

FORM 10-Q

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

(MARK ONE)

[X] QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE QUARTER ENDED JUNE 30, 2000 OR

[] TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Commission file number 1-12317

NATIONAL-OILWELL, INC.

(Exact name of registrant as specified in its charter)

DELAWARE

76-0475875

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification No.)

10000 RICHMOND AVENUE
4TH FLOOR
HOUSTON, TEXAS
77042-4200

(Address of principal executive offices)

(713) 346-7500

(Registrant's telephone number, including area code)

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

As of August 8, 2000, 80,055,764 common shares were outstanding, assuming the exchange on a one-for-one basis of all Exchangeable Shares of Dreco Energy Services Ltd. into shares of National-Oilwell, Inc. common stock.

PART I - FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

NATIONAL-OILWELL, INC.
 CONSOLIDATED BALANCE SHEETS
 (IN THOUSANDS, EXCEPT SHARE DATA)

	June 30, 2000 ----- (Unaudited)	December 31, 1999 -----
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 24,092	\$ 48,091
Marketable securities, at fair value (cost of \$13,437 at December 31, 1999)	-	14,686
Receivables, less allowance of \$6,970 and \$7,246	241,030	200,396
Inventories	364,690	348,024
Deferred income taxes	17,929	10,684
Income taxes receivable	16,154	12,888
Prepays and other current assets	8,699	7,776
	-----	-----
	672,594	642,545
Property, plant and equipment, net	156,682	154,844
Deferred income taxes	11,553	11,726
Goodwill	305,640	177,377
Property held for sale	7,424	7,424
Other assets	5,145	5,488
	-----	-----
	\$1,159,038	\$ 999,404
	=====	=====
LIABILITIES AND OWNERS' EQUITY		
Current liabilities:		
Current portion of long-term debt	\$ 170	\$ 300
Accounts payable	134,669	106,219
Customer prepayments	19,915	18,776
Accrued compensation	8,102	4,232
Other accrued liabilities	59,152	61,003
	-----	-----
	222,008	190,530
Long-term debt	183,160	196,053
Deferred income taxes	3,037	6,138
Other liabilities	11,364	10,308
	-----	-----
	419,569	403,029
Commitments and contingencies		
Stockholders' equity:		
Common stock - par value \$.01; 79,900,371 shares and 71,736,609 shares issued and outstanding at June 30, 2000 and December 31, 1999	799	717
Additional paid-in capital	573,841	415,701
Accumulated other comprehensive income	(22,073)	(11,923)
Retained earnings	186,902	191,880
	-----	-----
	739,469	596,375
	-----	-----
	\$1,159,038	\$ 999,404
	=====	=====

The accompanying notes are an integral part of these statements.

NATIONAL-OILWELL, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)
(IN THOUSANDS, EXCEPT SHARE DATA)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2000	1999	2000	1999
Revenues	\$270,305	\$195,004	\$ 534,196	\$422,270
Cost of revenues	212,121	165,687	418,298	343,768
Gross profit	58,184	29,317	115,898	78,502
Selling, general and administrative	44,555	39,750	90,796	78,008
Special charges	13,000	653	13,000	1,458
Operating income/(loss)	629	(11,086)	12,102	(964)
Other income (expense):				
Interest and financial costs	(4,788)	(3,671)	(9,470)	(8,010)
Interest income	790	654	1,421	1,142
Other	(8,276)	(3,758)	(8,469)	(6,238)
Income/(loss) before income taxes	(11,645)	(17,861)	(4,416)	(14,070)
Provision/(benefit) for income taxes	(2,181)	(5,828)	564	(3,870)
Net income	\$ (9,464)	\$(12,033)	\$ (4,980)	\$(10,200)
Net income per share:				
Basic	\$ (0.12)	\$ (0.17)	\$ (0.06)	\$ (0.14)
Diluted	\$ (0.12)	\$ (0.17)	\$ (0.06)	\$ (0.14)
Weighted average shares outstanding:				
Basic	79,866	71,723	78,468	71,717
Diluted	81,403	72,086	79,826	71,936

The accompanying notes are an integral part of these statements.

NATIONAL-OILWELL, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)
(IN THOUSANDS)

	Six Months Ended June 30,	
	2000	1999
Cash flow from operating activities:		
Net income	\$ (4,980)	\$(10,200)
Adjustments to reconcile net income to net cash provided (used) by operating activities:		
Depreciation and amortization	17,501	14,761
Amortization of negative goodwill	-	(2,683)
Provision for losses on receivables	1,273	1,244
Provision for deferred income taxes	(4,328)	(566)
Gain on sale of assets	(1,880)	(234)
Foreign currency transaction gain (loss)	(11)	5
Changes in assets and liabilities, net of acquisitions and divestments:		
Receivables	(18,389)	123,032
Net investment in marketable securities	14,686	(4,907)
Inventories	(13,494)	36,474
Prepaid and other current assets	(937)	(1,893)
Accounts payable	21,675	(51,492)
Other assets/liabilities, net	(5,668)	(29,823)
Net cash provided by operating activities	5,448	73,718
Cash flow from investing activities:		
Purchases of property, plant and equipment	(10,793)	(8,655)
Proceeds from sale of assets	4,853	29,632
Business acquired, net of cash	(6,431)	-
Net cash provided (used) by investing activities	(12,371)	20,977
Cash flow from financing activities:		
Payments on line of credit	(20,023)	(68,174)
Proceeds from stock options exercised	3,144	421
Other	37	(448)
Net cash used by financing activities	(16,842)	(68,201)
Effect of exchange rate (gain) on cash	234	(16)
Increase/(decrease) in cash and equivalents	(23,999)	26,478
Cash and cash equivalents, beginning of period	48,091	49,439
Cash and cash equivalents, end of period	\$ 24,092	\$ 75,917
Supplemental disclosures of cash flow information:		
Cash payments during the period for:		
Interest	\$ 8,737	\$ 8,017
Income taxes	3,463	7,983

The accompanying notes are an integral part of these statements.

