

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

FORM 8-K

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

January 31, 2020

Date of Report (Date of earliest event reported)

Aramark

(Exact name of Registrant as Specified in its Charter)

Delaware

(State or other Jurisdiction of Incorporation)

2400 Market Street

Philadelphia, Pennsylvania

(Address of Principal Executive Offices)

001-36223

(Commission File Number)

20-8236097

(IRS Employer Identification No.)

19103

(Zip Code)

(215) 238-3000

(Registrant's Telephone Number, Including Area Code)

N/A

(Former name or former address, if changed since last report.)

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

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

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

Emerging growth company

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

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

<u>Title of Each Class</u>	<u>Trading Symbol(s)</u>	<u>Name of Each Exchange on which Registered</u>
Common Stock, par value \$0.01 per share	ARMK	New York Stock Exchange

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

On January 29, 2020, Aramark (the “Company”) held its 2020 Annual Meeting of Shareholders (the “2020 Annual Meeting”) at which the Company’s shareholders approved the Company’s Second Amended and Restated 2013 Stock Incentive Plan (the “Amended Stock Plan”). The Amended Stock Plan, among other things, increases the number of shares of common stock of the Company reserved for issuance under the Amended Stock Plan by an additional 7,500,000 shares, and reflects certain technical updates, including (i) a prohibition on paying dividend equivalent amounts on unvested equity awards prior to the vesting of the underlying equity award and (ii) certain updates intended to reflect the repeal of the “performance-based compensation” exemption under Section 162(m) of the Internal Revenue Code. The Amended Stock Plan had been previously approved by the Company’s Board of Directors (the “Board”), subject to shareholder approval. The Amended Stock Plan became effective as of the date of such shareholder approval.

The material features of the Amended Stock Plan are described in the Company’s [definitive proxy statement for the 2020 Annual Meeting filed on December 20, 2019](#) (the “Proxy Statement”), under the heading “Proposal No 4. - Vote to Approve Second Amended and Restated 2013 Stock Incentive Plan”, which is incorporated herein by reference. The above and incorporated description of the Amended Stock Plan are qualified in their entirety by reference to the Amended Stock Plan, which is included at Appendix A to the Company’s Proxy Statement, and incorporated herein by reference as Exhibit 10.1.

Item 5.07. Submission of Matters to a Vote of Security Holders.

The Company held its 2020 Annual Meeting on January 29, 2020 in Philadelphia, Pennsylvania. A quorum was present at the meeting. Set forth below are the final voting results with respect to each matter voted upon by the Company’s shareholders:

1. Election of each of the following 11 director nominees to the Company’s Board to serve until the Company’s 2021 Annual Meeting or until his or her respective successor has been duly elected and qualified:

<u>Nominees for Director</u>	<u>For</u>	<u>Against</u>	<u>Abstentions</u>	<u>Broker Non-Votes</u>
Susan M. Cameron	203,234,966	1,665,955	440,415	8,042,617
Greg Creed	204,840,329	58,102	442,905	8,042,617
Calvin Darden	204,620,197	277,800	443,339	8,042,617
Richard W. Dreiling	201,672,299	3,227,893	441,144	8,042,617
Irene M. Esteves	199,595,943	5,305,026	440,367	8,042,617
Daniel J. Heinrich	204,809,421	90,584	441,331	8,042,617
Paul C. Hilal	204,554,957	338,759	447,620	8,042,617
Karen M. King	204,872,633	28,543	440,160	8,042,617
Stephen I. Sandove	200,511,217	4,387,319	442,800	8,042,617
Arthur B. Winkleblack	204,809,034	91,595	440,707	8,042,617
John J. Zillmer	200,505,729	4,397,036	438,571	8,042,617

2. Ratification of the appointment of KPMG LLP as the Company’s independent registered public accounting firm for the Company’s fiscal year ending October 2, 2020:

<u>For</u>	<u>Against</u>	<u>Abstentions</u>	<u>Broker Non-Votes</u>
207,116,364	1,842,090	4,425,499	—

3. Approval, on a non-binding, advisory basis, of the compensation of the Company’s named executive officers as disclosed in the Company’s definitive proxy statement for the 2020 Annual Meeting of Shareholders filed on December 20, 2019:

<u>For</u>	<u>Against</u>	<u>Abstentions</u>	<u>Broker Non-Votes</u>
191,349,565	13,488,644	503,127	8,042,617

4. Approval of the Company's Amended Stock Plan:

<u>For</u>	<u>Against</u>	<u>Abstentions</u>	<u>Broker Non-Votes</u>
198,664,166	6,208,186	468,984	8,042,617

5. Approval of the Second Amended and Restated Certificate of Incorporation to permit holders of at least fifteen percent (15%) of the Company's outstanding shares of common stock to call a special meeting of shareholders for any purpose permissible under applicable law and to delete certain obsolete provisions:

<u>For</u>	<u>Against</u>	<u>Abstentions</u>	<u>Broker Non-Votes</u>
204,475,008	411,787	454,541	8,042,617

The Company filed the Second Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware on January 30, 2020. The Second Amended and Restated Certificate of Incorporation is filed herewith as Exhibit 3.1 and incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
3.1*	Second Amended and Restated Certificate of Incorporation of Aramark.
10.1	Second Amended and Restated 2013 Stock Incentive Plan of Aramark (incorporated by reference to Appendix A to the Company's Proxy Statement filed with the SEC on December 20, 2019 (file number 001-36223)).
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

* Filed herewith.

