

SECURITIES AND EXCHANGE COMMISSION

Washington, D. C. 20549

FORM 10-Q

(Mark One)



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

For the quarterly period ended: **March 31, 2003**

OR



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

For the transition period from

Commission file number **1-10233**

MAGNETEK, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

95-3917584

(I.R.S. Employer
Identification Number)

10900 Wilshire Blvd., Suite 850

Los Angeles, California 90024

(Address of principal executive offices)

(Zip Code)

(310) 208-1980

(Registrant's telephone number, including area code)

(Former name, former address and former fiscal year,
if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes No

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

APPLICABLE ONLY TO CORPORATE ISSUERS:

The number of shares outstanding of Registrant's Common Stock, as of May 5, 2003 was 23,535,507 shares.

2003 MAGNETEK FORM 10-Q

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FOR THE FISCAL QUARTER ENDED MARCH 31, 2003

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PART I. FINANCIAL INFORMATION

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by accounting principles for complete financial statements.

In the opinion of management, the accompanying condensed consolidated financial statements contain all adjustments necessary to fairly present the financial position as of March 31, 2003 and the results of operations and cash flows for the three-month and nine-month periods ended March 31, 2003 and 2002. It is suggested that these condensed consolidated financial statements be read in conjunction with the consolidated financial statements and notes included in the Company's latest Annual Report on Form 10-K. Results for the three-months and nine-months ended March 31, 2003 are not necessarily indicative of results that may be experienced for the full fiscal year.

This document contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements are inherently subject to risks and uncertainties which in many cases are beyond the control of the Company and which cannot be predicted or quantified. As a result, future events and actual results could differ materially from those set forth in, contemplated by, or underlying forward-looking statements. Such risks and uncertainties include but are not limited to economic conditions in general, sensitivity to industry conditions, competitive factors such as technology and pricing pressures, business conditions in the telecommunications and electronic equipment markets, international sales and operations, dependence on significant customers, increased material costs, risks and costs associated with acquisitions and divestitures, environmental matters and the risk that the Company's ultimate costs of doing business exceed present estimates. Further information on factors that could affect Magnetek's financial results can be found in the Company's filings with the Securities and Exchange Commission.

ITEM 1

MAGNETEK, INC.
 CONDENSED CONSOLIDATED INCOME STATEMENTS
 FOR THE THREE MONTHS ENDED
 March 31, 2003 and 2002
 (amounts in thousands, except per share data)
 (unaudited)

	<u>2003</u>	<u>2002</u>
Net sales	\$ 53,223	\$ 44,444
Cost of sales	<u>42,893</u>	<u>33,917</u>
Gross profit	10,330	10,527
Research and development	2,998	2,472
Selling, general and administrative	<u>10,161</u>	<u>7,499</u>
Income (loss) from operations	(2,829)	556
Interest and other expense	<u>3,889</u>	<u>68</u>
Income (loss) before provision for income taxes	(6,718)	488
Provision (benefit) for income taxes	<u>(1,308)</u>	<u>186</u>
Net income (loss)	<u>\$ (5,410)</u>	<u>\$ 302</u>
<u>Earnings (loss) per common share</u>		
Basic and diluted:		
Net income (loss)	<u>\$ (0.23)</u>	<u>\$ 0.01</u>

See accompanying notes

MAGNETEK, INC.
CONDENSED CONSOLIDATED INCOME STATEMENTS
FOR THE NINE MONTHS ENDED
March 31, 2003 and 2002
(amounts in thousands, except per share data)
(unaudited)

	<u>2003</u>	<u>2002</u>
Net sales	\$ 147,317	\$ 143,987
Cost of sales	120,961	110,689
Gross profit	26,356	33,298
Research and development	8,456	7,237
Selling, general and administrative	29,576	23,237
Gain from termination of retiree medical plan	(27,771)	—
Goodwill and fixed asset impairment	34,019	—
Income (loss) from operations	(17,924)	2,824
Interest and other (income) expense	4,308	(158)
Income (loss) before provision for income taxes	(22,232)	2,982
Provision for income taxes	7,620	1,134
Net income (loss)	\$ (29,852)	\$ 1,848
 <u>Earnings (loss) per common share</u>		
 Basic and diluted:		
Net income (loss)	\$ (1.27)	\$ 0.08

See accompanying notes

MAGNETEK, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
MARCH 31, 2003 and JUNE 30, 2002
(amounts in thousands)

	March 31	June 30
	(unaudited)	
ASSETS		
Current assets:		
Cash	\$ 1,712	\$ 4,816
Accounts receivable, net	42,199	41,532
Inventories	48,411	45,338
Prepaid expenses and other	10,987	8,767
Total current assets	103,309	100,453
Property, plant and equipment	103,865	93,167
Less—accumulated depreciation and amortization	72,395	61,194
Net property, plant and equipment	31,470	31,973
Goodwill	61,778	95,533
Prepaid pension and other assets	73,768	76,932
Total Assets	\$ 270,325	\$ 304,891
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 32,105	\$ 25,386
Accrued liabilities	17,783	18,559
Current portion of long-term debt	5,101	407
Total current liabilities	54,989	44,352
Long-term debt, net of current portion	9,624	3,717
Other long-term obligations	80,892	114,003
Deferred income taxes	8,102	—
Stockholders' equity		
Common stock	236	236
Paid in capital in excess of par value	106,464	106,216
Retained earnings	85,951	115,803
Accumulated other comprehensive loss	(75,933)	(79,436)
Total stockholders' equity	116,718	142,819
Total Liabilities and Stockholders' Equity	\$ 270,325	\$ 304,891

See accompanying notes

MAGNETEK, INC.
CONSOLIDATED STATEMENTS OF CASH FLOW
FOR THE NINE MONTHS ENDED
March 31, 2003 and 2002
(amounts in thousands)
(unaudited)

	<u>2003</u>	<u>2002</u>
Cash flows from operating activities:		
Net income (loss)	\$ (29,852)	\$ 1,848
Adjustments to reconcile net income (loss) to net cash used in operating activities:		
Depreciation and amortization	6,938	6,553
Gain from termination of retiree medical, net of tax	(17,218)	—
Goodwill and fixed asset impairment	34,019	—
Changes in operating assets and liabilities	1,520	(21,507)
Total adjustments	25,259	(14,954)
Net cash used in operating activities	(4,593)	(13,106)
Cash flows from investing activities:		
Purchase of and investment in companies, net of cash acquired	(4,523)	—
Proceeds from sale of discontinued businesses and other assets	—	24,414
Capital expenditures	(4,672)	(5,363)
Net cash provided by (used in) investing activities	(9,195)	19,051
Cash flow from financing activities:		
Borrowings under bank and other long term obligations	10,601	2,911
Proceeds from issuance of common stock	248	915
Stock repurchases	—	(3,916)
Repayment of bank and other long term obligations	—	(6,159)
Increase in deferred financing costs	(165)	—
Net cash provided by (used in) financing activities	10,684	(6,249)
Net decrease in cash	\$ (3,104)	\$ (304)
Cash at the beginning of the period	4,816	5,310
Cash at the end of the period	\$ 1,712	\$ 5,006
Supplemental disclosures of cash flow information:		
Cash paid during the period for:		
Interest	\$ 857	\$ 327
Income taxes	\$ 602	\$ 5,977

See accompanying notes

MAGNETEK, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
MARCH 31, 2003
(All dollar amounts are in thousands)
(unaudited)

1. Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States for interim financial reporting. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for fiscal year end financial statements. For further information, refer to the financial statements and footnotes thereto included in the Company's Form 10-K for the year ended June 30, 2002 filed with the Securities and Exchange Commission.

The Company uses a fifty-two, fifty-three week fiscal year ending on the Sunday nearest to June 30. Fiscal quarters are the thirteen or fourteen week periods ending on the Sunday nearest September 30, December 31, March 31 and June 30. For clarity of presentation, all periods are presented as if they ended on the last day of the calendar period. The three-month and nine-month periods ended March 31, 2003 and 2002 each contained thirteen and thirty-nine weeks respectively.