NATIONAL-OILWELL, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (UNAUDITED)

1. BASIS OF PRESENTATION

Information concerning common stock and per share data has been restated on an equivalent share basis and assumes the exchange of all Exchangeable Shares issued in connection with the combination with Dresco Energy Services Ltd. In addition, all periods presented reflect the merger with IRI International Corporation.

The Company employs accounting policies that are in accordance with generally accepted accounting principles in the United States. Accordingly, Company management makes estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, as well as the reported amounts of revenues and expenses during the periods. Actual results could differ from those estimates.

The accompanying unaudited consolidated financial statements present information in accordance with generally accepted accounting principles for interim financial information and the instructions to Form 10-Q and applicable rules of Regulation S-X. They do not include all information or footnotes required by generally accepted accounting principles for complete financial statements and should be read in conjunction with the Company's 1999 Annual Report on Form 10-K.

In the opinion of the Company, the consolidated financial statements include all adjustments, all of which are of a normal, recurring nature, necessary for a fair presentation of the results for the interim periods. The results of operations for the six months ended June 30, 2000 and 1999 may not be indicative of results for the full year. No significant accounting changes have occurred during the six months ended June 30, 2000.

2. ACQUISITIONS

During February 2000, the Company completed its merger with Hitec ASA, a leading supplier of highly advanced systems and solutions, including leading-edge automation and remote control technologies, for the oil and gas industry. The Company issued approximately 7.9 million shares of common stock valued at \$19.50 per share and cash of \$4 million for all of the outstanding shares of Hitec. Goodwill related to the transaction approximated \$136 million. Hitec's financial results are included in National Oilwell's consolidated results effective February 1, 2000. Pro forma results of operations are not presented since they are not considered material.

On June 27, 2000, the stockholders of both the Company and IRI approved the merger of the two companies. The Company issued 13.5 million shares of common stock for all of the outstanding shares of IRI. The transaction was a tax-free exchange and was recorded in accordance with the pooling-of-interests method of accounting. All prior periods have been restated. In conjunction with the merger, the Company recorded a special charge of \$13.0 million, consisting principally of direct deal costs and employee severance payments. An additional charge is expected to be recognized in the third quarter of 2000 as the merger is implemented and redundant facilities are closed.

3. INVENTORIES

Inventories consist of (in thousands):

	June 30, 2000	December 31, 1999
	-----	-----
Raw materials and supplies	\$ 58,493	\$ 54,958
Work in process	58,668	46,722
Finished goods and purchased products	247,529	246,344
	-----	-----
Total	\$ 364,690	\$ 348,024
	=====	=====

4. RECENTLY ISSUED ACCOUNTING STANDARDS

In June 1998, the Financial Accounting Standards Board issued Statement No. 133, Accounting for Derivative Instruments and Hedging Activities. The Company expects to adopt the new Statement effective January 1, 2001. The Statement will require the Company to recognize all derivatives on the balance sheet at fair value. The Company has not completed its evaluation but currently does not anticipate that the adoption of this Statement will have a significant effect on its results of operations or financial position.

5. COMPREHENSIVE INCOME

The components of comprehensive income are as follows (in thousands):

	Quarter Ended June 30,		Six Months Ended June 30,	
	2000	1999	2000	1999
	-----	-----	-----	-----
Net loss	\$ (9,464)	\$ (12,033)	\$ (4,980)	\$ (10,200)
Currency translation adjustments	(7,087)	6,659	(10,720)	4,602
Unrealized gains on securities	251	193	570	382
	-----	-----	-----	-----
Comprehensive loss	\$ (16,300)	\$ (5,181)	\$ (15,130)	\$ (5,216)
	=====	=====	=====	=====

6. BUSINESS SEGMENTS

Segment information (unaudited) follows (in thousands):

	Quarter Ended June 30,		Six Months Ended June 30,	
	2000	1999	2000	1999
Revenues from unaffiliated customers				
Products and Technology	\$ 147,860	\$ 96,858	\$ 288,884	\$ 219,364
Distribution Services	122,444	98,146	245,311	202,906
Intersegment revenues				
Products and Technology	11,907	7,168	21,311	15,684
Distribution Services	85	281	195	373
Operating income (loss)				
Products and Technology	15,087	(2,165)	29,107	13,810
Distribution Services	2,546	(3,462)	3,496	(5,582)
Total profit for reportable segments	17,633	(5,627)	32,603	8,228
Special charges	13,000	653	13,000	1,458
Unallocated corporate costs	(4,004)	(4,806)	(7,501)	(7,734)
Operating income (loss)	629	(11,086)	12,102	(964)
Net interest expense	(3,998)	(3,017)	(8,049)	(6,868)
Other income (expense)	(8,276)	(3,758)	(8,469)	(6,238)
Income/(loss) before income taxes	\$ (11,645)	\$ (17,861)	\$ (4,416)	\$ (14,070)
Total assets	June 30, 2000	June 30, 1999		
Products and Technology	\$ 952,974	\$ 770,880		
Distribution Services	222,071	182,254		

7. SALE OF ASSETS

During June 2000, the Company liquidated a marketable securities portfolio maintained by IRI prior to the merger for \$11.2 million, generating a pre-tax loss on the sale of \$8.5 million (\$5.2 million after-tax). Proceeds were used to pay down debt.

