to make nominations or propose business (other than business included in the Corporation's proxy materials pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (such act, and the rules and regulations promulgated thereunder, the "1934 Act"), at an annual meeting of stockholders.

1.11 Advance Notice Requirements . For nominations or business to be properly brought before an annual meeting by a Record Stockholder pursuant to clause (iii) of Section 1.10 hereof, (i) the Record Stockholder must have given timely notice thereof in writing to the Secretary of the Corporation, (ii) any such business must be a proper matter for stockholder action under Delaware law, and (iii) the Record Stockholder and the beneficial owner, if any, on whose behalf any such proposal or nomination is made must have acted in accordance with the representations set forth in the Solicitation Statement required by these Bylaws. To be timely, a Record Stockholder's notice must: (i) in the case of a proposal submitted for inclusion in the Corporation's proxy statement and form of proxy statement pursuant to Rule 14a-8 under the 1934 Act, meet the deadline for proposals submitted under such rule; or (ii) in the case of all other matters, be received by the Secretary at the principal executive offices of the Corporation not less than 90 days prior to the one-year anniversary of the date on which the Corporation first mailed its proxy materials in connection with the previous year's annual meeting of the stockholders except that if no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than 30 days from the one-year anniversary of the previous year's annual meeting, a Record Stockholder's notice must be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the later of (a) the 90<sup>th</sup> day before such annual meeting or (b) the 10<sup>th</sup> day following the day on which public announcement of the date of such meeting is first made. Notwithstanding anything in the preceding sentence to the contrary, in the event that the number of directors to be elected by the Board of Directors is increased and there has been no public announcement naming all of the nominees for director or indicating the increase in the size of the Board of Directors made by the Corporation at least 10 days before the last day a Record Stockholder may deliver a notice of nomination in accordance with the preceding sentence, a Record Stockholder's notice required by these Bylaws shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be received by the Secretary at the principal executive offices of the Corporation not later than the close business on the 10<sup>th</sup> day following the day on which public announcement is first made by the Corporation. Notwithstanding anything in this Section 1.11 to the contrary, in no event shall an adjournment or postponement of an annual meeting for which notice has been given commence a new time period for the giving of a Record Stockholder's notice. Such Record Stockholder's notice shall set forth: (i) if such notice pertains to the nomination of directors, as to each person whom the Record Stockholder proposes to nominate for election or reelection as a director the name, age, business address, residence address, and principal occupation of such person, all information relating to such person as would be required to be disclosed in solicitations of proxies for the election of such nominees as directors pursuant to Regulation 14A under the 1934 Act, and such person's written consent to serve as a director if elected; (ii) as to any business that the Record Stockholder proposes to bring before the meeting, a complete description of the business desired to be brought before the annual meeting, and the reasons for conducting such business at the annual meeting; (iii) the name and record address of the Record Stockholder, the beneficial owner, if any, on whose behalf the proposal or nomination is made, and any Associated Person if any information with respect to such Associated Person is required to be disclosed under any other provision of this Section 1.11; (iv) the class, series, and number of shares of the Corporation's capital stock that are owned, directly or indirectly, beneficially or of record by the Record Stockholder, the beneficial owner, if any, on whose behalf the proposal or nomination is made, any Associated Person (as defined below) of such Record Stockholder, and any nominee for election or reelection as a director; (v) 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 capital stock of the Corporation or otherwise (a "Derivative Instrument") directly or indirectly owned beneficially by the Record Stockholder, the beneficial owner, if any, on whose behalf the proposal or nomination is made, any Associated Person of such Record Stockholder, or any nominee for election or reelection as a director, 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) any proxy, contract, arrangement, understanding, or relationship pursuant to which the Record Stockholder, a beneficial owner, if any, on whose behalf the nomination or proposal is made, any Associated Person of such Record Stockholder, or any nominee for election or reelection as a director has a right to vote, directly or indirectly, any shares of any security of the Corporation; (vii) any short interest in any security of the Corporation held by the Record Stockholder, a beneficial owner, if any, on whose behalf the nomination or proposal is made, any Associated Person of such Record Stockholder, or any nominee for election or reelection as a director (for purposes of this Section 1.11, 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) any rights to dividends on the shares of the Corporation owned beneficially directly or indirectly by the Record Stockholder, a beneficial owner, if any, on whose behalf the

