

COOPER TIRE & RUBBER CO

FORM 10-Q (Quarterly Report)

Filed 05/05/10 for the Period Ending 03/31/10

Address	LIMA & WESTERN AVENUES FINDLAY, OH 45840
Telephone	4194231321
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Symbol	CTB
SIC Code	3011 - Tires and Inner Tubes
Industry	Tires
Sector	Consumer Cyclical
Fiscal Year	12/31

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

FORM 10-Q

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

For the quarterly period ended March 31, 2010

OR

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

Commission File No. 1-4329



COOPER TIRE & RUBBER COMPANY

(Exact name of registrant as specified in its charter)

DELAWARE
(State or other jurisdiction of
incorporation or organization)

34-4297750
(I.R.S. employer
identification no.)

701 Lima Avenue, Findlay, Ohio 45840
(Address of principal executive offices)
(Zip code)

(419) 423-1321
(Registrant's telephone number, including area code)

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

Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (Check One):

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
Do not check if smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes No

Number of shares of common stock of registrant outstanding
at April 30, 2010: 61,230,969

Part I. FINANCIAL INFORMATION
Item 1. FINANCIAL STATEMENTS

COOPER TIRE & RUBBER COMPANY
CONDENSED CONSOLIDATED BALANCE SHEETS
(Dollar amounts in thousands except per-share amounts)

	December 31, 2009 (Note 1)	March 31, 2010 (Unaudited)
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 426,981	\$ 337,500
Accounts receivable, less allowances of \$10,928 in 2009 and \$11,161 in 2010	367,023	458,968
Inventories at lower of cost or market:		
Finished goods	188,323	210,865
Work in process	22,090	28,536
Raw materials and supplies	88,022	121,548
	<u>298,435</u>	<u>360,949</u>
Other current assets	39,392	39,165
Total current assets	<u>1,131,831</u>	<u>1,196,582</u>
Property, plant and equipment:		
Land and land improvements	33,321	33,330
Buildings	320,021	317,869
Machinery and equipment	1,587,306	1,583,168
Molds, cores and rings	246,395	246,871
	<u>2,187,043</u>	<u>2,181,238</u>
Less accumulated depreciation and amortization	<u>1,336,072</u>	<u>1,347,601</u>
Net property, plant and equipment	850,971	833,637
Intangibles, net of accumulated amortization of \$23,165 in 2009 and \$23,492 in 2010	18,546	18,219
Restricted cash	2,219	2,172
Other assets	96,773	92,282
	<u>\$2,100,340</u>	<u>\$2,142,892</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Notes payable	\$ 156,719	\$ 145,088
Accounts payable	300,448	352,029
Accrued liabilities	158,643	155,292
Income taxes	3,955	5,318
Liabilities of discontinued operations	1,061	1,052
Current portion of long term debt	15,515	4,995
Total current liabilities	<u>636,341</u>	<u>663,774</u>
Long-term debt	330,971	327,441
Postretirement benefits other than pensions	244,905	246,624
Pension benefits	272,050	265,963
Other long-term liabilities	145,978	174,072
Long-term liabilities related to the sale of automotive operations	6,043	5,888
Stockholders' equity:		
Preferred stock, \$1 par value; 5,000,000 shares authorized; none issued	—	—
Common stock, \$1 par value; 300,000,000 shares authorized; 87,850,292 shares issued in 2009 and in 2010	87,850	87,850
Capital in excess of par value	70,645	56,338
Retained earnings	1,133,133	1,137,764
Cumulative other comprehensive loss	(455,750)	(444,946)
	<u>835,878</u>	<u>837,006</u>
Less: common shares in treasury at cost (27,327,646 in 2009 and 26,635,823 in 2010)	(490,548)	(476,503)
Total parent stockholders' equity	<u>345,330</u>	<u>360,503</u>
Noncontrolling shareholders' interests in consolidated subsidiaries	118,722	98,627
Total stockholders' equity	<u>464,052</u>	<u>459,130</u>
	<u>\$2,100,340</u>	<u>\$2,142,892</u>

See accompanying notes.

COOPER TIRE & RUBBER COMPANY
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
THREE MONTHS ENDED MARCH 31, 2009 AND 2010
(UNAUDITED)
(Dollar amounts in thousands except per-share amounts)

	<u>2009</u>	<u>2010</u>
Net sales	\$571,408	\$754,443
Cost of products sold	521,139	669,271
Gross profit	50,269	85,172
Selling, general and administrative	45,106	44,605
Restructuring	14,352	7,612
Settlement of retiree medical case	7,050	-
Operating profit (loss)	(16,239)	32,955
Interest expense	12,655	8,730
Interest income	(1,375)	(1,213)
Other income	(823)	(237)
Income (loss) from continuing operations before income taxes	(26,696)	25,675
Income tax expense (benefit)	(3,773)	7,743
Income (loss) from continuing operations	(22,923)	17,932
Income (loss) from discontinued operations, net of income taxes	(364)	(760)
Net income (loss)	(23,287)	17,172
Net income (loss) attributable to noncontrolling shareholders' interests	(2,020)	5,596
Net income (loss) attributable to Cooper Tire & Rubber Company	<u>\$ (21,267)</u>	<u>\$ 11,576</u>
Basic earnings per share:		
Income (loss) from continuing operations attributable to Cooper Tire & Rubber Company	\$ (0.35)	\$ 0.20
Income (loss) from discontinued operations	(0.01)	(0.01)
Net income (loss) attributable to Cooper Tire & Rubber Company	<u>\$ (0.36)</u>	<u>\$ 0.19</u>
Diluted earnings per share:		
Income (loss) from continuing operations attributable to Cooper Tire & Rubber Company	\$ (0.35)	\$ 0.20
Income (loss) from discontinued operations	(0.01)	(0.01)
Net income (loss) attributable to Cooper Tire & Rubber Company	<u>\$ (0.36)</u>	<u>\$ 0.19</u>
Weighted average number of shares outstanding (000's):		
Basic	<u>58,941</u>	<u>60,914</u>
Diluted	<u>58,941</u>	<u>62,294</u>
Dividends per share	<u>\$ 0.105</u>	<u>\$ 0.105</u>

See accompanying notes.

COOPER TIRE & RUBBER COMPANY
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
THREE MONTHS ENDED MARCH 31, 2009 AND 2010
(UNAUDITED)
(Dollar amounts in thousands)

	2009	2010
Operating activities:		
Net income (loss)	\$ (23,287)	\$ 17,172
Adjustments to reconcile net income (loss) to net cash provided by (used in) continuing operations:		
Loss from discontinued operations, net of income taxes	364	760
Depreciation	30,551	29,859
Amortization	566	501
Deferred income taxes	(66)	(154)
Stock based compensation	838	1,087
Change in LIFO inventory reserve	(87,559)	15,021
Amortization of unrecognized postretirement benefits	7,410	8,282
Loss (gain) on sale of assets	(46)	211
Changes in operating assets and liabilities of continuing operations:		
Accounts receivable	(36,396)	(107,397)
Inventories	105,610	(80,030)
Other current assets	1,855	2,880
Accounts payable	14,027	52,914
Accrued liabilities	14,923	8,496
Other items	4,471	21,062
Net cash provided by (used in) continuing operations	33,261	(29,336)
Net cash used in discontinued operations	(613)	(924)
Net cash provided by (used in) operating activities	32,648	(30,260)
Investing activities:		
Additions to property, plant and equipment	(16,917)	(15,464)
Investments in unconsolidated subsidiary	(86)	-
Proceeds from the sale of assets	208	80
Net cash used in investing activities	(16,795)	(15,384)
Financing activities:		
Issuance of (payments on) short-term debt	(17,310)	(14,466)
Payments on long-term debt	(4,380)	(10,600)
Contributions by noncontrolling shareholder	—	5,250
Acquisition of noncontrolling shareholder interest	—	(17,920)
Payment of dividends	(6,190)	(6,416)
Issuance of common shares and excess tax benefits on options	—	2,167
Net cash used in financing activities	(27,880)	(41,985)
Effects of exchange rate changes on cash of continuing operations	(2,952)	(1,852)
Changes in cash and cash equivalents	(14,979)	(89,481)
Cash and cash equivalents at beginning of year	247,672	426,981
Cash and cash equivalents at end of period	<u>\$232,693</u>	<u>\$ 337,500</u>

See accompanying notes.

COOPER TIRE & RUBBER COMPANY
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Dollar amounts in thousands except per-share amounts)

1. 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 generally accepted in the United States for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included. There is a year-round demand for the Company's passenger and truck replacement tires, but sales of passenger replacement tires are generally strongest during the third and fourth quarters of the year. Winter tires are sold principally during the months of June through November. Operating results for the three-month period ended March 31, 2010 are not necessarily indicative of the results that may be expected for the year ended December 31, 2010.

The balance sheet at December 31, 2009 has been derived from the audited financial statements at that date but does not include all of the information and footnotes required by accounting principles generally accepted in the United States for complete financial statements.

For further information, refer to the consolidated financial statements and footnotes thereto included in the Company's Annual Report on Form 10-K for the year ended December 31, 2009.

The Company has evaluated subsequent events for recognition or disclosure through the time it filed this Form 10-Q with the Securities and Exchange Commission on May 5, 2010.

The consolidated financial statements include the accounts of the Company, its majority-owned (based on voting interests) subsidiaries and variable-interest entities for which the Company is the primary beneficiary. Acquired businesses are included in the consolidated financial statements from the dates of acquisition. The Company consolidates certain joint ventures in which it has a variable interest based on power to direct the activities and significant participation in expected returns of the joint venture. On January 1, 2010, the Company adopted Statement of Financial Accounting Standards ("SFAS") No. 167, "Amendments to FASB Interpretation No. 46(R)". The requirements of SFAS No. 167 have been incorporated into Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 810, "Consolidation". SFAS No. 167 changes the consolidation guidance for variable interest entities and the adoption of this standard did not have a material impact on the Company's consolidated financial statements. All intercompany accounts and transactions have been eliminated.

The equity method of accounting is followed for investments in 20 percent to 50 percent owned companies that are not otherwise consolidated based on variable interests. The Company's investment in the Mexican tire manufacturing facility represents an approximate 38 percent ownership interest.

The cost method is followed in those situations where the Company's ownership is less than 20 percent and the Company does not have the ability to exercise significant influence over the affiliate.

The Company entered into a joint venture with Kenda Tire Company to construct and operate a tire manufacturing facility in the People's Republic of China ("PRC") which began production in 2007. Until May 2012, all of the tires produced by this joint venture are required to be exported and sold by Cooper Tire & Rubber Company and its affiliates. Due to this requirement, the Company has the power to direct the manufacturing operations of the joint venture to produce the types of tires required by the Company to meet its global demands. The Company has determined it is the primary beneficiary of this joint venture because of the operational control and the fact it currently receives all of the tires produced by this manufacturing operation.

The Company has also entered into a joint venture with Nemet International to market and distribute Cooper, Pneustone and associated brand tires in Mexico. The Company has determined it has the power to control the purchasing and marketing of tires for this joint venture. The Company has also provided additional financial

support to this joint venture in order to allow it to finance its business activities. The joint venture partner has not provided such additional support. The Company has determined it is the primary beneficiary of this joint venture due to its ability to control the primary economic activity and to the subordinated financial support it has provided to the entity which would require the Company to absorb more than 50% of expected losses.

Since the Company has determined that each of these entities is a Variable Interest Entity (VIE) and it is the primary beneficiary, it has included their assets, liabilities and operating results in its consolidated financial statements. The Company has recorded the interest related to the joint venture partners' ownership in noncontrolling shareholders' interests in consolidated subsidiaries. The following table summarizes the balance sheets of these variable interest entities at December 31, 2009 and March 31, 2010:

	December 31, 2009	March 31, 2010
Assets		
Cash and cash equivalents	\$ 23,998	\$ 13,196
Accounts receivable	9,359	12,465
Inventories	16,472	20,495
Prepaid expenses	2,688	3,617
Total current assets	52,517	49,773
Net property, plant and equipment	139,705	135,473
Intangibles and other assets	12,773	10,585
Total assets	<u>\$ 204,995</u>	<u>\$195,831</u>
Liabilities and stockholders' equity		
Notes payable	\$ 87,016	\$ 76,379
Accounts payable	7,147	10,250
Accrued liabilities	1,118	(1,767)
Current portion of long-term debt	10,525	-
Current liabilities	105,806	84,862
Stockholders' equity	99,189	110,969
Total liabilities and stockholders' equity	<u>\$ 204,995</u>	<u>\$195,831</u>

- Derivative financial instruments are utilized by the Company to reduce foreign currency exchange risks. The Company has established policies and procedures for risk assessment and the approval, reporting and monitoring of derivative financial instrument activities. The Company does not enter into financial instruments for trading or speculative purposes. The derivative financial instruments include fair value and cash flow hedges of foreign currency exposures. The change in values of the fair value foreign currency hedges offset exchange rate fluctuations on the foreign currency-denominated intercompany loans and obligations. The Company presently hedges exposures in the Euro, Canadian dollar, British pound sterling, Swiss franc, Swedish krona, Norwegian krone, Mexican peso and Chinese yuan generally for transactions expected to occur within the next 12 months. The notional amount of these foreign currency derivative instruments at December 31, 2009 and March 31, 2010 was \$207,600 and \$187,400, respectively. The counterparties to each of these agreements are major commercial banks.

The Company uses foreign currency forward contracts as hedges of the fair value of certain non-U.S. dollar denominated asset and liability positions, primarily accounts receivable and debt. Gains and losses resulting from the impact of currency exchange rate movements on these forward contracts are recognized in the accompanying consolidated statements of operations in the period in which the exchange rates change and offset the foreign currency gains and losses on the underlying exposure being hedged.

Foreign currency forward contracts are also used to hedge variable cash flows associated with forecasted sales and purchases denominated in currencies that are not the functional currency of certain entities. The forward contracts have maturities of less than twelve months pursuant to the Company's policies and hedging practices. These forward contracts meet the criteria for and have been designated as cash flow hedges. Accordingly, the effective portion of the change in fair value of such forward contracts (approximately

\$(2,160) and \$(939) as of December 31, 2009 and March 31, 2010, respectively) are recorded as a separate component of stockholders' equity in the accompanying consolidated balance sheets and reclassified into earnings as the hedged transaction affects net sales.

The Company assesses hedge ineffectiveness quarterly using the hypothetical derivative methodology. In doing so, the Company monitors the actual and forecasted foreign currency sales and purchases versus the amounts hedged to identify any hedge ineffectiveness. Any hedge ineffectiveness is recorded as an adjustment in the accompanying consolidated financial statements of operations in the period in which the ineffectiveness occurs. The Company also performs regression analysis comparing the change in value of the hedging contracts versus the underlying foreign currency sales and purchases, which confirms a high correlation and hedge effectiveness.

The following table presents the location and amounts of derivative instrument fair values in the Statement of Financial Position:

(assets)/liabilities	December 31, 2009		March 31, 2010	
Derivatives designated as hedging instruments	Accrued liabilities	\$2,158	Accrued liabilities	\$1,024
Derivatives not designated as hedging instruments	Accrued liabilities	\$ (78)	Accrued liabilities	\$ 412

The following table presents the location and amount of gains and losses on derivative instruments in the consolidated statement of operations:

Derivatives Designated as Cash Flow Hedges	Amount of Gain (Loss) Recognized in Other Comprehensive Income on Derivatives (Effective Portion)		Amount of (Gain) Loss Reclassified from Cumulative Other Comprehensive Loss into Net Sales (Effective Portion)		Amount of Gain (Loss) Recognized in Other - net on Derivatives (Ineffective Portion)	
	Three Months Ended March 31, 2009	Three Months Ended March 31, 2010	Three Months Ended March 31, 2009	Three Months Ended March 31, 2010	Three Months Ended March 31, 2009	Three Months Ended March 31, 2010
Foreign exchange contracts	\$ 3,647	\$ 2,550	\$ 769	\$ (1,329)	\$ (78)	\$ (29)
Derivatives not Designated as Hedging Instruments				Location of Gain (Loss) Recognized in Income on Derivatives	Amount of Gain (Loss) Recognized in Income on Derivatives Three Months Ended March 31,	
Foreign exchange contracts				Other income	2009 \$ 454	2010 \$ (613)
Interest swap contracts				Other income	2,245	—
					\$ 2,699	\$ (613)

The Company has categorized its financial instruments, based on the priority of the inputs to the valuation technique, into the three-level fair value hierarchy. The fair value hierarchy gives the highest priority to quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3). If the inputs used to measure the financial instruments fall within the different levels of the hierarchy, the categorization is based on the lowest level input that is significant to the fair value measurement of the instrument.

Financial assets and liabilities recorded on the Consolidated Balance Sheet are categorized based on the inputs to the valuation techniques as follows:

Level 1. Financial assets and liabilities whose values are based on unadjusted quoted prices for identical assets or liabilities in an active market that the Company has the ability to access.

Level 2. Financial assets and liabilities whose values are based on quoted prices in markets that are not active or model inputs that are observable either directly or indirectly for substantially the full term of the asset or liability. Level 2 inputs include the following:

- a. Quoted prices for similar assets or liabilities in active markets;
- b. Quoted prices for identical or similar assets or liabilities in non-active markets;
- c. Pricing models whose inputs are observable for substantially the full term of the asset or liability; and
- d. Pricing models whose inputs are derived principally from or corroborated by observable market data through correlation or other means for substantially the full term of the asset or liability.

Level 3. Financial assets and liabilities whose values are based on prices or valuation techniques that require inputs that are both unobservable and significant to the overall fair value measurement. These inputs reflect management's own assumptions about the assumptions a market participant would use in pricing the asset or liability.

The following table presents the Company's fair value hierarchy for those assets and liabilities measured at fair value on a recurring basis as of March 31, 2010:

	Total Derivative (Assets) Liabilities	Fair Value Measurements Using		
		Quoted Prices in Active Markets for Identical Assets Level (1)	Significant Other Observable Inputs Level (2)	Significant Unobservable Inputs Level (3)
Foreign Exchange Contracts				
March 31, 2010	\$ 1,436	—	\$ 1,436	—
December 31, 2009	\$ 2,080	—	\$ 2,080	—

The carrying amounts and fair values of the Company's financial instruments are as follows:

	December 31, 2009		March 31, 2010	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
Cash and cash equivalents	\$ 426,981	\$ 426,981	\$ 337,500	\$ 337,500
Notes payable	(156,719)	(156,719)	(145,088)	(145,088)
Current portion of long-term debt	(15,515)	(15,515)	(4,995)	(4,995)
Long-term debt	(330,971)	(309,371)	(327,441)	(303,441)
Derivative financial instruments	(2,080)	(2,080)	(1,436)	(1,436)

The fair value of the Company's debt is computed using discounted cash flow analyses based on the Company's estimated current incremental borrowing rates.

3. The following table details information on the Company's operating segments.

	Three months ended March 31	
	2009	2010
Revenues from external customers:		
North American Tire	\$439,317	\$531,717
International Tire	166,212	293,557
Eliminations	<u>(34,121)</u>	<u>(70,831)</u>
Net sales	<u>\$571,408</u>	<u>\$754,443</u>
Segment profit (loss):		
North American Tire	\$ (3,620)	\$ 13,602
International Tire	(2,821)	22,550
Eliminations	(274)	(509)
Unallocated corporate charges	<u>(9,524)</u>	<u>(2,688)</u>
Operating profit (loss)	(16,239)	32,955
Interest expense	12,655	8,730
Interest income	(1,375)	(1,213)
Other income	<u>(823)</u>	<u>(237)</u>
Income (loss) from continuing operations before income taxes	<u>\$ (26,696)</u>	<u>\$ 25,675</u>

4. At December 31, 2009, approximately 45 percent of the Company's inventories had been valued under the LIFO method. At March 31, 2010, approximately 44 percent of the Company's inventories are valued under the LIFO method. The remaining inventories have been valued under the FIFO method or average cost method. All inventories are stated at the lower of cost or market.

Under the LIFO method, inventories have been reduced by approximately \$127,064 and \$142,085 at December 31, 2009 and March 31, 2010, respectively, from current cost which would be reported under the first-in, first-out method.