2. Summary of Significant Accounting Policies

Principles of Consolidation – The consolidated financial statements include the accounts of Magnetek, Inc. and its subsidiaries (the "Company"). All significant intercompany accounts and transactions have been eliminated.

Use of Estimates – The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the financial statements and the accompanying notes. Management estimates are used in, but not limited to, accounting for accounts receivable allowances, inventory allowances, depreciation and amortization, asset impairment, pension benefits, contingencies and taxes. Due to inherent uncertainties in making estimates, actual circumstances could differ from our estimates resulting in a material effect on the Company's financial position or results of operations.

Revenue Recognition – The Company's policy is to record and recognize sales only upon shipment.

Inventories – Inventories are stated at the lower of cost (first-in, first-out method) or market.

Property, Plant and Equipment – Additions and improvement are capitalized at cost, whereas expenditures for maintenance and repair are charged to expense as incurred. Depreciation is provided for over the estimated useful lives of the respective assets (ranging from three to forty years) principally using the straight-line method.

Goodwill – The Company adopted Statement of Financial Accounting Standards (“SFAS”) No. 142, “Goodwill and Other Intangible Assets”, effective July 1, 2001. Under SFAS No. 142, goodwill is no longer amortized but is subject to annual impairment tests, or interim impairment tests if certain indicators arise. During the second quarter of fiscal 2003, the Company performed interim tests for impairment of goodwill (see Note 7 of “Notes to Condensed Consolidated Financial Statements”).

Stock-Based Compensation – The Company has elected to continue to use the intrinsic-value method of accounting as prescribed by Accounting Principles Board (APB) No. 25 “Accounting for Stock Issued to Employees” in accounting for stock based awards to employees. Under APB 25, the Company recognizes no compensation expense with respect to such awards when the exercise price is equal to or greater than the market price at the date of grant. Accordingly, no stock-based employee compensation cost is reflected in reported results of operations for all periods presented.

The Company adopted the interim disclosure provisions of SFAS No. 148, “Accounting for Stock-Based Compensation – Transition and Disclosure – an Amendment of FASB Statement no. 123”, effective January 1, 2003 (see “Recent Accounting Pronouncements”). The following table illustrates the effect on net income and earnings per share if the Company had applied the fair value recognition provisions of SFAS No. 123, “Accounting for Stock-Based Compensation”, to stock-based employee compensation:

	Three Months Ended March 31		Nine Months Ended Ended March 31	
	2003	2002	2003	2002
Net income (loss)	\$ (5,410)	\$ 302	\$ (29,852)	\$ 1,848
Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards, net of related tax effects	(493)	(1,286)	(1,965)	(3,466)
Pro forma net loss	\$ (5,903)	\$ (984)	\$ (31,817)	\$ (1,618)
Earnings (loss) per share as reported:				
Basic and diluted	\$ (0.23)	\$ 0.01	\$ (1.27)	\$ 0.08
Pro forma loss per share:				
Basic and diluted	\$ (0.25)	\$ (0.04)	\$ (1.35)	\$ (0.07)

Pension Benefits – The valuation of the Company’s pension plan requires the use of assumptions and estimates that are used to develop actuarial valuations of expenses, assets and liabilities. These assumptions include discount rates, investment returns, projected salary increases and mortality rates. Changes in assumptions and

future interest rates and investment returns could potentially have a material impact on the Company's expenses and related funding requirements.

Derivative Financial Instruments – The Company uses derivative financial instruments to reduce financial market risks. These instruments are used to hedge foreign currency and interest rate market exposures. The Company does not use derivative financial instruments for speculative or trading purposes. The accounting policies for these instruments are based on the Company's designation of such instruments as hedging transactions. The criteria the Company uses for designating an instrument as a hedge include the instrument's effectiveness in risk reduction and the matching of the derivative to the underlying transaction. The resulting gains or losses are accounted for as part of the transactions being hedged, except for losses not expected to be recovered upon the completion of the hedge transaction, which are expensed.

Recent Accounting Pronouncements – In July 2002, the Financial Accounting Standards Board (FASB) issued SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities", which nullified Emerging Issues Task Force (EITF) Issue 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring)". SFAS No. 146 requires that a liability for a cost associated with an exit or disposal activity be recognized when the liability is incurred. Under EITF 94-3, a liability for an exit cost was recognized at the date of an entity's commitment to an exit plan. The provisions of this Statement are effective for exit or disposal activities that are initiated after December 31, 2002. The Company does not expect the adoption of SFAS 146 to have a material impact on its results of operations or financial position.

In November 2002, the FASB issued Interpretation No. (FIN) 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others". FIN 45 requires guarantors to recognize, at fair value, obligations to perform under certain guarantees, and is effective for guarantees issued or modified on or after January 1, 2003. FIN 45 did not have a material impact on the Company's results of operations or financial position.

In December 2002, the FASB issued SFAS No. 148, "Accounting for Stock-Based Compensation – Transition and Disclosure", which amends SFAS No. 123, "Accounting for Stock-Based Compensation". SFAS 148 provides alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation and requires more prominent and more frequent disclosures in the financial statements of the effects of stock-based compensation. The provisions of SFAS 148 are effective for fiscal years ending after December 15, 2002 and the interim disclosure provisions are effective for the current period.

3. Inventories

Inventories at March 31, 2003 and June 30, 2002 consist of the following:

	<u>March 31</u>	<u>June 30</u>
Raw materials and stock parts	\$ 27,160	\$ 29,201
Work-in-process	15,552	10,747
Finished goods	<u>5,699</u>	<u>5,390</u>
	<u>\$ 48,411</u>	<u>\$ 45,338</u>

4. Commitments and Contingencies

The Company is a party to a number of product liability lawsuits, many of which involve fires allegedly caused by defective lighting ballasts. All of these cases are being defended by the Company, and management believes that its insurers will bear all liability, except for applicable deductibles, and that none of these proceedings individually or in the aggregate will have a material effect on the Company. In June 2001 the Company sold its Lighting business. Pursuant to the terms of the sale agreement, the Company's liability for such claims asserted subsequent to December 2003 will terminate, regardless of whether or not the ballasts were manufactured by the Company.

The Company is frequently named, along with numerous other defendants, in asbestos-related lawsuits. While the outcome of these cases cannot be predicted with certainty, the Company is aggressively defending against such claims and seeking to be dismissed as a defendant. The Company has never produced asbestos-containing products and is either contractually indemnified against liability for asbestos-related claims or believes that it has no liability for such claims, all of which arise from business operations the Company acquired but no longer owns. The Company does not believe the proceedings, individually or in the aggregate, will have a material adverse effect on its financial position or results of operations.

In April 1998, Ole K. Nilssen filed a lawsuit in the U.S. District Court for the Northern District of Illinois alleging infringement by the Company of seven of his patents pertaining to electronic ballast technology. Mr. Nilssen sought unspecified damages and injunctive relief to preclude the Company from making, using or selling products allegedly infringing his patents. The Company denied that its products infringed any valid patent and filed a response asserting its affirmative defenses, as well as a counterclaim for a judicial declaration that its products did not infringe the patents asserted by Nilssen and also that the asserted patents were invalid. The Company vigorously defended the lawsuit. In April 2003, the lawsuits were dismissed with prejudice and the parties agreed to submit limited issues to binding arbitration. Although the Company will continue to assert what it believes are strong defenses at arbitration, an unfavorable decision could have a material adverse effect on the Company's financial position or results of operations.