nomination or proposal is made, any Associated Person of such Record Stockholder, or any nominee for election or reelection as a director that are separated or separable from the underlying shares of the Corporation; (ix) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which the Record Stockholder, a beneficial owner, if any, on whose behalf the nomination or proposal is made, any Associated Person of such Record Stockholder, or any nominee for election or reelection as a director is a general partner or, directly or indirectly, beneficially owns an interest in a general partner; (x) any performance-related fees (other than an asset-based fee) that the Record Stockholder, beneficial owner, if any, on whose behalf the nomination or proposal is made, any Associated Person of such Record Stockholder, or any nominee for election or reelection as a director is directly or indirectly entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice, including without limitation any such interests held by members of each such party's immediate family sharing the same household; (xi) any material interest of the Record Stockholder, the beneficial owner, if any, on whose behalf the proposal or nomination is made, or any Associated Person of such Record Stockholder in such business or nomination including any agreements the Record Stockholder or any Associated Person of such record stockholder may have with others in connection with such business; (xii) a representation that the Record 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 introduce the business or nomination or nominations specified in the notice; (xiii) any other information relating to the Record Stockholder and the beneficial owner, if any, on whose behalf the proposal or nomination is made that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or the election of directors in a contested election pursuant to Section 14 of the 1934 Act; (xiv) if such notice pertains to the nomination of directors, a description of all arrangements, understandings, or material relationships between the Record Stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the Record Stockholder; and (xv) a statement whether or not each of the Record Stockholder and the beneficial owner, if any, on whose behalf such nomination or proposal is made will deliver a proxy statement and form of proxy to holders of, in the case of a proposal, at least the percentage of voting power of all of the shares of capital stock of the Corporation required under applicable law to carry the proposal or, in the case of a nomination or nominations, at least the percentage of voting power of all of the shares of capital stock of the Corporation reasonably believed by the Record Stockholder or beneficial owner, as the case may be, to be sufficient to elect the nominee or nominees proposed to be nominated by the Record Stockholder (such statement, a "Solicitation Statement"). If any of the foregoing information changes in any material respect from the date the notice is received through the date of the meeting, the Record Stockholder shall promptly supplement such information to reflect such change by notice in writing and delivered to or mailed and received by the Secretary of the Corporation at the Corporation's principal executive offices. For purposes of this Section 1.11, "Associated Person" of any stockholder or proposed nominee shall mean (i) any member of the immediate family of such stockholder or proposed nominee sharing the same household with such stockholder or proposed nominee; (ii) any person controlling, controlled by, or under common control with, such stockholder or proposed nominee; (iii) any person acting in concert or as part of a group (within the meaning of the 1934 Act and the regulations promulgated thereunder) with such stockholder or proposed nominee; or (iv) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder or proposed nominee. No business shall be conducted at any annual meeting except business brought before the annual meeting in accordance with the procedures set forth in this Section 1.11 and in Section 1.10 hereof. Subject to the rights of any holders of a class of preferred stock of the Corporation, no person shall be eligible for election as a director of the Corporation unless (i) the person is nominated by a Record Stockholder in accordance with this Section 1.11 and in Section 1.10 hereof or (ii) the person is nominated by or at the direction of the Board of Directors. The chairman of the meeting shall have the power and the duty to determine whether a nomination or any business proposed to be brought before the meeting has been made in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such defectively proposed business or nomination shall not be presented for stockholder action at the meeting and shall be disregarded. For purposes of these Bylaws, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press, or a comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act. Notwithstanding the foregoing provisions of this Section 1.11, a stockholder shall also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder with respect to matters set forth in this Section 1.11 and in Section 1.10 hereof. Nothing in this Section 1.11 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act.