5. The following table discloses the amount of stock based compensation expense for the three-month period ended March 31, 2009 and 2010:

	Three months ended March 31	
	2009	2010
Stock options	\$ 86	\$ 221
Restricted stock units	400	167
Performance based units	352	699
Total stock based compensation	<u>\$ 838</u>	<u>\$ 1,087</u>

Executives participating in the Company's Long-Term Incentive Plan for the plan year 2007 – 2009 and 2008 – 2010, earn performance based units based on the Company's financial performance. As part of the 2007 – 2009 plan, the units earned in 2007 and 2009 vested in February 2010. As part of the 2008 – 2010 plan, the units earned in 2009 and any units earned in 2010 will vest at December 31, 2010. No units were earned in 2008.

In April 2009, executives participating in the 2009 – 2011 Long –Term Incentive Plan were granted stock options which vest one third each year from April 2010 through April 2012.

Executives participating in the Company’s Long-Term Incentive Plan for the plan year 2010 – 2012, earn performance based units and cash. Any units and cash earned during 2010 will vest at December 31, 2012. The executives also received stock options which will vest one third each year from March 2011 through March 2013. The following table provides details of the stock option activity for the three months ended March 31, 2010:

	<u>Long-Term Incentive Plan Years</u>	
	<u>2009 - 2011</u>	<u>2010 - 2012</u>
January 1, 2010		
Outstanding	1,037,000	—
Exercisable	59,000	—
Granted	—	303,120
Exercised	<u>(35,000)</u>	<u>—</u>
March 31, 2010	—	—
Outstanding	1,002,000	303,120
Exercisable	24,000	—

The following table provides details of the restricted stock unit activity for the three months ended March 31, 2010:

Restricted stock units outstanding at January 1, 2010	526,809
Restricted stock units granted	—
Accrued dividend equivalents	1,506
Restricted stock units settled	(248,818)
Restricted stock units cancelled	<u>(4,149)</u>
Restricted stock units outstanding at March 31, 2010	<u>275,348</u>

The following table provides details of the performance based units earned under the Company’s Long-Term Incentive Plans for the three months ended March 31, 2010:

	<u>Long-Term Incentive Plan Years</u>	
	<u>2007-2009</u>	<u>2008-2010</u>
Performance-based units outstanding at January 1, 2010	559,951	290,860
Accrued dividend equivalents	—	1,578
Performance-based units settled	<u>(559,951)</u>	<u>—</u>
Performance-based units outstanding at March 31, 2010	<u>0</u>	<u>292,438</u>

6. The following table discloses the amount of net periodic benefit costs for the three months ended March 31, 2009 and 2010 for the Company's defined benefit plans and other postretirement benefits relating to continuing operations:

	Pension Benefits		Other Postretirement Benefits	
	2009	2010	2009	2010
Components of net periodic benefit cost:				
Service cost	\$ 3,387	\$ 1,667	\$ 853	\$ 790
Interest cost	14,618	15,624	3,706	3,529
Expected return on plan assets	(13,687)	(16,379)	—	—
Amortization of prior service cost	(1,456)	(158)	(77)	(136)
Recognized actuarial loss	8,925	8,440	18	—
Albany settlement loss	—	3,330	—	—
Net periodic benefit cost	<u>\$ 11,787</u>	<u>\$ 12,524</u>	<u>\$ 4,500</u>	<u>\$ 4,183</u>

During 2010, the Company expects to contribute between \$35,000 and \$40,000 to its domestic and foreign pension plans.

In March 2010, the Patient Protection and Affordable Care Act and the Health Care and Education Affordability Act of 2010 (the Act) was enacted. The primary focus of the Act is to significantly reform health care in the U.S. The Act will reduce the tax deduction available to the Company to the extent of receipt of Medicare Part D prescription drug subsidy; however, this will not have a material impact on the Company's financial results. The Company is currently evaluating other prospective effects of the Act.

7. The following table reconciles the beginning and end of the period equity accounts attributable to Cooper Tire & Rubber Company and to the noncontrolling shareholder interests:

	Total Parent Stockholders' Equity	Noncontrolling Shareholders' Interests in Consolidated Subsidiaries	Total Stockholders' Equity
Balance at December 31, 2009	\$ 345,330	\$ 118,722	\$ 464,052
Net income	11,576	5,596	17,172
Other comprehensive income	10,804	—	10,804
Dividends payable to noncontrolling shareholders	—	(11,637)	(11,637)
Contribution of noncontrolling shareholder	—	5,250	5,250
Acquisition of noncontrolling shareholder interest	1,384	(19,304)	(17,920)
Stock compensation plans, including tax charge of \$392	(2,175)	—	(2,175)
Cash dividends — \$.105 per share	(6,416)	—	(6,416)
Balance at March 31, 2010	<u>\$ 360,503</u>	<u>\$ 98,627</u>	<u>\$ 459,130</u>

The following table provides the details of the Company's comprehensive income (loss). Comprehensive income includes net income and components of other comprehensive income, such as foreign currency translation adjustments, unrealized gains or losses on certain marketable securities and derivative instruments and unrecognized postretirement benefits plans.

The Company's comprehensive income (loss) is as follows:

	<u>Three months ended March 31</u>	
	<u>2009</u>	<u>2010</u>
Net income (loss) attributable to		
Cooper Tire & Rubber Company	\$(21,267)	\$11,576
Other comprehensive income (loss):		
Currency translation adjustments	(2,982)	(7,224)
Unrealized net gains on derivative instruments and marketable securities, net of tax effect	3,367	1,362
Unrecognized postretirement benefit plans, net of tax effect	354	16,666
Comprehensive income (loss) attributable to Cooper Tire & Rubber Company	(20,528)	22,380
Net and comprehensive income (loss) attributable to noncontrolling shareholders' interests	(2,020)	5,596
Total comprehensive income (loss)	<u>\$(22,548)</u>	<u>\$27,976</u>

8. During the first quarter of 2010, the Company recorded restructuring expenses associated with the closure of its Albany, Georgia manufacturing facility. This initiative, announced December 17, 2008, resulted in a workforce reduction of approximately 1,330 people with an estimated cost between \$140,000 and \$145,000 for restructuring expense and asset impairment.

The Company recorded \$4,282 of equipment relocation and other costs during the first quarter of 2010. The Company also recorded \$3,330 of employee related costs representing pension settlement losses. Through March 31, 2010, the Company has recorded \$130,301 of restructuring costs associated with this initiative.

At January 1, 2010, the accrued severance balance was \$848 and the Company made \$600 of severance payments resulting in an accrued severance balance at March 31, 2010 of \$248.

During the first quarter of 2009, the Company recorded \$4,852 of equipment relocation and other costs related to the Albany closure. The Company also recorded \$9,454 of employee related costs. Included in employee related costs are severance costs of \$10,707 partially offset by the amortization of prior service cost related to pension benefits. The Company also recorded \$46 of restructuring expenses associated with the closure of the Dayton, New Jersey distribution center.

9. The Company provides for the estimated cost of product warranties at the time revenue is recognized based primarily on historical return rates, estimates of the eligible tire population and the value of tires to be replaced. The following table summarizes the activity in the Company's product warranty liabilities:

	2009	2010
Reserve at January 1	\$ 18,244	\$ 23,814
Additions	2,423	4,223
Payments	(3,084)	(3,902)
Reserve at March 31	<u>\$ 17,583</u>	<u>\$ 24,135</u>

10. The Company is a defendant in various products liability claims brought in numerous jurisdictions in which individuals seek damages resulting from automobile accidents allegedly caused by defective tires manufactured by the Company. Each of the products liability claims faced by the Company generally involve different types of tires, models and lines, different circumstances surrounding the accident such as different applications, vehicles, speeds, road conditions, weather conditions, driver error, tire repair and maintenance practices, service life conditions, as well as different jurisdictions and different injuries. In addition, in many of the Company's products liability lawsuits the plaintiff alleges that his or her harm was caused by one or more co-defendants who acted independently of the Company. Accordingly, both the claims asserted and the resolutions of those claims have an enormous amount of variability. The aggregate amount of damages asserted at any point in time is not determinable since often times when claims are filed, the plaintiffs do not specify the amount of damages. Even when there is an amount alleged, at times the amount is wildly inflated and has no rational basis.

The fact that the Company is a defendant in products liability lawsuits is not surprising given the current litigation climate which is largely confined to the United States. However, the fact that the Company is subject to claims does not indicate that there is a quality issue with the Company's tires. The Company sells approximately 35 to 40 million passenger, light truck, SUV, high performance, ultra high performance and radial medium truck tires per year in North America. The Company estimates that approximately 300 million Cooper-produced tires — made up of thousands of different specifications — are still on the road in North America. While tire disablements do occur, it is the Company's and the tire industry's experience that the vast majority of tire failures relate to service-related conditions which are entirely out of the Company's control — such as failure to maintain proper tire pressure, improper maintenance, road hazard and excessive speed.

The Company's exposure for each claim occurring prior to April 1, 2003 is limited by the coverage provided by its excess liability insurance program. The program for that period includes a relatively low per claim retention and a policy year aggregate retention limit on claims arising from occurrences which took place during a particular policy year. Effective April 1, 2003, the Company established a new excess liability insurance program. The new program covers the Company's products liability claims occurring on or after April 1, 2003 and is occurrence-based insurance coverage which includes an increased per claim retention limit, increased policy limits and the establishment of a captive insurance company.

The Company accrues costs for products liability at the time a loss is probable and the amount of loss can be estimated. The Company believes the probability of loss can be established and the amount of loss can be estimated only after certain minimum information is available, including verification that Company-produced products were involved in the incident giving rise to the claim, the condition of the product purported to be involved in the claim, the nature of the incident giving rise to the claim and the extent of the purported injury or damages. In cases where such information is known, each products liability claim is evaluated based on its specific facts and circumstances. A judgment is then made to determine the requirement for establishment or revision of an accrual for any potential liability. The liability often cannot be determined with precision until the claim is resolved.

Pursuant to applicable accounting rules, the Company accrues the minimum liability for each known claim when the estimated outcome is a range of possible loss and no one amount within that range is more likely than another. The Company uses a range of settlements because an average settlement cost would not be meaningful since the products liability claims faced by the Company are unique and widely variable. The cases involve different types of tires, models and lines, different circumstances surrounding

the accident such as different applications, vehicles, speeds, road conditions, weather conditions, driver error, tire repair and maintenance practices, service life conditions, as well as different jurisdictions and different injuries. In addition, in many of the Company's products liability lawsuits the plaintiff alleges that his or her harm was caused by one or more co-defendants who acted independently of the Company. Accordingly, the claims asserted and the resolutions of those claims have an enormous amount of variability. The costs have ranged from zero dollars to \$33,000 in one case with no "average" that is meaningful. No specific accrual is made for individual unasserted claims or for premature claims, asserted claims where the minimum information needed to evaluate the probability of a liability is not yet known. However, an accrual for such claims based, in part, on management's expectations for future litigation activity and the settled claims history is maintained. Because of the speculative nature of litigation in the United States, the Company does not believe a meaningful aggregate range of potential loss for asserted and unasserted claims can be determined. The Company's experience has demonstrated that its estimates have been reasonably accurate and, on average, cases are settled at amounts close to the reserves established. However, it is possible an individual claim from time to time may result in an aberration from the norm and could have a material impact.

The Company determines its reserves using the number of incidents expected during a year. During the first quarter of 2010, the Company increased its products liability reserve by \$36,821. The addition of another quarter of self-insured incidents accounted for \$9,890 of this increase. The Company revised its estimates of future settlements for unasserted and premature claims increasing the reserve by \$1,065. Finally, changes in the amount of reserves for cases where sufficient information is known to estimate a liability increased by \$25,866. Of this amount, \$21,800 was the result of the Company increasing its self-insured portion of a jury verdict in one case during the first quarter. The Company considered the impact of this case when evaluating the assumptions used in establishing reserve balances and did not adjust its assumptions based solely on this case.

The time frame for the payment of a products liability claim is too variable to be meaningful. From the time a claim is filed to its ultimate disposition depends on the unique nature of the case, how it is resolved — claim dismissed, negotiated settlement, trial verdict and appeals process — and is highly dependent on jurisdiction, specific facts, the plaintiff's attorney, the court's docket and other factors. Given that some claims may be resolved in weeks and others may take five years or more, it is impossible to predict with any reasonable reliability the time frame over which the accrued amounts may be paid.

The Company paid \$4,781 during the first quarter of 2010 to resolve cases and claims. The Company's products liability reserve balance at December 31, 2009 totaled \$151,421 (current portion of \$30,805) and the balance at March 31, 2010 totaled \$183,461 (current portion of \$31,621).

The products liability expense reported by the Company includes amortization of insurance premium costs, adjustments to settlement reserves and legal costs incurred in defending claims against the Company offset by recoveries of legal fees. Legal costs are expensed as incurred and products liability insurance premiums are amortized over coverage periods. The Company is entitled to reimbursement, under certain insurance contracts in place for periods ending prior to April 1, 2003, of legal fees expensed in prior periods based on events occurring in those periods. The Company records the reimbursements under such policies in the period the conditions for reimbursement are met. Products liability expense totaled \$20,568 and \$44,598 for the periods ended March 31, 2009 and 2010, respectively.

11. For the quarter ended March 31, 2010, the Company recorded an income tax expense for continuing operations of \$7,743 including discrete items. The effective tax rate for the three-month period ended March 31, 2010, for continuing operations is 18.9 percent, exclusive of discrete items, using the applicable effective tax rate determined using the forecasted multi-jurisdictional annual effective tax rates. For comparable periods in 2009, the effective tax rate for continuing operations, exclusive of discrete items, was 16.2 percent using forecasted jurisdictional annual effective tax rates. The change in the tax rate, exclusive of discrete items, relates primarily to the reversal of a valuation allowances relating to the anticipated usage of various tax attribute carryforwards including tax credit and net operating loss carryforwards plus the impact of the mix of earnings or loss by jurisdiction as compared to 2009.

The Company maintains a valuation allowance pursuant to ASC 740 "Accounting for Income Taxes," on its net U.S. deferred tax asset position. The valuation allowance will be maintained as long as it is more likely than not that some portion of the deferred tax assets will not be realized. Deferred tax assets and liabilities are determined separately for each taxing jurisdiction in which the Company conducts its operations or otherwise generates taxable income or losses. In the U.S., the Company has recorded significant deferred tax assets, the largest of which relates to products liability, pension and other postretirement benefit obligations. These deferred tax assets are partially offset by deferred tax liabilities, the most significant of which relates to accelerated depreciation. Based upon this assessment, the Company maintains a \$145,244 valuation allowance for the portion of U.S. deferred tax assets exceeding its U.S. deferred tax liabilities. In addition, the Company has recorded valuation allowances of \$2,475 for deferred tax assets associated with losses in foreign jurisdictions.

The Company maintains an ASC 740-10, "Accounting for Uncertainty in Income Taxes" liability for unrecognized tax benefits for permanent and temporary book/tax differences for continuing operations. At March 31, 2010, the Company's liability, exclusive of interest, totals approximately \$7,461. The Company accrued approximately \$19 of interest expense for the quarter which has been recorded as a discrete item in its tax provision.

In 2003 the Company initiated bilateral Advance Pricing Agreement ("APA") negotiations with the Canadian and U.S. governments to change its intercompany transfer pricing process between a formerly owned subsidiary, Cooper-Standard Automotive, Inc., ("CSA") and its Canadian affiliate. In 2009 the governments settled the APA between the governments and the taxpayers for periods 2000-2007. On August 19, 2009, the Company filed an action in the United States Bankruptcy Court, District of Delaware, in response to the Bankruptcy petition filed by Cooper Standard Holdings Inc. on August 3, 2009. The action related to the tax refunds owed to the Company pursuant to the September 16, 2004 sale agreement of CSA for pre-disposition periods ending December 23, 2004. On March 17, 2010, the Company entered into a settlement agreement with Cooper Standard Holdings, Inc., et al. to resolve the subject proceedings. The approved settlement agreement was docketed by the Court on April 15, 2010 and became final and non-appealable on April 29, 2010. Pursuant to the settlement agreement, CSA paid the Company approximately \$17,600. Also, CSA must provide a release of the Company from all liability in connection with the Company's guaranty of a lease for certain property in Surgoinsville, Tennessee, or alternatively, cause a letter of credit to be issued for the benefit of the Company in the initial amount of \$7,000. The letter of credit will be payable to the Company for amounts that the Company is called upon to pay in connection with the Company's guaranty. The settlement agreement also provides that the Company has no obligation for any payments made under a pension plan covering certain employees of a former subsidiary. When all conditions have been satisfied, the parties have agreed to certain mutual releases with only certain limited obligations under the 2004 sale agreement to remain in force. Based upon the settlement, the Company recognized the cash received and released additional liabilities recorded on its books relating to the disposition of CSA as income from discontinued operations during the second quarter of 2010.

The Company and its subsidiaries are subject to income taxes in the U.S. federal jurisdiction and various state and foreign jurisdictions. With few exceptions, the Company is no longer subject to U.S. federal, state and foreign tax examinations by tax authorities for years prior to 2000.

12. On February 2, 2010 in the case of *Cates, et al v. Cooper Tire & Rubber Company*, the United States District Court for the Northern District of Ohio entered an order approving the settlement agreement negotiated by the parties in April 2009, in its entirety, as being fair, reasonable and adequate and dismissed, with prejudice, the case and a related lawsuit, *Johnson, et al v. Cooper Tire & Rubber Company*. The settlement agreement provides for 1) a cash payment of \$7,050 to the Plaintiffs for reimbursement of costs; and 2) modification to the Company's approach and costs of providing future health care to specified current retiree groups which will result in an amendment to the Company's retiree medical plan.

A group of the Company's union retirees and surviving spouses filed the Cates lawsuit on behalf of a purported class claiming that the Company was not entitled to impose any contribution requirement for the cost of their health care coverage pursuant to a series of letter agreements entered into by the Company and the United Steelworkers and that Plaintiffs were promised lifetime benefits, at no cost, after retirement. As a result of settlement discussions, the related Johnson case was filed with the Court on behalf of a different, smaller group of hourly union-represented retirees.

The Company is making plans to implement the settlement agreement. As a consequence of the settlement agreement, the Company recorded \$7,050 of expense during the first quarter of 2009 relating to the specified payments. Also during the first quarter of 2009, the actuarial value of costs related to the plan amendment was estimated to be approximately \$7,700 which has been reflected as an increase in the accrual for Other Post-employment Benefits with an offset to the Accumulated Other Comprehensive Income component of Shareholders' Equity. The Company is currently in the process of finalizing the impact of the amendment on its accrual for Other Post-employment Benefits and will record the impact when the settlement agreement is implemented.

13. In connection with the investment in Cooper Chengshan, beginning January 1, 2009 and continuing through December 31, 2011, the minority interest partners have the right to sell, and, if exercised, the Company has the obligation to purchase, the remaining 49 percent noncontrolling share at a minimum price of \$62,700. The Company was notified by a noncontrolling shareholder that it had exercised its put option and after governmental approval, the Company purchased the 14 percent share for \$17,920 on March 31, 2010. The remaining noncontrolling shareholder has the right to sell its 35 percent share to the Company at a minimum price of \$44,780. The price can vary depending on operating results of the entity.

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

This Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") presents information related to the consolidated results of operations of the Company, a discussion of the past results and future outlook of each of the Company's segments, and information concerning both the liquidity and capital resources of the Company. An important qualification regarding the "forward-looking statements" made in this discussion is then presented.