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 hereunto duly authorized.

Aramark

Date: January 31, 2020

By: /s/ THOMAS G. ONDROF
Name: THOMAS G. ONDROF
Title: Executive Vice President and
Chief Financial Officer

SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
ARAMARK

Aramark, a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

(1) The present name of the Corporation is Aramark. The Corporation's original certificate of incorporation was filed with the office of the Secretary of the State of Delaware on May 12, 2006 under the name Aramark Holdings Corporation.

(2) An Amended and Restated Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on December 11, 2013, and the name of the Corporation was changed pursuant to a Certificate of Ownership and Merger filed with the Secretary of State of the State of Delaware on May 9, 2014.

(3) This Second Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the Delaware General Corporation Law (the "DGCL").

(4) This Second Amended and Restated Certificate of Incorporation restates and integrates and further amends the certificate of incorporation of the Corporation, as heretofore amended, supplemented and/or restated (the "Certificate of Incorporation").

(5) The text of the Certificate of Incorporation is amended and restated in its entirety as follows:

FIRST: NAME. The name of the Corporation is **Aramark**.

SECOND: ADDRESS. The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle 19801. The name of its registered agent at this address is The Corporation Trust Company.

THIRD: PURPOSE. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

FOURTH: CAPITALIZATION. (A) The total number of shares of stock that the Corporation has authority to issue is 700 million, of which:

- (i) 600 million shares shall be shares of Common Stock, par value \$0.01 per share (the "Common Stock"); and
- (ii) 100 million shares of preferred stock, par value \$0.01 per share (the "Preferred Stock").

(B) The number of authorized shares of Preferred Stock or Common 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 votes entitled to be cast by the holders of the capital stock, irrespective of the provisions of Section 242(b)(2) of the DGCL or any corresponding provision hereinafter enacted, and no vote of the holders of any of the Common Stock or the Preferred Stock voting separately as a class shall be required therefor, unless a vote of any such holder is required pursuant to this Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock).

FIFTH: CAPITAL STOCK. (A) The Board of Directors is hereby expressly authorized, subject to any limitations prescribed by law, by resolution or resolutions and by filing a certificate pursuant to the applicable law of the State of Delaware (such certificate being hereinafter referred to as a "Preferred Stock Designation"), to provide, out of the unissued shares of Preferred Stock, for one or more series of Preferred Stock and, with respect to each such series, to fix, without further stockholder approval, the designation of such series, the powers (including voting powers), preferences and relative, participating, optional and other special rights, and the qualifications, limitations or restrictions thereof, of such series of Preferred Stock and the number of shares of such series. The powers, preferences and relative, participating, optional and other special rights of, and the qualifications, limitations or restrictions thereof, each series of Preferred Stock, if any, may differ from those of any and all other series at any time outstanding.

(B) Each holder of record of Common Stock, as such, shall have one vote for each share of Common Stock which is outstanding in his, her or its name on the books of the Corporation on all matters properly submitted to stockholders for their vote; provided, however, that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any Preferred Stock Designation) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation (including any Preferred Stock Designation).

(C) Except as otherwise required by law, holders of any series of Preferred Stock shall be entitled to only such voting rights, if any, as shall expressly be granted thereto by this Certificate of Incorporation (including any Preferred Stock Designation).

SIXTH: BOARD OF DIRECTORS. The Corporation shall be governed in accordance with the following provisions:

(A) The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors, the total number of directors shall be determined from time to time exclusively by resolution adopted by a majority of the Whole Board. For purposes of this Certificate of Incorporation, the term "Whole Board" shall mean the total number of authorized directors whether or not there exist any vacancies in previously authorized directorships. Directors of the Corporation shall be elected annually for terms of one year and shall continue to hold office until the next annual meeting of stockholders and until such director's successor shall have been elected and qualified, or until such director's earlier death, resignation, disqualification or removal.

(B) Advance notice of nominations for the election of directors by stockholders and of business to be brought by stockholders before any meeting of stockholders shall be given in the manner provided in the by-laws.

