

**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**

DATE OF REPORT (DATE OF EARLIEST EVENT REPORTED)

August 22, 2022

**SHARPS COMPLIANCE CORP.**

(Exact Name Of Registrant As Specified In Its Charter)

<b>Delaware</b>	<b>001-34269</b>	<b>74-2657168</b>
(State Or Other Jurisdiction Of Incorporation Or Organization)	(Commission File Number)	(IRS Employer Identification No.)

9220 Kirby Drive, Suite 500  
Houston, Texas 77054  
(Address Of Principal Executive Offices)

713-432-0300  
(Registrant's Telephone Number, Including Area Code)

Not Applicable  
(Former Name Or Former Address, If Changed Since Last Report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the Registrant under any of the following provisions:

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

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

Title of Each Class	Trading Symbol	Name of Each Exchange on Which Registered
Common Shares, \$0.01 Par Value	SMED	The NASDAQ Capital Market

Indicate by check mark whether the registrant is a 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.

## Introductory Note

As previously disclosed in the Current Report on Form 8-K filed with the Securities and Exchange Commission (the “SEC”) on July 13, 2022 by Sharps Compliance Corp., a Delaware corporation (the “Company”), the Company entered into an Agreement and Plan of Merger (as amended, the “Merger Agreement”) with Raven Buyer, Inc., a Delaware corporation (“Parent”), and Raven Houston Merger Sub, Inc., a Delaware corporation and a wholly-owned subsidiary of Parent (“Merger Sub”). Parent and Merger Sub are affiliates of Aurora Capital Partners.

In accordance with the Merger Agreement, on July 25, 2022, Merger Sub commenced a cash tender offer to purchase all of the outstanding shares of common stock of the Company, \$0.01 par value per share (the “Shares”), at a purchase price per Share of \$8.75 in cash (the “Offer Price”), without interest, and subject to any required withholding of taxes, upon the terms and conditions set forth in the Offer to Purchase, dated July 25, 2022 (together with any amendments or supplements thereto, the “Offer to Purchase”) and in the related letter of transmittal (together with any amendments or supplements thereto, which, together with the Offer to Purchase collectively constitute the “Offer”), filed as Exhibit (a)(1)(A) and Exhibit (a)(1)(B), respectively, to the Tender Offer Statement on Schedule TO filed on July 25, 2022 (as amended and supplemented from time to time).

The Offer and all withdrawal rights thereunder expired at one minute following 11:59 p.m., New York City time, on August 19, 2022. Computershare Trust Company, N.A., as the depository and paying agent (the “Depository and Paying Agent”), advised that, as of the Expiration Date (as defined in the Merger Agreement), a total of 16,830,657 Shares had been validly tendered into and not withdrawn from the Offer (not including 182,350 Shares tendered by Notice of Guaranteed Delivery), representing approximately 82% of the then issued and outstanding Shares of the Company on a fully diluted basis. The number of Shares tendered satisfied the Minimum Condition (as defined in the Merger Agreement and the Offer). All Offer Conditions (as defined in the Merger Agreement) having been satisfied or waived, Merger Sub accepted for payment, on August 22, 2022, all Shares validly tendered into and not withdrawn from the Offer and payment for such Shares was made to the Depository and Paying Agent on August 23, 2022.

As a result of its acceptance of the Shares tendered into the Offer, Merger Sub acquired sufficient Shares to consummate the Merger pursuant to Section 251(h) of the General Corporation Law of the State of Delaware (“DGCL”) without a vote or any further action by the stockholders of the Company. Accordingly, on August 23, 2022, Merger Sub merged with and into the Company (the “Merger”), pursuant to Section 251(h) of the DGCL, with the Company being the surviving corporation (the “Surviving Corporation”).

In the Merger, each Share that was not tendered and irrevocably accepted pursuant to the Offer was cancelled and converted into the right to receive cash in an amount equal to the Offer Price, without interest (the “Merger Consideration”) and subject to any required withholding of taxes, other than Shares (i) held in the treasury of the Company, (ii) owned directly or indirectly by Parent or Merger Sub immediately prior to the effective time of the Merger (the “Effective Time”), or (iii) held by stockholders who properly exercised their appraisal rights under Delaware law.

At the Effective Time, each Company stock option granted under any Company stock plan, whether vested or unvested or exercisable, that was outstanding immediately prior to the Effective Time was cancelled and, in exchange therefor, the Surviving Corporation will pay to each former holder of any such cancelled Company stock option as soon as practicable following the Effective Time an amount in cash (without interest, and subject to deduction for any required withholding tax) equal to the product of (i) the excess of the Merger Consideration over the applicable exercise price per Share under such Company stock option and (ii) the number of Shares subject to such Company stock option; provided, that if the exercise price per Share of any such Company stock option was equal to or greater than the Merger Consideration, such Company stock option was cancelled without any cash payment being made in respect thereof.

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At the Effective Time, each restricted stock award granted under any Company stock plan, whether vested or unvested, that was outstanding immediately prior to the Effective Time was cancelled and, in exchange therefor, was converted automatically into and represents the right to receive the Merger Consideration with respect to each Share subject to the cancelled restricted stock award.

The foregoing summary description of the Merger Agreement and related transactions does not purport to be complete and is qualified in its entirety by reference to the full text of the Merger Agreement, which is filed as Exhibits 2.1 and 2.2 hereto and is incorporated herein by reference.

**Item 1.01 Entry into a Material Definitive Agreement.**

In connection with the consummation of the Merger, on August 23, 2022, Parent entered into an amendment (the "Credit Agreement Amendment") to its existing credit agreement (the "Existing Credit Agreement"; as amended by the Credit Agreement Amendment, the "Credit Agreement") providing for a senior secured incremental term loan facility in an aggregate principal amount of \$95.0 million and an increase to the commitments under its senior secured revolving credit facility in an aggregate principal amount of \$15.0 million (the "Incremental Facilities").

The loans under the Incremental Facilities bear interest at a rate per annum equal to, at the election of Parent, (1) an adjusted base rate (calculated in a customary manner) plus an applicable margin or (2) an adjusted SOFR rate (calculated in a customary manner) plus an applicable margin.

In connection with the Credit Agreement Amendment, the Company and its subsidiaries joined the Credit Agreement as guarantors and granted liens on substantially all of their assets (subject to certain customary exceptions) to secure the obligations of Parent under the Credit Agreement.