Consolidated Results of Operations

(Dollar amounts in millions except per share amounts)

	Three months ended March 31		
	2009	Change	2010
Revenues:			
North American Tire	\$ 439.3	21.0%	\$ 531.7
International Tire	166.2	76.7%	293.6
Eliminations	<u>(34.1)</u>	107.9%	<u>(70.9)</u>
Net sales	<u>\$ 571.4</u>	32.0%	<u>\$ 754.4</u>
Segment profit (loss):			
North American Tire	\$ (3.6)	n/m	\$ 13.6
International Tire	(2.8)	n/m	22.6
Unallocated corporate charges	(9.5)	-71.6%	(2.7)
Eliminations	<u>(0.3)</u>	66.7%	<u>(0.5)</u>
Operating profit (loss)	(16.2)	n/m	33.0
Interest expense	12.7	-31.5%	8.7
Interest income	(1.4)	-14.3%	(1.2)
Other income	<u>(0.8)</u>	-75.0%	<u>(0.2)</u>
Income (loss) from continuing operations before income taxes	(26.7)	n/m	25.7
Income tax expense (benefit)	<u>(3.8)</u>	n/m	<u>7.7</u>
Income (loss) from continuing operations	(22.9)	n/m	18.0
Income (loss) from discontinued operations, net of income taxes	(0.4)	n/m	(0.8)
Noncontrolling shareholders' interests	<u>(2.0)</u>	n/m	<u>5.6</u>
Net income (loss) attributable to Cooper Tire & Rubber Company	<u>\$ (21.3)</u>	n/m	<u>\$ 11.6</u>
Basic earnings per share attributable to Cooper Tire & Rubber Company	<u>\$ (0.36)</u>		<u>\$ 0.19</u>
Diluted earnings per share attributable to Cooper Tire & Rubber Company	<u>\$ (0.36)</u>		<u>\$ 0.19</u>

Consolidated net sales for the three-month period ended March 31, 2010 were \$183.0 million higher than the comparable period one year ago. The increase in net sales for the first quarter of 2010 compared with the first quarter of 2009 was attributable to higher unit volumes in both the North American Tire Operations and International Tire Operations segments. Additional favorable impacts from foreign currency were partially offset by reduced pricing and mix in the International Tire Operations segment.

Operating profit in the first quarter of 2010 increased by \$49.2 million from the first quarter of 2009. The favorable impacts of higher sales volumes, improved pricing and mix, lower production curtailments costs, decreased restructuring expenses and improved manufacturing operations all contributed to the improvement from 2009. These improvements were partially offset by higher raw material costs and increased products liability charges in the North American Tire Operations segment.

The principal raw materials for the Company include natural rubber, synthetic rubber, carbon black, chemicals and steel reinforcement components. Approximately 65 percent of the Company's raw materials are petroleum-based. The increases in the cost of natural rubber and petroleum-based materials were the most significant drivers of higher raw material costs during the first quarter of 2010, which were up \$40.5 million from the first quarter of 2009.

The Company strives to assure raw material supply and to obtain the most favorable pricing. For natural rubber and natural gas, procurement is managed through a combination of buying forward of production requirements and utilizing the spot market. For other principal materials, procurement arrangements include supply agreements that may contain formula-based pricing based on commodity indices, multi-year agreements or spot purchase contracts. While these arrangements typically provide quantities necessary to satisfy normal manufacturing demands, the pricing volatility in these commodities contributes to the difficulty in managing the costs of raw materials.

Products liability costs totaled \$20.6 million and \$44.6 million in the first quarter of 2009 and 2010, respectively. The majority of the increase is due to the Company recording an additional \$21.8 million for its self-insured portion of a jury verdict in one case during the quarter. Additional information related to the Company's accounting for products liability costs appears in the Notes to Condensed Consolidated Financial Statements.

Selling, general and administrative expenses were \$44.6 million in the first quarter of 2010 (5.9 percent of net sales) and \$45.1 million in the first quarter of 2009 (7.9 percent of net sales). The decrease in selling, general and administrative expenses was due primarily to reduced advertising and promotion costs.

During the first quarter of 2010, the Company recorded \$7.6 million in restructuring costs related to the planned closure of its Albany, Georgia manufacturing facility. Additional information related to this restructuring initiative appears in the Notes to Condensed Consolidated Financial Statements.

As discussed in the Notes to Condensed Consolidated Financial Statements, the Company recorded a \$7.1 million charge during the first quarter of 2009 related to the agreement reached in the *Cates* retiree medical legal case which is reflected as Unallocated corporate charges in 2009.

Interest expense decreased \$3.9 million in the first quarter of 2010 from the first quarter of 2009 due to lower debt levels in both the parent Company and its subsidiaries. The Company repaid \$96.9 million of its parent company Senior Notes in December 2009.

Other expense (income) decreased by \$.6 million in the first quarter of 2010 compared to 2009. The Company recorded losses from an unconsolidated subsidiary of \$.8 million in 2009 but recorded \$.7 million in earnings in the first quarter of 2010. Proceeds from the settlement of a lawsuit of \$1.8 million were recorded in 2009.

For the quarter ended March 31, 2010, the Company recorded an income tax expense for continuing operations of \$7.7 million, which includes a tax expense for discrete items of \$2.9 million relating primarily to adjustments to U.S. and Non-U.S. deferred tax assets plus the increased state tax impact from the recent settlement of IRS audits for prior periods. The effective tax rate for the quarter for continuing operations is 18.9 percent, exclusive of discrete items, using the applicable effective tax rate determined using the forecasted multi-jurisdictional annual effective tax rates. For comparable periods in 2009, the effective tax rate for continuing operations, exclusive of discrete items, was 16.2 percent using forecasted jurisdictional annual effective tax rates. The change in the tax rate, exclusive of discrete items, relates primarily to the reversal of a valuation allowances relating to the anticipated usage of various tax attribute carryforwards including tax credit and net operating loss carryforwards plus the impact of the mix of earnings or loss by jurisdiction as compared to 2009.

The Company maintains a valuation allowance pursuant to ASC 740 "Accounting for Income Taxes," on its net U.S. deferred tax asset position. The valuation allowance will be maintained as long as it is more likely than not that some portion of the deferred tax assets will not be realized. Deferred tax assets and liabilities are determined separately for each taxing jurisdiction in which the Company conducts its operations or otherwise generates

taxable income or losses. In the U.S., the Company has recorded significant deferred tax assets, the largest of which relates to products liability, pension and other postretirement benefit obligations. These deferred tax assets are partially offset by deferred tax liabilities, the most significant of which relates to accelerated depreciation. Based upon this assessment, the Company maintains a \$145.2 million valuation allowance for the portion of U.S. deferred tax assets exceeding its U.S. deferred tax liabilities. In addition, the Company has recorded valuation allowances of \$2.5 million for deferred tax assets associated with losses in foreign jurisdictions.

North American Tire Operations Segment

(Dollar amounts in millions)	Three months ended March 31		
	2009	Change	2010
Sales	\$ 439.3	21.0%	\$ 531.7
Operating profit (loss)	\$ (3.6)	n/m	\$ 13.6
United States unit shipments changes:			
Passenger tires			
Segment		19.8%	
RMA members		9.6%	
Total Industry		12.6%	
Light truck tires			
Segment		14.6%	
RMA members		11.5%	
Total Industry		17.8%	
Total light vehicle tires			
Segment		18.9%	
RMA members		9.8%	
Total Industry		13.2%	
Total segment unit sales change		19.2%	

Overview

The North American Tire Operations segment manufactures and markets passenger car and light truck tires, primarily for sale in the United States replacement market. Major distribution channels and customers include independent tire dealers, wholesale distributors, regional and national retail tire chains, and large retail chains that sell tires as well as other automotive products. The segment does not sell its products directly to end users, except through three Company-owned retail stores, and does not manufacture tires for sale to the automobile original equipment manufacturers (“OEMs”).

Sales

Sales of the North American Tire Operations segment increased \$92.4 million, or 21.0 percent, in the first quarter of 2010 from levels in 2009. The increase in sales was a result of higher unit volume (\$87.9 million) and

improved pricing and mix (\$4.5 million). In the United States, the segment's unit sales of total light vehicle tires increased 18.9 percent in the first quarter of 2010 compared to the first quarter of 2009. This increase exceeded the 9.8 percent increase in total light vehicle shipments experienced by all members of the Rubber Manufacturers Association ("RMA"), and was also higher than the 13.2 percent increase in total light vehicle shipments for the total industry (which includes an estimate for non-RMA members). Nearly all product segments outpaced the industry in the U.S. market. Shipments to house brands and private brand distributors were strong.

Operating Profit

North American Tire segment operating profit increased \$17.2 million in the first quarter of 2010 from the first quarter of 2009. The increase in operating profit was due to higher unit volumes (\$21.5 million), reduced production curtailment costs (\$19.2 million), improved manufacturing operations (\$10.5 million), favorable pricing net of mix (\$8.2 million), lower restructuring costs (\$6.7 million) and decreased selling, general and administrative expenses (\$2.8 million). These improvements were partially offset by higher raw material costs (-\$29.2 million) and increased products liability charges (-\$24.0 million) as compared to the first quarter of 2009. Details of the methodology used to calculate the products liability reserve are discussed in the Notes to Consolidated Financial Statements.

International Tire Operations Segment

(Dollar amounts in millions)	Three months ended March 31		
	<u>2009</u>	<u>Change</u>	<u>2010</u>
Sales	\$ 166.2	76.7%	\$ 293.6
Operating profit (loss)	\$ (2.8)	n/m	\$ 22.6
Unit sales change		64.6%	

Overview

The International Tire Operations segment manufactures and markets passenger car, light truck and motorcycle tires for the international replacement market, as well as racing tires and tire retread materials, in Europe, Russia and other markets. The segment's Cooper Chengshan joint venture manufactures and markets passenger car and light truck radial tires as well as radial and bias medium truck tires in the international market. The segment's Cooper Kenda joint venture manufactures tires to be exported to markets outside of the PRC. Under the current agreement, until May 2012, all of the tires produced by this joint venture will be exported and sold to Cooper Tire & Rubber Company.

Sales

Sales of the International Tire Operations segment increased \$127.3 million, or 76.6 percent, in the first quarter of 2010 compared with the first quarter of 2009. The segment recognized higher unit volumes (\$126.0 million) in 2010 when compared with 2009, primarily from the Company's joint venture operations in Asia. The foreign currency impact of a weaker United States dollar in relation to the British pound also increased sales \$8.5 million in the first quarter of 2010. The impact of less favorable pricing and mix (-\$7.2 million) partially offset the improvements from volume and currency.

Operating Profit

Operating profit for the segment in the first quarter of 2010 was \$25.4 million higher than in the same period of 2009. The increase in operating profit was due to higher unit volumes (\$19.8 million), favorable pricing net of mix (\$9.3 million), improved manufacturing operations (\$3.6 million), favorable foreign currency impact (\$2.9 million) and a reduction in production curtailment costs (\$2.5 million). These increases were partially offset by higher raw material costs (-\$11.3 million) and increased selling, general and administrative expenses (-\$2.2 million).

Outlook for Company

The Company expects demand and growth rates in 2010 will vary by region as developing markets, including the PRC, present more robust opportunities for improvement. Mature tire markets are expected to grow at near historical growth rates of two to three percent. While the Company believes pent up demand for tires exists, it does not believe a surge in demand for tires will occur unless consumer confidence recovers more fully.

The heightened demand, in combination with relatively low levels of inventory, means the Company expects to operate its manufacturing facilities at very high utilization rates in 2010. This is partially the result of successful efforts to optimize production capacity in recent years. The Company also intends to invest in increased inventory levels; the ability to increase these quantities will be a function of both the strength of sales and the Company's ability to manufacture sufficient units above demand levels.

As success for the Company continues to build through improved competitiveness there will be additional focus shifted to the imperative of profitable growth. This is designed to leverage the Company's position and prepare for future growth opportunities. These actions will include the launch of new products to meet market demands, growth in sales channels where the Company is under-represented and progress in emerging markets. The Company expects this will position it for growth at or above industry rates.

Raw material prices have proven very difficult to accurately predict as commodity markets remain volatile. The Company expects prices for commodities to be higher in 2010 than in 2009. The Company announced a price increase in North America of up to 7.5 percent effective June 1, 2010. The Company expects its effective tax rate for 2010 will most likely be between 17 percent and 27 percent.

In 2010, the Company will continue to focus on building a strong foundation to take advantage of future market opportunities. This will require the Company to continue investing in opportunities that will make it more cost competitive including automation, efficiently adding capacity, LEAN-Six Sigma and manufacturing located in lower cost countries. Additionally, in 2010 the Company will continue preparations and begin investments for the implementation of a global ERP system that will enhance organizational capabilities.

The Company remains committed to its Strategic Plan. The plan calls for the Company to improve its cost structure, pursue profitable top line growth and improve organizational capabilities. Successful implementation of the three imperatives detailed in the Strategic Plan and improvement in market or industry conditions can drive improved operating results, which may also be subjected to uncontrollable factors including: consumer confidence, gasoline prices, raw material cost volatility, intense competition, government intervention and currency fluctuations. The Company's focus remains on prudent management of critical resources to drive shareholder value. The Company's outlook remains cautiously optimistic. The successes it achieves combined with improved global industry conditions can result in an even stronger Company with a more consistent level of profitability.

Liquidity and Capital Resources

Generation and uses of cash — Net cash used in operating activities of continuing operations was \$29 million in the first three months of 2010 compared to net cash provided by operating activities in 2009 of \$33 million. Net income contributed \$40 million more cash in 2010. Accounts payable levels increased at March 31, 2010 as raw

material purchases returned to more normal levels from the low 2009 levels that resulted from the economic downturn during the fourth quarter of 2008. Increases in accounts receivable due to improved sales and higher inventory levels from the low levels at December 31, 2009 were the primary reasons for the consumption of cash in the first quarter of 2010.

Net cash used in investing activities during the first quarters of 2009 and 2010 reflect capital expenditures of \$17 million and \$15 million, respectively.

During the first quarters of 2009 and 2010, the Company repaid \$22 million and \$25 million of debt, respectively. In 2010, the Company's Cooper Kenda joint venture received \$5 million of capital contributions from its joint venture partner. Also in the first quarter of 2010, the Company paid \$18 million to purchase an additional 14 percent interest in its Cooper Chengshan joint venture increasing its ownership share to 65 percent.

Dividends paid on the Company's common shares in the first quarter of 2009 and 2010 were \$6 million.

Available credit facilities — Domestically, the Company has a revolving credit facility with a consortium of six banks that provides up to \$200 million based on available collateral and expires November 9, 2012. The Company also has an accounts receivable securitization facility with a \$125 million limit with a September 2010 maturity. These credit facilities remain undrawn and have no significant financial covenants until available credit is less than specified amounts.

The Company's consolidated joint ventures in Asia have annual renewable unsecured credit lines that provide up to \$200 million of borrowings and do not contain financial covenants.

Available cash and contractual commitments — At March 31, 2010, the Company had cash and cash equivalents of \$338 million. The Company's additional borrowing capacity based on eligible collateral through use of its credit facility with its bank group and its accounts receivable securitization facility at March 31, 2010 was \$203 million. The additional borrowing capacity on the Asian credit lines totaled \$126 million.

The Company expects capital expenditures for 2010 to be in the \$120 to \$130 million range of which approximately \$36 million will be in consolidated entities where the Company's ownership is at or near 50 percent.

The following table summarizes long-term debt at March 31, 2010:

Parent company	
8% unsecured notes due December 2019	\$ 173.6
7.625% unsecured notes due March 2027	116.9
Capitalized leases and other	<u>10.5</u>
	301.0
Subsidiaries	
5.4% unsecured notes due in 2010	4.4
5.13% unsecured notes due in 2011	6.6
4.86% to 5.13% unsecured notes due in 2012	<u>20.4</u>
	31.4
Less current maturities	<u>5.0</u>
	<u><u>\$ 327.4</u></u>

Contingencies

The Company is a defendant in various products liability claims brought in numerous jurisdictions in which individuals seek damages resulting from automobile accidents allegedly caused by defective tires manufactured

by the Company. Each of the products liability claims faced by the Company generally involve different types of tires, models and lines, different circumstances surrounding the accident such as different applications, vehicles, speeds, road conditions, weather conditions, driver error, tire repair and maintenance practices, service life conditions, as well as different jurisdictions and different injuries. In addition, in many of the Company's products liability lawsuits the plaintiff alleges that his or her harm was caused by one or more co-defendants who acted independently of the Company. Accordingly, both the claims asserted and the resolutions of those claims have an enormous amount of variability. The aggregate amount of damages asserted at any point in time is not determinable since often times when claims are filed, the plaintiffs do not specify the amount of damages. Even when there is an amount alleged, at times the amount is wildly inflated and has no rational basis.

Pursuant to applicable accounting rules, the Company accrues the minimum liability for each known claim when the estimated outcome is a range of possible loss and no one amount within that range is more likely than another. The Company uses a range of settlements because an average settlement cost would not be meaningful since the products liability claims faced by the Company are unique and widely variable. The cases involve different types of tires, models and lines, different circumstances surrounding the accident such as different applications, vehicles, speeds, road conditions, weather conditions, driver error, tire repair and maintenance practices, service life conditions, as well as different jurisdictions and different injuries. In addition, in many of the Company's products liability lawsuits the plaintiff alleges that his or her harm was caused by one or more co-defendants who acted independently of the Company. Accordingly, the claims asserted and the resolutions of those claims have an enormous amount of variability. The costs have ranged from zero dollars to \$33 million in one case with no "average" that is meaningful. No specific accrual is made for individual unasserted claims or for premature claims, asserted claims where the minimum information needed to evaluate the probability of a liability is not yet known. However, an accrual for such claims based, in part, on management's expectations for future litigation activity and the settled claims history is maintained. Because of the speculative nature of litigation in the United States, the Company does not believe a meaningful aggregate range of potential loss for asserted and unasserted claims can be determined. The Company's experience has demonstrated that its estimates have been reasonably accurate and, on average, cases are settled at amounts close to the reserves established. However, it is possible an individual claim from time to time may result in an aberration from the norm and could have a material impact.

Forward-Looking Statements

This report contains what the Company believes are "forward-looking statements," as that term is defined under the Private Securities Litigation Reform Act of 1995, regarding projections, expectations or matters that the Company anticipates may happen with respect to the future performance of the industries in which the Company operates, the economies of the United States and other countries, or the performance of the Company itself, which involve uncertainty and risk. Such "forward-looking statements" are generally, though not always, preceded by words such as "anticipates," "expects," "believes," "projects," "intends," "plans," "estimates," and similar terms that connote a view to the future and are not merely recitations of historical fact. Such statements are made solely on the basis of the Company's current views and perceptions of future events, and there can be no assurance that such statements will prove to be true. It is possible that actual results may differ materially from those projections or expectations due to a variety of factors, including but not limited to:

- changes in economic and business conditions in the world;
- the failure to achieve expected sales levels;
- consolidation among the Company's competitors and customers;
- technology advancements;
- the failure of the Company's suppliers to timely deliver products in accordance with contract specifications;
- changes in interest and foreign exchange rates;
- changes in the Company's customer relationships, including loss of particular business for competitive or other reasons;
- the impact of reductions in the insurance program covering the principal risks to the Company, and other unanticipated events and conditions;
- volatility in raw material and energy prices, including those of steel, petroleum based products and natural gas and the unavailability of such raw materials or energy sources;

- the inability to obtain and maintain price increases to offset higher production or material costs;
- increased competitive activity including actions by larger competitors or low-cost producers;
- the inability to recover the costs to develop and test new products or processes;
- the risks associated with doing business outside of the United States;
- changes in pension expense and/or funding resulting from investment performance of the Company's pension plan assets and changes in discount rate, salary increase rate, and expected return on plan assets assumptions, or changes to related accounting regulations;
- government regulatory initiatives;
- the impact of labor problems, including a strike brought against the Company or against one or more of its large customers or suppliers;
- litigation brought against the Company including products liability;
- an adverse change in the Company's credit ratings, which could increase its borrowing costs and/or hamper its access to the credit markets;
- changes to the credit markets and/or access to those markets;
- inaccurate assumptions used in developing the Company's strategic plan or the inability or failure to successfully implement the Company's strategic plan;
- inability to adequately protect the Company's intellectual property rights;
- failure to successfully integrate acquisitions into operations or their related financings may impact liquidity and capital resources;
- inability to use deferred tax assets;
- recent changes to tariffs on certain tires imported into the United States from the PRC and;
- changes in the Company's relationship with joint venture partners.

It is not possible to foresee or identify all such factors. Any forward-looking statements in this report are based on certain assumptions and analyses made by the Company in light of its experience and perception of historical trends, current conditions, expected future developments and other factors it believes are appropriate in the circumstances. Prospective investors are cautioned that any such statements are not a guarantee of future performance and actual results or developments may differ materially from those projected.