Included in Other Expense for the second quarter of 1999 and the first six months of 1999 are losses totaling \$1.9 million from the sale of assets related to two product lines. On June 17, 1999, the Company sold its tubular business for approximately \$15 million, generating a pre-tax loss of \$0.9 million (\$0.5 million after-tax). Revenues and operating loss recorded in 1999 for the tubular business was \$23.6 million and \$0.6 million, respectively. On June 24, 1999 the Company sold its drill bit manufacturing business for approximately \$12 million, recording a pre-tax loss of \$1.0 million (\$0.6 million after-tax). Revenues and operating income recorded in 1999 for the drill bit business was \$6.1 million and \$0.1 million, respectively.

8. SPECIAL CHARGE

In conjunction with the merger, the Company recorded a special charge of \$13.0 million, approximately half of which was direct transaction costs. The remaining amount pertains to severance payments related to the integration of executive and administrative functions. Cash payments related to this charge will be substantially complete by the end of September 2000. An additional charge is expected to be recognized in the third quarter of 2000 as the merger is implemented and redundant facilities are closed.

9. SUBSEQUENT EVENTS

For July 2000, the first full month following the merger with IRI, the Company reported consolidated revenues of \$87.7 million and net income of \$2.6 million (\$0.03 per diluted share).

On August 1, 2000, the Company announced it has entered into a letter of intent to purchase the assets of the Baylor Company and subsidiaries from Boots & Coots International Well Control, Inc. Baylor designs and manufactures braking systems and large synchronous generators used on drilling rigs.

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

INTRODUCTION

National Oilwell is a worldwide leader in the design, manufacture and sale of drilling systems, drilling equipment and downhole products as well as the distribution of maintenance, repair and operating products to the oil and gas industry. National Oilwell's revenues are directly related to the level of worldwide oil and gas drilling and production activities and the profitability and cash flow of oil and gas companies and drilling contractors, which in turn are affected by current and anticipated prices of oil and gas. Beginning in late 1997, oil prices declined to less than \$15 per barrel due to concerns about excess production, less demand from Asia due to an economic slowdown and warmer than average weather in many parts of the United States. The resulting lower demand for products and services had an increasingly negative effect on both business segments in 1999. Oil prices have recovered since late July 1999 to a range of \$25-\$30 per barrel. The higher prices have already resulted in higher revenues for National Oilwell and the Company expects its revenues to increase further if its customers gain confidence in sustained commodity prices at this level and as their cash flows from operations improve.

On June 27, 2000, the stockholders of both the Company and IRI International Corporation approved the merger of the two companies. The Company issued 13.5 million shares of common stock for all of the outstanding shares of IRI. The transaction was a tax-free exchange and was recorded in accordance with the pooling-of-interests method of accounting. All prior periods have been restated.

RESULTS OF OPERATIONS

Operating results by segment are as follows (in thousands):

	Quarter Ended June 30,		Six Months Ended June 30,	
	2000	1999	2000	1999
Revenues				
Products and Technology	\$ 159,767	\$ 104,026	\$ 310,195	\$235,048
Distribution Services	122,529	98,427	245,506	203,279
Eliminations	(11,991)	(7,449)	(21,505)	(16,057)
Total	\$ 270,305	\$ 195,004	\$ 534,196	\$422,270
Operating Income				
Products and Technology	\$ 15,087	\$ (2,165)	\$ 29,107	\$ 13,810
Distribution Services	2,546	(3,462)	3,496	(5,582)
Corporate	(4,004)	(4,806)	(7,501)	(7,734)
	13,629	(10,433)	25,102	494
Special charges	13,000	653	13,000	1,458
Total	\$ 629	\$ (11,086)	\$ 12,102	\$ (964)

Products and Technology

The Products and Technology segment designs and manufactures a wide range of proprietary products, including drawworks, mud pumps, power swivels, electrical control systems and downhole motors and tools, as well as complete land drilling and well servicing rigs and structural components such as cranes, masts, derricks and substructures for offshore rigs. A substantial installed base of these products results in a recurring replacement parts and maintenance business. Sales of new capital equipment fluctuate between periods depending on the size and timing of order shipments. In addition, the segment provides pump expendable products for maintenance of National-Oilwell's and other manufacturers' equipment.

During February 2000, the Company completed its merger with Hitec ASA, a leading supplier of highly advanced systems and solutions, including leading-edge automation and remote control technologies, for the oil and gas industry. In connection therewith, the Company issued approximately 7.9 million shares of common stock and \$4 million in cash. Hitec's financial results are included in National Oilwell's consolidated results effective February 1, 2000. This transaction has been accounted for as a purchase for financial reporting purposes with goodwill related to this transaction approximating \$136 million. With the addition of Hitec, the Company intends to expand its emphasis on technology, especially in the areas of automation and remotely controlled equipment

Revenues for the Products and Technology segment increased by \$56 million (54%) in the second quarter of 2000 as compared to the same quarter in 1999 due primarily to increased sales of capital equipment, drilling replacement parts, and downhole motors and tools. An increase in IRI and Hitec revenues accounted for \$29 million, or approximately 52% of the increase. Operating income increased by \$17 million in the second quarter of 2000 compared to the same quarter in 1999 due principally to the higher revenue volume. IRI and Hitec accounted for \$14 million of the operating income increase.

Products and Technology revenues in the first half of 2000 increased \$75 million as compared to 1999 due to the overall improved market opportunities, as reflected in IRI results increasing by 66%, and the inclusion of Hitec revenues of \$19 million. Operating income increased by \$15 million, or 110%, in the first half of 2000 as a result of the higher volumes.

Backlog of the Products and Technology capital products was \$142 million at June 30, 2000 compared to \$114 million at December 31, 1999 and \$36 million at June 30, 1999. Substantially all of the current backlog is expected to be shipped by the end of 2000.