Beginning in 1997, the Company entered into a number of swap transactions with Bank of America ("B of A") to reduce its exposure to fluctuations in interest rates on its outstanding debt. One swap transaction included a provision that allowed B of A, at its sole option, to extend the transaction for a five-year period upon expiration (the "swaption"). Prior to August 1999, the Company paid off a large amount of its outstanding debt and the existing hedging strategy was no longer appropriate. Beginning in August 1999, the Company, with B of A's assistance, began unwinding the swap transactions and in December 1999, it unwound the last remaining swap, which was subject to the swaption. On June 26, 2002, the Company received notice that B of A intended to exercise the swaption, although at that point the underlying swap had been terminated for two and a half years. Between December 1999 and June 2002, the Company had no contact from B of A (which was also the agent bank under its credit agreement) regarding the alleged survival of the swaption. As a result of the significant decline in interest rates between December 1999 and June 2002, the value of a swaption had increased significantly in B

of A's favor. A dispute arose between the Company and B of A regarding whether the swaption was also terminated in December 1999 along with the underlying swap and whether a right to extend a terminated contractual agreement even exists. In December 2002, the Company filed a lawsuit in Los Angeles Superior Court against Bank of America. Bank of America removed the case to the U.S. District Court for the Central District of California. In April 2003, the Company and B of A reached an agreement whereby Magnetek would pay B of A \$3.275 million. A corresponding charge to income was recorded in the quarter ended March 31, 2003 and is reflected as other expense in the accompanying condensed consolidated income statement.

From time to time, the Company discovered the existence of hazardous substances at certain facilities associated with previously owned businesses and responded as necessary to bring the facilities into compliance with applicable laws and regulations. Upon sale of the businesses, the Company agreed, in some cases, to indemnify the buyers against environmental claims associated with the divested operations, subject to various conditions and limitations. Remediation activities, including those related to the Company's indemnification obligations, did not involve material expenditures during the third quarter of fiscal 2003.

The Company has also been identified by the United States Environmental Protection Agency and certain state agencies as a potentially responsible party for cleanup costs associated with alleged past waste disposal practices at several previously owned facilities and offsite locations. Its remediation activities as a potentially responsible party were not material in the third quarter of fiscal 2003. Although the materiality of future expenditures for environmental activities may be affected by the level and type of contamination, the extent and nature of cleanup activities required by governmental authorities, the nature of the Company's alleged connection to the contaminated sites, the number and financial resources of other potentially responsible parties, the availability of indemnification rights against third parties and the identification of additional contaminated sites, the Company's estimated share of liability, if any, for environmental remediation, including its indemnification obligations, is not expected to be material.

Prior to the Company's purchase of Century Electric, Inc. ("Century Electric") in 1986, Century Electric acquired a business from Gould Inc. ("Gould") in May 1983 that included a leasehold interest in a fractional horsepower electric motor manufacturing facility located in McMinnville, Tennessee. Gould agreed to indemnify Century Electric from and against liabilities and expenses arising out of the handling and cleanup of certain waste materials, including but not limited to cleaning up any polychlorinated biphenyls ("PCBs") at the McMinnville facility (the "1983 Indemnity"). The presence of PCBs and other substances, including solvents, in the soil and in the groundwater underlying the facility and in certain offsite soil, sediment and biota samples has been identified. The McMinnville plant is listed as a Tennessee Inactive Hazardous Waste Substance Site and plant employees were notified of the presence of contaminants at the facility. Gould has completed an interim remedial excavation and disposal of onsite soil containing PCBs and a preliminary investigation and cleanup of certain onsite and offsite contamination. The Company believes the cost of further investigation and remediation (including ancillary costs) are covered by the 1983 Indemnity. The Company sold its leasehold interest in the McMinnville plant in August 1999 and while the Company believes that Gould will continue to perform substantially under its indemnity obligations, Gould's substantial

failure to perform such obligations could have a material adverse effect on the Company's financial position or results of operations.

The Company acquired the stock of Universal Manufacturing Company ("Universal") from a predecessor of Fruit of the Loom ("FOL"), and the predecessor agreed to indemnify the Company against certain environmental liabilities arising from pre-acquisition activities. Environmental liabilities covered by the indemnification agreement include completion of additional cleanup activities, if any, at the Bridgeport, Connecticut facility (sold in connection with the sale of the transformer business in June 2001) and defense and indemnification against liability related to offsite disposal locations where Magnetek may have a share of potential response costs. In 1999 FOL filed a petition for Reorganization under Chapter 11 of the Bankruptcy Code and the Company filed a proof of claim in the proceeding for obligations related to the environmental indemnification agreement. In November 2001, the Company and FOL entered into an agreement involving the allocation of certain potential tax credits and Magnetek withdrew its claims in the bankruptcy proceeding. Although the Company believes that FOL has substantially completed the obligations required by the indemnification agreement, its ability to set aside any remaining obligations to the states of Connecticut and New Jersey through bankruptcy, or the discovery of additional environmental contamination at the Bridgeport facility, could have a material adverse effect on the Company's financial position or results of operations.

5. Comprehensive Income (Loss)

For the fiscal quarters and nine months to date ended March 31, 2003 and 2002, comprehensive income (loss) consisted of the following:

Fiscal Quarter

	<u>2003</u>	<u>2002</u>
Net income (loss)	\$ (5,410)	\$ 302
Currency translation adjustment	1,754	347
Comprehensive income (loss)	<u>\$ (3,656)</u>	<u>\$ 649</u>

Nine Months to Date

	<u>2003</u>	<u>2002</u>
Net income (loss)	\$ (29,852)	\$ 1,848
Currency translation adjustment	3,503	2,069
Comprehensive income (loss)	<u>\$ (26,349)</u>	<u>\$ 3,917</u>

6. Earnings (Loss) Per Share

The following table sets forth the computation of basic and diluted earnings (loss) per share.

	Three Months Ended March 31		Nine Months Ended Ended March 31	
	2003	2002	2003	2002
Basic earnings (loss) per share:				
Net income (loss)	\$ (5,410)	\$ 302	\$ (29,852)	\$ 1,848
Weighted average shares for basic earnings per share	23,525	22,455	23,519	22,505
Basic earnings (loss) per share	<u>\$ (0.23)</u>	<u>\$ 0.01</u>	<u>\$ (1.27)</u>	<u>\$ 0.08</u>
Diluted earnings (loss) per share:				
Net income (loss)	\$ (5,410)	\$ 302	\$ (29,852)	\$ 1,848
Weighted average shares for basic earnings per share	23,525	22,455	23,519	22,505
Effect of dilutive stock options	—	395	—	341
Weighted average shares for diluted earnings per share	23,525	22,850	23,519	22,846
Diluted earnings (loss) per share	<u>\$ (0.23)</u>	<u>\$ 0.01</u>	<u>\$ (1.27)</u>	<u>\$ 0.08</u>

7. Goodwill

The changes in the carrying value of goodwill by reporting unit, net of accumulated amortization of \$9,720, are as follows:

	Telecom Power	Power Electronics	Industrial Controls	Total
Balance at June 30, 2002	\$ 36,301	\$ 33,509	\$ 25,723	\$ 95,533
Acquisitions during period	—	—	1,693	1,693
Purchase price adjustments and reclassifications	(2,859)	—	—	(2,859)
Currency translation	—	864	(11)	853
Impairment of goodwill	(33,442)	—	—	(33,442)
Balance at March 31, 2003	<u>\$ —</u>	<u>\$ 34,373</u>	<u>\$ 27,405</u>	<u>\$ 61,778</u>

As a result of the decline in the Company's market capitalization in the first quarter of fiscal 2003, the continuing decline in the telecommunications (telecom) market, and anticipated reduced demand of telecom power system spending in the future, the Company determined that there were indicators of impairment in the carrying value of goodwill related to acquisitions made within the past two fiscal years in the telecom industry. Accordingly, during the second quarter of fiscal 2003, the Company performed an interim test for goodwill impairment in accordance with SFAS No. 142. At the end of the first quarter of fiscal 2003, the Company had goodwill of \$95.5 million resulting from acquisitions. Upon completing the interim impairment tests, the Company recorded a goodwill impairment charge of \$33.4 million related to the telecom acquisitions.