The Company makes no commitment to update any forward-looking statement included herein or to disclose any facts, events or circumstances that may affect the accuracy of any forward-looking statement.

Further information covering issues that could materially affect financial performance is contained in the Company's periodic filings with the U. S. Securities and Exchange Commission ("SEC").

Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

There have been no material changes in market risk at March 31, 2010 from those detailed in the Company's Annual Report on Form 10-K filed with the SEC for the year ended December 31, 2009.

Item 4. CONTROLS AND PROCEDURES

Pursuant to the requirements of the Sarbanes-Oxley Act of 2002, the Company's management, with the participation of the Chief Executive Officer and Chief Financial Officer of the Company, have evaluated, as of the end of the period covered by this Quarterly Report on Form 10-Q, the effectiveness of the Company's disclosure controls and procedures, including its internal controls and procedures. Based upon that evaluation, the Chief Executive Officer and the Chief Financial Officer have concluded that, as of the end of such period, the Company's disclosure controls and procedures were effective in identifying the information required to be disclosed in the Company's periodic reports filed with the SEC, including this Quarterly Report on Form 10-Q, and ensuring that such information is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms.

There have been no changes in the Company's internal control over financial reporting during the first quarter of 2010 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

Part II. OTHER INFORMATION

Item 1. LEGAL PROCEEDINGS

The Company is a defendant in various judicial proceedings arising in the ordinary course of business. A significant portion of these proceedings are products liability cases in which individuals involved in vehicle accidents seek damages resulting from allegedly defective tires manufactured by the Company. In the future, products liability costs could have a materially greater impact on the consolidated results of operations and financial position of the Company than in the past.

On March 19, 2010, the Company received an adverse jury verdict in a trial in the Iowa District Court for Polk County. The jury found that the Company was liable for a vehicle accident allegedly caused by tire failure involving tread separation. The jury awarded damages of approximately \$33 million. The Company believes that a number of legal rulings were in error, and the Company intends to pursue post-verdict relief, including appeal.

Item 1A. RISK FACTORS

The more significant risk factors related to the Company and its subsidiaries follow:

The Company is facing heightened risks due to the current business environment.

Current global economic conditions may affect demand for the Company's products, create volatility in raw material costs and affect the availability and cost of credit. These conditions also affect the Company's customers and suppliers as well as retail customers.

A deterioration in the global macroeconomic environment or in specific regions could impact the Company and, depending upon the severity and duration of these factors, the Company's profitability and liquidity position could be negatively impacted.

This may also be the result of increased price competition and product discounts, resulting in lower margins in the business.

Inadequate supply of key raw materials and pricing volatility for raw materials could result in increased costs and may affect the Company's profitability.

The pricing volatility for natural rubber and petroleum-based materials contributes to the difficulty in managing the costs of raw materials. Costs for certain raw materials used in the Company's operations, including natural rubber, chemicals, carbon black, steel reinforcements and synthetic rubber remain volatile. Increasing costs for raw material supplies will increase the Company's production costs and affect its margins if the Company is unable to pass the higher production costs on to its customers in the form of price increases.

Further, if the Company is unable to obtain adequate supplies of raw materials in a timely manner, its operations could be interrupted. In recent years, the severity of hurricanes and the consolidation of the supplier base have had an impact on the availability of raw materials.

If the price of natural gas or other energy sources increases, the Company's operating expenses could increase significantly.

The Company's manufacturing facilities rely principally on natural gas, as well as electrical power and other energy sources. High demand and limited availability of natural gas and other energy sources have resulted in

significant increases in energy costs in the past several years which have increased the Company's operating expenses and transportation costs. Higher energy costs would increase the Company's production costs and adversely affect its margins and results of operations.

Further, if the Company is unable to obtain adequate sources of energy, its operations could be interrupted.

The Company's industry is highly competitive, and it may not be able to compete effectively with low-cost producers and larger competitors.

The replacement tire industry is a highly competitive, global industry. Some of the Company's competitors are large companies with relatively greater financial resources. Most of the Company's competitors have operations in lower-cost countries. Intense competitive activity in the replacement tire industry has caused, and will continue to cause, pressures on the Company's business. The Company's ability to compete successfully will depend in part on its ability to balance capacity with demand, leverage global purchasing of raw materials, make required investments to improve productivity, eliminate redundancies and increase production at low-cost, high-quality supply sources. If the Company is unable to offset continued pressures with improved operating efficiencies, its sales, margins, operating results and market share would decline and the decline could become material.

The Company may be unable to recover new product and process development and testing costs, which could increase the cost of operating its business.

The Company's business strategy emphasizes the development of new equipment and new products and using new technology to improve quality, performance and operating efficiency. Developing new products and technologies requires significant investment and capital expenditures, is technologically challenging and requires extensive testing and accurate anticipation of technological and market trends. If the Company fails to develop new products that are appealing to its customers, or fails to develop products on time and within budgeted amounts, the Company may be unable to recover its product development and testing costs.

The Company conducts its manufacturing, sales and distribution operations on a worldwide basis and is subject to risks associated with doing business outside the United States.

The Company has operations worldwide, including in the U.S., the United Kingdom, Europe, Mexico and the PRC. The Company has two joint venture manufacturing plants, Cooper Chengshan and Cooper Kenda, in the PRC and has continued to expand operations in that country. The Company has also invested in a tire manufacturing operation in Mexico. There are a number of risks in doing business abroad, including political and economic uncertainty, social unrest, shortages of trained labor and the uncertainties associated with entering into joint ventures or similar arrangements in foreign countries. These risks may impact the Company's ability to expand its operations in the PRC and elsewhere and otherwise achieve its objectives relating to its foreign operations including utilizing these locations as suppliers to other markets. In addition, compliance with multiple and potentially conflicting foreign laws and regulations, import and export limitations and exchange controls is burdensome and expensive. The Company's foreign operations also subject it to the risks of international terrorism and hostilities and to foreign currency risks, including exchange rate fluctuations and limits on the repatriation of funds.

The Company's results could be impacted by the tariffs recently imposed by the United States government on tires imported from the PRC.

On September 26, 2009, a tariff was imposed on light vehicle tires imported into the United States from the PRC at a level of 35 percent for the first 12 months, 30 percent for the second 12 months, and 25 percent for the third 12 months. The Company's ability to competitively source tires from its operations in the PRC could be significantly impacted. Other effects, including impacts on the price of tires, responsive actions from other governments and the opportunity for other low cost competitors to establish a presence in the United States could also have significant impacts on the Company's results.

The Company's expenditures for pension and other postretirement obligations could be materially higher than it has predicted if its underlying assumptions prove to be incorrect.

The Company provides defined benefit and hybrid pension plan coverage to union and non-union U.S. employees and a contributory defined benefit plan in the U.K. The Company's pension expense and its required contributions to its pension plans are directly affected by the value of plan assets, the projected and actual rates of return on plan assets and the actuarial assumptions the Company uses to measure its defined benefit pension plan obligations, including the discount rate at which future projected and accumulated pension obligations are discounted to a present value and the inflation rate. The Company could experience increased pension expense due to a combination of factors, including the decreased investment performance of its pension plan assets, decreases in the discount rate and changes in its assumptions relating to the expected return on plan assets. The Company could also experience increased other postretirement expense due to decreases in the discount rate and/or increases in the health care trend rate.

In the event of declines in the market value of the Company's pension assets or lower discount rates to measure the present value of pension obligations, the Company could experience changes to its Consolidated Balance Sheet which would include an increase to Pension benefits liabilities and a corresponding decrease in Stockholders' equity through Cumulative other comprehensive loss and could result in higher minimum funding requirements.

The cost of compliance with the recently enacted health care reforms could affect the Company's operating costs.

In March 2010, the Patient Protection and Affordable Care Act and the Health Care and Education Affordability Act of 2010 (the Act) was enacted. The primary focus of the Act is to significantly reform health care in the U.S. The Act will reduce the tax deduction available to the Company to the extent of receipt of Medicare Part D prescription drug subsidy; however, this will not have a material impact on the Company's financial results. The Company is currently evaluating other prospective effects of the Act.

Compliance with regulatory initiatives could increase the cost of operating the Company's business.

The Company is subject to federal, state and local laws and regulations. Compliance with those now in effect, or that may be enacted, could require significant capital expenditures, increase the Company's production costs and affect its earnings and results of operations.

Clean oil directive number 2005/69/EC in the European Union ("EU") was effective January 1, 2010 and requires all tires manufactured after this date and sold in the EU, use non-aromatic oils. The Company is in compliance with this directive. Additional countries may legislate similar clean oil requirements which could increase the cost of materials used in the Company's products.

In addition, while the Company believes that its tires are free from design and manufacturing defects, it is possible that a recall of the Company's tires could occur in the future. A substantial recall could harm the Company's reputation, operating results and financial position.

Any interruption in the Company's skilled workforce could impair its operations and harm its earnings and results of operations.

The Company's operations depend on maintaining a skilled workforce and any interruption of its workforce due to shortages of skilled technical, production and professional workers could interrupt the Company's operations and affect its operating results. Further, a significant number of the Company's U.S. employees are currently represented by unions. The labor agreement at the Findlay, Ohio operation expires October 2011 and the labor agreement at the Texarkana, Arkansas operations expires January 2012. Although the Company believes that its relations with its employees are generally good, the Company cannot provide assurance that it will be able to successfully maintain its relations with its employees. If the Company fails to extend or renegotiate its collective

bargaining agreements with the labor unions on satisfactory terms, or if its unionized employees were to engage in a strike or other work stoppages, the Company's business and operating results could suffer.

The Company has a risk of exposure to products liability claims which, if successful, could have a negative impact on its financial position, cash flows and results of operations.

The Company's operations expose it to potential liability for personal injury or death as an alleged result of the failure of or conditions in the products that it designs and manufactures. Specifically, the Company is a party to a number of products liability cases in which individuals involved in motor vehicle accidents seek damages resulting from allegedly defective tires that it manufactured. Products liability claims and lawsuits, including possible class action litigation, could have a negative effect on the Company's financial position, cash flows and results of operations.

Those claims may result in material losses in the future and cause the Company to incur significant litigation defense costs. Further, the Company cannot provide assurance that its insurance coverage will be adequate to address any claims that may arise. A successful claim brought against the Company in excess of its available insurance coverage may have a significant negative impact on its business and financial condition.

Further, the Company cannot provide assurance that it will be able to maintain adequate insurance coverage in the future at an acceptable cost or at all.

The Company has a risk due to volatility of the capital and financial markets.

The Company periodically requires access to the capital and financial markets as a significant source of liquidity for capital requirements that it cannot satisfy by cash on hand or operating cash flows. Substantial volatility in world capital markets and the banking industry may make it difficult for the Company to access credit markets and to obtain financing or refinancing, as the case may be, on satisfactory terms or at all. In addition, various additional factors, including a deterioration of the Company's credit ratings or its business or financial condition, could further impair its access to the capital markets. See also related comments under "There are risks associated with the Company's global strategy of using joint ventures and partially owned subsidiaries" below.

Additionally, any inability to access the capital markets, including the ability to refinance existing debt when due, could require the Company to defer critical capital expenditures, reduce or not pay dividends, reduce spending in areas of strategic importance, sell important assets or, in extreme cases, seek protection from creditors.

If assumptions used in developing the Company's strategic plan are inaccurate or the Company is unable to execute its strategic plan effectively, its profitability and financial position could be negatively impacted.

In February 2008, the Company announced its strategic plan which contains three imperatives:

- Build a sustainable, competitive cost position,
- Drive profitable top line growth, and
- Build bold organizational capabilities and enablers to support strategic goals.

If the assumptions used in developing the strategic plan vary significantly from actual conditions, the Company's sales, margins and profitability could be harmed.

The Company may not be able to protect its intellectual property rights adequately.

The Company's success depends in part upon its ability to use and protect its proprietary technology and other intellectual property, which generally covers various aspects in the design and manufacture of its products and processes. The Company owns and uses tradenames and trademarks worldwide. The Company relies upon a combination of trade secrets, confidentiality policies, nondisclosure and other contractual arrangements and patent, copyright and trademark laws to protect its intellectual property rights. The steps the Company takes in this regard may not be adequate to prevent or deter challenges, reverse engineering or infringement or other

violations of its intellectual property, and the Company may not be able to detect unauthorized use or take appropriate and timely steps to enforce its intellectual property rights. In addition, the laws of some countries may not protect and enforce the Company's intellectual property rights to the same extent as the laws of the United States.

The Company may not be successful in executing and integrating acquisitions into its operations, which could harm its results of operations and financial condition.

The Company routinely evaluates potential acquisitions and may pursue acquisition opportunities, some of which could be material to its business. While the Company believes there are a number of potential acquisition candidates available that would complement its business, it currently has no agreements to acquire any specific business or material assets. The Company cannot predict whether it will be successful in pursuing any acquisition opportunities or what the consequences of any acquisition would be. Additionally, in any future acquisitions, the Company may encounter various risks, including:

- the possible inability to integrate an acquired business into its operations;
- increased intangible asset amortization;
- diversion of management's attention;
- loss of key management personnel;
- unanticipated problems or liabilities; and
- increased labor and regulatory compliance costs of acquired businesses.

Some or all of those risks could impair the Company's results of operations and impact its financial condition. The Company may finance any future acquisitions from internally generated funds, bank borrowings, public offerings or private placements of equity or debt securities, or a combination of the foregoing. Future acquisitions may involve the expenditure of significant funds and management time. Future acquisitions may also require the Company to increase its borrowings under its bank credit facilities or other debt instruments, or to seek new sources of liquidity. Increased borrowings would correspondingly increase the Company's financial leverage, and could result in lower credit ratings and increased future borrowing costs. These risks could also reduce the Company's flexibility to respond to changes in its industry or in general economic conditions.

The Company is required to comply with environmental laws and regulations that could cause it to incur significant costs.

The Company's manufacturing facilities are subject to numerous laws and regulations designed to protect the environment, and the Company expects that additional requirements with respect to environmental matters will be imposed on it in the future. Material future expenditures may be necessary if compliance standards change or material unknown conditions that require remediation are discovered. If the Company fails to comply with present and future environmental laws and regulations, it could be subject to future liabilities or the suspension of production, which could harm its business or results of operations. Environmental laws could also restrict the Company's ability to expand its facilities or could require it to acquire costly equipment or to incur other significant expenses in connection with its manufacturing processes.

A portion of the Company's business is seasonal, which may affect its period-to-period results.

Although there is year-round demand for replacement tires, demand for passenger replacement tires is typically strongest during the third and fourth quarters of the year in the northern hemisphere where the majority of the Company's business is conducted, principally due to higher demand for winter tires during the months of June through November. The seasonality of this portion of the Company's business may affect its operating results from quarter-to-quarter.

The realizability of deferred tax assets may affect the Company's profitability and cash flows.

A valuation allowance is required pursuant to ASC 740 relating to *Accounting for Income Taxes*, when, based upon an assessment which is largely dependent upon objectively verifiable evidence including recent operating loss history, expected reversal of existing deferred tax liabilities and tax loss carry back capacity, it is more likely than not that some portion of the deferred tax assets will not be realized. Deferred tax assets and liabilities are determined separately for each taxing jurisdiction in which the Company conducts its operations or otherwise generates taxable income or losses. In the United States, the Company has recorded significant deferred tax assets, the largest of which relate to tax attribute carryforwards, products liabilities, pension and other post retirement benefit obligations. These deferred tax assets are partially offset by deferred tax liabilities, the most significant of which relates to accelerated depreciation. Based upon this assessment, the Company maintains a \$145.2 million valuation allowance for the portion of U.S. deferred tax assets exceeding deferred tax liabilities. In addition, the Company has recorded valuation allowances of \$2.5 million for certain non-U.S. net deferred tax assets primarily associated with losses in foreign jurisdictions. As a result of changes in the amount of U.S. and certain foreign net deferred tax assets during the year, the valuation allowance was decreased in the first quarter 2010 by \$6.7 million. The pension liability and associated deferred tax asset accounts for \$123.1 million of the total valuation allowance at March 31, 2010.

The impact of new accounting standards on determining pension and other postretirement benefit plans' expense may have a negative impact on the Company's results of operations.

The Financial Accounting Standards Board is considering the second part of its review of accounting for pension and postretirement benefit plans. This second phase of this project may result in changes to the current manner in which pension and other postretirement benefit plan costs are expensed. These changes could result in higher pension and other postretirement costs.

There are risks associated with the Company's global strategy of using joint ventures and partially owned subsidiaries.

The Company's strategy includes expanding its global footprint through the use of joint ventures and other partially owned subsidiaries. These entities operate in countries outside of the U.S., are generally less well capitalized than the Company and bear risks similar to the risks of the Company. However, there are specific additional risks applicable to these subsidiaries and these risks, in turn, add potential risks to the Company. Such risks include: somewhat greater risk of sudden changes in laws and regulations which could impact their competitiveness, risk of joint venture partners or other investors failing to meet their obligations under related shareholders' agreements and risk of being denied access to the capital markets which could lead to resource demands on the Company in order to maintain or advance its strategy. The Company's outstanding notes and primary credit facility contain cross default provisions in the event of certain defaults by the Company under other agreements with third parties, including certain of the agreements with the Company's joint venture partners or other investors. In the event joint venture partners or other investors do not satisfy their funding or other obligations and the Company does not or cannot satisfy such obligations, the Company could be in default under its outstanding notes and primary credit facility and, accordingly, be required to repay or refinance such obligations. There is no assurance that the Company would be able to repay such obligations or that the current noteholders or creditors would agree to refinance or to modify the existing arrangements on acceptable terms or at all. For further discussion of access to the capital markets, see above "Capital and Financial Markets; Liquidity."

The two consolidated Chinese joint ventures have been financed in part using multiple loans from several lenders to finance facility construction, expansions and working capital needs. These loans are generally for terms of three years or less. Therefore, debt maturities occur frequently and access to the capital markets is crucial to their ability to maintain sufficient liquidity to support their operations.

In connection with its acquisition of Cooper Chengshan, beginning January 1, 2009, and continuing through December 31, 2011, the noncontrolling shareholders have the right to sell and, if exercised, the Company has the obligation to purchase, the remaining 49 percent minority interest share at a minimum price of \$62.7 million. The Company received notification from one of its noncontrolling shareholders of its intention to exercise its put option. After receiving governmental approvals, the Company purchased the 14 percent share for \$17.9 million on March 31, 2010. The remaining shares may be sold to the Company under the put option through December 31, 2011.

The minority investment in a tire operation in Mexico, which is not consolidated with the Company's results, is being funded largely by loans from the Company. The amount of such loans fluctuates with its results of operations and working capital needs and its ability to repay the existing loans is heavily dependent upon successful operations and cash flows.

Item 5. OTHER INFORMATION

Submission of Matters to a Vote of Security Holders

- (a) The Company's Annual Meeting of Stockholders was held on May 4, 2010.
- (b) All of the nominees for directors, as listed below under (c) and on pages 4 and 8 of the Company's Proxy Statement dated March 25, 2010, were elected. The following directors have terms of office which continued after the Annual Meeting.

Laurie J. Breininger	Steven M. Chapman
John J. Holland	John F. Meier
John H. Shuey	Richard L. Wambold

- (c) A description of each matter voted upon at the Annual Meeting is contained on pages 4 through 13 of the Company's Proxy Statement dated March 25, 2010, which pages are incorporated herein by reference.

The number of votes cast by common stockholders with respect to each matter is as follows:

- (i) Election of directors

	<u>Term Expires</u>	<u>Affirmative Votes</u>	<u>Withheld Votes</u>
Roy V. Armes	2013	46,919,873	1,987,845
Thomas P. Capo	2013	47,703,745	1,203,973
Robert D. Welding	2013	46,494,845	2,412,873

At March 11, 2010, the record date, there were 61,146,610 shares of common stock issued and outstanding and entitled to vote at the Annual meeting. Each of the directors received in excess of a majority of votes cast for their respective election.