Distribution Services

Distribution Services revenues result primarily from the sale of maintenance, repair and operating ("MRO") supplies from National Oilwell's network of distribution service centers and, prior to July 1999, from the sale of well casing and production tubing. These products are purchased from numerous manufacturers and vendors, including National Oilwell's Products and Technology segment. The Company sold its tubular product line in June 1999 for approximately \$15 million, generating a pre-tax loss of \$0.9 million (\$0.5 million after-tax). Revenues and operating loss recorded in 1999 for the tubular operations were \$23.6 million and \$0.6 million, respectively.

Distribution Services revenues increased during the second quarter of 2000 over the comparable 1999 period by \$24 million. This 24% increase in MRO products reflects the enhanced drilling activity driven primarily by higher, more stable oil and gas prices. North American revenues account for all of this increase, offsetting completely the loss of \$8 million in revenues resulting from the sale of the tubular product line. Operating income in the second quarter of 2000 of \$2.5 million was a \$6 million improvement over the second quarter of 1999, principally due to the higher revenue volume and improved margins.

Revenues for the Distribution Services segment increased \$42 million in the first half of 2000 when compared to the prior year. Reflecting the significant increase in oil prices between the periods, Canadian revenues were higher by 43% while MRO revenues in the United States were 32% greater. Operating income was \$9 million higher in the first six months of 2000 when compared to 1999 and is attributable to the higher volume levels.

Corporate

Corporate costs during the second quarter of 2000 of \$4.0 million and the first six months of 2000 of \$7.5 million were generally comparable to the same periods in the prior year, and represent the sum of the separate corporate operations of National Oilwell and IRI prior to the merger. Significant combination benefits in this area will result from the merger, and ongoing corporate costs are projected at approximately \$2 million per quarter after the merger is fully implemented.

Interest Expense

Interest expense increased during the three months and six months ended June 30, 2000 as compared to the prior year due to higher levels of debt incurred in connection with acquisitions made subsequent to June 30, 1999.

LIQUIDITY AND CAPITAL RESOURCES

At June 30, 2000, the Company had working capital of \$451 million, virtually unchanged from December 31, 1999. Significant increases in accounts receivable and inventory of \$41 million and \$17 million were partially offset by an increase in accounts payable of \$28 million. Cash and equivalents was reduced \$24 million and \$15 million of marketable securities liquidated to repay outstanding debt.

Total capital expenditures were \$11 million during the first six months of 2000 compared to \$9 million in the first half of 1999. Enhancements to information and inventory control systems represent a large portion of these capital expenditures. The Company believes it has sufficient existing manufacturing capacity to meet currently anticipated demand for its products and services.

The Company has a five-year unsecured \$125 million revolving credit facility which is available for acquisitions and general corporate purposes. The credit facility provides for interest at prime or LIBOR plus 0.625%, subject to adjustment based on the Company's Capitalization Ratio, as defined. The credit facility contains financial covenants and ratios regarding minimum tangible net worth, maximum debt to capital and minimum interest coverage. The Company believes that cash generated from operations and amounts available under the credit facility will be sufficient to fund operations, working capital needs, capital expenditure requirements and financing obligations.

The Company intends to pursue acquisition candidates, but the timing, size or success of any acquisition effort and the related potential capital commitments cannot be predicted. The Company expects to fund future cash acquisitions primarily with cash flow from operations and borrowings, including the unborrowed portion of the Credit Facility or new debt issuances, but may also issue additional equity either directly or in connection with acquisitions. There can be no assurance that additional financing for acquisitions will be available at terms acceptable to the Company.

On August 1, 2000, the Company announced it has entered into a letter of intent to purchase the assets of the Baylor Company and subsidiaries from Boots & Coots International Well Control, Inc. Baylor designs and manufactures braking systems and large synchronous generators used on drilling rigs.

SPECIAL CHARGE

In conjunction with the merger, the Company recorded a special charge of \$13.0 million, approximately half of which was direct transaction costs. The remaining amount pertains to severance payments related to the integration of executive and administrative functions. Cash payments related to this charge will be substantially complete by the end of September 2000. An additional charge is expected to be recognized in the third quarter of 2000 as the merger is implemented and redundant facilities are closed.

FORWARD-LOOKING STATEMENTS

This document, other than historical financial information, contains forward-looking statements that involve risks and uncertainties. Such statements relate to the Company's revenues, sales of capital equipment, backlog, capacity, liquidity and capital resources and plans for acquisitions and any related financings. Readers are referred to documents filed by the Company with the Securities and Exchange Commission which identify significant risk factors which could cause actual results to differ from those contained in the forward-looking statements, including "Risk Factors" at Item 1 of the Annual Report on Form 10-K. Given these uncertainties, current or prospective investors are cautioned not to place undue reliance on any such forward-looking statements. The Company disclaims any obligation or intent to update any such factors or forward-looking statements to reflect future events or developments.

PART II - OTHER INFORMATION

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

The annual meeting of stockholders was held on May 17, 2000. Stockholders elected two directors nominated by the board of directors for terms expiring in 2003 by the following votes: Ben A Guill - 53,075,379 votes for and 293,499 votes withheld, and Jon Gjedebo - 53,091,379 votes for and 277,499 votes withheld. There were no nominees to office other than the directors elected.

At a special meeting of stockholders held on June 27, 2000, stockholders approved the Agreement of Merger with IRI International Corporation by the following vote: 58,869,256 votes for, 29,797 votes against and 58,657 votes abstained. Stockholders also approved adoption of a restated certificate of incorporation that includes an amendment increasing the number of authorized shares of National Oilwell common stock from 75,000,000 shares to 150,000,000 shares by the following vote: 56,092,561 votes for, 802,368 votes against and 62,871 votes abstained.

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

- (a) Exhibits
 - 3.1 Amended and Restated Certificate of Incorporation of National-Oilwell, Inc.
 - 27.1 Financial Data Schedule
- (b) Reports on Form 8-K

The Company has not filed any report on Form 8-K during the quarter for which this report is filed.

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.