The Credit Agreement contains covenants that, among other things, limit the Company and certain of its subsidiaries' ability to incur, issue, assume, or guarantee certain indebtedness, issue shares of disqualified or preferred stock, pay dividends on equity, make investments, grant liens, consummate certain mergers and acquisitions or consummate certain asset sales or affiliate transactions. Additionally, certain customary events of default may result in an acceleration of the credit facilities under the Credit Agreement.

**Item 1.02 Termination of a Material Definitive Agreement.**

On August 23, 2022, in connection with the consummation of the Merger, the Company terminated and repaid in full all outstanding obligations (other than certain surviving obligations) due under (i) the Amended and Restated Loan Agreement, dated as of March 18, 2022, by and among, *inter alios*, Sharps Compliance, Inc. of Texas and the lender thereto, and (ii) the Master Equipment Finance Agreement, dated as of August 21, 2019, by and among, *inter alios*, Sharps Compliance, Inc. of Texas and the lender thereto.

**Item 2.01 Completion of Acquisition or Disposition of Assets.**

As described in the Introductory Note above, on August 22, 2022, Merger Sub irrevocably accepted for payment all Shares validly tendered and not withdrawn pursuant to the Offer on or prior to the expiration of the Offer. On August 23, 2022, the Merger was completed pursuant to Section 251(h) of the DGCL, with no vote of the Company's stockholders required to consummate the Merger. Upon the consummation of the Merger, the Company became a wholly-owned subsidiary of Parent.

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The consideration paid to the Company's stockholders and equityholders in the Offer and the Merger was approximately \$176,975,068 million. The consideration and related fees and expenses were funded by proceeds from debt financing described above in Item 1.01 of this Current Report on Form 8-K, as well as by an equity contribution from certain funds affiliated with Aurora Capital Partners (the "Aurora Funds") and certain co-investors in the Aurora Funds.

The information contained in the Introductory Note of this Current Report on Form 8-K is incorporated by reference into this Item 2.01.

**Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

The information contained in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.03.

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

On August 23, 2022, in connection with the consummation of the Merger, the Company notified the NASDAQ Capital Market ("Nasdaq") of the consummation of the Merger and requested that Nasdaq suspend trading of the Shares effective as of before the opening of trading on August 23, 2022, and file with the SEC a Form 25 Notification of Removal from Listing and/or Registration to delist and deregister the Shares under Section 12(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Nasdaq filed the Form 25 with the SEC on August 23, 2022. The Company intends to file with the SEC a certification on Form 15 requesting that the Shares be deregistered and that the Company's reporting obligations under Section 13 and 15(d) of the Exchange Act be suspended.

**Item 3.03. Material Modification to Rights of Security Holders.**

The information contained in the Introductory Note, Item 2.01, 3.01, 5.01, and 5.03 of this Current Report on Form 8-K is incorporated by reference into this Item 3.03.

**Item 5.01. Change in Control of Registrant.**

The information contained in the Introductory Note, Items 2.01, 5.02, and 5.03 of this Current Report on Form 8-K is incorporated by reference into this Item 5.01.

As a result of Merger Sub's acceptance for payment on August 22, 2022 of all Shares that were validly tendered and not validly withdrawn in accordance with the terms of the Offer, and the consummation of the Merger pursuant to Section 251(h) of the DGCL on August 23, 2022, a change in control of the Company occurred, and the Company is now a wholly owned subsidiary of Parent. Parent is affiliated with, and controlled by, the Aurora Funds.

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

In connection with the consummation of the Merger, as contemplated by the Merger Agreement, W. Patrick Mulloy II, Sharon R. Gabrielson, Parris H. Holmes, Susan N. Vogt, and Gary R. Enzor resigned from the Board of Directors of the Company, effective as of the Effective Time.

Following consummation of the Merger, the following persons, who were members of the Board of Directors of Merger Sub, became the new members to the Board of Directors of the Company: Angela Klappa, Andrew Wilson, Matthew Laycock, Matthew Asperheim, Charles Veniez, and Robert Weil. Information about Ms. Klappa and Messrs. Wilson, Laycock, Asperheim, Veniez, and Weil is contained in the Offer to Purchase, filed by Parent and Merger Sub as Exhibit (a)(1)(A) to the Tender Offer Statement on Schedule TO, originally filed with the SEC on July 25, 2022, which information is incorporated herein by reference.

In connection with the consummation of the Merger, Eric T. Bauer resigned as an officer of the Company and terminated employment with the Company, effective as of August 23, 2022. Pursuant to his employment agreement, subject to Mr. Bauer's execution, delivery, and non-revocation of a release agreement in favor of the Company and continued compliance with certain restrictive covenants, including covenants relating to confidentiality, non-competition, and non-solicitation (the "Release Agreement"), Mr. Bauer will receive severance payments equal to six months of base salary in the amount of \$137,500 plus \$17,482.64, such amount equal to the pro rata portion of Mr. Bauer's annual bonus for the fiscal year commenced July 1, 2022 (collectively, the "Severance Payments"). The Severance Payments will be paid in a lump sum as soon as practicable following the effectiveness of the Release Agreement.

Following consummation of the Merger, the following persons were appointed officers of the Company: John Pencak as Chief Financial Officer, and Allen Ruttenberg as Chief Marketing Officer, joining the following existing officers of the Company: W. Patrick Mulloy II, Chief Executive Officer and President, Diana P. Diaz, Senior Vice President, Secretary, and Chief Accounting Officer, Gregory C. Davis, Vice President of Operations, and Dennis P. Halligan, Vice President of Sales and Marketing.

In accordance with the terms of the Merger Agreement, the Sharps Compliance Corp. 2010 Stock Plan, as amended, was terminated effective as of the Effective Time.

**Item 5.03. Amendment to Articles of Incorporation or Bylaws.**

Pursuant to the terms of the Merger Agreement, at the Effective Time, the Amended and Restated Certificate of Incorporation of the Company, as amended, and the Amended and Restated Bylaws of the Company, as amended, were amended and restated in their entirety. Copies of the Company's Second Amended and Restated Certificate of Incorporation and Second Amended and Restated Bylaws are included as Exhibits 3.1 and 3.2 hereto, respectively, and are incorporated by reference herein.