- (ii) Ratification of the selection of the Company's independent auditors. The votes that had been submitted on the proposal were as follows:

Affirmative Votes	52,218,949
Negative Votes	1,690,049
Abstentions	495,037

(iii) Proposal to declassify the Board of Directors. The votes that had been submitted on the proposal were as follows:

Affirmative Votes	52,394,066
Negative Votes	1,376,465
Abstentions	633,504

(iv) Approval of the Cooper Tire & Rubber Company 2010 Incentive Compensation Plan. The votes that had been submitted on the proposal were as follows:

Affirmative Votes	38,021,247
Negative Votes	10,213,824
Abstentions	672,647

Amendments to Bylaws

(a) On May 4, 2010, the Board of Directors of the Company adopted an amendment to the Bylaws of the Company to declassify the Board of Directors. The amendment conforms the Bylaws to reflect a similar amendment to the Company's Restated Certificate of Incorporation that was approved at a meeting of the stockholders of the Company held on May 4, 2010.

The amendment to the Bylaws provides for the annual election of all directors beginning at the 2011 Annual Meeting of Stockholders; provided, however, that prior to the 2011 Annual Meeting of Stockholders, any director elected by the stockholders of the Company to a three-year term may complete the term to which he or she has been elected. The amendment further provides that directors chosen to fill a vacancy shall hold office until the next annual meeting of stockholders and until their successors are elected and qualified. Additionally, any director or the entire Board of Directors may be removed from office at any time, but only by the affirmative vote of the holders of a majority of the voting power of all of the shares of capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class.

Prior to the amendment, the Bylaws provided that (i) the Board of Directors was divided into three classes, (ii) each class of directors served for a term of three years, (iii) directors chosen to fill a vacancy served until the next election of the class for which such director would have been chosen and (iv) directors could only be removed for cause by the affirmative vote of the holders of at least 80% of the voting power of all of the shares of the company entitled to vote generally in the election of directors, voting together as a single class.

Item 6. EXHIBITS

(a) Exhibits

- (3)(i) Certificate of Incorporation of Cooper Tire & Rubber Company, as amended following an amendment filed May 4, 2010 with the Secretary of State of Delaware.
- (3)(ii) Bylaws of Cooper Tire & Rubber Company, as amended May 4, 2010.
- (10) 2010 Incentive Compensation Plan is incorporated herein by reference from Appendix B to the Company's Proxy Statement dated March 25, 2010.
- (31.1) Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
- (31.2) Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
- (32) Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

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.

COOPER TIRE & RUBBER COMPANY

/s/ B. E. Hughes

B. E. Hughes
Vice President and
Chief Financial Officer
(Principal Financial Officer)

/s/ R. W. Huber

R. W. Huber
Director of External Reporting
(Principal Accounting Officer)

May 5, 2010
(Date)

RESTATED CERTIFICATE OF INCORPORATION
OF
COOPER TIRE & RUBBER COMPANY

(As Amended as of May 4, 2010)

FIRST: The name of the Corporation is Cooper Tire & Rubber Company.

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

THIRD: The nature of the business, or objects or purposes to be transacted, promoted or carried on are:

To manufacture, produce, buy, sell and generally deal in and with all kinds of rubber goods and products, including automobile tires, tubes, accessories, and any and all articles and things made in whole or in part of rubber, gutta percha, or of substitutes for such rubber or gutta percha, and all articles and things used in connection therewith.

To carry on the business of planters, growers, and producers of rubber, gutta percha, or of substitutes therefor, the business of planters, growers, and producers of cotton, cotton fabrics, and the various materials entering into the manufacture of rubber goods and products, and to do any and all things necessary, convenient or incident thereto.

To manufacture, purchase or otherwise acquire, own, mortgage, pledge, sell, assign and transfer, or otherwise dispose of, to invest, trade, deal in and deal with goods, wares and merchandise and real and personal property of every class and description.

To acquire, and pay for in cash, stock or bonds of this Corporation or otherwise, the good will, rights, assets and property, and to undertake or assume the whole or any part of the obligations or liabilities of any person, firm, association or corporation.

To acquire, hold, use, sell, assign, lease, grant licenses in respect of, mortgage or otherwise dispose of letters patent of the United States or any foreign country, patent rights, licenses and privileges, inventions, improvements and processes, copyrights, trademarks and trade names, relating to or useful in connection with any business of this Corporation.

To guarantee, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of shares of the capital stock of, or any bonds, securities or evidences of indebtedness created by any other corporation or corporations organized under the laws of this state or any other state, country, nation or government, and while the owner thereof to exercise all the rights, powers and privileges of ownership.

To enter into, make and perform contracts of every kind and description with any person, firm, association, corporation, municipality, county, state, body politic or government or colony or dependency thereof.

To borrow or raise moneys for any of the purposes of the Corporation and, from time to time, without limit as amount, to draw, make, accept, endorse, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness, and to secure the payment of any thereof and of the interest thereon by mortgage upon or pledge, conveyance or assignment in trust of the whole or any part of the property of the Corporation, whether at the time owned or

thereafter acquired and to sell, pledge, or otherwise dispose of such bonds or other obligations of the Corporation for its corporate purposes.

To purchase, hold, sell and transfer the shares of its own capital stock; provided it shall not use its funds or property for the purchase of its own shares of capital stock when such use would cause any impairment of its capital except as otherwise permitted by law, and provided further that shares of its own capital stock belonging to it shall not be voted upon directly or indirectly.

To have one or more offices, to carry on all or any of its operations and business and without restriction or limit as to amount to purchase or otherwise acquire, hold, own, mortgage, sell, convey or otherwise dispose of real and personal property of every class and description in any of the States, Districts, Territories or Colonies of the United States, and in any and all foreign countries, subject to the laws of such State, District, Territory, Colony or Country.

In general, to carry on any other business in connection with the foregoing, and to have and exercise all the powers conferred by the laws of Delaware upon corporations, formed under the act hereinafter referred to, and to do any or all of the things hereinbefore set forth to the same extent as natural persons might or could do.

The objects and purposes specified in the foregoing clauses shall, except where otherwise expressed, be in nowise limited or restricted by reference to, or inference from, the terms of any other clause in this Certificate of Incorporation, but the objects and purposes specified in each of the foregoing clauses of this article shall be regarded as independent objects and purposes.

FOURTH: The total number of shares of stock of all classes which the Corporation has authority to issue is three hundred and five million (305,000,000) shares of which three hundred million (300,000,000) shares shall be Common Stock, with a par value of one dollar (\$1) per share, and five million (5,000,000) shares shall be Preferred Stock, with a par value of one dollar (\$1) per share.

The designations and the powers, preferences and rights, and the qualifications, limitations or restrictions of the shares of each class of stock are as follows:

1. The Preferred Stock may be issued from time to time in one or more series, the shares of each series to have such voting powers, full or limited, and such designations, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions thereof as are stated and expressed herein or in the resolution or resolutions providing for the issue of such series, adopted by the Board of Directors as hereinafter provided.

2. Authority is hereby expressly granted to the Board of Directors of the Corporation, subject to the provisions of this Article FOURTH and to the limitations prescribed by law, to authorize the issue of one or more series of Preferred Stock and with respect to each such series to fix by resolution or resolutions providing for the issue of such series the voting powers, full or limited, if any, of the shares of such series and the designations, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions thereof. The authority of the Board of Directors with respect to each series shall include, but not be limited to, the determination or fixing of the following:

(a) The designation of such series.

(b) The dividend rate of such series, the conditions and dates upon which such dividends shall be payable, the relation which such dividends shall bear to the dividends payable on any other class or classes of stock, and whether such dividends shall be cumulative or non—cumulative.

(c) Whether the shares of such series shall be subject to redemption by the Corporation and, if made subject to such redemption, the times, prices and other terms and conditions of such redemption.

(d) The terms and amount of any sinking fund provided for the purchase or redemption of the shares of such series.

(e) whether or not the shares of such series shall be convertible into or exchangeable for shares of any other class or classes of any other series of any class or classes of stock of the Corporation, and, if provision be made for conversion or exchange, the times, prices, rates, adjustments, and other terms and conditions of such conversion or exchange.

(f) The extent, if any, to which the holders of the shares of such series shall be entitled to vote with respect to the election of Directors or otherwise.

(g) The restrictions, if any, on the issue or reissue of any additional Preferred Stock.

(h) The rights of the holders of the shares of such series upon the dissolution of, or upon the distribution of assets of, the Corporation.

3. The Series A Preferred Stock shall have the powers, preferences and relative, participating, optional or other special rights and qualifications, limitations and restrictions thereof as set forth in **Exhibit A** hereto.

4. Subject to all of the rights of the Preferred Stock, and except as may be expressly provided with respect to the Preferred Stock herein, by law or by the Board of Directors pursuant to this Article FOURTH:

(a) dividends may be declared and paid or set apart for payment upon the Common Stock out of any assets or funds of the Corporation legally available for the payment of dividends;

(b) the holders of Common Stock shall have the exclusive right to vote for the election of Directors and on all other matters requiring stockholder action, each share being entitled to one vote; and

(c) upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the net assets of the Corporation shall be distributed pro rata to the holders of the Common Stock in accordance with their respective rights and interests.

5. No holder of any shares of any class of stock of the Corporation shall be entitled as of right, to purchase or subscribe for any part of the unissued shares of any class of stock of the Corporation to be issued by reason of any increase of the authorized capital stock of the Corporation or the number of its shares, or of bonds, certificates of indebtedness, debentures, or other securities convertible into any class of stock of the Corporation, or any shares of any class of stock of the Corporation purchased by it or its nominee or nominees.

FIFTH: The amount of capital with which this Corporation will commence business is One Thousand Dollars (\$1,000).

SIXTH: The names and places of residence of the incorporators are as follows:

NAMES	RESIDENCES
H. E. Grantland	Wilmington, Delaware
H. H. Snow	Wilmington, Delaware
L. E. Gray	Wilmington, Delaware

SEVENTH: The Corporation is to have perpetual existence.

EIGHTH: The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

NINTH: The property and affairs of the Corporation shall be managed by or under the direction of its Board of Directors. The number of Directors constituting the entire Board shall be not less than six nor more than twelve, as fixed from time to time exclusively by a vote of a majority of the Board of Directors. Prior to the 2011 annual meeting of stockholders, the Board of Directors shall be divided into three classes, as nearly equal in number as the then total number of Directors constituting the entire Board permits, with the term of office of one class expiring each year. Commencing with the annual meeting of stockholders in 2011, each class of directors whose term shall expire shall be elected to hold office for a one-year term expiring at the next annual meeting of stockholders.

Subject to the rights of the holder of any series of Preferred Stock then outstanding, any vacancies in the Board of Directors for any reason and any newly created Directorships by reason of any increase in the number of Directors occurring after the 2010 annual meeting of stockholders may be filled only by the Board of Directors, acting by a majority of the Directors then in office, although less than a quorum, and any Directors so chosen shall hold office until the next annual meeting of stockholders and until their successors are elected and qualified. No decrease in the number of Directors constituting the Board of Directors shall shorten the term of any incumbent Director.

Subject to the rights of the holders of any series of Preferred Stock then outstanding, any Director, or the entire Board of Directors, may be removed from office at any time, but only by the affirmative vote of the holders of a majority of the voting power of all of the shares of capital stock of the Corporation entitled to vote generally in the election of Directors, voting together as a single class.

In addition to any requirements of law and any other provision of this Certificate of Incorporation (and notwithstanding the fact that a lesser percentage may be specified by law or this Certificate of Incorporation), the affirmative vote of the holders of at least 80% of the voting power of all of the shares of capital stock of the Corporation entitled to vote generally in the election of Directors, voting together as a single class, shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article NINTH.

TENTH: In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized:

To make and alter the by-laws of the Corporation.

To authorize and cause to be executed mortgages and liens upon the real and personal property of the Corporation.

To set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose or to abolish any such reserve in the manner in which it was created.

By resolution or resolutions, passed by a majority of the whole Board to designate one or more committees, each committee to consist of two or more of the Directors of the Corporation, which, to the extent provided in said resolution or resolutions or in the by-laws of the Corporation, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation, and may have power to authorize the seal of the Corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be stated in the by-laws of the Corporation or as may be determined from time to time by resolution adopted by the Board of Directors.

The Corporation may in its by-laws confer powers upon its Board of Directors in addition to the foregoing, and in addition to the powers and authorities expressly conferred upon it by Statute.

A Director's liability to the Corporation for breach of duty to the Corporation or its stockholders shall be limited to the fullest extent permitted by Delaware law as now in effect or hereafter amended; provided, however, the foregoing provision shall not eliminate or limit the liability of a Director for any act or omission occurring prior to the date when the foregoing provision becomes effective; provided further, that any repeal or modification of the foregoing provision which has the effect of increasing the liability of a Director to the corporation or its

stockholders shall be prospective only and shall not adversely affect the rights and immunities of a Director existing at the time of such repeal or modification.

ELEVENTH: Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 3883 of the Revised Code of 1915 of said State, or on the application of Trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 43 of the General Corporation Law of the State of Delaware, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said Court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and said reorganization shall, if sanctioned by the Court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

TWELFTH: No contract or other transaction between the Corporation and any other corporation shall be affected or invalidated by the fact that any one or more of the Directors of this Corporation is or are interested in, or is a director or officer, or are directors or officers of said other corporation, and any Director or Directors, individually or jointly, may be a party or parties to, or may be interested in any contract or transaction with this Corporation, or in which this Corporation is interested, and no contract, or act or transaction of this Corporation shall be affected or invalidated by the fact that any Director or Directors of this Corporation is a party or are parties to, or are interested in such contract, act or transaction.

THIRTEENTH: Both stockholders and Directors shall have power, if the by-laws so provide, to hold their meetings, and to have one or more offices within or without the State of Delaware, and to keep the books of this Corporation (subject to the provisions of the Statutes), outside of the State of Delaware at such places as may be from time to time designated by the Board of Directors.

FOURTEENTH: Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders. special meetings of stockholders of the Corporation may be called only by the Chairman of the Board or the President or by the Board of Directors pursuant to a resolution adopted by a majority of the entire Board of Directors. In addition to any requirements of law and any other provision of this Certificate of Incorporation (and notwithstanding the fact that a lesser percentage may be specified by law or this Certificate of Incorporation), the affirmative vote of the holders of at least 80% of the voting power of all of the shares of capital stock of the Corporation entitled to vote generally in the election of Directors, voting together as a single class, shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article FOURTEENTH.

FIFTEENTH: In addition to any requirements of law and any other provision of this Certificate of Incorporation (and notwithstanding the fact that a lesser percentage may be specified by law or this Certificate of Incorporation), the affirmative vote of the holders of at least 80% of the voting power of all of the shares of capital stock of the Corporation entitled to vote generally in the election of Directors, voting together as a single class, shall be required for the stockholders of the Corporation to adopt, repeal, alter or amend any bylaws of the Corporation.

SIXTEENTH: The stockholder vote required to approve Business Combinations (as hereinafter defined) shall be as set forth in this Article SIXTEENTH.

Section 1. Higher Vote for Certain Business Combinations. In addition to any affirmative vote required by law or this Certificate of Incorporation, and except as otherwise expressly provided in Section 3 of this Article SIXTEENTH:

A. any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with (a) any Interested Stockholder (as hereinafter defined) or (b) any other person (whether or not itself an Interested Stockholder) which is, or after such merger or consolidation would be, an Affiliate (as hereinafter defined) of an Interested Stockholder; or

B. any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with any Interested Stockholder or any Affiliate of any Interested Stockholder of any assets of the Corporation or any Subsidiary having an aggregate Fair Market Value (as hereinafter defined) of \$25,000,000 or more; or

C. the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of transactions) of any securities of the Corporation or any Subsidiary to any Interested Stockholder or any Affiliate of any Interested Stockholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate Fair Market Value of \$25,000,000 or more; or

D. the adoption of any plan or proposal for the liquidation or dissolution of the Corporation proposed by or on behalf of any Interested Stockholder or any Affiliate of any Interested Stockholder; or

E. any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any other transaction (whether or not with or into or otherwise involving an Interested Stockholder) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of the Corporation or any Subsidiary which is directly or indirectly owned by any Interested Stockholder or any Affiliate of any Interested Stockholder; shall require the affirmative vote of the holders of at least 80% of the voting power of all of the shares of capital stock of the Corporation entitled to vote generally in the election of Directors (the "Voting Stock"), voting together as a single class (it being understood that for purposes of this Article SIXTEENTH, each share of the Voting Stock shall have the number of votes granted to it pursuant to Article FOURTH of this Certificate of Incorporation). Such affirmative vote shall be required in addition to any requirement of law and any other provision of this Certificate of Incorporation or any certificate of designation thereunder and notwithstanding the fact that no vote may be required, or that a lesser percentage may be specified, by law or any other provision of this Certificate of Incorporation or any certificate of designation thereunder or in any agreement with any national securities exchange or otherwise.

Section 2. Definition of "Business Combination". The term "Business Combination" as used in this Article SIXTEENTH shall mean any transaction which is referred to in any one or more of paragraphs A through E of Section 1 of this Article SIXTEENTH.

Section 3. When Higher Vote is Not Required. The provisions of Section 1 of this Article SIXTEENTH shall not be applicable to any particular Business Combination, and such Business Combination shall require only such affirmative vote as is required by law and any other provision of this Certificate of Incorporation, if, in the case of a Business Combination that does not involve any cash or other consideration being received by stockholders of the Corporation, solely in their capacity as stockholders, the condition specified in the following paragraph A is met, or, in the case of any other Business Combination, all the conditions specified in either of the following paragraphs A and B are met:

A. Approval by Disinterested Directors. The Business Combination shall have been approved by a majority of the Disinterested Directors (as hereinafter defined).

B. Price and Procedural Requirements. All the following conditions shall have been met:

(i) The aggregate amount of the cash and the Fair Market Value as of the date of the consummation of the Business Combination (the “Consummation Date”) of consideration other than cash to be received per share by holders of Common Stock in such Business Combination shall be at least equal to the higher of the following (it being intended that the requirements of this paragraph B(i) shall be required to be met with respect to all shares of Common Stock outstanding, whether or not the Interested Stockholder has previously acquired any shares of the Common Stock):

(a) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers’ fees) paid by the Interested Stockholder for any shares of Common Stock acquired by it (1) within the two-year period immediately prior to the date of the first public announcement of the proposal of the Business Combination (the “Announcement Date”) or (2) in the transaction in which it became an Interested Stockholder, whichever is higher; and

(b) the Fair Market Value per share of Common Stock on the Announcement Date.

(ii) The aggregate amount of the cash and the Fair Market Value as of the Consummation Date of the consideration other than cash to be received per share by holders of shares of any class of outstanding Voting Stock, other than the Common Stock, in such Business Combination shall be at least equal to the highest of the following (it being intended that the requirements of this paragraph B(ii) shall be required to be met with respect to all shares of every such other class of outstanding Voting Stock, whether or not the Interested Stockholder has previously acquired any shares of a particular class of Voting Stock):

(a) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers’ fees) paid by the Interested Stockholder for any shares of such class of voting Stock acquired by it (1) within the two-year period immediately prior to the Announcement Date or (2) in the transaction in which it became an Interested Stockholder, whichever is higher;

(b) the Fair Market Value per share of such class of Voting Stock on the Announcement Date; and

(c) the highest preferential amount per share to which the holders of shares of such class of Voting Stock are entitled in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

(iii) The consideration to be received by holders of shares of a particular class of outstanding Voting Stock (including Common Stock) shall be in cash or in the same form as the Interested Stockholder has previously paid for shares of such class of Voting Stock. If the Interested Stockholder has paid for shares of any class of voting Stock with varying forms of consideration, the form of consideration for such class of Voting Stock shall be either cash or the form used to acquire the largest number of shares of such class of Voting Stock previously acquired by it.

(iv) After such Interested Stockholder has become an Interested Stockholder and prior to the consummation of such Business Combination: (a) except as approved by a majority of the Disinterested Directors, there shall have been no failure to declare and pay at the regular date therefor the full amount of any dividends (whether or not cumulative) payable on any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation; (b) there shall have been (1) no reduction in the annual rate of dividends paid on the Common Stock (except as necessary to reflect any subdivision of the Common Stock), except as approved by a majority of the Disinterested Directors, and (2) an increase in such annual rate of dividends as necessary to reflect any reclassification (including any reverse stock split) recapitalization, reorganization or any similar transaction which has the effect of reducing the number of outstanding shares of the Common Stock, unless the failure so to increase such annual rate is approved by a majority of the Disinterested Directors; and (c) such interested Stockholder shall have not become the beneficial owner of any additional shares of voting Stock except as part of the transaction which results in such Interested Stockholder becoming an Interested Stockholder.