1.12 Special Meetings. Except as otherwise required by the DGCL, special meetings of stockholders may be called only by the Chairman of the Board, the President or the Board of Directors pursuant to a resolution adopted by the affirmative vote of a majority of the Whole Board. For purposes of these Bylaws, the term "Whole Board" shall mean the total number of authorized directors whether or not there exist any vacancies in previously authorized directorships. Except as otherwise required by the DGCL, stockholders of the Corporation shall not have the right to request or call a special meeting of the stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting by or at the direction of the Board of Directors. The Board of Directors may postpone or reschedule any previously scheduled special meeting. The notice of such special meeting shall include the purpose for which the meeting is called. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected (i) by or at the direction of the Board of Directors or (ii) by any stockholder of record at the time of giving of notice provided for in this paragraph, who shall be entitled to vote at the meeting and who delivers a written notice to the Secretary setting forth the information required for nominations by a stockholder of record in Section 1.11 hereof. Nominations by stockholders of persons for election to the Board of Directors may be made at such a special meeting of stockholders only if such stockholder of record's notice required by the preceding sentence shall be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the later of the 90<sup>th</sup> day prior to such special meeting or the 10<sup>th</sup> day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall an adjournment, or postponement of a special meeting for which notice has been given, commence a new time period for the giving of a stockholder of record's notice. A person shall not be eligible for election or reelection as a director at a special meeting unless the person is nominated (i) by or at the direction of the Board of Directors or (ii) by a stockholder of record in accordance with the notice procedures set forth in this Article 1. Notwithstanding the foregoing provisions of this Section 1.12, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to matters set forth in this Section 1.12. Nothing in this Section 1.12 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

1.13 Organization. Unless otherwise provided by the Board of Directors, the Chairman of the Board, or, in his or her absence, such person as may be designated by the Board of Directors, or, in his or her absence, such person as may be chosen by the holders of a majority of the voting power of the shares entitled to vote who are present, in person or by proxy, shall call to order any meeting of the stockholders and act as chairman of the meeting. In the absence of the Secretary of the Corporation, the secretary of the meeting shall be such person as the chairman of the meeting appoints.

1.14 Conduct of Business. The chairman of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seem to him or her in order. The chairman shall have the power to adjourn the meeting to another place, if any, date and time. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting.

1.15 Inspectors. The Corporation may, and to the extent required by law, shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The Corporation may designate one or more alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting may, and to the extent required by law, shall, appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. Every vote taken by ballots shall be counted by a duly appointed inspector or inspectors.

## **ARTICLE 2**

### **DIRECTORS**

2.1 General Powers. The business and affairs of the Corporation shall be managed by or under the direction of a Board of Directors, who may exercise all of the powers of the Corporation except as otherwise provided by the DGCL, the Certificate of Incorporation or these Bylaws. In the event of a vacancy on the Board of Directors, the remaining directors, except as otherwise provided by the DGCL, may exercise the powers of the full Board of Directors until the vacancy is filled.

2.2 Number; Election; Tenure and Qualification. Subject to the rights of the holders of any series of preferred stock to elect directors under specified circumstances, the number of directors of the Corporation shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the Whole Board, but the total number of directors shall not be less than three nor more than 15. Directors need not be stockholders of the Corporation. Directors shall be elected at the annual meeting of stockholders or, if, in accordance with Section 1.9 hereof, no such annual meeting is held, by written consent in lieu of meeting pursuant to Section 1.9 hereof, and each director shall hold office until his or her successor is duly elected and qualified, or until his or her earlier death or resignation or removal in the manner hereinafter provided.



2.3 Vacancies. Except as otherwise required by the DGCL and subject to the rights of the holders of shares of Preferred Stock, any vacancy on the Board of Directors for any reason and any newly-created directorship resulting by reason of any increase in the number of directors may be filled only by the Board of Directors (and not by the stockholders), by resolution adopted by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum (or by a sole remaining director); provided, however, that if not so filled, any such vacancy shall be filled by the stockholders at the next annual meeting or at a special meeting called for that purpose; provided further, that a vacancy created by the removal of a director by the vote of the stockholders or by court order may be filled only by the affirmative vote of a majority of the shares of the Corporation's capital stock represented and voting at a duly held meeting at which a quorum is present (which shares voting affirmatively also constitute a majority of the required quorum) or by written consent in accordance with Section 1.9 hereof. Any director so elected shall hold office until the next meeting of stockholders at which directors are elected and until his or her successor is elected and qualified. No decrease in the number of authorized directors shall shorten the term of any incumbent director.

2.4 Resignation. Any director may resign at any time upon notice given in writing or by electronic transmission to the Corporation. Such resignation shall be effective upon delivery unless it is specified to be effective at some later effective date or upon the happening of some other event.

2.5 Removal. Any director or the entire Board of Directors may be removed, only as permitted by the DGCL and Section 5 of the Certificate of Incorporation.