8. Acquisitions

During the third quarter of fiscal 2003, the Company purchased all of the outstanding shares of MXT Holdings, Inc. for approximately \$4.5 million in cash, subject to post closing adjustments. MXT Holdings, Inc. is a holding company whose wholly owned subsidiary, Maxtec International Corp. is engaged in the development, manufacture and sale of wireless remote controls and anti-collision systems for overhead cranes, hoists, monorail systems, conveyors, locomotives and other material handling applications under the name Telemotive Industrial Controls ("Telemotive"). Telemotive reported revenue of approximately \$10.0 million in its most recently completed fiscal year. Acquisition costs in excess of net assets acquired, approximately \$1.7 million, were recorded as goodwill. The acquisition was financed from the Company's revolving credit facility.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF RESULTS OF OPERATIONS AND FINANCIAL CONDITION

Critical Accounting Policies

The following discussion and analysis of our financial condition and results of operations are based upon our condensed consolidated financial statements. In preparing financial statements in conformity with accounting principles generally accepted in the United States, we must make estimates and assumptions that affect the reported amount of assets and liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities at the date of our financial statements. Actual results could differ from those estimates. For additional information regarding our critical accounting policies and significant assumptions, refer to Note 2 of Notes to Condensed Consolidated Financial Statements, or to the footnotes included in our Form 10-K for the year ended June 30, 2002 filed with the Securities and Exchange Commission. There have been no significant changes in critical accounting policies since June 30, 2002.

Three Months Ended March 31, 2003 and 2002

Net Sales and Gross Profit

Net sales for the third quarter of fiscal 2003 were \$53.2 million, an increase of 19.8% from the third quarter of fiscal 2002 sales of \$44.4 million. The revenue increase is due to higher sales of power supplies, particularly into consumer product markets, as well as the acquisition of Telemotive, which offset lower sales in industrial

controls markets. We expect our fourth quarter revenue to remain relatively flat with the third quarter, as we expect continuing softness in the general economy and the telecommunications market in particular.

Our current year third quarter gross profit was \$10.3 million, or 19.4% of sales, versus \$10.5 million, or 23.7% of sales in the third quarter of fiscal 2002. The continued strength in the Euro relative to the U.S. dollar compressed gross profits on sales from our European subsidiary denominated in U.S. dollars, negatively impacting power supply gross profits. Additionally, softness in the industrial controls business and lower margins in telecom power and related service revenue negatively impacted margins.

Research and Development, Selling, General and Administrative

R&D expense was \$3.0 million, or 5.6% of sales, in the third quarter of fiscal 2003 compared to \$2.5 million, or 5.6% of sales, in fiscal 2002. We maintained our spending in new product development aimed at custom product markets and diverse consumer markets. We continue to invest in new power–electronic platforms and applications and expand the breadth of existing product lines.

Selling, general and administrative (SG&A) expense was \$10.2 million (19.1% of sales) in the third quarter of fiscal 2003 versus \$7.5 million (16.9% of sales) in the third quarter of fiscal 2002. This increase was due to the acquisition of Telemotive, volume–related selling expenses, and increased pension, legal and advertising expenses. Our third quarter fiscal 2003 selling expenses were \$4.4 million versus \$3.7 million in the third quarter of fiscal 2002, due to the acquisition of Telemotive, and higher spending to improve our sales capabilities, increase brand awareness and develop our domestic OEM and distribution sales channels. Our third quarter fiscal 2003 pension expense was \$0.4 million compared to a prior year third quarter income amount of \$0.2 million. We expect this higher level of pension expense to continue throughout fiscal 2003.

Interest and Other Expense

Net interest expense was \$0.6 million in the third quarter of fiscal 2003 compared to net interest expense of \$0.1 million in the third quarter of fiscal 2002. The increase in net interest expense is attributable to increased borrowings under domestic and European credit facilities and expenses related to the amendment in March 2003 to our revolving loan facility agreement. Other expense in the third quarter of fiscal 2003 includes a \$3.3 million charge for settlement of our litigation with Bank of America (see Note 4 of “Notes to Condensed Consolidated Financial Statements”).

Net Income (Loss)

Net loss for the third quarter of fiscal 2003 was \$5.4 million, compared to net income of \$0.3 million in the third quarter of fiscal 2002. The tax benefit in the third quarter of fiscal 2003 was \$1.3 million (19.5% effective rate) versus a tax provision of \$0.2 million (38% effective rate) in the third quarter of fiscal 2002. As a result of the deferred tax asset position on our balance sheet, we do not expect to record tax benefits for future pretax losses.

Nine Months Ended March 31, 2003 and 2002

Net Sales and Gross Profit

Our net sales for the first nine months of fiscal 2003 were \$147.3 million, a 2.3% increase from sales of \$144.0 million for the first nine months of fiscal 2002. Current year revenue was negatively impacted by weakness in the general economy as well as continued weakness in certain served markets, notably telecommunications and information technology.

Our fiscal 2003 gross profit for the first nine months was \$26.4 million, or 17.9% of sales, versus \$33.3 million, or 23.1% of sales in the first nine months of fiscal 2002. The fiscal 2003 gross profit reflects a charge of \$4.7 million to write down the value of telecom-related inventory based upon past and expected future demand. Excluding this charge gross profit would have been \$31.1 million, or 21.1% of sales. Lower sales and margins in telecom power and related service revenue also negatively impacted gross profit. Additionally, the strength in the Euro relative to the U.S. dollar compressed gross profits on sales from our European subsidiary denominated in U.S. dollars, negatively impacting power supply gross profits.

Research and Development, Selling, General and Administrative

Research and development (R&D) expense was \$8.5 million, or 5.8% of sales, in the first nine months of fiscal 2003 compared to \$7.2 million, or 5.0% of sales, in the first nine months of fiscal 2002. We increased spending in new product development aimed at diverse consumer markets, our fastest growing product area. We continue to invest in new power-electronic platforms and applications and expand the breadth of existing product lines.

Selling, general and administrative (SG&A) expense was \$29.6 million (20.1% of sales) for the first nine months of fiscal 2003 versus \$23.2 million (16.1% of sales) for the first nine months of fiscal 2002. This increase was due to the acquisition of Telemotive, increased headcount in sales and marketing, and increased pension, insurance, advertising and legal expenses. Fiscal 2003 selling expenses were \$12.7 million for the first nine months versus \$10.7 million in the first nine months of fiscal 2002, due to higher spending to improve our sales capabilities, increase brand awareness and develop our domestic OEM and distribution sales channels. Pension expense was \$1.1 million for the first nine months of fiscal 2003 compared to pension income of \$0.7 million for the same period in fiscal 2002. We expect this higher level of pension expense to continue throughout fiscal 2003.

Gain from Termination of Retiree Medical Plan

Fiscal 2003 results for the first nine months include a nonrecurring pre-tax gain of \$27.8 million related to the termination in the first quarter of our retiree medical plan. The financial impact in future fiscal quarters subsequent to the first quarter of fiscal 2003 will be a reduction of income from operations of approximately \$0.4 million, due to elimination of the amortization credit associated with the related liability. However, we will realize a positive quarterly cash impact of approximately the same amount.

Goodwill and Fixed Asset Impairment

During the second quarter of fiscal 2003, we determined that there were indicators of impairment in the carrying value of goodwill, based on the decline in our market capitalization and the continuing decline in the telecommunications industry. We performed an interim impairment test in accordance with SFAS 142 based on updated forecasts of operating results and cash flows, and we recorded a \$33.4 million goodwill impairment charge in the second quarter of fiscal 2003. The charge relates exclusively to our telecommunications business and effectively reduces the carrying value of goodwill for that business to zero.

We also performed an impairment review of our long-lived assets in accordance with SFAS 144. Based upon utilization and current market values of certain fixed assets, notably in our telecommunications business, we recorded a \$0.6 million impairment charge in the second quarter of fiscal 2003 to reduce the carrying value of those assets.