**Item 7.01. Regulation FD Disclosure.**

On August 22, 2022, Parent issued a press release announcing the completion of the Offer. A copy of the press release is attached hereto as Exhibit 99.1 and incorporated herein by reference.

On August 24, 2022, Parent issued a press release announcing the consummation of the Merger. A copy of the press release is attached hereto as Exhibit 99.2 and incorporated herein by reference.

The information furnished in this Item 7.01 and in Exhibits 99.1 and 99.2 of this Current Report on Form 8-K shall not be deemed "filed" for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities of that section, nor shall it be incorporated by reference into any filings under the Securities Act of 1933, as amended, or the Exchange Act, except as expressly set forth by specific reference in such filing.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

<b>Exhibit Number</b>	<b>Description</b>
<a href="#">2.1*</a>	Agreement and Plan of Merger, dated as of July 12, 2022, by and among Raven Buyer, Inc., Raven Houston Merger Sub, Inc., and the Sharps Compliance Corp. (incorporated by reference to Exhibit 2.1 of the Current Report on Form 8-K filed by Sharps Compliance Corp. with the SEC on July 13, 2022)
<a href="#">2.2</a>	Amendment No. 1 to Agreement and Plan of Merger, dated as of July 22, 2022, by and among Raven Buyer, Inc., Raven Houston Merger Sub, Inc., and Sharps Compliance Corp. (incorporated by reference to Exhibit (e)(2) of the Schedule 14D-9 filed by Sharps Compliance Corp. with the SEC on July 25, 2022)
<a href="#">3.1</a>	Second Amended and Restated Certificate of Incorporation of Sharps Compliance Corp.
<a href="#">3.2</a>	Second Amended and Restated Bylaws of Sharps Compliance Corp.
<a href="#">99.1</a>	Press Release, dated August 22, 2022
<a href="#">99.2</a>	Press Release, dated August 24, 2022
104.0	Cover Page Interactive Data File (embedded within the Inline XBRL document)

\* Schedules have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company hereby undertakes to furnish supplemental copies of any of the omitted schedules upon request by the Securities and Exchange Commission or its staff.

**SIGNATURES**

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.

**SHARPS COMPLIANCE CORP.**

By: /s/ Diana P. Diaz

Name: Diana P. Diaz

Title: Senior Vice President, Secretary, and Chief Accounting Officer

August 25, 2022

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**SECOND AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
SHARPS COMPLIANCE CORP.  
(a Delaware corporation)**

**ARTICLE I  
NAME**

The name of the corporation is Sharps Compliance Corp. (the "Corporation").

**ARTICLE II  
AGENT**

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

**ARTICLE III  
PURPOSE**

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

**ARTICLE IV  
AUTHORIZED CAPITAL STOCK**

The Corporation shall be authorized to issue one class of stock to be designated Common Stock; the total number of shares of Common Stock which the Corporation shall have authority to issue is 1,000 shares, and each such share shall have a par value of \$0.01

**ARTICLE V  
BOARD POWER REGARDING BYLAWS**

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind the bylaws of the Corporation.

**ARTICLE VI  
ELECTION OF DIRECTORS**

Election of directors need not be by written ballot unless the bylaws of the Corporation shall so provide.

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**ARTICLE VII  
LIABILITY**

A director of the Corporation shall not be liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended. Any amendment, modification or repeal of the foregoing sentence shall not adversely affect any right or protection of a director of the corporation hereunder in respect of any act or omission occurring prior to the time of such amendment, modification or repeal.

**ARTICLE VIII  
CORPORATE POWER**

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

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## SECOND AMENDED AND RESTATED

## BYLAWS

## OF

SHARPS COMPLIANCE CORP.  
(a Delaware corporation)

## Article I

## OFFICES

Section 1.1 Registered Office.

Sharps Compliance Corp. (the "Corporation") shall maintain its registered office in the State of Delaware at Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801.

Section 1.2 Other Offices.

The Corporation may also have offices in such other places within or without the State of Delaware as the Board of Directors may, from time to time, determine or as the business of the Corporation may require.

## Article II

## MEETINGS OF STOCKHOLDERS

Section 2.1 Annual Meetings.

Meetings of stockholders may be held at such place, either within or without the State of Delaware, and at such time and date as the Board of Directors shall determine. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as described in Section 2.3 of these Bylaws in accordance with Section 211(a)(2) of the General Corporation Law of the State of Delaware. Stockholders may act by written or electronic transmission of consent to elect directors; provided, however, that if such consent is less than unanimous, such action by written or electronic transmission of consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could have been elected at an annual meeting held at the effective time of such action are vacant and are filled by such action. If the Board of Directors fails to determine the time, date and place for the annual meeting and the stockholders have not elected directors by written or electronic transmission of consent as permitted by law, the annual meeting shall be held, beginning in the year after the date of incorporation, at the principal office of the Corporation at 10 a.m. on the last Friday in March of each year.

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Section 2.2 Special Meetings.

Special meetings of stockholders, unless otherwise prescribed by statute, may be called by the Chairman of the Board of Directors, the Chief Executive Officer or by resolution of the Board of Directors and shall be called by the Chief Executive Officer or Secretary upon the written request of holders of not less than 10% in voting power of the outstanding stock entitled to vote at the meeting. Notice of each special meeting shall be given in accordance with Section 2.4 of these Bylaws. Unless otherwise permitted by law, business transacted at any special meeting of stockholders shall be limited to the purpose stated in the notice.

Section 2.3 Meetings by Remote Communications.

If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxy holders not physically present at a meeting of stockholders may, by means of remote communication:

- (a) participate in a meeting of stockholders; and
- (b) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided, that
  - (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder;
  - (ii) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and
  - (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

Section 2.4 Notice of Meetings.

(a) Whenever stockholders are required or permitted to take any action at a meeting, a written notice or electronic transmission, in the manner provided in Section 232 of the General Corporation Law of the State of Delaware, of notice of the meeting, which shall state the place, if any, date and time of the meeting, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purposes for which the meeting is called, shall be mailed to or transmitted electronically to each stockholder of record entitled to vote thereat. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, such notice shall be given not less than 10 days nor more than 60 days before the date of any such meeting. If mailed, notice to stockholders shall be deemed given when deposited in the mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation.