2.6 Regular Meetings. Regular meetings of the Board of Directors may be held without notice at such times and places as shall be determined from time to time by the Board of Directors, provided that any director who is absent when such a determination is made shall be given notice of the determination. A regular meeting of the Board of Directors may be held without notice immediately after and at the same place as the annual meeting of stockholders.

2.7 Special Meetings. Special meetings of the Board of Directors may be called by the Chairman of the Board, the President, a majority of the Whole Board, or by one director in the event that there is only a single director then in office and shall be held at such place, on such date, and at such time as he or she or they shall fix. Notice of any special meeting of the Board of Directors shall be given to each director by whom it is not waived and shall state the time and place for the special meeting.

2.8 Notice of Special Meetings. Any time it is necessary to give notice of a meeting of the Board of Directors, notice shall be given: (i) in person or by telephone to each director at least 24 hours in advance of such meeting; (ii) by personally delivering written notice to each director's last known business or home address at least 24 hours in advance of such meeting; (iii) by delivering an electronic transmission (including, without limitation, via telefacsimile or electronic mail) to each director's last known number or address for receiving electronic transmissions of that type at least 24 hours in advance of such meeting; (iv) by depositing written notice with a reputable delivery service or overnight carrier addressed to each director's last known business or home address for delivery to that address no later than the second business day preceding the date of such meeting; or (v) by depositing written notice in the United States mail, postage prepaid, addressed to each director's last known business or home address no later than the fourth business day preceding the date of such meeting. Notice of a meeting of the Board of Directors need not be given to any director who attends such meeting without objecting prior to such meeting or at its commencement to the lack of notice to that director. A notice of a meeting of the Board of Directors need not specify the purposes of such meeting. Unless otherwise indicated in the notice hereof, any and all business may be transacted at a special meeting.

2.9 Use of Communications Equipment. Directors may participate in meetings of the Board of Directors or any committee of the Board of Directors by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting in this manner shall constitute presence in person at the meeting.

2.10 Quorum. A majority of the total number of the Whole Board, as established pursuant to Section 2.2 hereof, shall constitute a quorum at all meetings of the Board of Directors. In the absence of a quorum at any such meeting, a majority of the directors present may adjourn the meeting to another place, date or time, without further notice or waiver thereof other than announcement at the meeting, until a quorum shall be present.

2.11 Action at Meeting. At any meeting of the Board of Directors at which a quorum is present, the vote of a majority of those present shall be sufficient to take any action, unless a different vote is specified by the DGCL, the Certificate of Incorporation, or these Bylaws. For so long as the Corporation's Board of Directors consists of an even number of directors, a majority of the Board of Directors for purposes of these Bylaws shall equal one or more than are half of the directors then in office.

2.12 Action Without a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all of the directors consent to the action in writing or by electronic transmission. The writing or writings or electronic transmission or transmissions shall be filed with the minutes of the proceedings of the Board of Directors. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

2.13 Committees. The Board of Directors may from time to time designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee and any alternate member in his or her place, the member or members of the committee present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors and subject to the provisions of the DGCL, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation. Each such committee shall keep minutes and make such reports as the Board of Directors may from time to time request. Except as the Board of Directors may otherwise determine or as otherwise provided herein or required by the DGCL, any committee may make rules for the conduct of its business, but unless otherwise so provided, its business shall be conducted as nearly as possible in the same manner as is provided in these Bylaws for the Board of Directors. Adequate provision shall be made for notice to members of all meetings; one-third of the members shall constitute a quorum unless the committee shall consist of one or two members, in which event one member shall constitute a quorum; and all matters shall be determined by a majority vote of the members present. Action may be taken by any committee without a meeting if all members thereof consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of the proceedings of such committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

2.14 Compensation for Directors. Directors may be paid such compensation for their services and such reimbursement for expenses of attendance at meetings as the Board of Directors may from time to time determine. No such payment shall preclude any director from serving the Corporation or any of its parent or subsidiary Corporations in any other capacity and receiving compensation for such service. Members of special or standing committees may be allowed compensation for attending committee meetings.

### **ARTICLE 3**

#### **OFFICERS**

3.1 Enumeration; Qualification. The officers of the Corporation shall consist of a Chairman of the Board, a President, a Secretary, a Chief Financial Officer, a Treasurer and such other officers with such other titles as the Board of Directors shall determine, including one or more Vice Presidents, Assistant Treasurers and Assistant Secretaries. Any officer may be, but need not be, a director or stockholder of the Corporation. Any two or more offices may be held by the same person.