Interest and Other Expense (Income)

Net interest expense was \$1.0 million for the first nine months of fiscal 2003 compared to net interest expense of \$0.1 million for the same period in fiscal 2002. The increase in net interest expense is attributable to increased borrowings under domestic and European credit facilities and expenses related to the amendment in March 2003 to our revolving loan facility agreement. Other expense in the third quarter of fiscal 2003 includes a \$3.3 million charge for settlement of our litigation with Bank of America. Other income in the third quarter of fiscal 2002 includes \$0.2 million related to the sale of the Company's standard drives business.

Net Income (Loss)

Net loss for the first nine months of fiscal 2003 was \$29.9 million, including the impact of the nonrecurring gain, goodwill and fixed asset impairment charges and litigation settlement charges, compared to net income of \$1.8 million for the first nine months of fiscal 2002. Excluding the impact of the nonrecurring gain, all telecom-related asset write downs and impairment charges, and the litigation settlement charge, our net loss would have been \$4.8 million. The tax provision for the first nine months of fiscal 2003 was \$7.6 million versus \$1.1 million for the same period of fiscal 2002. Although we had a pretax operating loss of \$22.2 million for the first nine months of fiscal 2003, we also recorded a tax provision during the same period, associated mainly with the \$27.8 million nonrecurring gain recorded in the first quarter of fiscal 2003. There was no tax benefit associated with the \$33.4 million goodwill impairment charge recorded in the second quarter of fiscal 2003, as the goodwill to which the charge related is not deductible for income tax purposes. As a result of the deferred tax asset position on our balance sheet, we do not expect to record tax benefits for future pretax losses.

Liquidity and Capital Resources

As a result of non-cash charges recorded during the second fiscal quarter in accordance with SFAS Nos. 142 and 144, as well as projected operating performance, in March 2003 the Company and its lenders under the Company's domestic revolving loan facility executed an amendment to the revolving loan facility agreement to address the violation or potential violation of certain financial covenants. The amendment reduced the bank's lending commitment to \$16 million from \$40 million, increased certain fees and interest rates and adjusted certain financial covenants through the Company's fiscal year end on June 30, 2003. The amendment also contains restrictions on disbursements for, among other things, dividend payments, stock repurchases and acquisitions. The loan facility agreement also supports the issuance of letters of credit and expires on December 17, 2003. Our European subsidiary maintains borrowing arrangements with local banks, primarily to support working capital needs.

During the quarter ended March 31, 2003 the Company acquired MXT Holdings, Inc. for a cash purchase price of approximately \$4.5 million (see Note 8 of "Notes to Condensed Consolidated Financial Statements"). The purchase was funded with proceeds from the domestic revolving loan facility. As of March 31, 2003, long-term borrowings (including current portion) were \$14.7 million compared to \$4.1 million as of June 30, 2002. The increase related primarily to the purchase of Telemotive and year-to-date operating losses incurred mainly in the Telecommunications Systems business. As of March 31, 2003, borrowings under the domestic revolving loan facility were \$4.7 million; borrowings under European credit lines were \$6.4 million with the remaining \$3.6 million in long-term borrowings representing capital leases and notes payable in Europe. In April 2003, the Company made a payment to Bank of America in connection with the settlement of litigation (See Note 4 of "Notes to Condensed Consolidated Financial Statements") with proceeds from the revolving loan facility. As of May 6, 2003 there were approximately \$4 million in available borrowings under the domestic loan facility and approximately \$3 million in available borrowings under European credit lines, as well as \$1.7 million in available cash balances.

We intend to replace our existing revolving loan facility agreement with an asset based lending arrangement and are currently working with potential lenders toward that end. We are also evaluating additional financing in Europe that would be secured by our owned European land and facility that could provide up to \$10 million in additional borrowing capacity.

Capital expenditures in the third fiscal quarter of 2003 were \$2.0 million with \$4.7 million in capital expenditures for the first nine months of fiscal 2003. We anticipate that our capital expenditures for the fiscal year will be less than \$7.0 million.

As a result of the decline in stock market equity values and interest rates over the past nine months, the amount by which the accumulated benefit obligation of our defined benefit pension plan exceeds plan assets has continued to increase during fiscal 2003. As a result, in accordance with accounting rules an additional minimum pension liability will be recorded in the Company's balance sheet as of our fiscal year end at June 30, 2003. The amount of additional minimum pension liability depends primarily on trust asset values and interest

rates at June 30, 2003, however current projections indicate an amount of approximately \$30 million. The amount and timing of future contributions to the plan are dependent upon values in equity and fixed income markets as well as interest rates. No contributions are currently mandated under pension funding regulations, however, we intend to make a contribution of approximately \$2.5 million in September 2003. This contribution may be made in cash, Company stock, or a combination of the two. Based upon this contribution and current contribution credits available to the Company under pension funding regulations, actuarial projections indicate no mandatory contributions would be required through calendar 2007. However, we may elect to make contributions to the plan prior to that time, and, depending upon changes in asset values and interest rates, required contributions in periods subsequent to 2007 could be significant.

Based upon current plans and business conditions, management believes that borrowing capacity under our revolving loan facilities and borrowings secured by our European land and facility, as well as internally generated cash flows will be sufficient to fund anticipated working capital needs, capital expenditures and other near-term commitments.

ITEM 3

QUALITATIVE AND QUANTITATIVE DISCLOSURE ABOUT MARKET RISK

The Company is exposed to market risks in the areas of foreign exchange and interest rates. To reduce the effect of such risks, the Company selectively utilizes derivative financial instruments. These instruments are used to hedge foreign currency and interest rate market exposures. The Company does not use, and Company policy prohibits the use of, derivative financial instruments for speculative or trading purposes.

ITEM 4

CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Pursuant to Securities Exchange Act Rule 13a-14, within 90 days prior to the date of filing of this Report, an evaluation of the Company's disclosure controls and procedures was performed by management, with the participation of the Company's Chief Executive Officer and the Chief Financial Officer. Based on this evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures are effective in timely alerting them to material information relating to the Company (including our consolidated subsidiaries) required to be included in our periodic SEC filings.

Changes in Internal Controls

In the quarter ended March 31, 2003, there were no significant changes in the Company's internal controls or in other factors that could significantly affect these controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

PART II OTHER INFORMATION

ITEM 1. Legal Proceedings

See Part I, Item 1, Note 4.

ITEM 6. Exhibits and Reports on Form 8-K

- (a) Index to Exhibits
- 3.2 By-laws of the Company, as amended and restated.
- 99.1 Certification pursuant to 18 U.S.C. Section 1350.
- 99.2 Certification pursuant to 18 U.S.C. Section 1350.
- (b) Reports on Form 8-K

Form 8-K dated January 27, 2003, Press release announcing revaluation of assets based on impairment tests.

Form 8-K dated February 6, 2003, Press release announcing results for the second quarter and the first half of fiscal year 2003.

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 thereunto duly authorized.

MAGNETEK, INC.
(Registrant)

Date: May 14, 2003

/s/ DAVID P. REILAND
David P. Reiland
Executive Vice President
and Chief Financial Officer
(Duly authorized officer of the
registrant and principal
financial officer)

CERTIFICATION

I, Andrew G. Galef, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Magnetek, Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
 - a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
 - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and
 - c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
 - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: May 14, 2003

/s/ ANDREW G. GALEF
Andrew G. Galef
Chairman of the Board,
President and Chief Executive Officer

CERTIFICATION

I, David P. Reiland, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Magnetek, Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
 - a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
 - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and
 - c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
 - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: May 14, 2003

/s/ DAVID P. REILAND
David P. Reiland
Executive Vice President and Chief Financial
Officer

BY-LAWS
OF
MAGNETEK, INC.

BY-LAWS
OF
MAGNETEK, INC.
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BY-LAWS
OF
MAGNETEK, INC.

ARTICLE I

OFFICES

Section 1. Registered Office

The registered office shall be in the City of Dover, County of Kent, State of Delaware.

Section 2. Other Offices.

The corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 1. Place of Meetings.