Date: August 10, 2000

/ s / Steven W. Krablin

Steven W. Krablin
Principal Financial and Accounting Officer
and Duly Authorized Signatory

INDEX TO EXHIBITS

Exhibit Number -----	Description -----
3.1	Amended & Restated Certificate of Incorporation of National-Oilwell, Inc.
27	F.D.S.

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

NATIONAL-OILWELL, INC.

FIRST: The name of the Corporation is National-Oilwell, Inc.

SECOND: The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of the registered agent of the Corporation at such address is The Corporation Trust Company.

THIRD: The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful business, act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH: CAPITAL STOCK.

I. AUTHORIZED SHARES

The total number of shares of stock that the Corporation shall have authority to issue is, 160,000,001 shares of capital stock, consisting of (i) 150,000,000 shares of common stock, par value \$.01 per share ("Common Stock"); (ii) one share of Special Voting Stock ("Special Voting Stock"; the Class A Common Stock and the Common Stock and the Special Voting Stock are collectively referred to as the "Common Shares"); and (iii) 10,000,000 shares of preferred stock, par value \$.01 per share ("Preferred Stock").

The Common Shares shall have the rights, preferences and limitations set forth below. Capitalized terms used but not otherwise defined in Parts I or II of this Article Fourth are defined in Part III of this Article Fourth.

II. COMMON SHARES

Except as otherwise provided in this Part II or as otherwise required by applicable law, all shares of Special Voting Stock and Common Stock shall be identical in all respects and shall entitle the holders thereof to the same rights and privileges, subject to the same qualifications, limitations and restrictions.

SECTION 1. SPECIAL VOTING STOCK. Each outstanding share of Special Voting Stock shall be entitled at any relevant date to the number of votes determined in accordance with the "Plan of Arrangement" (as that term is defined in that certain "Combination Agreement" dated as of May 14, 1997 (as amended), by and between the Corporation and Dresco Energy Services Ltd.) on all matters presented to the stockholders. No dividend or distribution of assets shall be paid to the holders of Special Voting Stock. The Special Voting Stock is not convertible into any other class or series of the capital stock of the Corporation or into cash, property or other rights, and may not be redeemed. Any shares of Special Voting Stock purchased or otherwise acquired by the Corporation shall be deemed retired and shall be canceled and may not thereafter be reissued or otherwise disposed of by the Corporation. At such time as the Special Voting Stock has no votes attached to it because there are not

"Exchangeable Shares" (as that term is defined in the Combination Agreement) outstanding, the Special Voting Stock shall be canceled.

SECTION 2. VOTING RIGHTS. Except as otherwise provided in this part II or as otherwise required by applicable law, all holders of Common Stock shall be entitled to one vote per share on all matters to be voted on by the Corporation's stockholders. In respect of all matters concerning the voting shares, the Common Stock and the Special Voting Stock shall vote as a single class and such voting rights shall be identical in all respects.

SECTION 3. STOCK SPLITS AND STOCK DIVIDENDS. The Corporation shall not in any manner subdivide (by stock split, stock dividend or otherwise) or combine (by stock split, stock dividend or otherwise) the outstanding Common Shares of one class unless the outstanding Common Shares of the other class shall be proportionately subdivided or combined. All such subdivisions and combinations shall be payable only in Class A Common Stock to the holders of Class A Common Stock and in Common Stock to the holders of Common Stock. In no event shall a stock split or stock dividend constitute a return of Original Cost.

SECTION 4. REGISTRATION OF TRANSFER. The Corporation shall keep at its principal office (or such other place as the Corporation reasonably designates) a register for the registration of Common Shares. Upon surrender of any certificate representing shares of any class of Common Shares at such place, the Corporation shall, at the request of the registered holder of such certificate, execute and deliver a new certificate or certificates in exchange therefore representing in the aggregate the number of shares of such class represented by the surrendered certificate, and the Corporation forthwith shall cancel such surrendered certificate. Each such new certificate will be registered in such name and will represent such number of shares of such class as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate. The issuance of new certificates shall be made without charge to the holders of the surrendered certificates for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such issuance.

SECTION 5. REPLACEMENT. Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder will be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing one or more shares of any class of Common Shares, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonable satisfactory to the Corporation (provided that if the holder is a financial institution or other institutional investor its own agreement will be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Corporation shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of such class represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate.

SECTION 6. NOTICES. All notices referred to herein shall be in writing, shall be delivered personally or by first class mail, postage prepaid, and shall be deemed to have been given when so delivered or mailed to the Corporation at its principal executive offices and to any stockholder at such holder's address as it appears in the stock records of the Corporation (unless otherwise specified in a written notice to the Corporation by such holder).

SECTION 7. AMENDMENT AND WAIVER. No amendment or waiver of any provision of this Article Fourth shall be effective without prior written consent of the holders of a majority of the then outstanding Common Shares voting as a single class; provided that no amendment as to any terms or provisions of, or for the benefit of, any class of Common Shares that adversely affects the powers, preferences or special rights of such class of Common Shares shall be effective without the prior consent of the holders of a majority of the then outstanding shares of such affected class of Common Shares, voting as a single class.

III. DEFINITIONS

"DISTRIBUTION" means each distribution made by the Corporation to holders of Common Shares, whether in cash, property or securities of the Corporation or any other entity and whether by a dividend, liquidating distributions or otherwise; provided that neither of the following shall be a Distribution: (a) any redemption or repurchase by the Corporation of any Common Shares for any reason or (b) any recapitalization or exchange of any Common Shares for other securities of the Corporation, or any subdivision (by stock split, stock dividend or otherwise) or any combination (by stock split, stock dividend or otherwise) of any outstanding Common Shares.

"GENERAL CORPORATION LAW" means the General Corporation Law of the State of Delaware, as amended from time to time.