3.2 Election; Term of Office. The Board of Directors may elect officers at any time. Each officer shall hold office until his or her successor is elected and qualified, unless a different term is specified in the resolution electing the officer, or until his or her earlier death, resignation or removal.

3.3 Resignation and Removal. Any officer may resign by delivering his or her written resignation to the Corporation at its principal office or to the President or the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event. The Board of Directors, or a committee duly authorized to do so, may remove any officer with or without cause. Except as the Board of Directors may otherwise determine, no officer who resigns or is removed shall have any right to any compensation as an officer for any period following his or her resignation or removal, or any right to damages on account of such removal, whether his or her compensation be by the month or by the year or otherwise, unless such compensation is expressly provided in a duly authorized written agreement with the Corporation.

3.4 Vacancies. The Board of Directors may fill any vacancy occurring in any office for any reason and may, in its discretion, leave unfilled for such period as it may determine any offices other than those of President, Treasurer and Secretary. Each such successor shall hold office for the unexpired term of his or her predecessor and until his or her successor is elected and qualified, or until his or her earlier death, resignation or removal.

3.5 Chairman of the Board and Vice Chairman of the Board. The Chairman of the Board shall, when present, preside at all meetings of the Board of Directors and, unless otherwise provided by the Board of Directors, at all meetings of stockholders. He or she shall perform such duties and possess such powers as are usually vested in the office of the Chairman of the Board or as may be vested in him or her by the Board of Directors. If the Board of Directors appoints a Vice Chairman of the Board, he or she shall, in the absence or disability of the Chairman of the Board, and unless otherwise provided by these Bylaws, perform the duties and exercise the powers of the Chairman of the Board and shall perform such other duties and possess such other powers as may from time to time be vested in him or her by the Board of Directors.

3.6 President. Unless otherwise determined by the Board of Directors, the President shall be the Chief Executive Officer of the Corporation. The President shall, subject to these Bylaws and the direction of the Board of Directors, have general supervision and control of the business and affairs of the Corporation. He or she shall have power to sign all stock certificates, contracts and other instruments of the Corporation which are authorized and shall have general supervision and direction of all of the other officers, employees and agents of the Corporation. The President shall perform such other duties and shall have such other powers as the Board of Directors may from time to time prescribe.

3.7 Chief Financial Officer. The Chief Financial Officer shall perform such duties and shall have such powers as the Board of Directors or the President may from time to time prescribe. In addition, the Chief Financial Officer shall perform such duties and have such powers as are incident to the office of the chief financial officer, including without limitation the duty and power to be responsible for the financial affairs of the Corporation and to render, as required by the Board of Directors or the President, statements of the financial condition of the Corporation.

3.8 Vice Presidents. Any Vice President shall perform such duties and possess such powers as the Board of Directors or the President may from time to time prescribe. In the event of the absence, inability or refusal to act of the President, the Vice President (or if there shall be more than one Vice President, the Vice Presidents in the order determined by the Board of Directors) shall perform the duties of the President and when so performing shall have all the powers of and be subject to all the restrictions upon the President. The Board of Directors may assign to any Vice President the title of Executive Vice President, Senior Vice President or any other title selected by the Board of Directors.

3.9 Secretary and Assistant Secretary. The Secretary shall perform such duties and shall have such powers as the Board of Directors or the President may from time to time prescribe. In addition, the Secretary shall perform such duties and have such powers as are incident to the office of the secretary, including without limitation the duty and power to give notices of all meetings of stockholders and special meetings of the Board of Directors, to attend all meetings of stockholders and the Board of Directors and keep a record of the proceedings, to maintain a stock ledger and prepare lists of stockholders and their addresses as required and to be the custodian of corporate books and records. Any Assistant Secretary shall perform such duties and possess such powers as the Board of Directors, the President or the Secretary may from time to time prescribe. In the event of the absence, inability or refusal to act of the Secretary, the Assistant Secretary (or if there shall be more than one Assistant Secretary, the Assistant Secretaries in the order determined by the Board of Directors) shall perform the duties and exercise the powers of the Secretary. In the absence of the Secretary or any Assistant Secretary at any meeting of stockholders or directors, the person presiding at the meeting shall designate a temporary Secretary to keep a record of the meeting.