(C) Subject to the rights granted to the holders of any one or more series of Preferred Stock then outstanding, any newly-created directorship on the Board of Directors that results from an increase in the authorized number of directors and any vacancy occurring in the Board of Directors shall, unless otherwise required by law or by resolution of the Board of Directors, be filled only by a majority of the directors then in office, although less than a quorum, or by a sole remaining director (and not by stockholders). Any director elected to fill a vacancy or newly created directorship shall hold office until the next annual meeting of stockholders and until his or her successor shall be elected and qualified, or until his or her earlier death, resignation, disqualification or removal. No decrease in the authorized number of directors shall shorten the term of any incumbent director.

(D) Any or all of the directors (other than the directors elected solely by the holders of any series of Preferred Stock of the Corporation, voting separately as a series or together with one or more other such series, as the case may be) may be removed at any time either with or without cause by the affirmative vote of the holders of at least 75% in voting power of all the then-outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class.

(E) Elections of directors need not be by written ballot unless the by-laws shall so provide.

SEVENTH: BY-LAWS. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to make, alter, amend, change, add to, rescind or repeal the by-laws of the Corporation, in whole or in part, without the vote of the stockholders, in any manner not inconsistent with the laws of the State of Delaware or this Certificate of Incorporation. Any adoption, amendment or repeal of the by-laws of the Corporation by the board of directors shall require the approval of a majority of the Whole Board. In addition to any vote of the holders of any class or series of capital stock of the Corporation required herein (including any Preferred Stock Designation) or by applicable law, any amendment, alteration, rescission or repeal of the by-laws by the stockholders will require the affirmative vote of the holders of at least 75% in voting power of all the then-outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class.

EIGHTH: INDEMNIFICATION OF DIRECTORS AND OFFICERS. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a “proceeding”), by reason of the fact that he or she or a person of whom he or she is the legal representative is or was a director or an officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee, agent or trustee of another corporation, or as its representative in a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an “indemnitee”), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee, agent, trustee or representative or in any other capacity while serving as a director, officer, employee, agent, trustee or representative, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by the DGCL, 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 such law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys’ fees, judgments, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith; provided, however, that, except as provided in this Article Eighth with respect to proceedings to enforce rights to indemnification and “advancement of expenses” (as defined below) or with respect to any compulsory counterclaim brought by such indemnitee, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation.

In addition to the right to indemnification conferred in this Article Eighth, an indemnitee shall also have the right to be paid by the Corporation the expenses (including attorney’s fees) incurred in appearing at, participating in or defending any such proceeding in advance of its final disposition or in connection with a proceeding brought to establish or enforce a right to indemnification or advancement of expenses under this Article Eighth (hereinafter an “advancement of expenses”); provided, however, that, if the DGCL requires or in the case of an advance made in a proceeding brought to establish or enforce a right to indemnification or advancement, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (hereinafter an “undertaking”), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a “final adjudication”) that such indemnitee is not entitled to be indemnified or entitled to advancement for such expenses under this Article Eighth or otherwise.

If a claim under this Article Eighth is not paid in full by the Corporation within sixty (60) days after a written claim for indemnification has been received by the Corporation, and in the case of a claim for an advancement of expenses, within twenty (20) days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim or to obtain advancement of expenses, as applicable. 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 Eighth or otherwise shall be on the Corporation.

The provision of indemnification to or the advancement of expenses and costs to any indemnitee under this Article Eighth, or the entitlement of any indemnitee to indemnification or advancement of expenses and costs under this Article Eighth, shall not limit or restrict in any way the power of the Corporation to indemnify or advance expenses and costs to such indemnitee in any other way permitted by law or be deemed exclusive of, or invalidate, any right to which any indemnitee seeking indemnification or advancement of expenses and costs may be entitled under any law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such indemnitee's capacity as an officer, director, employee or agent of the Corporation and as to action in any other capacity.

Given that certain jointly indemnifiable claims (as defined below) may arise due to the service of the indemnitee as a director of the Corporation at the request of the indemnitee-related entities (as defined below), the Corporation shall be fully and primarily responsible for the payment to the indemnitee in respect of indemnification or advancement of expenses in connection with any such jointly indemnifiable claims, pursuant to and in accordance with the terms of this Article Eighth, irrespective of any right of recovery the indemnitee may have from the indemnitee-related entities. Under no circumstance shall the Corporation be entitled to any right of subrogation or contribution by the indemnitee-related entities and no right of advancement or recovery the indemnitee may have from the indemnitee-related entities shall reduce or otherwise alter the rights of the indemnitee or the obligations of the Corporation hereunder. In the event that any of the indemnitee-related entities shall make any payment to the indemnitee in respect of indemnification or advancement of expenses with respect to any jointly indemnifiable claim, the indemnitee-related entity making such payment shall be subrogated to the extent of such payment to all of the rights of recovery of the indemnitee against the Corporation, and the indemnitee shall execute all papers reasonably required and shall do all things that may be reasonably necessary to secure such rights, including the execution of such documents as may be necessary to enable the indemnitee-related entities effectively to bring suit to enforce such rights. Each of the indemnitee-related entities shall be third-party beneficiaries with respect to this paragraph of this Article Eighth, entitled to enforce this paragraph of this Article Eighth.