(v) After such Interested Stockholder has become an Interested Stockholder, such Interested Stockholder shall not have received the benefit, directly or indirectly (except proportionately, and solely in such Interested Stockholder's capacity, as a stockholder of the Corporation or any Subsidiary), of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by the Corporation or any Subsidiary, whether in anticipation of or in connection with such Business Combination or otherwise.

(vi) A proxy or information statement describing the proposed Business Combination and complying with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder (or any subsequent provisions replacing such Act, rules or regulations) shall be mailed to all stockholders of the Corporation at least 30 days prior to the consummation of such Business Combination (whether or not such proxy or information statement is required to be mailed pursuant to such Act or subsequent provisions).

Section 4. Certain Definitions. For the purposes of this Article SIXTEENTH:

A. "Affiliate" or "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on February 1, 1985.

B. A person shall be a "beneficial owner" of any Voting Stock:

(i) which such person or any of its Affiliates or Associates (as hereinabove defined) beneficially owns, directly or indirectly; or

(ii) which such person or any of its Affiliates or Associates has (a) the right to acquire (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (b) the right to vote pursuant to any agreement, arrangement or understanding; or

(iii) which are beneficially owned, directly or indirectly, by any other person with which such person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of Voting Stock.

C. "Disinterested Director" means any member of the Board of Directors of the Corporation (the "Board") who is unaffiliated with the Interested Stockholder and was a member of the Board prior to the time that the Interested Stockholder became an Interested Stockholder, and any successor of a Disinterested Director who is unaffiliated with the Interested Stockholder and is recommended to succeed a Disinterested Director by a majority of Disinterested Directors then on the Board, and any person elected to fill a newly created Directorship who is unaffiliated with, and not a nominee of, the Interested Stockholder and who is recommended by a majority of Disinterested Directors then on the Board.

D. "Fair Market Value" means: (i) in the case of stock, the highest closing sale price during the 30-day period immediately preceding the date in question of a share of such stock on the Composite Tape for New York Stock Exchange-Listed Stocks, or, if such stock is not quoted on the Composite Tape, on the New York Stock Exchange, or, if such stock is not listed on such Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which such stock is listed, or, if such stock is not listed on any such exchange, the highest closing bid quotation with respect to a share of such stock during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use, or if no such quotations are available, the fair market value on the date in question of a share of such stock as determined by the Board in good faith; and (ii) in the case of property other than cash or stock, the fair market value of such property on the date in question as determined by the Board in good faith.

E. "Interested Stockholder" shall mean any person (other than the Corporation or any Subsidiary and other than any profit-sharing, employee stock ownership or other employee benefit plan of the Corporation or of any Subsidiary or any Trustee of or fiduciary with respect to any such plan when acting in such capacity) who or which:

(i) is the beneficial owner, directly or indirectly, of more than 10% of the voting power of the outstanding Voting Stock; or

(ii) is an Affiliate of the Corporation and at any time within the two-year period immediately prior to the date in question was the beneficial owner, directly or indirectly, of 10% or more of the voting power of the then outstanding Voting Stock; or

(iii) is an assignee of or has otherwise succeeded to any shares of Voting Stock which were at any time within the two-year period immediately prior to the date in question beneficially owned by any Interested Stockholder, if such assignment or succession shall have occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933.

F. For the purposes of determining whether a person is an Interested Stockholder pursuant to paragraph B of this Section 4, the number of shares of Voting Stock deemed to be outstanding shall include shares deemed owned through application of paragraph C of this Section 4 but shall not include any other shares of Voting Stock which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

G. In the event of any Business Combination in which the Corporation survives, the phrase "other consideration to be received" as used in paragraphs B(i) and (ii) of Section 3 of this Article SIXTEENTH shall include the shares of Common Stock and/or the shares of any other class of outstanding voting Stock retained by the holders of such shares.

H. A "person" shall mean any individual, firm, corporation or other entity, as well as any syndicate or group deemed to be a person for purposes of Section 14(d)(2) of the Securities Exchange Act of 1934, as in effect on February 1, 1985.

I. "Subsidiary" means any corporation of which a majority of any class of equity security is owned, directly or indirectly, by the Corporation; provided, however, that for the purposes of the definition of Interested Stockholder set forth in paragraph B of this Section 4, the term "Subsidiary" shall mean only a corporation of which a majority of each class of equity security is owned, directly or indirectly, by the Corporation.

Section 5. Powers of Disinterested Directors. A majority of the Disinterested Directors of the Corporation shall have the power and duty to determine, on the basis of information known to them after reasonable inquiry, all facts necessary to determine compliance with this Article SIXTEENTH, including but not limited to (A) whether a person is an Interested stockholder, (B) the number of shares of voting Stock beneficially owned by any person, (C) whether a person is an Affiliate or Associate of another, (D) whether the requirements of paragraph B of Section 3 have been met with respect to any Business Combination, and (E) whether the assets which are the subject of any Business Combination referred to in paragraph B of Section 1 have, or the consideration to be received for the issuance or transfer of securities by the Corporation or any Subsidiary in any Business Combination referred to in paragraph C of Section I has, an aggregate Fair market Value of \$25,000,000 or more; and the good faith determination of a majority of the Disinterested Directors on such matters shall be conclusive and binding for all purposes of this Article SIXTEENTH.

Section 6. No Effect on Fiduciary Obligations of Interested Stockholders. Nothing contained in this Article SIXTEENTH shall be construed to relieve any Interested Stockholder from any fiduciary obligation imposed by law.

SERIES A PREFERRED STOCK

Section 1. Designation and Amount. The shares of such series shall be designated as "Series A Preferred Stock" and the number of shares constituting such series shall be 300,000.

Section 2. Dividends and Distributions. (A) Subject to the prior and superior rights of the holders of any shares of any other series of Preferred Stock or any other shares of preferred stock of the Corporation ranking prior and superior to the shares of Series A Preferred Stock with respect to dividends, each holder of one one-hundredth (1/100) of a share (a "Unit") of Series A Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for that purpose, (i) quarterly dividends payable in cash on the last business day of March, June and September and on the last business day of December preceeding December 25th in each year (each such date being a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of such Unit of Series A Preferred Stock, in an amount per Unit (rounded to the nearest cent) equal to the greater of (a) \$.34 or (b) subject to the provision for adjustment hereinafter set forth, the aggregate per share amount of all cash dividends declared on shares of the Common Stock since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of a Unit of Series A Preferred Stock, and (ii) subject to the provision for adjustment hereinafter set forth, quarterly distributions (payable in kind) on each Quarterly Dividend Payment Date in an amount per Unit equal to the aggregate per share amount of all non-cash dividends or other distributions (other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock, by reclassification or otherwise) declared on shares of Common Stock since the immediately preceding Quarterly Dividend Payment Date, or with respect to the first Quarterly Dividend Payment Date, since the first issuance of a Unit of Series A Preferred Stock. In the event that the Corporation shall at any time after June 6, 1988 (the "Rights Declaration Date") (i) declare any dividend on outstanding shares of Common Stock payable in shares of Common Stock (ii) subdivide outstanding shares of Common Stock or (iii) combine outstanding shares of Common Stock into a smaller number of shares, then in each such case the amount to which the holder of a Unit of Series A Preferred Stock was entitled immediately prior to such event pursuant to the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which shall be the number of shares of Common Stock that are outstanding immediately after such event and the denominator of which shall be the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Corporation shall declare a dividend or distribution on Units of Series A Preferred Stock as provided in paragraph (A) above immediately after it declares a dividend or distribution on the shares of Common Stock (other than a dividend payable in shares of Common Stock); provided, however, that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$.34 per Unit on the Series A Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall begin to accrue and shall be cumulative on each outstanding Unit of Series A Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issuance of such Unit of Series A Preferred Stock, unless the date of issuance of such Unit is prior to the record date for the first Quarterly Dividend Payment Date, in which case, dividends on such Unit shall begin to accrue from the date of issuance of such Unit, or unless the date of issuance is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of Units of Series A Preferred Stock entitled to receive a quarterly dividend and

before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on Units of Series A Preferred Stock in an amount less than the aggregate amount of all such dividends at the time accrued and payable on such Units shall be allocated pro rata on a unit-by-unit basis among all Units of Series A Preferred Stock at the time outstanding. The Board of Directors may fix a record date for the determination of holders of Units of Series A Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be no more than 30 days prior to the date fixed for the payment thereof.

Section 3. Voting Rights. The holders of Units of Series A Preferred Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each Unit of Series A Preferred Stock shall entitle the holder thereof to one vote on all matters submitted to a vote of the stockholders of the Corporation. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on outstanding shares of Common Stock payable in shares of Common Stock, (ii) subdivide outstanding shares of Common Stock or (iii) combine the outstanding shares of Common Stock into a smaller number of shares, then in each such case the number of votes per Unit to which holders of Units of Series A Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction the numerator of which shall be the number of shares of Common Stock outstanding immediately after such event and the denominator of which shall be the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein or by law, the holders of Units of Series A Preferred Stock and the holders of shares of Common Stock shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(C) (i) If at any time dividends on any Units of Series A Preferred Stock shall be in arrears in an amount equal to six quarterly dividends thereon, then during the period (a “default period”) from the occurrence of such event until such time as all accrued and unpaid dividends for all previous quarterly dividend periods and for the current quarterly dividend period on all Units of Series A Preferred Stock then outstanding shall have been declared and paid or set apart for payment, all holders of Units of Series A Preferred Stock, voting separately as a class, shall have the right to elect two Directors.

(ii) During any default period, such voting rights of the holders of Units of Series A Preferred Stock may be exercised initially at a special meeting called pursuant to subparagraph (iii) of this Section 3(C) or at any annual meeting of stockholders, and thereafter at annual meetings of stockholders, provided that neither such voting rights nor any right of the holders of Units of Series A Preferred Stock to increase, in certain cases, the authorized number of Directors may be exercised at any meeting unless one-third of the outstanding Units of Preferred Stock shall be present at such meeting in person or by proxy. The absence of a quorum of the holders of Common Stock shall not affect the exercise by the holders of Units of Series A Preferred Stock of such rights. At any meeting at which the holders of Units of Series A Preferred Stock shall exercise such voting right initially during an existing default period, they shall have the right, voting separately as a class, to elect Directors to fill up to two vacancies in the Board of Directors, if any such vacancies may then exist, or, if such right is exercised at an annual meeting, to elect two Directors. If the number which may be so elected at any special meeting does not amount to the required number, the holders of the Series A Preferred Stock shall have the right to make such increase in the number of Directors as shall be necessary to permit the election by them of the required number. After the holders of Units of Series A Preferred Stock shall have exercised their right to elect Directors during any default period, the number of Directors shall not be increased or decreased except as approved by a vote of the holders of Units of Series A Preferred Stock as herein provided or pursuant to the rights of any equity securities ranking senior to the Series A Preferred Stock.

(iii) Unless the holders of Series A Preferred Stock shall, during an existing default period, have previously exercised their right to elect Directors, the Board of Directors may order, or any stockholder or stockholders owning in the aggregate not less than 25% of the total number of Units of Series A Preferred Stock outstanding may request, the calling of a special meeting of the holders of Units of Series A Preferred Stock, which meeting shall thereupon be called by the Secretary of the Corporation. Notice of such meeting and of any annual meeting at which holders of Units of Series A Preferred Stock are entitled to vote pursuant to this paragraph (C)(iii) shall be given to each holder of record of Units of Series A Preferred Stock by mailing a copy of such notice to him at his last address as the same appears on the books of the Corporation. Such meeting shall be called for a time not earlier than 20 days and not later than 60 days after such order or request or in default of the calling of such meeting within 60 days after such order or request, such meeting may be called on similar notice by any stockholder or stockholders owning in the aggregate not less than 25% of the total number of outstanding Units of Series A Preferred Stock. Notwithstanding the provisions of this paragraph (C)(iii), no such special meeting shall be called during the 60 days immediately preceding the date fixed for the next annual meeting of the stockholders.

(iv) During any default period, the holders of shares of Common Stock and Units of Series A Preferred Stock, and other classes or series of stock of the Corporation, if applicable, shall continue to be entitled to elect all the Directors until the holders of Units of Series A Preferred Stock shall have exercised their right to elect two Directors voting as a separate class, after the exercise of which right (x) the Directors so elected by the holders of Units of Series A Preferred Stock shall continue in office until their successors shall have been elected by such holders or until the expiration of the default period, and (y) any vacancy in the Board of Directors may (except as provided in paragraph (C)(ii) of this Section 3) be filled by vote of a majority of the remaining Directors theretofore elected by the holders of the class of capital stock which elected the Director whose office shall have become vacant. References in this paragraph (C) to Directors elected by the holders of a particular class of capital stock shall include Directors elected by such Directors to fill vacancies as provided in clause (y) of the foregoing sentence.

(v) Immediately upon the expiration of a default period, (x) the right of the holders of Units of Series A Preferred Stock as a separate class to elect Directors shall cease, (y) the term of any Directors elected by the holders of Units of Series A Preferred Stock as a separate class shall terminate, and (z) the number of Directors shall be such number as may be provided for in the Certificate of by-laws irrespective of any increase made pursuant to the provisions of paragraph (C)(ii) of this Section 3 (such number being subject, however, to change thereafter in any manner provided by law or in the Certificate or by-laws). Any vacancies in the Board of Directors effected by the provisions of clauses (y) and (z) in the preceding sentence may be filled by a majority of the remaining Directors.

(vi) The provisions of this paragraph (C) shall govern the election of Directors by holders of Units of Preferred Stock during any default period notwithstanding any provisions of the Certificate to the contrary, including, without limitation, the provisions of Article FOURTH of the Certificate.

(D) Except as set forth herein, holders of Units of Series A Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Shares of Common Stock as set forth herein) for taking any corporation action.

Section 4. Certain Restrictions. (A) Whenever quarterly dividends or other dividends or distributions payable on Units of Series A Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on outstanding Units of Series A Preferred Stock shall have been paid in full, the Corporation shall not

(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of junior stock;

(ii) declare or pay dividends on or make any other distributions on any shares of parity stock, except dividends paid ratably on Units of Series A Preferred Stock and shares of all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of such Units and all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any parity stock, provided, however, that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any junior stock;

(iv) purchase or otherwise acquire for consideration any Units of Series A Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such Units.

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. **Reacquired Shares.** Any Units of Series A Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such Units shall, upon their cancellation, become authorized but unissued Units of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors, subject to the conditions and restrictions on issuance set forth herein.

Section 6. **Liquidation, Dissolution or Winding Up.** (A) Upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, no distribution shall be made (i) to the holders of shares of junior stock unless the holders of Units of Series A Preferred Stock shall have received, subject to adjustment as hereinafter provided in paragraph (B), the greater of either (a) \$.01 per Unit plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not earned or declared, to the date of such payment, or (b) the amount equal to the aggregate per share amount to be distributed to holders of shares of Common Stock, or (ii) to the holders of shares of parity stock, unless simultaneously therewith distributions are made ratably on Units of Series A Preferred Stock and all other shares of such parity stock in proportion to the total amounts to which the holders of Units of Series A Preferred Stock are entitled under clause (i)(a) of this sentence and to which the holders of shares of such parity stock are entitled, in each case upon such liquidation, dissolution or winding up.

(B) In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on outstanding shares of Common Stock payable in shares of Common Stock, (ii) subdivide outstanding shares of Common Stock, or (iii) combine outstanding shares of Common Stock into a smaller number of shares, then in each such case the aggregate amount to which holders of Units of Series A Preferred Stock were entitled immediately prior to such event pursuant to clause (i)(b) of paragraph (A) of this Section 6 shall be adjusted by multiplying such amount by a fraction the numerator of which shall be the number of shares of Common Stock that are outstanding immediately after such event and the denominator of which shall be the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 7. Consolidation, Merger, etc. In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or converted into other stock or securities, cash and/or any other property, then in any such case Units of Series A Preferred Stock shall at the same time be similarly exchanged for or converted into an amount per Unit (subject to the provision for adjustment hereinafter set forth) equal to the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is converted or exchanged. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on outstanding shares of Common Stock payable in shares of Common Stock, (ii) subdivide outstanding shares of Common Stock, or (iii) combine outstanding Common Stock into a smaller number of shares, then in each such case the amount set forth in the immediately preceding sentence with respect to the exchange or conversion of Units of Series A Preferred Stock shall be adjusted by multiplying such amount by a fraction the numerator of which shall be the number of shares of Common Stock that are outstanding immediately after such event and the denominator of which shall be the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 8. Redemption. The Units of Series A Preferred Stock shall not be redeemable.

Section 9. Ranking. The Units of Series A Preferred Stock shall rank junior to all other series of the Preferred Stock and to any other class of preferred stock that hereafter may be issued by the Corporation as to the payment of dividends and the distribution of assets, unless the terms of any such series or class shall provide otherwise.

Section 10. Amendment. The Certificate, including, without limitation, this resolution, shall not hereafter be amended, either directly or indirectly, or through merger or consolidation with another corporation, in any manner that would alter or change the powers, preferences or special rights of the Series A Preferred Stock so as to affect them adversely without the affirmative vote of the holders of a majority or more of the outstanding Units of Series A Preferred Stock, voting separately as a class.

Section 11. Fractional Shares. The Series A Preferred Stock may be issued in Units or other fractions of a share, which Units or fractions shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series A Preferred Stock.

Section 12. Certain Definitions. As used herein with respect to the Series A Preferred Stock, the following terms shall have the following meanings:

(A) The term "Common Stock" shall mean the class of stock designated as the common stock, par value \$1.00 per share, of the Corporation at the date hereof or any other class of stock resulting from successive changes or reclassification of the common stock.

(B) The term "junior stock" (i) as used in Section 4, shall mean the Common Stock and any other class or series of capital stock of the Corporation hereafter authorized or issued over which the Series A Preferred Stock has preference or priority as to the payment of dividends and (ii) as used in Section 6, shall mean the Common Stock and any other class or series of capital stock of the Corporation over which the Series A Preferred Stock has preference or priority in the distribution of assets on any liquidation, dissolution or winding up of the Corporation.

(C) The term "parity stock" (i) as used in Section 4, shall mean any class or series of stock of the Corporation hereafter authorized or issued ranking pari passu with the Series A Preferred Stock as to dividends and (ii) as used in Section 6, shall mean any class or series of capital stock ranking pari passu with the Preferred Stock in the distribution of assets or any liquidation, dissolution or winding up.

**BYLAWS
OF
COOPER TIRE & RUBBER COMPANY**

(As Amended as of May 4, 2010)

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ARTICLE II

STOCKHOLDERS' MEETINGS

Section 1. Place of Meeting . All meetings of stockholders shall be held in the City of Findlay, State of Ohio, at such place as may be designated from time to time by the Board of Directors, or at such other place either within or without the State of Delaware as shall be designated from time to time by the Board of Directors or, in the absence of a designation by the Board of Directors, the Chairman of the Board, the President or the Secretary, and stated in the notice of the meeting. Notwithstanding the foregoing, the Board of Directors may, in its sole discretion, determine that meetings of stockholders shall not be held at any place, but may instead be held by means of remote communication, subject to such guidelines and procedures as the Board of Directors may adopt from time to time.

Section 2. Action by Stockholders . As provided in the Fourteenth Article of the Certificate of Incorporation, any action required or permitted to be taken by stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders.

Section 3. Annual Meeting; Notice . The annual meeting of stockholders shall be held at such date and time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting. The Board of Directors may postpone and reschedule any previously scheduled annual meeting of stockholders. Written notice of the annual meeting stating the place, if any, date and time of the meeting and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such annual meeting, shall be given to each stockholder of record entitled to vote at such annual meeting not less than ten nor more than 60 days before the date of such meeting. At such meeting or any adjournment thereof, the stockholders shall elect, as further described in Article III, Section 13, the directors to succeed those directors whose terms expire at such meeting and shall transact such other business as may be properly brought before the meeting in accordance with Article II, Section 12 of these Bylaws. All elections of directors shall be by written ballot unless otherwise provided in the Certificate of Incorporation. If authorized by the Board of Directors, such requirement of a written ballot shall be satisfied by a ballot submitted by electronic transmission; provided, that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder or proxy holder.