Meetings of stockholders shall be held at any place within or outside the State of Delaware designated by the Board of Directors. In the absence of any such designation, stockholders' meetings shall be held at the principal executive office of the corporation.

Section 2. Annual Meeting of Stockholders.

The annual meeting of stockholders shall be held each year on a date and a time designated by the Board of Directors. At each annual meeting directors shall be elected and any other proper business may be transacted.

Section 3. Quorum; Adjourned Meetings and Notice Thereof.

A majority of the stock issued and outstanding and entitled to vote at any meeting of stockholders, the holders of which are present in person or represented by proxy, shall constitute a quorum for the transaction of business except as otherwise provided by law, by the Certificate of Incorporation, or by these By-Laws. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum and the votes present may continue to transact business until adjournment. If, however, such quorum shall not be present or represented at any meeting of the stockholders, a majority of the voting stock represented in person or by proxy may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been

transacted at the meeting as originally notified. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote thereat.

Section 4. Voting.

When a quorum is present at any meeting, the vote of the holders of majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express provision of the statutes, or the Certificate of Incorporation, or these By-Laws, a different vote is required in which case such express provision shall govern and control the decision of such question.

Section 5. Proxies.

At each meeting of the stockholders, each stockholder having the right to vote may vote in person or may authorize another person or persons to act for him by proxy appointed by an instrument in writing subscribed by such stockholder and bearing a date not more than three years prior to said meeting, unless said instrument provides for a longer period. All proxies must be filed with the Secretary of the corporation at the beginning of each meeting in order to be counted in any vote at the meeting. Each stockholder shall have one vote for each share of stock having voting power, registered in his name on the books of the corporation on the record date set by the Board of Directors as provided in Article V, Section 6 hereof. All elections shall be had and all questions decided by a plurality vote.

Section 6. Special Meetings.

Special meetings of the stockholders, for any purpose, or purposes, unless otherwise prescribed by statute or by the Certificate of Incorporation, may be called by the President and shall be called by the President or the Secretary at the request in writing of a majority of the Board of Directors, or at the request in writing of stockholders owning a majority in amount of the entire capital stock of the corporation issued and outstanding, and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 7. Notice of Stockholders' Meetings.

Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be

given which notice shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. The written notice of any meeting shall be given to each stockholder entitled to vote at such meeting not less than ten nor more than sixty days before the date of the meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the corporation.

Section 8. Maintenance and Inspection of Stockholder List.

The officer who has charge of the stock ledger of the corporation shall prepare and make, at least ten 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, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 9. Stockholder Action by Written Consent Without a Meeting.

Unless otherwise provided in 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 such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken and bearing the dates of signature of the stockholders who signed the consent or consents, 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 by delivery to its registered office in the state of Delaware, or the corporation's principal place of business, or an officer or agent of the corporation having custody of the book or books in which proceedings of meetings of the stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return

receipt requested. All consents properly delivered in accordance with this section shall be deemed to be recorded when so delivered. No written consent shall be effective to take the corporate action referred to therein unless, within sixty days of the earliest dated consent delivered to the corporation as required by this section, written consents signed by the holders of a sufficient number of shares to take such corporate action are so recorded. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing. Any action taken pursuant to such written consent or consents of the stockholders shall have the same force and effect as if taken by the stockholders at a meeting thereof.

Section 10. Advance Notice of Stockholder Proposals and Stockholder Nominations.

(a) At any meeting of the stockholders, only such business shall be conducted as shall have been brought before the meeting (i) by or at the direction of the Board of Directors or (ii) by any stockholder of the corporation who complies with the notice procedures set forth in this Section 10(a). Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the corporation's notice of meeting, as provided by Section 6 of this Article II. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the corporation's notice of meeting, in accordance with clause (b) of this Section 10. For business to be properly brought before any annual meeting of the stockholders by a stockholder, it must be a proper matter for stockholder action and the stockholder must have given timely notice thereof in writing to the Secretary of the corporation. For such notice to be timely in respect of an annual meeting, it must be delivered to the Secretary at the principal executive office of the corporation not later than the close of business on the 120th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so delivered not later than the close of business on the 120th day prior to such annual meeting or, if later, the close of business on the 10th day following the date on which public announcement of the date of such meeting is first made by the corporation. A stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the meeting (1) a brief description of the business desired to be brought before

the meeting and the reasons for conducting such business at the meeting, (2) the name and address, as they appear on the corporation's books, of the stockholder proposing such business, (3) the class and number of shares of the corporation that are beneficially owned by the stockholder, and (4) any material interest of the stockholder in such business. In addition, the stockholder making such proposal shall promptly provide any other information reasonably requested by the corporation. Notwithstanding anything in these By-laws to the contrary, no business shall be conducted at any meeting of the stockholders except in accordance with the procedures set forth in this Section 10(a). The Chairman of any such meeting shall direct that any business not properly brought before the meeting shall not be considered.

(b) Nominations for the election of directors may be made by the Board of Directors or a committee thereof, or by any stockholder entitled to vote in the election of directors; provided, however, that a stockholder may nominate a person for election as a director at a meeting only if written notice of such stockholder's intent to make such nomination has been timely given to the Secretary of the corporation. Such notice shall be timely as to an annual meeting if it complies with clause (a) of this Section 10, and shall be timely as to a special meeting if it is received by the Secretary at the principal executive office of the corporation not later than the close of business on the 120th day prior to the date of the special meeting or, if later, the close of business on the 10th day following the first public announcement of the date of such meeting. Each such notice shall set forth (1) the name and address of the stockholder who intends to make the nomination and of the person or persons to be nominated, (2) a representation that the stockholder is a holder of record of stock of the corporation entitled to vote at such a meeting and intends to appear in person or by proxy at the meeting and nominate the person or persons specified in the notice, (3) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder, (4) such other information regarding each nominee proposed by such stockholder as would be required to be included in a proxy statement filed pursuant to the proxy rules of the United States Securities and Exchange Commission had the nominee been nominated, or intended to be nominated, by the Board of Directors, and (5) the consent of each nominee to serve as a director of the corporation if so elected. In addition, the stockholder making such nomination shall promptly provide any

other information reasonably requested by the corporation. No person shall be eligible for election as a director of the corporation unless nominated in accordance with the procedures set forth in this Section 10(b). The Chairman of any meeting of stockholders shall direct that any nomination not made in accordance with these procedures be disregarded. For purposes of this Section 10, "public announcement" shall mean disclosure in a press release reported by the Dow Jones New Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission.

ARTICLE III

DIRECTORS

Section 1(a). Number and Qualification of Directors.

The Board of Directors shall consist of not less than five or more than nine persons and the specific number of directors shall be as fixed by resolution of the Board of Directors from time to time. The directors need not be stockholders. The directors shall be elected at the annual meeting of the stockholders, except as provided in Section 2 of this Article, and each director elected shall hold office until his successor is elected and qualified; provided, however, that unless otherwise restricted by the Certificate of Incorporation or by law, any director or the entire Board of Directors may be removed, either with or without cause, from the Board of Directors at any meeting of stockholders by a majority of the stock represented and entitled to vote thereat.

Section 1(b). Restrictions on Filling Vacancies.

No person shall be qualified to be elected to, or appointed to fill a vacancy on, the Board of Directors of the corporation during the pendency of a Business Combination transaction, as defined herein, if such person is, or (in the case of a person described in clause (i), (ii) or (iii) below) was within the two years preceding the date of such election or appointment: (i) an officer, director, employee or affiliate (as defined in Rule 144 under the Securities Act of 1933, as amended) of a party to such transaction (an "Interested Party") or of any affiliate of an Interested Party; (ii) an agent subject to the direction of an Interested Party (iii) a consultant or advisor to an Interested Party; (iv) a person having a material financial interest in the transaction (other than through the ownership of stock or securities of the corporation), or (v) a person having any

business, financial, or familial relationship with any person referred to in clauses (i)–(iv) above that would reasonably be expected to affect such person’s judgment in a manner adverse to this corporation. A person shall not be disqualified from election or appointment to the Board of Directors by reason of this Section 1(b) solely because such person is a director or officer of this corporation who receives normal and customary compensation as such and/or is a stockholder or affiliate of this corporation.