(b) When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the place, if any, date and time thereof, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; provided, however, that if the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix a new record date for notice of such adjourned meeting in accordance with Section 5.6, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

Section 2.5 Quorum.

Unless otherwise required by law or the Certificate of Incorporation, the holders of a majority in voting power of the issued and outstanding stock entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of stockholders. When a quorum is once present to organize a meeting, the quorum is not broken by the subsequent withdrawal of any stockholders. In the absence of a quorum, the chairman of the meeting or the stockholders so present may, by a majority in voting power thereof, adjourn the meeting from time to time in the manner provided in Section 2.4(b) of these Bylaws until a quorum shall attend. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation or any subsidiary of the Corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

Section 2.6 Voting.

(a) Unless otherwise provided in the Certificate of Incorporation, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder. Upon the request of holders of not less than 10% in voting power of the outstanding stock entitled to vote at the meeting, voting shall be by written ballot, unless otherwise provided in the Certificate of Incorporation; if authorized by the stockholders, such requirement of a written ballot shall be satisfied, if authorized by the Board of Directors, by a ballot submitted by electronic transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder or proxyholder.

(b) All elections of directors shall be determined by a plurality of the votes cast, and except as otherwise required by law, the Certificate of Incorporation or these Bylaws, all other matters shall be determined by a majority of the votes cast.

Section 2.7 Proxy Representation.

Any stockholder may authorize another person or persons to act for him by proxy in all matters in which a stockholder is entitled to participate, whether by waiving notice of any meeting, voting or participating at a meeting, or expressing consent or dissent without a meeting. Every proxy must be signed by the stockholder or by his attorney-in-fact. No proxy shall be voted or acted upon after three years from its date, unless such proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the Corporation a revocation of the proxy or a new proxy bearing a later date.

Section 2.8 Organization.

(a) The Chairman of the Board of Directors, if one is elected, or, in his or her absence or disability, the Chief Executive Officer of the Corporation, shall preside at all meetings of the stockholders.

(b) The Secretary of the Corporation shall act as Secretary at all meetings of the stockholders. In the absence or disability of the Secretary, the Chairman of the Board of Directors or the Chief Executive Officer shall appoint a person to act as Secretary at such meetings.

Section 2.9 Conduct of Meeting.

The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person presiding over any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the presiding person of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

(a) Unless otherwise restricted by the Certificate of Incorporation, any action required to be taken at any annual or special meeting of stockholders of the Corporation, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation in accordance with Section 228 of the General Corporation Law of the State of Delaware.

(b) No consent shall be effective to take the corporate action referred to therein unless written consents signed by a sufficient number of holders to take action are delivered to the Corporation in accordance with this Section 2.10 within 60 days of the first date on which a signed written consent is so delivered to the Corporation. Any person executing a consent may provide, whether through instruction to an agent or otherwise, that such a consent shall be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made, and if evidence of such instruction or provision is provided to the Corporation, such future time shall serve as the effective time. Unless otherwise provided, any such consent shall be revocable prior to its becoming effective. Prompt notice of the taking of the corporate action without a meeting by less than unanimous consent shall be given to those stockholders who have not consented in writing or electronic transmission and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date of such meeting had been the date that consents signed by a sufficient number of stockholders to take the action were delivered to the Corporation as provided by law.

(c) Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such .pdf, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

Section 2.11 List of Stockholders Entitled to Vote.

The Corporation shall prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting at least 10 days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting or (ii) during ordinary business hours at the principal place of business of the Corporation. The list of stockholders must also be open to examination at the meeting as required by applicable law. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list of stockholders required by this Section 2.11, or to vote in person or by proxy at any meeting of stockholders.

**Article III**

**BOARD OF DIRECTORS**

Section 3.1 Powers.

The business and affairs of the Corporation shall be managed by or under the direction of its Board of Directors. The Board of Directors shall exercise all of the powers and duties conferred by law except as provided by the Certificate of Incorporation.

Section 3.2 Number and Term.

The number of directors of the Corporation shall initially be two, and shall be fixed at no less than two nor more than ten. Within the limits specified above, the number of directors shall be fixed from time to time by the Board of Directors or the Stockholders, in accordance with applicable law. The Board of Directors shall be elected by the stockholders at their annual meeting, and each director shall be elected to serve for the term of one year or until his or her successor is elected and qualified or until his or her earlier death, resignation, disqualification or removal. Directors need not be stockholders.

Section 3.3 Resignations.

Any director may resign at any time upon notice given in writing or by electronic transmission to the Board of Directors, the Chairman of the Board of Directors, the Chief Executive Officer or the Secretary. The resignation shall take effect at the time specified therein, and if no time is specified, at the time of its receipt by the Board of Directors, the Chairman of the Board of Directors, the Chief Executive Officer or Secretary, as the case may be. The acceptance of a resignation shall not be necessary to make it effective.

Section 3.4 Removal.

Any director or the entire Board of Directors may be removed either with or without cause at any time by the affirmative vote of the holders of a majority in voting power of the outstanding shares then entitled to vote for the election of directors at any annual or special meeting of the stockholders called for that purpose or by written or electronic transmission of consent as permitted by law.

Section 3.5 Vacancies and Newly Created Directorships.

Unless otherwise provided in the Certificate of Incorporation, vacancies occurring in any directorship and newly created directorships may be filled by a majority vote of the remaining directors then in office, even though less than a quorum, or by the sole remaining director. Any director so chosen shall hold office for the unexpired term of his or her predecessor in the case of a director elected to fill a vacancy, until the next annual meeting of stockholders in the case of a director elected to fill a newly created directorship, and in each case until his or her successor shall be elected and qualified or until his or her earlier death, resignation, disqualification or removal.

Section 3.6 Meetings.

(a) The initial directors shall hold their first meeting to organize the Corporation, elect officers and transact any other business that may properly come before the meeting. An annual meeting of the Board of Directors shall be held immediately after each annual meeting of the stockholders, or at such time and place as may be noticed for the meeting.

(b) Regular meetings of the Board of Directors may be held at such places and times as shall be determined from time to time by the Board.

(c) Special meetings of the Board of Directors shall be called by the Chief Executive Officer or by the Secretary on the written or electronic transmission of such request of a majority of the Board of Directors and shall be held at such place as may be determined by the directors or as shall be stated in the notice of the meeting.

Section 3.7 Notice of Meetings.