"MERGER CONSIDERATION" means cash, property or securities of an entity other than the Corporation received by the stockholders of the Corporation in any merger or consolidation, valued at the fair market value thereof as determined by the board of directors of the Corporation.

"NET PUBLIC OFFERING PRICE" means the initial public offering price per share of Common Stock set forth on the front cover page of the final prospectus included in the Registration Statement referenced in the definition of Public Offering Time and in the form first used to confirm sales of the Common Stock, after deduction for any underwriting discount or commissions, but without deduction for any expenses, incurred by the Corporation in connection with the initial public offering.

"ORIGINAL COST" of each share of Class A Common Stock shall be equal to the amount originally paid for such share when it was issued by the Corporation (as proportionally adjusted for all stock splits, stock dividends and other recapitalizations affecting the Class A Common Stock), all such shares shall be deemed to have an Original Cost equal to \$24,900 per share (as proportionally adjusted for all stock splits, stock dividends and other recapitalizations affecting the Class A Common Stock).

"PUBLIC OFFERING TIME" means the time the Corporation's Registration Statement on Form S-1 relating to the initial public offering of its Common Stock is declared effective under Section 8(a) of the Securities Act of 1933, as amended, by the Securities and Exchange Commission.

"UNRETURNED ORIGINAL COST" of any share of Class A Common Stock means an amount equal to the excess, if any, of (a) the Original Cost of such share, over (b) the aggregate amount of Distributions made by the Corporation that constitute a return of Original Cost of such share.

IV. PREFERRED STOCK

The Preferred Stock may be issued from time to time in one or more classes or series, the shares of each class or series to have any designations and powers, preferences, and rights, and qualifications,

limitations, and restrictions thereof as are stated and expressed in this Article IV and in the resolution or resolutions providing for the issue of such class or series adopted by the board of directors of the Corporation as hereinafter prescribed.

Authority is hereby expressly granted to and vested in the board of directors of the Corporation to authorize the issuance of the Preferred Stock from time to time in one or more classes or series, and with respect to each class or series of the Preferred Stock, to state by the resolution or resolutions from time to time adopted providing for the issuance thereof the following:

- (i) whether or not the class or series is to have voting rights, special, or limited, or is to be without voting rights, and whether or not such class or series is to be entitled to vote as a separate class either alone or together with the holders of one or more other classes or series of stock;
- (ii) the number of shares to constitute the class or series and the designations thereof;
- (iii) the preferences and relative, participating, optional, or other special rights, if any, and the qualifications, limitations, or restrictions thereof, if any, with respect to any class or series
- (iv) whether or not the shares of any class or series shall be redeemable at the option of the Corporation or the holders thereof or upon the happening of any specified event, and, if redeemable, the redemption price or prices (which may be payable in the form of cash, notes, securities, or other property), and the time or times at which, and the terms and conditions upon which, such shares shall be redeemable and the manner of redemption;
- (v) whether or not the shares of a class or series shall be subject to the operation of retirement or sinking funds to be applied to the purchase or redemption of such shares for retirement, and, if such retirement or sinking fund or funds are to be established, the periodic amount thereof, and the terms and provisions relative to the operation thereof;
- (vi) the dividend rate, whether dividends are payable in cash, stock of the Corporation, or other property, the conditions upon which and the times when such dividends are payable, the preference to or the relation to the payment of dividends payable on any other class or classes or series of stock, whether or not such dividends shall be cumulative or noncumulative, and if cumulative, the date or dates from which such dividends shall accumulate;
- (vii) the preferences, if any, and the amounts thereof which the holders of any class or series thereof shall be entitled to receive upon the voluntary or involuntary dissolution of, or upon any distribution of the assets of, the Corporation;
- (viii) whether or not the shares of any class or series, at the option of the Corporation or the holder thereof or upon the happening of any specified event, shall be convertible into or exchangeable for the shares of any other class or classes or of any other series of the same or any other class or classes of stock, securities, or other property of the Corporation and the conversion price or prices or ratio or ratios of the rate or rates at which such conversion or exchange may be made, with such adjustments, if any, as shall be stated and expressed or provided for in such resolution or resolutions; and

- (ix) any other special rights and protective provisions with respect to any class or series as may to the board of directors of the Corporation seem advisable.

The shares of each class or series of the Preferred Stock may vary from the shares of any other class or series thereof in any or all of the foregoing respects and in any other manner. The board of directors of the Corporation may increase the number of shares of the Preferred Stock designated for any existing class or series by a resolution adding to such class or series authorized and unissued shares of the Preferred Stock not designated for any other class or series. The board of directors of the Corporation may decrease the number of shares of the Preferred Stock designated for any existing class or series by a resolution subtracting from such class or series authorized and unissued shares of the Preferred Stock designated for such existing class or series, and the shares so subtracted shall become authorized, unissued, and undesignated shares of the Preferred Stock. The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the outstanding Common Stock, without a vote of the holders of the Preferred Stock, or any series thereof, unless a vote of any such holder is required pursuant to any Preferred Stock Series Resolution.

V. NO PREEMPTIVE RIGHTS

No holder of shares of stock of the Corporation shall have any preemptive or other rights, except such rights as are expressly provided by contract, to purchase or subscribe for or receive any shares of any class, or series thereof, of stock of the Corporation, whether now or hereafter authorized, or any warrants, options, bonds, debentures or other securities convertible into, exchangeable for or carrying any right to purchase any shares of any class, or series thereof, of stock; but such additional shares of stock and such warrants, options, bonds, debentures or other securities convertible into, exchangeable for or carrying any right to purchase any shares of any class, or series thereof, of stock may be issued or disposed of by the board of directors to such persons, and on such terms and for such lawful consideration, as in its discretion it shall deem advisable or as to which the Corporation shall have by binding contract agreed.