A Business Combination shall mean any of the following: (i) a merger or consolidation of this corporation with another corporation, or a sale of all or substantially all of the business and assets of this corporation; or (ii) an acquisition (including by tender offer or any other means) by any person (including any two or more persons comprising a group, within the meaning of Rule 13(d)(5), of beneficial ownership, within the meaning of Rule 13(d)(3) under the Securities Exchange Act of 1934, as amended, of 15% or more of the outstanding common stock of this corporation.

A Business Combination shall be deemed pending for purposes of this Section 1(b) commencing on the date any offer or proposal for such transaction shall be made and until such time as the proposed transaction is abandoned or until such time as: (i) the party proposing such transaction shall have acquired beneficial ownership, as defined above, of 50% or more of this corporation’s outstanding voting stock; and (ii) 10 business days shall have elapsed thereafter. A business day shall mean any day other than a Saturday, a Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

Section 2. Vacancies.

Vacancies on the Board of Directors by reason of death, resignation, retirement, disqualification, removal from office, or otherwise, and newly created directorships may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. The directors so chosen shall hold office until the next annual election of directors and until their successors are duly elected and shall qualify, unless sooner displaced. If there are no directors in office, then an election of directors may be held in the manner provided by statute. If, at the time of filling any vacancy or newly created directorship, the directors then in office shall constitute less than a majority of the whole Board (as constituted immediately

prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least ten percent of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or vacancies or newly created directorships, or to replace the directors chosen by the directors then in office.

Section 3. Powers.

The property and business of the corporation shall be managed by or under the direction of its Board of Directors. In addition to the powers and authorities by these By-Laws expressly conferred upon them, the Board may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-Laws directed or required to be exercised or done by the stockholders.

Section 4. Place of Directors' Meetings.

The directors may hold their meetings and have one or more offices, and keep the books of the corporation outside of the State of Delaware.

Section 5. Regular Meetings.

Regular meetings of the Board of Directors may be held without notice at such time and place as shall from time to time be determined by the Board.

Section 6. Special Meetings.

(a) Special meetings of the Board of Directors (or of any Committee of the Board of Directors) shall be held whenever called by (i): a majority of the authorized number of Directors, or (ii) the Chairman of the Board (or, in the case of a special meeting of a Committee of the Board of Directors, the Chairman of such Committee).

(b) Except as otherwise provided by law or by these By-Laws, written notice of the time and place of each such special meeting shall be given to each Director (or, in the case of a special meeting of a Committee of the Board of Directors, each Director who sits on such Committee): (i) by first class mail, postage prepaid, addressed to him or her at his or her address as it is shown upon the records of the corporation, at least five days before the date of such meeting, or (ii) by personal delivery, telecopy, electronic mail (if the Director and the corporation are then connected for electronic mail transmission), or orally in person or by telephone, in each case if received by the

Director at least twenty-four (24) hours prior to the time of the holding of the meeting.

Section 7. Quorum.

At all meetings of the Board of Directors a majority of the authorized number of directors shall be necessary and sufficient to constitute a quorum for the transaction of business, and the vote of a majority of the directors present at any meeting at which there is a quorum, shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute, by the Certificate of Incorporation or by these By-Laws. If a quorum shall not be present at any meeting of the Board of Directors the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. If only one director is authorized, such sole director shall constitute a quorum.

Section 8. Action Without Meeting.

Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, 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 or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee.

Section 9. Telephonic Meetings.

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

Section 10. Committees of Directors.

The Board of Directors may, by resolution passed by a majority of the whole Board, designate one or more committees, each such committee to consist of one or more of the directors of the corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he 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, 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 amending the Certificate of Incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, recommending to the stockholders a dissolution of the corporation or a revocation of a dissolution, or amending the By-Laws of the corporation; and, unless the resolution or the Certificate of Incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock.

Section 11. Minutes of Committee Meetings.

Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

Section 12. Compensation of Directors.

Unless otherwise restricted by the Certificate of Incorporation or by these By-Laws, the Board of Directors shall have the authority to fix the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as a director. No such payment shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be given compensation for serving on such committees.

Section 13. Indemnification.

(a) The corporation shall, to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), indemnify and hold harmless any person who was or is a party, or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was

serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan, against expenses, liabilities and losses (including attorneys' fees, judgments, fines, excise taxes or penalties paid in connection with the Employee Retirement Income Security Act of 1974, as amended, and amounts paid in settlement) reasonably incurred or suffered by such individual in connection therewith; *provided, however*, that except as provided in paragraph (c) with respect to proceedings to enforce rights to indemnification, the corporation shall indemnify any such individual in connection with a proceeding (or part thereof) initiated by such individual only if such proceeding or part thereof was authorized in advance by the Board of Directors of the corporation.

(b) The right to indemnification conferred in this Section 13 shall include the right to be paid by the corporation the expenses (including attorneys' fees) incurred in defending any such proceeding in advance of its final disposition; *provided, however*, that, if the Delaware General Corporation Law requires, an advancement of expenses incurred by an individual in his capacity as a Director or officer (and not in any other capacity in which service was or is rendered by such individual, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking, by or on behalf of such individual, to repay all amounts so advanced if it is ultimately determined by final judicial decision, from which there is no further right to appeal, that such individual is not entitled to be indemnified for such expenses under this section or otherwise. The rights to indemnification and to the advancement of expenses conferred in this Section 13 shall be contract rights and such rights shall continue as to an indemnified individual who has ceased to be a Director, officer, employee or agent and shall inure to the benefit of the indemnified individual's heirs, executors and administrators.

(c) If a claim under the two preceding paragraphs of this Section 13 is not paid in full by the corporation within 60 days after a written claim has been received by the corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be 20 days, the director, officer, employee or agent indemnified hereunder (as the case may be) 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 indemnified individual shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnified individual to enforce a right to indemnification hereunder (but not in a suit brought by such individual to enforce a right to an advancement of expenses) 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 only upon a final adjudication that the individual has not met any applicable standard for indemnification set forth in the Delaware General Corporation Law. Neither the failure of the corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnified individual is proper in the circumstances because such individual has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the indemnified individual has not met such applicable standard of conduct, shall create a presumption that the individual has not met the applicable standard of conduct or, in the case of such a suit brought by the individual, be a defense to such suit. In any suit brought by the indemnified individual 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 individual is not entitled to be indemnified, or to such advancement of expenses under this section or otherwise shall be on the corporation.

(d) Any indemnification under paragraphs (a) and (b) (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in paragraphs (a) and (b). Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the stockholders.

(e) The indemnification and advancement of expenses provided by this Section 13 shall not be deemed exclusive of any

other rights to which those seeking indemnification or advancement of expenses may be entitled under any by-law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(f) The corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this Section 13.

(g) For the purposes of this Section 13, references to “the corporation” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Section with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(h) For purposes of this section, references to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the corporation” shall include service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee

benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the corporation.”

ARTICLE IV

OFFICERS

Section 1. Officers.

The officers of this corporation shall be chosen by the Board of Directors and shall include a President, a Secretary, and a Treasurer. The corporation may also have at the discretion of the Board of Directors such other officers as are desired, including a Chairman of the Board, one or more Vice Presidents, one or more Assistant Secretaries and Assistant Treasurers, and such other officers as may be appointed in accordance with the provisions of Section 3 hereof. In the event there are two or more Vice Presidents, then one or more may be designated as Executive Vice President, Senior Vice President, or other similar or dissimilar title. At the time of the election of officers, the directors may by resolution determine the order of their rank. Any number of offices may be held by the same person, unless the Certificate of Incorporation or these By-Laws otherwise provide.

Section 2. Election of Officers.

The Board of Directors, at its first meeting after each annual meeting of stockholders, shall choose the officers of the corporation.