Except as provided by law, notice of regular meetings need not be given. Notice of the time and place of any special meeting shall be given to each director by the Secretary. Notice of each such meeting shall be given to each director, if by mail, addressed to such director at his or her residence or usual place of business and deposited in a United States post office at least two days before the day on which such meeting is to be held, or shall be sent to such director by electronic transmission, or delivered personally or by telephone, in each case, at least 24 hours before the time at which such meeting is to be held. The notice of any special meeting need not specify the purpose thereof, and, unless indicated in the notice thereof, any and all business may be transacted at a special meeting.

Section 3.8 Quorum, Voting and Adjournment.

A majority of the total number of directors or any committee thereof shall constitute a quorum for the transaction of business. The vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. In the absence of a quorum, a majority of the directors present thereat may adjourn such meeting to another time and place. Notice of such adjourned meeting need not be given if the time and place of such adjourned meeting are announced at the meeting so adjourned.

Section 3.9 Committees.

The Board of Directors may, by resolution, designate one or more committees, including but not limited to an Executive Committee and an Audit Committee, each such committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee to replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matters: (a) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the General Corporation Law of the State of Delaware to be submitted to stockholders for approval or (b) adopting, amending or repealing any bylaw of the Corporation. All committees of the Board of Directors shall keep minutes of their meetings and shall report their proceedings to the Board of Directors when requested or required by the Board of Directors.

Section 3.10 Action Without a Meeting.

Unless otherwise restricted by the Certificate of Incorporation, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all members of the Board of Directors or any committee thereof, as the case may be, consent thereto in writing or by electronic transmission. After an action is taken, the consent or consents relating thereto shall be filed in the minutes of proceedings of the Board of Directors or committee, as the case may be. Such filing shall be in paper form if the minutes are maintained in paper form or shall be in electronic form if the minutes are maintained in electronic form. Any person (whether or not then a director) may provide, whether through instruction to an agent or otherwise, that a consent to action shall be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made and such consent shall be deemed to have been given at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective.

Section 3.11 Compensation.

The Board of Directors shall have the authority to fix the compensation of directors for their services. In addition, as determined by the Board of Directors, directors may be reimbursed by the Corporation for their expenses, if any, in the performance of their duties as directors. A director may also serve the Corporation in other capacities and receive compensation therefor.

Section 3.12 Remote Meeting.

Unless otherwise restricted by the Certificate of Incorporation, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting by means of conference telephone or other communications equipment in which all persons participating in the meeting can hear each other. Participation in a meeting by means of conference telephone or other communications equipment shall constitute the presence in person at such meeting.

**Article IV**

**OFFICERS**

Section 4.1 Number.

The officers of the Corporation shall include a Chief Executive Officer, a Chief Financial Officer or Treasurer and a Secretary, each of whom shall be elected by the Board of Directors and who shall hold office for such term as may be prescribed by the Board of Directors and until their successors are elected and qualified or until their earlier death, disqualification, resignation or removal. In addition, the Board of Directors may elect a Chairman of the Board of Directors, one or more Vice Presidents, including an Executive Vice President, a Chief Financial Officer or a Treasurer and one or more Assistant Treasurers and one or more Assistant Secretaries, who shall hold their office for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors. The initial officers shall be elected at the first meeting of the Board of Directors and, thereafter, at the annual organizational meeting of the Board of Directors. Any number of offices may be held by the same person.

Section 4.2 Other Officers and Agents.

The Board of Directors may appoint such other officers and agents as it deems advisable, who shall hold their office for such terms and shall exercise and perform such powers and duties as shall be determined from time to time by the Board of Directors.

Section 4.3 Chairman of the Board of Directors.

The Chairman of the Board of Directors shall be a member of the Board of Directors and shall preside at all meetings of the Board of Directors and of the stockholders. In addition, the Chairman of the Board of Directors shall have such powers and perform such other duties as from time to time may be assigned to him or her by the Board of Directors.

Section 4.4 Chief Executive Officer.

The Chief Executive Officer of the Corporation shall exercise such duties as customarily pertain to the office of president, and shall have general and active management of the property, business and affairs of the Corporation, subject to the supervision and control of the Board of Directors. He or she shall perform such other duties as prescribed from time to time by the Board of Directors or these Bylaws. In the absence, disability or refusal of the Chairman of the Board of Directors to act, or the vacancy of such office, the Chief Executive Officer shall preside at all meetings of the stockholders and of the Board of Directors. Except as the Board of Directors shall otherwise authorize, the Chief Executive Officer shall execute bonds, mortgages and other contracts on behalf of the Corporation, and shall cause the seal to be affixed to any instrument requiring it and, when so affixed, the seal shall be attested by the signature of the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer.

Section 4.5 Vice Presidents.

Each Vice President, if any are elected, of whom one or more may be designated an Executive Vice President, shall have such powers and shall perform such duties as shall be assigned to him or her by the Chief Executive Officer or the Board of Directors.

Section 4.6 Chief Financial Officer or Treasurer.

The Chief Financial Officer or Treasurer shall have the general care and custody of the funds and securities of the Corporation, and shall deposit all such funds in the name of the Corporation in such banks, trust companies or other depositories as shall be selected by the Board of Directors. He or she shall receive, and give receipts for, moneys due and payable to the Corporation from any source whatsoever. He or she shall exercise general supervision over expenditures and disbursements made by officers, agents and employees of the Corporation and the preparation of such records and reports in connection therewith as may be necessary or desirable. He or she shall, in general, perform all other duties incident to the office of Chief Financial Officer or Treasurer and such other duties as from time to time may be assigned to him or her by the Board of Directors.

Section 4.7 Secretary.

The Secretary shall be the Chief Administrative Officer of the Corporation and shall: (a) cause minutes of all meetings of the stockholders and directors to be recorded and kept; (b) cause all notices required by these Bylaws or otherwise to be given properly; (c) see that the minute books, stock books, and other nonfinancial books, records and papers of the Corporation are kept properly; and (d) cause all reports, statements, returns, certificates and other documents to be prepared and filed when and as required. The Secretary shall have such further powers and perform such other duties as prescribed from time to time by the Board of Directors.

Section 4.8 Assistant Treasurers and Assistant Secretaries.