VI. REGISTERED OWNER

The Corporation shall be entitled to treat the person in whose name any share of its stock is registered as the owner thereof for all purposes and shall not be bound to recognize any equitable or other claim to, or interest in, such share on the part of any other person, whether or not the Corporation shall have notice thereof, except as expressly provided by applicable law.

VII. GENERAL

Subject to the foregoing provisions of this Amended and Restated Certificate of Incorporation, the Corporation may issue shares of its Preferred Stock and Common Stock from time to time for such consideration (not less than the par value thereof) as may be fixed by the board of directors of the Corporation, which is expressly authorized to fix the same in its absolute discretion subject to the foregoing conditions. Shares so issued for which the consideration shall have been paid or delivered to the Corporation shall be deemed fully paid stock and shall not be liable to any further call or assessment thereon, and the holders of such shares shall not be liable for any further payments in respect of such shares.

The Corporation shall have authority to create and issue rights and options entitling their holders to purchase shares of the Corporation's capital stock of any class or series or other securities of the

Corporation, and such rights and options shall be evidenced by instrument(s) approved by the board of directors of the Corporation. The board of directors of the Corporation shall be empowered to set the exercise price, duration, times for exercise, and other terms of such rights or options; provided, however, that the consideration to be received for any shares of capital stock subject thereto shall not be less than the par value thereof.

FIFTH: The following provisions are inserted for the management of the business and for the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

I. DIRECTORS

The number, classification, and terms of the board of directors of the Corporation and the procedures to elect directors, to remove directors, and to fill vacancies in the board of directors shall be as follows:

(a) The number of directors that shall constitute the whole board of directors shall from time to time be fixed exclusively by the board of directors by a resolution adopted by a majority of the whole board of directors serving at the time of that vote. In no event shall the number of directors that constitute the whole board of directors shall be fewer than three. No decrease in the number of directors shall have the effect of shortening the term of any incumbent director. Directors of the Corporation need not be elected by written ballot unless the by-laws of the Corporation otherwise provide.

(b) The board of directors of the Corporation shall be divided into three classes designated Class I, Class II, and Class III, respectively, all as nearly equal in number as possible, with each director then in office receiving the classification that at least a majority of the board of directors designates. The initial term of office of directors of Class I shall expire at the annual meeting of stockholders of the Corporation in 1997, of Class II shall expire at the annual meeting of stockholders of the Corporation in 1998, and of Class III shall expire at the annual meeting of stockholders of the Corporation in 1999, and in all cases as to each director until his earlier death, resignation or removal. At each annual meeting of stockholders beginning with the annual meeting of stockholders in 1997, each director until his successor is elected and qualified or until his earlier death, resignation or removal. If the number of directors comprising each class; provided, however, that any increase or decrease in the number of directors shall be apportioned among the classes as equally as possible.

(c) Vacancies in the board of directors resulting from death, resignation, retirement, disqualification, removal from office, or other cause and newly-created directorships resulting from any increase in the authorized number of directors may be filled by no less than a majority vote of the remaining directors then in office, though less than a quorum, who are designated to represent the same class or classes of stockholders that the vacant position, when filled, is to represent or by the sole remaining director (but not by the stockholders except as required by law), and each director so chosen shall receive the classification of the vacant directorship to which he has been appointed or, if it is a newly-created directorship, shall receive the classification that at least a majority of the board of directors designates and shall hold office until the first meeting of stockholders held after his election for the purpose of electing directors of that classification and until his successor is elected and qualified or until his earlier death, resignation, or removal from office.

(d) A director of any class of directors of the Corporation may be removed before the expiration date of that director's term of office, only for cause, by an affirmative vote of the holders of not less than eighty percent (80%) of the votes of the outstanding shares of the class or classes or series of stock then entitled to be voted at an election of directors of that classes or series, voting together as a single class, cast at the annual meeting of stockholders or at any special meeting of stockholders called by a majority of the whole board of directors for this purpose.

II. POWER TO AMEND BY-LAWS

The by-laws may be altered or repealed and new by-laws may be adopted (a) at any annual or special meeting of stockholders if notice of the proposed alteration, repeal or adoption of the new by-law or by-laws be contained in the notice of such annual or special meeting by the affirmative vote of a majority of the stock issued and outstanding and entitled to vote thereat, voting together as a single class, or (b) by the affirmative vote of a majority of the members present at any regular meeting of the board of directors, or at any special meeting of the board of directors, without any action on the part of the stockholders, if notice of the proposed alteration, repeal or adoption of the new by-law or by-laws be contained in the notice of such regular or special meeting.

III. STOCKHOLDERS' ACTION - SPECIAL MEETINGS

After October 15, 1996, no action required to be taken or that may be taken at any meeting of common stockholders of the Corporation may be taken without a meeting, and, after such date, the power of common stockholders to consent in writing, without a meeting, to the taking of any action is specifically denied.

Special meetings of the stockholders of the Corporation, and any proposals to be considered at such meetings, may be called and proposed exclusively by (i) the Chairman of the Board, (ii) the President or (iii) the board of directors, pursuant to a resolution approved by a majority of the members of the board of directors at the time in office, and no stockholder of the Corporation shall require the board of directors to call a special meeting of common stockholders or to propose business at a special meeting of stockholders. Except as otherwise required by law or regulation, no business proposed by a stockholder to be considered at an annual meeting of the stockholders (including the nomination of any person to be elected as a director of the Corporation) shall be considered by the stockholders at that meeting unless, no later than ninety (90) days before the annual meeting of stockholders or (if later) ten days after the first public notice of that meeting is sent to stockholders, the Corporation receives from the stockholder proposing that business a written notice that sets forth (1) the nature of the proposed business with reasonable particularity, including the exact text of any proposal to be presented for adoption, and the reasons for conducting that business at an annual meeting; (2) with respect to each such stockholder, that stockholder's name and address (as they appear on the records of the Corporation), business address and telephone number, residence address and telephone number, and the number of shares of each class of stock of the Corporation beneficially owned by that stockholder; (3) any interest of the stockholder in the proposed business; (4) the name of names of each person nominated by the stockholder to be elected or re-elected as a director, if any; and (5) with respect to each nominee, that nominee's name, business address and telephone number, and residence address and telephone number, the number of shares, if any, of each class of stock of the Corporation owned directly and beneficially by that nominee, and all information relating to that nominee that is required to be disclosed in solicitations of proxies for elections of directors, or is otherwise required, pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "exchange Act") (or any provision of law subsequently replacing Regulation 14A), together with a duly acknowledged letter signed by the nominee stating his or her acceptance of the