Section 4. Quorum; Adjournment . Except as otherwise provided by law or in any applicable powers, designations, preferences and relative, participating, optional or other rights, if any, and qualifications, limitations or restrictions of any of the Corporation's Preferred Stock (as defined in the Certificate of Incorporation) (the "Preferred Stock") that are adopted by the Board of Directors in a resolution or resolutions pursuant to the Fourth Article of the Certificate of Incorporation (a "Preferred Stock Designation"), the holders of the majority of the stock issued and outstanding and entitled to vote at any meeting of stockholders, present in person or represented by proxy, shall constitute a quorum at such meeting of stockholders for the transaction of business except as otherwise provided by law, by the Certificate of Incorporation or by these Bylaws. If, however, a quorum shall not be present or represented at any meeting of stockholders, the stockholders entitled to vote thereat, present in person or by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting of the time, place, if any, of the adjourned meeting and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting, until a quorum shall be present. At such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally noticed. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting stating the place, if any, date and time of the adjourned meeting and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting, shall be given to each stockholder of record entitled to vote at the meeting.

Section 5. Vote — Majority, Other. When a quorum is present at any meeting of stockholders, the vote of the holders of a 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 law or express provision of the Certificate of Incorporation, these Bylaws, the applicable listing standards of the New York Stock Exchange, or a Preferred Stock Designation, a different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 6. Vote — Proxies, Qualification. At any meeting of stockholders, every stockholder having the right to vote shall be entitled to vote in person, or by proxy authorized in a manner permitted by Section 212 of the Delaware General Corporation Law or any successor provision. Without affecting any vote previously taken, a stockholder may revoke any proxy that is not irrevocable (a) by attending the meeting of stockholders and voting in person after requesting that the proxy be revoked, (b) upon the receipt by the Secretary of the Corporation of a written notice requesting that the stockholder's proxy be revoked, or (c) by a later appointment of a proxy. Except as otherwise provided by law, by the Certificate of Incorporation, or in a Preferred Stock Designation, each stockholder shall have one vote for each share of stock having voting power registered in the stockholder's name on the books of the Corporation as of the applicable record date for any such vote.

Section 7. Stock Ledger. The Secretary shall have charge of the stock ledger of the Corporation and shall cause to be prepared, 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 examination by any stockholder for any purpose germane to the meeting for a period of at least ten days prior to the meeting (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall 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. If the meeting is to be held solely by means of remote communication, then the list shall also be open to examination by any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

Section 8. Special Meetings. As provided by the Fourteenth Article of the Certificate of Incorporation, special meetings of stockholders of the Corporation may be called only by the Chairman of the Board or the President or by the Board of Directors pursuant to a resolution adopted by a majority of the total number of directors that the Corporation would have if there were no vacancies (the "Whole Board"). Special meetings of holders of Preferred Stock, if any, may be called in the manner and for the purposes provided in an applicable Preferred Stock Designation.

Section 9. Special Meetings — Business. Business transacted at all special meetings of stockholders shall be confined to the purposes stated in the notice.

Section 10. Special Meetings — Notice. Written notice of a special meeting of stockholders, stating the place, if any, date, time and purposes thereof and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such special meeting, shall be given not less than ten nor more than 60 days before such meeting to each stockholder entitled to vote at such meeting, except as otherwise provided herein or by law. The Board of Directors may postpone and reschedule any previously scheduled special meeting of stockholders.

Section 11. Inspectors of Election. The Board of Directors, in advance of any meeting of stockholders or of the holders of any class of stock, may appoint one or more inspectors of election to act at any meeting of stockholders or any adjournment thereof and make a written report thereof. If inspectors are not so appointed, the chairman of such meeting may, and on the request of any stockholder entitled to vote at such meeting or any stockholder's proxy shall, make such appointment. The inspectors shall perform duties specified by the Board of

Directors or the chairman of such meeting, as applicable, in such appointment and such duties specified in Section 231 of the Delaware General Corporation Law or any successor provision. The Board of Directors or the chairman of such meeting may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the chairman of the meeting shall appoint one or more substitute inspectors to act at the meeting. If there are three or more inspectors, the decision, act or certificate of a majority of them shall be effective in all respects as the decision, act or certificate of all. On request, the inspectors shall make a report in writing of any challenge, question or matter determined by them and execute a certificate of any fact found by them. The certificate of the inspectors shall be prima facie evidence of the facts stated therein and of the vote as certified by them.

Section 12. Order of Business. (a) The Chairman of the Board, or such other officer of the Corporation designated by a majority of the Whole Board, will call meetings of stockholders to order and will act as chairman thereof. Unless otherwise determined by the Board of Directors prior to the meeting, the chairman of the meeting of stockholders will also determine the order of business and have the authority in the chairman's sole discretion to regulate the conduct of any such meeting, including without limitation by imposing restrictions on the persons (other than stockholders of the Corporation or their duly appointed proxies) that may attend any such meeting of stockholders, by ascertaining whether any stockholder or any stockholder's proxy may be excluded from any meeting of stockholders based upon any determination by the chairman of the meeting of stockholders, in the chairman's sole discretion, that any such person has disrupted or is likely to disrupt the proceedings thereat, and by determining the circumstances in which any person may make a statement or ask questions at any meeting of stockholders.

(b) At an annual meeting of stockholders, only such business will be conducted or considered as is properly brought before the annual meeting. To be properly brought before an annual meeting, business must be (i) specified in the notice of the annual meeting (or any supplement thereto) given by or at the direction of the Board of Directors in accordance with Article II, Section 3 of these Bylaws, (ii) otherwise properly brought before the annual meeting by the chairman of the annual meeting or by or at the direction of a majority of the Whole Board, or (iii) otherwise properly requested to be brought before the annual meeting by a stockholder of the Corporation in accordance with Article II, Section 12(c) of these Bylaws.

(c) For business to be properly requested to be brought before an annual meeting by a stockholder (i) the stockholder must be a stockholder of record at the time of the giving of notice provided for in this Article II, Section 12(c) of these Bylaws and at the time of such annual meeting, (ii) the stockholder must be entitled to vote at such annual meeting, (iii) the stockholder must have given timely notice thereof in writing to the Secretary and (iv) if the stockholder, or the beneficial owner on whose behalf any business is brought before the annual meeting, has provided the Corporation with a Proposal Solicitation Notice (as defined below), such stockholder or beneficial owner must have delivered a proxy statement and form of proxy to the holders of at least the percentage of shares of the Corporation entitled to vote that is required to approve such business that the stockholder proposes to bring before the annual meeting and included in such materials the Proposal Solicitation Notice (as defined below). To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the Corporation not less than 60 nor more than 90 calendar days prior to the first anniversary of the date on which the Corporation first mailed its proxy materials for the preceding year's annual meeting of stockholders; provided, however, that if the date of the annual meeting is advanced more than 30 calendar days prior to or delayed by more than 30 calendar days after the first anniversary of the preceding year's annual meeting, then notice by the stockholder to be timely must be so delivered not later than the close of business on the later of the 90th calendar day prior to such annual meeting or the 10th calendar day following the day on which public disclosure of the date of such annual meeting is first made. In no event shall the public disclosure of any postponement or adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described above. A stockholder's notice to the Secretary must set forth as to each matter the stockholder proposes to bring before the annual meeting (A) a description in reasonable detail of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting; (B) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business and any Stockholder Related Person; (C) the class and series and number of shares of any securities of the Corporation that are owned beneficially or held of record by the stockholder proposing such business and any

Stockholder Related Person; (D) a description of (1) any derivative positions in any securities of the Corporation directly or indirectly held or beneficially owned by the stockholder or any Stockholder Related Person and (2) any hedging or other transaction or series of transactions, agreement, arrangement or understanding with respect to any of the Corporation's securities entered into or made by such stockholder or any Stockholder Related Person; (E) a description of any proxy, transaction, agreement, arrangement, understanding or relationship pursuant to which such stockholder or any Stockholder Related Person has a right to vote any shares of any of the Corporation's securities; (F) a description of all arrangements or understandings between or among any of (1) the stockholder giving the notice, (2) any Stockholder Related Person, and (3) any other person relating to the proposal of such business by such stockholder and any material interest of such stockholder or any Stockholder Related Person in such business; (G) whether either such stockholder or beneficial owner intends to deliver a proxy statement and form of proxy to the holders of at least the percentage of shares of the Corporation entitled to vote that is required to approve the proposal (an affirmative statement of such intent, a "Proposal Solicitation Notice"); and (H) a representation that such stockholder intends to appear in person or by proxy at the annual meeting to bring such business before the annual meeting. For purposes of this Article II, Section 12(c) of these Bylaws and Article III, Section 12 of these Bylaws, a "Stockholder Related Person" of any stockholder means (1) any person controlling, directly or indirectly, or acting in concert with, such stockholder, (2) any beneficial owner of securities of the Corporation owned of record or beneficially by such stockholder, and (3) any person controlling, controlled by or under common control with such Stockholder Related Person. Notwithstanding the foregoing provisions of this Article II, Section 12(c) of these Bylaws, a stockholder must also comply with all applicable requirements of the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder (the "Exchange Act") with respect to the matters set forth in this Article II, Section 12(c) of these Bylaws. For purposes of this Article II, Section 12(c) of these Bylaws and Article III, Section 13 of these Bylaws, "public disclosure" means disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document filed by the Corporation with the Securities and Exchange Commission pursuant to the Exchange Act or furnished by the Corporation to stockholders. Nothing in this Article II, Section 12(c) of these Bylaws will be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(d) At a special meeting of stockholders, only such business may be conducted or considered as is properly brought before the special meeting. To be properly brought before a special meeting, business must be (i) specified in the notice of the special meeting (or any supplement thereto) given in accordance with these Bylaws or (ii) otherwise properly brought before the special meeting by the chairman of the special meeting or by or at the direction of a majority of the Whole Board.

(e) The determination of whether any business sought to be brought before any annual or special meeting of stockholders is properly brought before such meeting in accordance with Article II, Section 12 of these Bylaws will be made by the chairman of such meeting. If the chairman of such meeting determines that any business is not properly brought before such meeting, the chairman will so declare to the meeting and any such business will not be conducted or considered.

ARTICLE III

DIRECTORS

Section 1. Authority; Number; Election; Terms . As provided in the Ninth Article of the Restated Certificate of Incorporation, the property and affairs of the Corporation shall be managed by or under the direction of its Board of Directors, which 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 Bylaws directed or required to be exercised or done by the stockholders. Subject to the rights, if any, of any series of Preferred Stock to elect additional directors under circumstances specified in a Preferred Stock Designation, and also as provided in the Ninth Article of the Restated Certificate of Incorporation: (a) the number of directors constituting the entire Board of Directors shall be not less than six nor more than twelve, as fixed from time to time exclusively by a vote of a majority of the Board of Directors; (b) prior to the 2011 annual meeting of stockholders, the Board of Directors shall be divided into three classes, as nearly equal in number as the then total number of Directors constituting the

entire Board permits, with the term of office of one class expiring each year; and (c) commencing with the annual meeting of stockholders in 2011, each class of directors whose term shall expire shall be elected to hold office for a one-year term expiring at the next annual meeting of stockholders and until their successors are elected and qualified.

Section 2. Meetings — Location. The directors may hold their meetings and have one or more offices, and shall keep the books of the Corporation, outside of Delaware, including at the principal office of the Corporation in the City of Findlay, State of Ohio, or at such other place within or without the State of Delaware as they may from time to time determine.

Section 3. Vacancies. As provided in the Ninth Article of the Restated Certificate of Incorporation, subject to the rights of the holder of any series of Preferred Stock then outstanding, any vacancies in the Board of Directors for any reason and any newly created directorships by reason of any increase in the number of directors occurring after the 2010 annual meeting of stockholders may be filled only by the Board of Directors, acting by a majority of the directors then in office, although less than a quorum, and any directors so chosen shall hold office until the next annual meeting of stockholders and until their successors are elected and qualified. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

Section 4. Removal. As provided in the Ninth Article of the Restated Certificate of Incorporation, subject to the rights of the holders of any series of Preferred Stock then outstanding, any director, or the entire Board of Directors, may be removed from office at any time, but only by the affirmative vote of the holders of a majority of the voting power of all of the shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

Section 5. Committees — Composition, Powers. (a) As provided in the Tenth Article of the Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute (i) the Board of Directors is expressly authorized by resolution or resolutions passed by a majority of the Whole Board to designate one or more committees, each committee to consist of two or more of the directors of the Corporation, which, to the extent provided in said resolution or resolutions or in the Bylaws of the Corporation, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation, and may have power to authorize the seal of the Corporation to be affixed to all papers which may require it, and (ii) such committee or committees shall have such name or names as may be stated in the Bylaws of the Corporation or as may be determined from time to time by resolution adopted by the Board of Directors.

(b) No such committee designated under this Article III, Section 5 shall have the power or authority in reference to amending the Certificate of Incorporation (except to the extent permitted by law), 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 Bylaws of the Corporation; and, unless the resolution, these Bylaws or the Certificate of Incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend, authorize the issuance of stock, or adopt a certificate of ownership and merger pursuant to Section 253 of the Delaware General Corporation Law or any successor provision. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Unless otherwise prescribed by the Board of Directors, a majority of the members of any committee of the Board of Directors will constitute a quorum for the transaction of business, and the act of a majority of the members present at a meeting at which there is a quorum will be the act of such committee. Each committee of the Board of Directors may prescribe its own rules for calling and holding meetings and its method of procedure, subject to any rules prescribed by the Board of Directors. Unless otherwise provided in the Certificate of Incorporation, these Bylaws or the resolution designating a committee of the Board of Directors, the committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee. The Board of Directors will appoint the chairs of its committees based on the nominations or recommendations of the Nominating and Governance Committee.

Section 6. Committees — Reports. The committees shall keep regular minutes of their proceedings and report the same to the Board of Directors when required.

Section 7. Compensation. The Board of Directors shall establish the compensation for, and reimbursement of the expenses of, directors for membership on the Board of Directors and on committees of the Board of Directors, attendance at meetings of the Board of Directors or committees of the Board of Directors, and for other services by directors to the Corporation or any of its majority-owned subsidiaries. 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 allowed like compensation for attending committee meetings.

Section 8. Regular Meetings. Regular meetings of the Board of Directors may be held immediately after the annual meeting of stockholders and at such other time and at such place either within or without the State of Delaware as shall from time to time be determined by the Board of Directors. Notice of regular meetings of the Board of Directors need not be given.

Section 9. Special Meetings. Special meetings of the Board of Directors may be called by the Chairman of the Board or the President on one day's notice to each director by whom such notice is not waived, and will be called by the Chairman of the Board or the President, in like manner and on like notice, on the written request of a majority of the Whole Board. Special meetings of the Board of Directors may be held at such time and place either within or without the State of Delaware as is determined by the Board or specified in the notice of any such special meeting.

Section 10. Quorum. At all meetings of the Board of Directors, a majority of the Whole Board shall constitute a quorum for the transaction of business, and the act of the 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 or by the Certificate of Incorporation or by these Bylaws. 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 to another place, if any, time or date, without notice other than announcement at the meeting, until a quorum shall be present.

Section 11. Action by Written Consent. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee, as the case may be. Such filing will be in paper form if the minutes are maintained in paper form and will be in electronic form if the minutes are maintained in electronic form.

Section 12. Nominations of Directors; Election. Subject to the rights, if any, of the holders of any series of Preferred Stock to elect additional directors under circumstances specified in a Preferred Stock Designation, only persons who are nominated in accordance with this Article III, Section 12 of these Bylaws will be eligible for election as directors of the Corporation.

(a) *Annual Meetings*. (i) Nominations of persons for election as directors of the Corporation may be made at an annual meeting of stockholders only (A) by or at the direction of the Board of Directors or a committee thereof or (B) by any stockholder that (1) is a stockholder of record at the time of giving of notice provided for in this Article III, Section 12(a)(ii) of these Bylaws and at the time of such annual meeting, (2) is entitled to vote for the election of directors at such annual meeting, (3) makes the nomination pursuant to timely notice in proper written form to the Secretary, and (4) otherwise complies with the procedures set forth in this Article III, Section 12(a) of these Bylaws. If a stockholder, or a beneficial owner on whose behalf any such nomination is made, has provided the Corporation with a Nomination Solicitation Notice (as defined below), such stockholder or beneficial owner must have delivered a proxy statement and form of proxy to the holders of at least a majority of the outstanding shares of the Corporation entitled to vote and included in such materials the Nomination Solicitation Notice.

(ii) To be timely, a stockholder's notice of a nomination must be addressed to the Secretary and delivered or mailed to and received at the principal executive offices of the Corporation not less than 60 nor more than 90 calendar days prior to the first anniversary of the date on which the Corporation first mailed its proxy materials for the preceding year's annual meeting; provided, however, that if the date of the annual meeting is advanced more than 30 calendar days prior to or delayed by more than 30 calendar days after the first anniversary of the preceding year's annual meeting, then notice by the stockholder to be timely must be so delivered not later than the close of business on the later of the 90th calendar day prior to such annual meeting or the 10th calendar day following the day on which public disclosure of the date of such annual meeting is first made. In no event shall the public disclosure of any postponement or adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice of a nomination.

(iii) To be in proper written form, a stockholder's notice of a nomination must set forth or include: (A) the name and address, as they appear on the Corporation's books, of the stockholder giving the notice and any Stockholder Related Person; (B) a representation that the stockholder giving the notice is a holder of record of stock of the Corporation entitled to vote at such annual meeting and intends (1) to be a holder of record of stock of the Corporation at the time of the annual meeting and (2) to appear in person or by proxy at the annual meeting to nominate the person or persons specified in the notice; (C) the class and series and number of shares of any securities of the Corporation that are owned beneficially or held of record by the stockholder giving the notice or any Stockholder Related Person; (D) a description of (1) any derivative positions in any securities of the Corporation directly or indirectly held or beneficially owned by the stockholder or any Stockholder Related Person and (2) any hedging or other transaction or series of transactions, agreement, arrangement or understanding with respect to any of the Corporation's securities entered into or made by such stockholder or any Stockholder Related Person; (E) a description of any proxy, transaction, agreement, arrangement, understanding or relationship pursuant to which such stockholder or any Stockholder Related Person has a right to vote any shares of any of the Corporation's securities; (F) a description of all arrangements or understandings between or among any of (1) the stockholder giving the notice, (2) any Stockholder Related Person, and (3) each nominee; (G) all information regarding each nominee proposed by the stockholder giving the notice that would be required to be included in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder, including the signed consent of each nominee to be named as a nominee and to serve as a director of the Corporation if so elected; (H) with respect to each nominee proposed by the stockholder giving the notice, a Nominee Questionnaire (as defined below) and a Nominee Representation and Agreement (as defined below), each completed and signed by the nominee; and (I) whether either such stockholder, beneficial owner or Stockholder Related Person intends to deliver a proxy statement and form of proxy to the holders of at least the percentage of shares of the Corporation entitled to vote that is required to elect such nominee or nominees (an affirmative statement of such intent, a "Nomination Solicitation Notice").

(b) *Special Meetings* . (i) 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. Nominations of persons for election as directors of the Corporation may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting only (A) by or at the direction of the Board of Directors or a committee thereof or (B) provided that the Board of Directors has determined that directors shall be elected at such special meeting, by any stockholder that (1) is a stockholder of record at the time of giving of notice provided for in this Article III, Section 12(b) of these Bylaws and at the time of such annual meeting, (2) is entitled to vote for the election of directors at such annual meeting, (3) makes the nomination pursuant to timely notice in proper written form to the Secretary, and (4) otherwise complies with the procedures set forth in this Article III, Section 12(b) of these Bylaws. If a stockholder, or a beneficial owner on whose behalf any such nomination is made, has provided the Corporation with a Nomination Solicitation Notice, such stockholder or beneficial owner must have delivered a proxy statement and form of proxy to the holders of at least a majority of the outstanding shares of the Corporation entitled to vote and included in such materials the Nomination Solicitation Notice.