3.10 Treasurer and Assistant Treasurer. The Treasurer shall perform such duties and shall have such powers as may from time to time be assigned to him or her by the Board of Directors or the President. In addition, the Treasurer shall perform such duties and have such powers as are incident to the office of treasurer, including without limitation the duty and power to keep and be responsible for all funds and securities of the Corporation, to deposit funds of the Corporation in depositories selected in accordance with these Bylaws, to disburse such funds as ordered by the Board of Directors, to make proper accounts of such funds and to render, as required by the Board of Directors, statements of all such transactions. Any Assistant Treasurers shall perform such duties and possess such powers as the Board of Directors, the President or the Treasurer may from time to time prescribe. In the event of the absence, inability or refusal to act of the Treasurer, the Assistant Treasurer (or if there shall be more than one Assistant Treasurer, the Assistant Treasurers in the order determined by the Board of Directors) shall perform the duties and exercise the powers of the Treasurer.

3.11 Bonded Officers. The Board of Directors may require any officer to give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors upon such terms and conditions as the Board of Directors may specify, including without limitation a bond for the faithful performance of his or her duties and for the restoration to the Corporation of all property in his or her possession or under his or her control belonging to the Corporation.

3.12 Salaries. Officers of the Corporation shall be entitled to such salaries, compensation or reimbursement as shall be fixed or allowed from time to time by the Board of Directors or a committee of the Board of Directors or by such officers as may be designated by resolution of the Board of Directors.

3.13 Delegation of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding any provision hereof.

## **ARTICLE 4**

### **CAPITAL STOCK**

4.1 Certificates of Stock. The Corporation's shares of stock shall be represented by certificates, provided that the Board of Directors may, subject to the limits imposed by law, provide by resolution or resolutions that some or all of any or all classes or series shall be uncertificated shares. Shares of stock represented by certificates shall be in such form as shall be approved by the Board of Directors, to the extent consistent with applicable law. Stock certificates shall be numbered in the order of their issue and shall be signed by or in the name of the Corporation by: (i) the chairperson or vice chairperson, if any, of the Board of Directors, or the president or a vice president; and (ii) the treasurer, an assistant treasurer, the secretary or an assistant secretary. Any or all of the signatures on a certificate may be a facsimile. In case any officer, transfer agent or registrar who signed or whose facsimile signature has been placed upon a certificate shall have ceased to be an officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. Each certificate that is subject to any restriction on transfer shall have conspicuously noted on its face or back either the full text of the restriction or a statement of the existence of the restriction.

4.2 Transfers of Stock. Subject to the restrictions, if any, stated or noted on the stock certificates, shares of the capital stock of the Corporation shall be transferred on the books of the Corporation by the holder thereof in person or by his or her attorney, (i) with regard to certificated shares, upon surrender for cancellation of certificates for the same number of shares, with an assignment and power of transfer endorsed thereon or attached thereto, duly executed, and with such proof of the authenticity of the signature as the Corporation or its agents may reasonably require, and (ii) with regard to uncertificated shares, upon delivery of an instruction duly executed, and with such proof of the authenticity of the signature as the Corporation or its agents may reasonably require. Whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of transfer if, when the certificates are presented to the Corporation for transfer or uncertificated shares are requested to be transferred, both the transferor and transferee request the Corporation to do so. Except as may be otherwise required by the DGCL, by the Certificate of Incorporation or by these Bylaws, the Corporation shall be entitled to treat the record holder of shares of capital stock as shown on its books as the owner of such stock for all purposes, including the payment of dividends and the right to vote with respect to such capital stock, regardless of any transfer, pledge or other disposition of such stock until the shares have been transferred on the books of the Corporation in accordance with the requirements of these Bylaws.

4.3 Lost, Stolen or Destroyed Certificates. The Corporation may issue (i) a new stock certificate or (ii) uncertificated shares in place of any certificates previously issued by the Corporation alleged to have been lost, stolen or destroyed, upon such terms and conditions as the Board of Directors may prescribe, including the presentation of reasonable evidence of such loss, theft or destruction and the giving of such indemnity as the Board of Directors may require for the protection of the Corporation or any transfer agent or registrar.

4.4 Record Date. In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may, except as otherwise required by law, fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders 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. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the foregoing provisions of this Section 4.4 at the adjourned meeting. In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by the DGCL, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by the DGCL, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action. In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

4.5 Regulations. The issue, transfer, conversion and registration of certificates of stock shall be governed by such other regulations as the Board of Directors may establish.