Section 3. Subordinate Officers.

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

Section 4. Compensation of Officers.

The salaries of all officers and agents of the corporation shall be fixed by the Board of Directors.

Section 5. Term of Office; Removal and Vacancies.

The officers of the corporation shall hold office until their successors are chosen and qualify in their stead. Any officer elected or appointed by the Board of Directors may be removed at any time by the affirmative vote of a majority of the Board of Directors. If the office of any officer or officers becomes

vacant for any reason, the vacancy shall be filled by the Board of Directors.

Section 6. Chairman of the Board.

The Chairman of the Board, if such an officer be elected, shall, if present, preside at all meetings of the Board of Directors and exercise and perform such other powers and duties as may be from time to time assigned to him by the Board of Directors or prescribed by these By-Laws. If so designated by the Board of Directors, the Chairman of the Board may in addition be the Chief Executive Officer of the corporation and have such powers and duties prescribed by the Board of Directors.

Section 7. President.

Subject to such supervisory powers, if any, as may be given by the Board of Directors to the Chairman of the Board, if there be such an officer, the President shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation and, if so designated by the Board of Directors, be the Chief Executive Officer of the corporation. He shall preside at all meetings of the stockholders and, in the absence of the Chairman of the Board, or if there be none, at all meetings of the Board of Directors. He shall be an ex-officio member of all committees and shall have the general powers and duties of management usually vested in the office of President and, if so designated, Chief Executive Officer of the corporation, and shall have such other powers and duties as may be prescribed by the Board of Directors or these By-Laws.

Section 8. Vice President.

In the absence or disability of the President, the Vice Presidents in order of their rank as fixed by the Board of Directors, or if not ranked, the Vice President designated by the Board of Directors, shall perform all the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. The Vice Presidents shall have such other duties as from time to time may be prescribed for them, respectively, by the Board of Directors.

Section 9. Secretary.

The Secretary shall attend all sessions of the Board of Directors and all meetings of the stockholders and record all votes and the minutes of all proceedings in a book to be kept for that purpose; and shall perform like duties for the standing committees when required by the Board of Directors. He shall give, or cause to be given, notice of all meetings of the stockholders and of the

Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or these By-Laws. He shall keep in safe custody the seal of the corporation, and when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by his signature or by the signature of an Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the corporation and to attest the affixing by his signature.

Section 10. Assistant Secretaries.

The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board of Directors, or if there be no such determination, the Assistant Secretary designated by the Board of Directors, shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

Section 11. Treasurer.

The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys, and other valuable effects in the name and to the credit of the corporation, in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all his transactions as Treasurer and of the financial condition of the corporation. If required by the Board of Directors, he shall give the corporation a bond, in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors, for the faithful performance of the duties of his office and for the restoration to the corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the corporation.

Section 12. Assistant Treasurer.

The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors, or if there be no such determination, the Assistant Treasurer designated by the Board of Directors, shall, in the absence or disability of the Treasurer, perform the duties and

exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

Section 13. Vacancy of President's Office.

Wherever an action is required, by these By-Laws or otherwise, to be taken by the President of the corporation and such office is vacant, such action may, to the extent permitted under the General Corporation Law of the State of Delaware, be taken by the Chairman of the Board or by any Executive Vice President.

ARTICLE V

CERTIFICATES OF STOCK

Section 1. Certificates.

Every holder of stock of the corporation shall be entitled to have a certificate signed by, or in the name of the corporation by, the Chairman or Vice Chairman of the Board of Directors, or the President or a Vice President, and by the Secretary or Assistant Secretary, or the Treasurer or an Assistant Treasurer of the corporation, certifying the number of shares represented by the certificate owned by such stockholder in the corporation.

Section 2. Signatures on Certificates.

Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have 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 he were such officer, transfer agent, or registrar at the date of issue.

Section 3. Statement of Stock Rights, Preferences and Privileges.

If the corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualification, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in Section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements, there may be set forth on the face or

back of the certificate which the corporation shall issue to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the power, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 4. Lost Certificates.

The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or to give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 5. Transfers of Stock.

Upon surrender to the corporation, or the transfer agent of the corporation, of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the corporation, subject to the terms of the agreement under which such shares were purchased if the corporation is a party thereto, to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

Section 6. Fixing Record Date.

In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of the stockholders, or any adjournment thereof, or to express consent to corporate action in writing 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 shall not be more than sixty nor less than ten days before the date of such meeting, nor more than

sixty days prior to any other action. 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.

Section 7. Registered Stockholders.

The corporation shall be entitled to treat the holder of record of any share or shares of stock as the holder in fact thereof and accordingly shall not be bound to recognize any equitable or other claim or interest in such share on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided by the laws of the State of Delaware.

ARTICLE VI

GENERAL PROVISIONS

Section 1. Dividends.

Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

Section 2. Payment of Dividends; Directors' Duties.

Before payment of any dividend there may be set aside out of any funds of the corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the directors shall think conducive to the interests of the corporation, and the directors may abolish any such reserve.

Section 3. Checks.

All checks or demands for money and notes of the corporation shall be signed by such officer or officers as the Board of Directors may from time to time designate.

Section 4. Fiscal Year.

The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

Section 5. Corporate Seal.

The corporate seal shall have inscribed thereon the name of the corporation, the year of its organization and the words "Corporate Seal, Delaware." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

Section 6. Manner of Giving Notice.

(a) 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, 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 shall not be more than sixty nor less than ten days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be the close of business on the next day preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders or 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.

(b) In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by statute, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of

Directors is required by statute, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment or any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purposes of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall not be more than sixty days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 7. Waiver of Notice.

Whenever any notice is required to be given under the provisions of the statutes or of the Certificate of Incorporation or of these By-Laws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

Section 8. Annual Statement.

The Board of Directors shall present at each annual meeting, and at any special meeting of the stockholders when called for by vote of the stockholders, a full and clear statement of the business and condition of the corporation.

Section 9. Exemption from Section 203, Delaware G.C.L.

The corporation expressly elects not to be governed by Section 203 of the General Corporation Law of Delaware. This Section of the By-Laws shall not be further amended by the Board of Directors of the corporation.

ARTICLE VII

AMENDMENTS

Section 1. Amendments by Directors or Stockholders.

These By-Laws may be altered, amended or repealed or new By-Laws may be adopted by the stockholders or by the Board of Directors,

when such power is conferred upon the Board of Directors by the Certificate of Incorporation, at any regular meeting of the stockholders or of the Board of Directors or at any special meeting of the stockholders or of the Board of Directors if notice of such alteration, amendment, repeal or adoption of new By-Laws be contained in the notice of such special meeting. If the power to adopt, amend or repeal By-Laws is conferred upon the Board of Directors by the Certificate of Incorporation it shall not divest or limit the power of the stockholders to adopt, amend or repeal By-Laws.

END OF BY-LAWS

**Certification Pursuant to 18 U.S.C. Section 1350,
As Adopted Pursuant to Section 906 of the Sarbanes–Oxley Act of 2002**

In connection with the third quarterly report of Magnetek, Inc. (the “Company”) on Form 10–Q for the fiscal quarter ended March 31, 2003 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, Andrew G. Galef, certify, pursuant to U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes–Oxley Act of 2002, that:

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

/s/ ANDREW G. GALEF _____

Andrew G. Galef
Chairman of the Board, President and
Chief Executive Officer

Dated May 14, 2003

**Certification Pursuant to 18 U.S.C. Section 1350,
As Adopted Pursuant to Section 906 of the Sarbanes–Oxley Act of 2002**

In connection with the third quarterly report of Magnetek, Inc. (the “Company”) on Form 10–Q for the fiscal quarter ended March 31, 2003 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), I, David P. Reiland, certify, pursuant to U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes–Oxley Act of 2002, that:

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

/s/ DAVID P. REILAND

David P. Reiland
Executive Vice President and
Chief Financial Officer

Dated May 14, 2003