(ii) To be timely, a stockholder's notice of a nomination must be addressed to the Secretary and delivered or mailed to and received at the principal executive offices of the Corporation not less than 90 nor more

than 120 calendar days prior to the date of such special meeting, provided, that if the first public announcement of such special meeting is less than 100 days prior to the date of the special meeting, the 10th day following the date on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall any postponement or adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice of a nomination.

(iii) To be in proper written form, a stockholder's notice of a nomination must set forth or include all of the information required to be set forth by clauses (A) through (G) of Section 12(a)(iii) of this Article III.

(c) *General*. (i) At the request of the Board of Directors, any person nominated by the Board of Directors for election as a director must also furnish to the Secretary that information required to be set forth in a stockholder's notice of nomination that pertains to the nominee.

(ii) The chairman of any annual meeting will, if the facts warrant, determine that a nomination was not made in accordance with the procedures prescribed by this Article III, Section 12 of these Bylaws, and if the chairman should so determine, the chairman will so declare to the meeting and the defective nomination will be disregarded.

(iii) In addition to the foregoing provisions of this Article III, Section 12 of these Bylaws, a stockholder must also comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Article III, Section 12 of these Bylaws.

(iv) For purposes of this Article III, Section 12 of these Bylaws, the following terms shall have the meanings indicated:

- (A) A "Nominee Questionnaire" means a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (in the form provided by the Secretary upon written request).
- (B) A "Nominee Representation and Agreement" means a written representation and agreement (in the form provided by the Secretary upon written request) that such person (1) is not and will not become a party to (a) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (b) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law, (2) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, (3) beneficially owns, or agrees to purchase within two years if elected as a director of the Corporation, not less than 8,000 common shares of the Corporation ("Qualifying Shares") (subject to adjustment for any stock splits or stock dividends occurring after date of such representation or agreement), will not dispose of such minimum number of shares so long as he or she is a director, and has disclosed therein whether all or any portion of the Qualifying Shares were purchased with any financial assistance provided by any other person and whether any other person has any interest in the Qualifying Shares, and (4) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with the provisions of these Bylaws and all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation.

Section 13. Required Vote for Directors. (a) Each director to be elected by stockholders shall be elected as such by the vote of the majority of the votes cast by stockholders at a meeting for the election of directors at

which a quorum is present, except that if the number of nominees exceeds the number of directors to be elected, the directors shall be elected by the vote of a plurality of the shares represented in person or by proxy at any such meeting. For purposes of this Article III, Section 13, a majority of votes cast shall mean that the number of shares voted “for” a director’s election exceeds 50% of the number of votes cast with respect to that director’s election. “Votes cast” includes votes “for” that director’s election plus votes to withhold authority with respect to that director’s election and excludes abstentions and broker non-votes with respect to that director’s election.

(b) If a nominee for director who is an incumbent director is not reelected and no successor has been elected at such meeting, the director must promptly tender his or her resignation to the Chairman of the Board or the Secretary following the certification of the stockholder vote. The Nominating and Governance Committee shall consider the tendered resignation and recommend to the Board of Directors whether to accept or reject it. The Board of Directors shall act on the tendered resignation, taking into account the Nominating and Governance Committee’s recommendation, within 90 days following certification of the stockholder vote. The Nominating and Governance Committee in making its recommendation, and the Board of Directors in making its decision, may consider any factors or other information that it considers appropriate and relevant. The director who failed to be elected as such by the vote of the majority of the votes cast by stockholders at a meeting for the election of directors at which a quorum is present shall not vote with respect to the recommendation of the Nominating and Governance Committee or the decision of the Board of Directors with respect to whether or not to accept his or her resignation.

(c) The Board of Directors will publicly disclose (1) its decision whether or not to accept the tendered resignation and (2) if applicable, the reasons for rejecting the tendered resignation in a press release to be disseminated in the manner Corporation press releases are typically distributed.

(d) If such incumbent director’s tendered resignation is not accepted by the Board of Directors pursuant to this Article III, Section 13, such director shall continue to serve until his or her successor is duly elected, or his or her earlier effective resignation or removal. If a director’s tendered resignation is accepted by the Board of Directors pursuant to this Article III, Section 13, or if a nominee for director is not elected and the nominee is not an incumbent director, then the Board of Directors, in its sole discretion, may fill any resulting vacancy pursuant to the provisions of Article III, Section 3 or may decrease the size of the Board of Directors pursuant to the provisions of Article III, Section 1.

Section 14. Participation in Meetings by Remote Communications. Unless otherwise restricted by the Certificate of Incorporation, members of the Board of Directors or any committee designated by the Board of Directors may participate in a meeting of the Board of Directors or any such committee, as the case may be, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting will constitute presence in person at the meeting.

Section 15. Resignation. Any director may resign at any time by giving notice in writing or by electronic transmission of the director’s resignation to the Chairman of the Board or the Secretary. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation submitted by a director pursuant to Article III, Section 13 may provide that it is irrevocable.

Section 16. Rules. The Board of Directors may adopt rules and regulations for the conduct of meetings and the oversight of the management of the affairs of the Corporation.

ARTICLE IV

NOTICES

Section 1. Notice . Whenever, by law or under the provisions of the Certificate of Incorporation or of these Bylaws, unless otherwise provided, notice is required to be given to any director or stockholder, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail or overnight courier, addressed to such director or stockholder, at the director's or stockholder's address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Notice to directors may also be given by telephone, facsimile, electronic transmission or similar medium of communication or as otherwise may be permitted by these Bylaws.

Section 2. Waiver of Notice . Whenever any notice is required to be given by law or under the provisions of the Certificate of Incorporation or of these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, or a waiver by electronic transmission by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to such notice. Attendance of a person at a meeting will constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

ARTICLE V

OFFICERS

Section 1. Election; General Provisions . The officers of the Corporation shall be elected by the Board of Directors and shall consist of a Chairman of the Board, a President, a Secretary and a Treasurer. The Board of Directors may also elect one or more Executive Vice Presidents, Vice Presidents and Assistant Vice Presidents, a General Counsel, a Controller and such other officers as it may deem necessary. Any person may hold any number of offices at the same time except that the offices of President and Secretary shall not be held by the same person; but no officer shall execute, acknowledge or verify any instrument in more than one capacity if such instrument is required by law or by the Certificate of Incorporation or by these Bylaws to be executed, acknowledged or verified by two or more officers. Notwithstanding the foregoing, by specific action the Board of Directors may authorize the Chairman of the Board to appoint any person to any office other than Chairman of the Board, Chief Executive Officer, President, Secretary or Treasurer. Any of the offices may be left vacant from time to time as the Board of Directors may determine.

Section 2. Time of Election; Board Membership . The Board of Directors shall elect the officers at the first meeting of the Board of Directors held after the annual meeting of stockholders. The Chairman of the Board and the President shall be, but the other officers need not be, elected from among the members of the Board of Directors.

Section 3. Appointment . The Board of Directors may appoint, at its discretion, one or more Assistant Secretaries, Assistant Treasurers, Assistant General Counsels, Assistant Controllers, and such other assistant officers as it may deem necessary.

Section 4. Compensation . The compensation of all officers of the Corporation shall be fixed by the Board of Directors or by a committee of the Board of Directors.

Section 5. Term of Office; Removal; Vacancies . The elected officers of the Corporation shall hold office until their successors are elected and qualify or until such officers' earlier resignation, removal or death. Any officer elected or appointed by the Board of Directors may be removed at any time with or without cause by the affirmative vote of the majority of the Whole Board. In the event of a vacancy in any office by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the Board of Directors may elect a

successor or successors in accordance with Article V, Section 1 of these Bylaws, who shall hold office in accordance with the provisions of this Article V, Section 5.

Section 6. Chief Executive Officer. The Board of Directors shall designate either the Chairman of the Board or the President as Chief Executive Officer of the Corporation. The Chief Executive Officer shall have general and active management of the business of the Corporation and over its several officers, and shall see that all orders, resolutions or directives of the Board of Directors are carried into effect. The Chief Executive Officer shall, unless such authority is otherwise delegated by the Board of Directors, execute bonds, mortgages, other contracts requiring a seal under the seal of the Corporation, and any other documents in the name of the Corporation, in addition to the duties set forth in Article V, Section 7 or 8 of these Bylaws, as the case may be.

Section 7. Chairman of the Board. The Chairman of the Board shall preside at all meetings of stockholders and at all meetings of the Board of Directors, and shall have such other powers and duties as may be assigned to the Chairman by the Board of Directors.

Section 8. President. The President shall have general and active supervision of the operations of the Corporation and, unless the President shall be serving as Chief Executive Officer, shall be responsible to the Chairman of the Board. In the absence or incapacity of the Chairman of the Board, the President shall perform all duties and functions of the Chairman of the Board. The President shall see that all orders, resolutions and directives of the Board of Directors are carried into effect, shall be ex-officio member of all management committees and shall have such other powers and duties as may be assigned to the President by the Board of Directors.

Section 9. Executive Vice Presidents. The Executive Vice Presidents shall perform such duties as the Board of Directors shall prescribe. In the absence or disability of the President, the Executive Vice Presidents, in the order designated from time to time by the Board of Directors, shall perform the duties and exercise the powers of the President.

Section 10. Vice Presidents. The Vice Presidents, in the order of their seniority, shall, in the absence or disability of the President and the Executive Vice Presidents, perform the duties of the President and shall perform such other duties as the Board of Directors shall prescribe.

Section 11. Assistant Vice Presidents. The Assistant Vice Presidents shall perform such duties and exercise such powers as may be assigned to them from time to time by the Board of Directors.

Section 12. Secretary. The Secretary shall serve as Secretary of and shall attend all meetings of the Board of Directors and all meetings of stockholders, shall record all votes and the minutes of the proceedings of such meetings in a book to be kept for that purpose, and shall perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of stockholders and of the Board of Directors, and shall perform such other duties as may pertain to that office or are assigned to the Secretary by the Board of Directors or any officer to whom the Secretary is responsible. The Secretary shall keep in safe custody the seal of the Corporation and when authorized by the Board, the Secretary or Treasurer shall affix the same to any instrument requiring it. When so affixed, the seal of the Corporation shall be attested by the signature of the Secretary or Treasurer so affixing the seal. The Secretary shall be sworn to the faithful discharge of the Secretary's duty. 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 the officer's signature.

Section 13. Assistant Secretaries. The Assistant Secretaries, in the order of their seniority (except as otherwise 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 exercise such powers as may be assigned to them from time to time by the Board of Directors.

Section 14. Treasurer. The Treasurer shall have custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in the books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of Corporation in such depositories as may be designated by the Board of Directors. The Treasurer 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 President and directors, at the regular meetings of the Board of Directors or whenever they may require it, an account of all the Treasurer's transactions as Treasurer and of the financial condition of the Corporation. In the event no Controller shall have been duly elected and qualified, the Treasurer shall assume the duties and powers of the Controller. The Treasurer shall give the Corporation a bond if required by the Board of Directors in a sum, and with one or more sureties satisfactory to the Board of Directors, for the faithful performance of the duties of that office and for the restoration to the Corporation, in case of the Treasurer's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in the Treasurer's possession or under the Treasurer's control belonging to the Corporation.

Section 15. Assistant Treasurers. The Assistant Treasurers, in the order of their seniority (except as otherwise 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 exercise such powers as may be assigned to them from time to time by the Board of Directors.

Section 16. General Counsel. The General Counsel shall have charge of all legal matters of the Corporation, and shall have such other duties as may be assigned to the General Counsel from time to time by the Board of Directors.

Section 17. Assistant General Counsels. The Assistant General Counsels, in the order of their seniority (except as otherwise designated by the Board of Directors), shall, in the absence or disability of the General Counsel, perform the duties and exercise the powers of the General Counsel, and shall perform such other duties as the Board of Directors shall prescribe.

Section 18. Controller. The Controller shall have direct charge, supervision and control of all matters of auditing, accounting and bookkeeping. The Controller shall render financial statements and reports to the Board of Directors at regular intervals and whenever called upon to do so by the Board, and shall perform such other and further duties as the Board of Directors shall prescribe.

Section 19. Assistant Controllers. The Assistant Controllers, in the order of their seniority (except as otherwise designated by the Board of Directors), shall, in the absence or disability of the Controller, perform the duties and exercise the powers of the Controller, and shall perform such other duties as the Board of Directors shall prescribe.

ARTICLE VI

DUTIES OF OFFICERS MAY BE DELEGATED

In the case of absence of any officer of the Corporation, or for any other reason that the Board of Directors may deem sufficient, the Board of Directors may delegate, for the time being, the powers or duties or any of them, of such officer to any other officer, or to any director, provided a majority of the Whole Board concurs therein.

ARTICLE VII

INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 1. Right to Indemnification. Except as otherwise provided by the Certificate of Incorporation, each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding"), by reason of the fact

that the person is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans maintained or sponsored by the Corporation, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent permitted or required 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 laws permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, excise taxes pursuant to the Employee Retirement Income Security Act of 1974 or penalties and amounts paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except as provided in Article VII, Section 3 of these Bylaws with respect to proceedings to enforce rights to indemnification, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors.

Section 2. Right to Advancement of Expenses. The right to indemnification conferred pursuant to this Article VII shall be a contract right and shall include the right to be paid by the Corporation the expenses (including, without limitation, attorneys' fees and expenses) incurred in defending any such proceeding in advance of its final disposition (an "Advancement of Expenses"); provided, however, that if the Delaware General Corporation Law requires, an Advancement of Expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such director or officer, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the Corporation of an undertaking (an "Undertaking"), by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (a "Final Adjudication") that such director or officer is not entitled to be indemnified under this Article VII or otherwise.

Section 3. Right to Bring Suit. To the extent indemnification is to be provided pursuant to this Article VII and if a claim under Section 1 or 2 of this Article VII is not paid in full by the Corporation within 60 calendar 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 calendar days, the person seeking indemnification or an Advancement of Expenses 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 person seeking indemnification or an Advancement of Expenses shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the person seeking indemnification hereunder (but not in a suit brought by a person seeking Advancement of Expenses) it shall be a defense that, and (ii) any suit brought by the Corporation to recover an Advancement of Expenses pursuant to the terms of an Undertaking, the Corporation shall be entitled to recover such expenses upon a Final Adjudication that, such person 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 stockholders) to have made a determination prior to the commencement of such suit that indemnification of the person seeking indemnification or an Advancement of Expenses is proper in the circumstances because the person seeking indemnification or an Advancement of Expenses 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 stockholders) that the person seeking indemnification or an Advancement of Expenses has not met such applicable standard of conduct, shall create a presumption that the person seeking indemnification or an Advancement of Expenses has not met the applicable standard of conduct or, in the case of such a suit brought by the person seeking indemnification or an Advancement of Expenses, be a defense to such suit. In any suit brought by the person seeking indemnification or 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 such

person is not entitled to be indemnified, or to such Advancement of Expenses, under this Article VII or otherwise shall be on the Corporation.

Section 4. Non-Exclusivity of Rights. The right to indemnification and the Advancement of Expenses conferred pursuant to this Article VII shall not be exclusive of any rights which any person may have or hereafter acquire under any statute, the Certificate of Incorporation, these Bylaws, any agreement, any vote of stockholders or disinterested directors or otherwise.

Section 5. Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Delaware General Corporation Law.

Section 6. Indemnification of Employees and Agents of the Corporation. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the Advancement of Expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article VII with respect to the indemnification and Advancement of Expenses of directors and officers of the Corporation.

ARTICLE VIII CERTIFICATES OF STOCK

Section 1. Form of Certificate; Signatures. Every holder of stock in the Corporation shall be entitled to have a certificate, signed by, or in the name of the Corporation by, the Chairman of the Board, the President or a Vice President and by the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Corporation, representing the number of shares owned by the holder in the Corporation, and will also be signed by, or bear the facsimile signature of, a duly authorized officer or agent of any properly designated transfer agent of the Corporation. Certificates representing shares of stock in the Corporation will be in such form as is determined by the Board of Directors, subject to applicable legal requirements. The certificates of stock of the Corporation shall be numbered and shall be entered in the books of the Corporation as they are issued. 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 qualifications, 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 Delaware General Corporation Law, 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 powers, 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 2. Facsimile Signatures. Any or all of the signatures on the certificate may be facsimiles. 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 the signatory were such officer, transfer agent or registrar at the date of issue.

Section 3. Transfer of Stock. Upon surrender to the Corporation or to 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 to issue a new certificate to the person entitled thereto, cancel the older certificate and record the transaction upon its books.

Section 4. Record Date . 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, 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, in advance, a record date which shall not be more than 60 nor less than ten days before the date of such meeting, nor more than 60 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 5. Registered Stockholders . The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

Section 6. Lost, Stolen or Destroyed Certificates . Any person claiming a certificate of stock to be lost, stolen or destroyed shall make an affidavit or affirmation of that fact and advertise the same in such a manner as the Board of Directors may require, and the Board of Directors may, in its discretion, require the owner of the lost, stolen or destroyed certificate, or the owner's legal representative, to give the Corporation a bond, in such sum as it may direct, not exceeding double the value of the stock, to indemnify the Corporation against any claim that may be made against it on account of the alleged loss of any such certificate. A new certificate of the same tenor and for the same number of shares as the one alleged to be lost, stolen or destroyed may be issued without requiring any bond when, in the judgment of the directors, it is proper to do so.

Section 7. Transfer Agents and Registrars . The Board of Directors may appoint, or revoke the appointment of, transfer agents and registrars, and may require all certificates for stock to bear the signatures of such transfer agents and registrars or any of them.

ARTICLE IX GENERAL PROVISIONS

Section 1. Dividends . Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, may be declared by the Board of Directors at any regular or special meeting, pursuant to law, and may be paid in cash, in property, or in shares of the Corporation's capital stock.

Section 2. Dividend Reserves . As provided in the Tenth Article of the Certificate of Incorporation, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose or to abolish such reserve in the manner in which it was created.

Section 3. Checks . All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 4. Fiscal Year . The fiscal year shall begin on the first day of January in each year.

Section 5. Annual Statement . The Board of Directors shall present at each annual meeting, and when called for by the vote of stockholders at any special meeting of stockholders, a full and clear statement of the business and condition of the Corporation.

Section 6. Seal . The seal of the Corporation 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 otherwise reproduced.

Section 7. Reliance Upon Books, Reports and Records . Each director, each member of a committee designated by the Board of Directors, and each officer of the Corporation will, in the performance of such person's duties, be fully protected in relying in good faith upon the records of the Corporation and upon such information, opinions, reports, or statements presented to the Corporation by any of the Corporation's officers or employees, or committees of the Board of Directors, or by any other person or entity as to matters the director, committee member, or officer reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

ARTICLE X
AMENDMENTS

Except as otherwise provided by law or by the Certificate of Incorporation, these Bylaws may be altered, amended or repealed or new Bylaws may be adopted by the stockholders or by the Board of Directors 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 Bylaws be contained in the notice of such special meeting.

CERTIFICATIONS

I, Roy V. Armes, certify that:

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

Date: May 5, 2010

/s/ Roy V. Armes

Roy V. Armes

President and Chief Executive Officer

CERTIFICATIONS

I, Bradley E. Hughes, certify that:

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

Date: May 5, 2010

/s/ Bradley E. Hughes

Bradley E. Hughes

Vice President and Chief Financial Officer

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

In connection with the Quarterly Report of Cooper Tire & Rubber Company (the "Company") on Form 10-Q for the period ended March 31, 2010, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned officers of the Company certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to such officer's knowledge:

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

Date: May 5, 2010

/s/ Roy V. Armes

Name: Roy V. Armes

Title: Chief Executive Officer

/s/ Bradley E. Hughes

Name: Bradley E. Hughes

Title: Chief Financial Officer

The foregoing certification is being furnished solely pursuant to 18 U.S.C. § 1350 and is not being filed as part of the Report or as a separate disclosure document.