Each Assistant Treasurer and each Assistant Secretary, if any are elected, shall be vested with all the powers and shall perform all the duties of the Treasurer and Secretary, respectively, in the absence or disability of such officer, unless or until the Board of Directors shall otherwise determine. In addition, Assistant Treasurers and Assistant Secretaries shall have such powers and shall perform such duties as shall be assigned to them by the Board of Directors.

Section 4.9 Corporate Funds and Checks.

The funds of the Corporation shall be kept in such depositories as shall from time to time be prescribed by the Board of Directors. All checks or other orders for the payment of money shall be signed by the Chief Executive Officer, the Chief Financial Officer or the Treasurer or such other person or agent as may from time to time be authorized and with such countersignature, if any, as may be required by the Board of Directors.

Section 4.10 Contracts and Other Documents.

The Chief Executive Officer, the Chief Financial Officer or the Treasurer, or such other officer or officers as may from time to time be authorized by the Board of Directors or any other committee given specific authority by the Board of Directors during the intervals between the meetings of the Board of Directors, shall have power to sign and execute on behalf of the Corporation deeds, conveyances and contracts, and any and all other documents requiring execution by the Corporation.

Section 4.11 Compensation.

The compensation of the officers of the Corporation shall be fixed from time to time by the Board of Directors (subject to any employment agreements that may then be in effect between the Corporation and the relevant officer). None of such officers shall be prevented from receiving such compensation by reason of the fact that he or she is also a director of the Corporation. Nothing contained herein shall preclude any officer from serving the Corporation, or any subsidiary, in any other capacity and receiving such compensation by reason of the fact that he or she is also a director of the Corporation.

Section 4.12 Ownership of Stock of Another Corporation.

Unless otherwise directed by the Board of Directors, the Chief Executive Officer, the Chief Financial Officer or the Treasurer, or such other officer or agent as shall be authorized by the Board of Directors, shall have the power and authority, on behalf of the Corporation, to attend and to vote at any meeting of stockholders, members or other equityholders of any company in which the Corporation holds stock, membership interests or other equity interests and may exercise, on behalf of the Corporation, any and all of the rights and powers incident to the ownership of such stock, membership interests or other equity interests at any such meeting, including the authority to execute and deliver proxies and consents on behalf of the Corporation.

Section 4.13 Delegation of Duties.

In the absence, disability or refusal of any officer to exercise and perform his or her duties, the Board of Directors may delegate to another officer such powers or duties.

Section 4.14 Resignation and Removal.

Any officer may resign at any time in the same manner upon notice given in writing or by electronic transmission to the Corporation. Any officer of the Corporation may be removed from office for or without cause at any time by the Board of Directors.

Section 4.15 Vacancies.

The Board of Directors shall have power to fill vacancies occurring in any office.

STOCK

Section 5.1 Certificates of Stock.

The shares of the Corporation shall be represented by certificate; provided, however, that the Board of Directors may provide by resolution or resolutions that some or all classes or series of stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock represented by a certificate shall be entitled to have a certificate signed by, or in the name of the Corporation by, any two authorized officers of the Corporation, including, without limitation, the Chairman of the Board of Directors, the Vice Chairman of the Board of Directors, the Chief Executive Officer, the Chief Financial Officer, a Vice President, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, certifying the number and class of shares of stock in the Corporation owned by him or her. Any or all of the signatures on the certificate may be a facsimile. The Board of Directors shall have the power to appoint one or more transfer agents and/or registrars for the transfer or registration of certificates of stock of any class, and may require stock certificates to be countersigned or registered by one or more of such transfer agents and/or registrars. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Section 5.2 Transfer of Shares.

Transfers of shares of stock of the Corporation shall be made only on the books of the Corporation upon authorization by the registered holder thereof or by such holder's attorney thereunto authorized by a power of attorney duly executed and filed with the Secretary of the Corporation or a transfer agent for such stock, and if such shares are represented by a certificate, upon surrender of the certificate or certificates for such shares properly endorsed or accompanied by a duly executed stock transfer power and the payment of any taxes thereon; provided, however, that the Corporation shall be entitled to recognize and enforce any lawful restriction on transfer. A record shall be made of each transfer. Whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer if, when the certificates are presented, both the transferor and transferee request the Corporation to do so. The Board of Directors shall have power and authority to make such rules and regulations as it may deem necessary or proper concerning the issue, transfer and registration of shares of stock of the Corporation.

Section 5.3 Lost, Stolen, Destroyed or Mutilated Certificates.

A new certificate of stock may be issued in the place of any certificate previously issued by the Corporation alleged to have been lost, stolen or destroyed, and the Board of Directors may, in its discretion, require the owner of such lost, stolen or destroyed certificate, or his or her legal representative, to give the Corporation a bond, in such sum as the Board of Directors may direct, in order to indemnify the Corporation against any claims that may be made against it in connection therewith. A new certificate of stock may be issued in the place of any certificate previously issued by the Corporation that has become mutilated without the posting by the owner of any bond upon the surrender by such owner of such mutilated certificate.

Section 5.4 List of Stockholders Entitled To Vote.

The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list required by Section 219 of the General Corporation Law of the State of Delaware or to vote in person or by proxy at any meeting of stockholders.

Section 5.5 Dividends.

Subject to the provisions of the Certificate of Incorporation, the Board of Directors may at any regular or special meeting, declare dividends upon the stock of the Corporation either (a) out of its surplus, as defined in and computed in accordance with Section 154 and Section 244 of the General Corporation Law of the State of Delaware or (b) in case there shall be no such surplus, out of its net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year. Before the declaration of any dividend, the Board of Directors may set apart, out of any funds of the Corporation available for dividends, such sum or sums as from time to time in its discretion may be deemed proper for working capital or as a reserve fund to meet contingencies or for such other purposes as shall be deemed conducive to the interests of the Corporation.

Section 5.6 Fixing Date for Determination of Stockholders of Record.