For purposes of this Article, the following terms shall have the following meanings: The term "indemnitee-related entities" means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise (other than the Corporation or any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise for which the indemnitee has agreed, on behalf of the Corporation or at the Corporation's request, to serve as a director, officer, employee or agent and which service is covered by the indemnity described herein) from whom an indemnitee may be entitled to indemnification or advancement of expenses with respect to which, in whole or in part, the Corporation may also have an indemnification or advancement obligation.

The term "jointly indemnifiable claims" shall be broadly construed and shall include, without limitation, any action, suit or proceeding for which the indemnitee shall be entitled to indemnification or advancement of expenses from both the indemnitee-related entities and the Corporation pursuant to Delaware law, any agreement or certificate of incorporation, by-laws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or comparable organizational documents of the Corporation or the indemnitee-related entities, as applicable.

The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any 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 DGCL.

The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article Eighth with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

The rights conferred upon indemnitees in this Article Eighth shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer or trustee and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article Eighth that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal.

NINTH: LIMITATION OF DIRECTORS' LIABILITY. To the fullest extent permitted by the DGCL as it now exists or may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty owed to the Corporation or its stockholders as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit. Neither the amendment nor repeal of this Article Ninth, nor the adoption of any provision of this Certificate of Incorporation, nor, to the fullest extent permitted by the DGCL, any modification of law shall eliminate, reduce or otherwise adversely affect any right or protection of a current or former director of the Corporation existing at the time of such amendment, repeal, adoption or modification.

TENTH: MEETINGS OF STOCKHOLDERS. (A) Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent in writing by such holders; provided, however, that any action required or permitted to be taken by the holders of Preferred Stock, voting separately as a series or separately as a class with one or more other such series, may be taken without a meeting, without prior notice and without a vote, to the extent expressly so provided by the applicable Preferred Stock Designation.

(B) Except as otherwise required by law and subject to the rights of the holders of any series of Preferred Stock, special meetings of the stockholders of the Corporation for any purpose or purposes (i) may be called at any time only by or at the direction of the Board of Directors acting pursuant to a resolution adopted by a majority of the Whole Board or the Chairman of the Board of Directors and (ii) shall be called by the Chairman of the Board or the Secretary of the Corporation upon the written request of one or more stockholders that own, or who are acting on behalf of persons who own shares representing 15% or more of the voting power of the then outstanding shares of Common Stock entitled to vote on the matter or matters to be brought before the proposed special meeting. Except as provided for in the preceding sentence of this Article Tenth (B) or in the terms of any series of Preferred Stock, special meetings of the stockholders of the Corporation may not be called by any other person or persons. Any business that could be considered at an annual meeting of the stockholders may be considered at a special meeting of the stockholders, including the election and/or removal of any director or directors of the Corporation. Upon request in writing sent by registered mail to the Chairman of the Board of Directors or Secretary of the Corporation by any stockholder or stockholders entitled to call a special meeting of the stockholders pursuant to this Article Tenth(B), the Board of Directors shall determine a place and time for such meeting, and shall hold such meeting not less than sixty (60) nor more than ninety (90) days after the receipt of such request, and shall set a record date for the determination of stockholders entitled to vote at such meeting in the manner set forth in the By-laws. Following such receipt, it shall be the duty of the Secretary of the Corporation to cause notice to be given to the stockholders entitled to vote at such meeting, in the manner set forth in the By-laws, that a meeting will be held at the time and place so determined, no later than ten (10) business days after the date of receipt of such request.

(C) An annual meeting of stockholders for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held at such place, if any, on such date, and at such time as shall be fixed exclusively by resolution of the Board of Directors or a duly authorized committee thereof.

ELEVENTH: CORPORATE ACTIONS. At every meeting of stockholders duly called and held at which a quorum is present (i) in all matters other than the election of directors, the vote of the holders of a majority of the voting power represented in person or by proxy at the meeting and entitled to vote on the matter and (ii) in the case of the election of directors, a plurality of the votes cast at the meeting upon the election, by the holders who are present in person or by proxy and entitled to vote on the matter, shall be necessary to decide the question or election, unless the question is one upon which, by express provision of applicable law, of the rules or regulations of any stock exchange applicable to the Corporation, of any regulation applicable to the Corporation or its securities, of this Certificate of Incorporation or of the By-laws, a different vote is required, in which case such express provision shall govern and control the decision of such question or election.