## ARTICLE 5

### INDEMNIFICATION AND INSURANCE

#### 5.1 Indemnification.

(a) Subject to paragraph (d) of this Section 5.1 and the Certificate of Incorporation, the Corporation shall, to the fullest extent permitted by law, 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 or she is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise, against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement or other disposition actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she 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 or her 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, of itself, create a presumption that the person did not act in good faith and in a manner he or she 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 reasonable cause to believe that his or her conduct was unlawful.

(b) Subject to paragraph (d) of this Section 5.1 and the Certificate of Incorporation, the Corporation shall, to the fullest extent permitted by law, 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 or she is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise against all expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation. Notwithstanding the foregoing, no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of the State of Delaware or 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 that the Court of Chancery or such other court shall deem proper.

(c) To the extent that a present or former 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 paragraphs (a) and (b) of this Section 5.1, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

(d) Any indemnification under paragraphs (a) and (b) of this Section 5.1 (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in paragraphs (a) and (b) of this Section 5.1. Such determination shall be made (i) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, (ii) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (iii) by the stockholders of the Corporation.



(e) Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation pursuant to this Article 5. Such expenses (including attorneys' fees) incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board of Directors deems appropriate.

(f) If a claim under this Article 5 is not paid in full by the Corporation within 60 days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. To the fullest extent permitted by law, if successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (ii) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article 5 or otherwise shall be on the Corporation.

(g) The indemnification and advancement of expenses provided by, or granted pursuant to, other subsections of this Article 5 shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any law, bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding office.

(h) For purposes of this Article 5, references to “the Corporation” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger that, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article 5 with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

(i) For purposes of this Article 5, references to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the Corporation” shall include any service as a director, officer, employee or agent of the Corporation that imposes duties on, or involves service by, such director, officer, employee or agent with respect to any employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this Article 5.

(j) The indemnification and advancement of expenses provided by, or granted pursuant to, this Article 5 shall, unless otherwise provided when authorized or ratified, continue as to a 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.

5.2 Effect of Amendment. Neither the amendment, modification or repeal of this Article 5 nor the adoption of any provision in these Bylaws inconsistent with this Article 5 shall adversely affect any right or protection of any director, officer, employee or agent with respect to any act or omission that occurred prior to the time of such amendment, modification, repeal or adoption.

5.3 Insurance for Indemnification. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of Section 145 of the DGCL.

## **ARTICLE 6**

### **GENERAL PROVISIONS**

6.1 Fiscal Year. Except as from time to time otherwise designated by the Board of Directors, the fiscal year of the Corporation shall end on December 31 of each year.

6.2 Execution of Instruments. The President, the Chief Executive Officer, the Chief Financial Officer, any Vice President, the Secretary, any Assistant Secretary or the Treasurer shall have power to execute and deliver on behalf of and in the name of the Corporation any instrument requiring the signature of an officer of the Corporation, except as otherwise provided in these Bylaws, or where the execution and delivery of such an instrument shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation.

6.3 Waiver of Notice. A written waiver of any notice, signed by a stockholder or director, or waiver by electronic transmission by such person, whether before, at or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person. Any such waiver shall be filed with the records of the Corporation. If any stockholder or director shall be present at any meeting it shall constitute a waiver of notice of the meeting, except when that stockholder or director attends 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. A waiver of notice of meeting need not specify the business or purposes of the meeting.

6.4 Electronic Transmissions. For purposes of these Bylaws, "electronic transmission" shall mean a form of communication that satisfies the requirements with respect to such communication contained in the DGCL.

6.5 Voting of Securities. Except as the Board of Directors may otherwise designate, the President, the Chief Executive Officer, the Chief Financial Officer, any Vice President, the Secretary, any Assistant Secretary or the Treasurer shall have the power to vote and otherwise act on behalf of the Corporation, in person or by proxy (or to appoint any person or persons to so vote and otherwise act in person or by proxy), at any meeting of stockholders of any other corporation in which this Corporation may hold securities and otherwise to exercise any and all rights and powers which this Corporation may possess by reason of its ownership of securities in such other corporation.