In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action or by electronic transmission without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date: (a) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof shall, unless otherwise required by law, not be more than 60 days nor less than 10 days before the date of such meeting; (b) in the case of determination of stockholders entitled to express consent to corporate action without a meeting, shall not be more than 10 days from the date upon which the resolution fixing the record date is adopted by the Board of Directors; and (c) in the case of any other action, shall not be more than 60 days prior to such other action. If no record date is fixed: (i) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; (ii) the record date for determining stockholders entitled to express consent to corporate action without a meeting, when no prior action of the Board of Directors is required by law, shall be the first date on which a signed consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with law, or, if prior action by the Board of Directors is required by law, shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action; and (iii) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

## Article VI

### INDEMNIFICATION

#### Section 6.1 Right to Indemnification.

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, arbitration, alternative dispute resolution mechanism, investigation, inquiry, juridical, administrative or legislative hearing, or any other threatened, pending or completed, proceeding, whether brought by or in the right of the Corporation or otherwise, including any and all appeals, whether of a civil, criminal, administrative, legislative, investigative, or other nature (a "proceeding"), by reason of the fact that he or she 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 of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee, agent or trustee, or in any other capacity while serving as a director, officer, employee, agent or trustee, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended, against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith; provided, however, that, except as provided in Section 6.3 of these Bylaws with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee (including claims and counterclaims, whether such counterclaims are asserted by: (i) such indemnitee; or (ii) the Corporation in a proceeding initiated by such indemnitee) only if such proceeding (or part thereof) was authorized or ratified by the Board of Directors or the Board of Directors otherwise determines that indemnification or advancement of expenses is appropriate; further provided, however, that this prohibition shall not apply to indemnification or reimbursement limited to and arising out of any counter-claim, cross-claim or third-party claim brought against the indemnitee in any proceeding.

Section 6.2 Right to Advancement of Expenses.

In addition to the right to indemnification conferred in Section 6.1 of these Bylaws, an indemnitee shall, to the fullest extent not prohibited by law, also have the right to be paid by the Corporation the expenses (including attorney's fees) incurred in defending any such proceeding in advance of its final disposition (an "advancement of expenses"); provided, however, that, if the General Corporation Law of the State of Delaware as then in effect requires, 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 (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 for such expenses under this Section 6.2 or otherwise.

Section 6.3 Right of Indemnitee to Bring Suit.

If a claim under Section 6.1 or Section 6.2 of these Bylaws is not paid in full by the Corporation within 30 days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. 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 (a) 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 (b) 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 General Corporation Law of the State of Delaware. 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 General Corporation Law of the State of Delaware, 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 VI or otherwise shall be on the Corporation.

Section 6.4 Non-Exclusivity of Rights.

The rights to indemnification and to the advancement of expenses conferred in this Article VI shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

Section 6.5 Insurance.

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 General Corporation Law of the State of Delaware.

Section 6.6 Indemnification of Employees and Agents of the Corporation.

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 VI with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

Section 6.7 Nature of Rights.

The rights conferred upon indemnitees in this Article VI 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 VI 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, alteration or repeal.

## Article VII

### MISCELLANEOUS

Section 7.1 Amendments.

These Bylaws may be altered, amended or repealed, and new Bylaws made, by the Board of Directors, but the stockholders may make additional Bylaws and may alter and repeal any Bylaws whether adopted by them or otherwise.

Section 7.2 Electronic Transmission.

For purposes of these Bylaws, "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, including the use of, participation in, one or more electronic networks or databases (including one or more distributed electronic networks or databases) that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Section 7.3 Corporate Seal.

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

Section 7.4 Fiscal Year.

The fiscal year of the Corporation shall end on December 31 of each year, or such other 12 consecutive months as the Board of Directors may designate.

Section 7.5 Waiver of Notice.

Whenever notice is required to be given under any provision of the General Corporation Law of the State of Delaware or the Certificate of Incorporation or the Bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, the Board of Directors or a committee of the Board of Directors need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Certificate of Incorporation or these Bylaws.

Section 7.6 Section Headings.

Section headings in these Bylaws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

Section 7.7 Inconsistent Provisions; Changes in Delaware Law.

If any provision of these Bylaws is or becomes inconsistent with any provision of the Certificate of Incorporation, the General Corporation Law of the State of Delaware or any other applicable law, the provision of these Bylaws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect. If any of the provisions of the General Corporation Law of the State of Delaware referred to above are modified or superseded, the references to those provisions is to be interpreted to refer to the provisions as so modified or superseded.

Date of Adoption: August 23, 2022

**CERTIFICATE OF SECRETARY**

The undersigned, being the duly elected Secretary of Sharps Compliance Corp., a Delaware corporation, hereby certifies that the Bylaws to which this Certificate is attached were duly adopted by the sole stockholder of the Corporation as of August 23, 2022.

/s/ Diana P. Diaz

Diana P. Diaz



### **Aurora Capital Partners Announces Completion of the Tender Offer For All Outstanding Shares of Sharps Compliance Corp.**

LOS ANGELES, California, August 22, 2022 –Aurora Capital Partners (“Aurora”), a leading middle-market private equity firm, today announced the successful completion of the previously commenced all-cash tender offer by Aurora’s affiliate, Raven Houston Merger Sub, Inc. (“Purchaser”) to purchase all of the issued and outstanding shares of common stock (the “Shares”) of Sharps Compliance Corp. (NASDAQ: SMED) (“Sharps”), a leading full-service national provider of comprehensive waste management solutions including medical, pharmaceutical and hazardous waste, for \$8.75 per share, net to the seller in cash, without interest and less any applicable withholding taxes.

The tender offer expired one minute after 11:59 p.m., New York City time, on August 19, 2022 (the “Expiration Date”). As of the Expiration Date, a total of 16,830,657 Shares were validly tendered and not withdrawn from the tender offer, representing approximately 82% of the number of Shares that are issued and outstanding as of the Expiration Date on a fully diluted basis. As of such Expiration Date, all conditions to the tender offer have been satisfied or waived. Purchaser has accepted for payment, and expects to promptly pay for, all such Shares validly tendered and not validly withdrawn in accordance with the terms of the tender offer.

As a result of its acceptance of the Shares tendered in the tender offer, Purchaser has acquired a sufficient number of Shares to close the merger of Purchaser with and into Sharps without the affirmative vote of the Sharps remaining public stockholders pursuant to Section 251(h) of the Delaware General Corporation Law. The parties expect to consummate the merger on August 23, 2022. In connection with the merger, the remaining outstanding Shares will be converted into the right to receive \$8.75 per share in cash, without interest and subject to any required withholding taxes (which is the same amount per Share paid in the tender offer). As a result of the tender offer and the merger, Sharps will become a privately-held company and Sharps common stock will cease trading on the NASDAQ.