nomination by that stockholder, stating his or her intention to serve as director if elected, and consenting to being named as a nominee for director in any proxy statement relating to such election. The person presiding at the annual meeting shall determine whether business (including the nomination of any person as a director) has been properly brought before the meeting and, if the facts so warrant, shall not permit any business (or voting with respect to any particular nominee) to be transacted that has not been properly brought before the meeting. Notwithstanding any other provisions of this Amended and Restated Certificate of Incorporation, the affirmative vote of the holders of not less than eighty percent (80%) of the shares of the Corporation then entitled to be voted in an election of directors, voting together as a single class, shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article Fifth.

SIXTH: ELIMINATION OF CERTAIN LIABILITY OF DIRECTORS AND INDEMNIFICATION

I. ELIMINATION OF CERTAIN LIABILITY OF DIRECTORS

No director shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty by such director as a director, except for liability (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the General Corporation Law of the State of Delaware, or (d) for any transaction from which the director derived an improper personal benefit. Any amendment or repeal of this Part I of this Article Sixth shall be prospective only, and neither the amendment nor repeal of this Part I of this Article Sixth shall eliminate or reduce the effect of this Part I of this Article Sixth in respect to any matter occurring, or any cause of action, suit or claim that, but for this Part I of this Article Sixth would accrue or arise, prior to such amendment or repeal. If the Delaware General Corporation Law hereafter is amended to authorize corporate action further eliminating or limiting the liability of directors, then the liability of a director of the Corporation, in addition to the limitation on personal liability provided herein, shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended from time to time.

II. INDEMNIFICATION AND INSURANCE

SECTION 1. RIGHT TO INDEMNIFICATION. Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was or has agreed to become a director or officer of the Corporation or is or was serving or has agreed to serve at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director or officer, or in any other capacity while serving or having agreed to serve as a director or officer, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said Law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including, without limitation, attorneys' fees, judgments, fines, excise taxes pursuant to the Employee Retirement Income Security Act of 1974 or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to serve in the capacity which initially

entitled such person to indemnity hereunder and shall inure to the benefit of his or her heirs, executors and administrators. The right to indemnification conferred in this Part II of this Article Sixth shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that, if the Delaware General Corporation Law requires, the payment of such expenses incurred by a current, former or proposed director or officer in his or her capacity as a director or officer or proposed director or officer (and not in any other capacity in which service was or is or has been agreed to be rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such indemnified person, to repay all amounts so advanced if it shall ultimately be determined that such indemnified person is not entitled to be indemnified under this Part II or otherwise. The Corporation may, by action of its board of directors, provide indemnification to employees and agents of the Corporation, individually or as a group, with the same scope and effect as the foregoing indemnification of directors and officers.

SECTION 2. RIGHT OF CLAIMANT TO BRING SUIT. If a written claim from or on behalf of an indemnified party under Section 1 of this Part II is not paid in full by the Corporation within thirty days after such written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standard of conduct which makes it permissible under the Delaware General Corporation Law for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its board of directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the Corporation (including its board of directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

SECTION 3. NON-EXCLUSIVITY OF RIGHTS. The right to indemnification and the advancement and payment of expenses conferred in this Part II shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of this Amended and Restated Certificate of Incorporation, by-law, agreement, vote of stockholders or disinterested directors or otherwise.

SECTION 4. INSURANCE. The Corporation may maintain insurance, at its expense, to protect itself and any person who is or was serving as 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, including service with respect to employee benefit plans, against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

SECTION 5. SAVINGS CLAUSE. If this Part II or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify and hold harmless each director and officer of the Corporation, as to costs, charges and expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative to the full extent permitted by any applicable portion of this Part II that shall not have been invalidated and to the fullest extent permitted by applicable law.

SECTION 6. DEFINITIONS. For purposes of this Part II, reference to the "Corporation" shall include, in addition to the Corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger prior to (or, in the case of an entity specifically designated in a resolution of the board of directors, after) the adoption hereof and which, if its separate existence had continued, would have had the power and authority to indemnify its directors, officers and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Part II with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

SEVENTH: No contract or transaction between the Corporation and one or more of its directors, officers, or stockholders or between the Corporation and any person (as used herein "person" means any corporation, partnership, association, firm, trust, joint venture, political subdivision, or instrumentality) or other organization in which one or more of its directors, officers, or stockholders are directors, officers or stockholders, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the board of any committee thereof which authorizes the contract or transaction, or solely because his, her, or their votes are counted for such purpose, if: (i) 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 the committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested be less than a quorum; or (ii) the material facts as to his or her relationship or interest and as to the contract or transaction is specifically approved in good faith by majority vote of the stockholders; or (iii) 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 thereof, 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 which authorizes the contract or transaction.

EIGHTH: The Corporation reserves the right to amend, change, or repeal any provision contained in the Amended and Restated Certificate of Incorporation in the manner now or hereafter prescribed by law, and all rights and powers conferred herein on stockholders, directors, directors, and officers are subject to this reserved power.

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