6.6 Evidence of Authority. A certificate by the Secretary, or an Assistant Secretary, or a temporary Secretary, as to any action taken by the stockholders, the Board of Directors, any committee of the Board of Directors or any officer or representative of the Corporation shall, as to all persons who rely on the certificate in good faith, be conclusive evidence of such action.

6.7 Certificate of Incorporation. All references in these Bylaws to the Certificate of Incorporation shall be deemed to refer to the Certificate of Incorporation of the Corporation, as amended and in effect from time to time. These Bylaws are subject to the provisions of the Certificate of Incorporation, the DGCL and other applicable laws, rules and regulations.

6.8 Transactions with Interested Parties. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other Corporation, partnership, association or other organization in which one or more of the Corporation's directors or officers serves as a director or officer, or has a financial interest, shall be void or voidable solely for that reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or of a committee of the Board of Directors that authorizes the contract or transaction or solely because his or her or their votes are counted for such purpose, if:

(a) The material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors may be less than a quorum;

(b) The material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by a vote of the stockholders; or

(c) The contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee of the Board of Directors or the stockholders. Interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee that authorizes the contract or transaction.

6.9 Facsimile Signatures. In addition to the provisions for use of facsimile signatures elsewhere specifically authorized in these Bylaws, facsimile signatures of any officer or officers of the Corporation may be used whenever and as authorized by the Board of Directors or a committee thereof.

6.10 Corporate Seal. The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary. If and when so directed by the Board of Directors or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or Assistant Treasurer.

6.11 Reliance Upon Books, Reports and Records. Each director, each member of any committee designated by the Board of Directors, and each officer of the Corporation shall, in the performance of his or her or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board of Directors so designated, or by any other person as to matters which such director, committee member, or officer reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

6.12 Time Periods. Unless otherwise specified by these Bylaws, in applying any provision of these Bylaws which requires that an act be done or not be done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

6.13 Severability. Any determination that any provision of these Bylaws is for any reason inapplicable, illegal or ineffective shall not affect or invalidate any other provision of these Bylaws.

6.14 Pronouns. All pronouns used in these Bylaws shall be deemed to refer to the masculine, feminine or neuter gender, singular or plural, as the identity of the person or persons may require.

## **ARTICLE 7**

### **AMENDMENTS**

7.1 By the Board of Directors. Subject to the provisions of the Certificate of Incorporation, these Bylaws may be altered, amended or repealed or new bylaws may be adopted by the affirmative vote of a majority of the Whole Board.

7.2 By the Stockholders. Subject to the provisions of the Certificate of Incorporation, these Bylaws may be altered, amended or repealed or new bylaws may be adopted by the affirmative vote of the holders of at least two-thirds of the voting power of all shares of the capital stock of the Corporation then entitled to vote generally in the election of directors, voting as a single class, either by written consent or at any annual meeting of the stockholders, or at any special meeting of the stockholders, provided notice of such alteration, amendment, repeal or adoption of new bylaws shall have been stated in the notice of such special meeting.



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**EXHIBIT 31.1**

**SECTION 302 – CERTIFICATION OF CHIEF EXECUTIVE OFFICER**

I, M. Truman Hunt, certify that:

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

Date: August 4, 2011  
M. Truman Hunt  
Chief Executive Officer

/s/ M. Truman Hunt

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**EXHIBIT 31.2**  
**SECTION 302 – CERTIFICATION OF CHIEF FINANCIAL OFFICER**

I, Ritch N. Wood, certify that:

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

Date: August 4, 2011  
Ritch N. Wood  
Chief Financial Officer

/s/ Ritch N. Wood

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**EXHIBIT 32.1**  
**SECTION 1350 CERTIFICATION OF CHIEF EXECUTIVE OFFICER**

CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the quarterly report of Nu Skin Enterprises, Inc. (the "Company") on Form 10-Q for the period ended June 30, 2011, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, M. Truman Hunt, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

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

Date: August 4, 2011

/s/ M. Truman Hunt  
M. Truman Hunt  
Chief Executive Officer

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**EXHIBIT 32.2**  
**SECTION 1350 CERTIFICATION OF CHIEF FINANCIAL OFFICER**

CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the quarterly report of Nu Skin Enterprises, Inc. (the "Company") on Form 10-Q for the period ended June 30, 2011, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Ritch N. Wood, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

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

Date: August 4, 2011

/s/ Ritch N. Wood  
Ritch N. Wood  
Chief Financial Officer

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