#### **About Aurora Capital Partners**

Aurora Capital Partners is a leading Los Angeles-based private equity firm with over \$4.5 billion in assets under management. Founded in 1991, the firm focuses principally on control investments in middle-market companies with leading market positions, stable industry dynamics, attractive business model characteristics and actionable opportunities for growth in partnership with management. Aurora provides unique resources to its portfolio companies through its Strategy & Operations Program and its team of experienced operating advisors. Aurora’s investors include leading public and corporate pension funds, endowments and foundations active in private equity investing. For more information about Aurora Capital Partners, visit: [www.auroracap.com](http://www.auroracap.com).

#### **About Sharps Compliance Corp.**

Headquartered in Houston, Texas, Sharps Compliance Corp. (NASDAQ: SMED) is a leading business-to-business services provider to the healthcare, long-term care and retail pharmacy markets. Sharps Compliance offers comprehensive solutions for the management of regulated medical waste, hazardous waste and unused medications. For more information, visit: [www.sharpsinc.com](http://www.sharpsinc.com).

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**Forward-Looking Statements**

The information in this press release contains certain forward-looking statements relating to the transactions between Purchaser and Sharps, strategic and other potential benefits of the transactions, and other statements about Aurora's, Purchaser's or Sharps' future expectations, beliefs, goals, plans or prospects that are based on current beliefs, expectations and assumptions made by, and information currently available to, the management of Aurora, Purchaser and Sharps on the date of this press release. When used in this press release, the words "may," "could," "position," "plan," "potential," "designed," "continue," "anticipate," "believe," "expect," "estimate," "project," and "intend" and words or phrases of similar import are intended to identify forward-looking statements. Such statements reflect known and unknown risks, uncertainties, and assumptions related to certain factors including, without limitation, those risks and uncertainties described under the heading "Risk Factors" in Sharps' periodic reports on file with the U.S. Securities and Exchange Commissions ("SEC"). These statements speak only as of the date of this press release and are based on Aurora's, Purchaser's and Sharp's current plans and expectations and involve risks and uncertainties that could cause actual future events or results to be different from those described in or implied by such forward-looking statements, including risks and uncertainties regarding: changes in financial markets; changes in economic, political or regulatory conditions; changes in facts and other circumstances and uncertainties concerning the transactions; and other factors set forth from time to time in Sharps' SEC filings, including its Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q, as well as the tender offer statement, solicitation/recommendation statement and other tender offer documents filed by Aurora, Purchaser and Sharps, as applicable. None of Sharps, Aurora, Purchaser or any of their affiliates undertakes any obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future developments, subsequent events, circumstances or otherwise, except as may be required by any applicable securities laws.

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## **Aurora Capital Partners Completes Acquisition of Sharps Compliance Corp.**

### *Acquisition Significantly Expands Aurora's Medical Waste Platform*

LOS ANGELES, Aug. 24, 2022 -- Aurora Capital Partners ("Aurora"), a leading middle-market private equity firm, today announced that it has completed its acquisition of Sharps Compliance Corp. ("Sharps" or the "Company"), a full-service national provider of comprehensive waste management solutions including medical, pharmaceutical and hazardous waste.

Headquartered in Houston, Texas, and founded in 1992, Sharps is a leading provider of medical waste solutions, including both mail-back and route-based collection services. The Company's strong management team has overseen consistent growth over multiple decades, driven by repeat business and a long-term focus on exceptional customer service. Additionally, Sharps developed and manages a proprietary nationwide solution for proper handling of unused medication, which has significantly expanded its customer base and reach in the past several years.

"We are excited to add Sharps' industry-leading solutions to our medical waste platform," said Andrew Wilson, Partner at Aurora. "In addition to creating the industry's leading mail-back solution and a growing route-based service, the Company's management team was early to identify the need for reliable, controlled disposal of unused medication, establishing Sharps as a pioneer in the sector. We look forward to partnering with the team to capitalize on our platform and selectively pursue add-on acquisitions."

"Aurora has a proven history of partnering with industry leaders to accelerate growth across business lines, and we are honored to work with them moving forward," said Pat Mulloy, Chief Executive Officer of Sharps. "I am confident that their understanding of the medical waste services market, combined with their alignment with our customer-first approach, will allow us to build on our recent growth, expand our customer base and further enhance our innovative solutions offerings."

"Following our partnerships with Restaurant Technologies, VLS Environmental Solutions and PSC Group, Sharps represents the addition of another high-quality Business Services platform to the Aurora program," said Matthew Laycock, Partner at Aurora.

As previously announced on August 22, 2022, a total of 16,830,657 Shares were validly tendered and not withdrawn from Aurora's tender offer, representing approximately 82% of the number of Shares that were issued and outstanding as of the Expiration Date on a fully diluted basis. As a result of the completion of the merger, Sharps has ceased trading on the NASDAQ, effective August 23, 2022, and has become a privately-held company.

The transaction marks the fifth Aurora investment specifically within the medical waste management space and follows a number of recent Aurora investments within the broader Business Services sector.

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Stifel served as exclusive financial advisor and Gibson, Dunn & Crutcher LLP served as legal advisor to Aurora. Raymond James & Associates, Inc. acted as financial advisor and Norton Rose Fulbright US LLP acted as legal advisor to Sharps. Antares arranged the debt financing for the transaction.

#### **About Aurora Capital Partners**

Aurora Capital Partners is a leading Los Angeles-based private equity firm with over \$4.5 billion in assets under management. Founded in 1991, the firm focuses principally on control investments in middle-market companies with leading market positions, stable industry dynamics, attractive business model characteristics and actionable opportunities for growth in partnership with management. Aurora provides unique resources to its portfolio companies through its Strategy & Operations Program and its team of experienced operating advisors. Aurora's investors include leading public and corporate pension funds, endowments and foundations active in private equity investing. For more information about Aurora Capital Partners, visit: [www.auroracap.com](http://www.auroracap.com).

#### **About Sharps Compliance Corp.**

Headquartered in Houston, Texas, Sharps Compliance is a leading business-to-business services provider to the healthcare, long-term care and retail pharmacy markets. Sharps Compliance offers comprehensive solutions for the management of regulated medical waste, hazardous waste and unused medications. For more information, visit: [www.sharpsinc.com](http://www.sharpsinc.com).

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