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

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FORM 10-Q

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(MARK ONE)

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

For the quarterly period ended July 30, 2000 or

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number 0-6920

**APPLIED MATERIALS, INC.**

*(Exact name of registrant as specified in its charter)*

**Delaware**

*(State or other jurisdiction of incorporation or organization)*

**94-1655526**

*(I.R.S. Employer Identification Number)*

**3050 Bowers Avenue**  
**Santa Clara, California 95054-3299**  
*(Address of principal executive offices, including zip code)*

**(408) 727-5555**  
*(Registrant's telephone number, including area code)*

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Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES  NO .

Number of shares outstanding of the issuer's common stock as of July 30, 2000: 811,134,656

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**PART I. FINANCIAL INFORMATION**

**Item 1. Financial Statements**

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**APPLIED MATERIALS, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
**(UNAUDITED)**

(In thousands, except per share amounts)	Three Months Ended		Nine Months Ended	
	August 1, 1999	July 30, 2000	August 1, 1999	July 30, 2000
Net sales.....	\$1,490,695	\$2,732,028	\$3,482,732	\$6,644,249
Cost of products sold.....	775,025	1,340,126	1,863,973	3,297,428
Gross margin.....	715,670	1,391,902	1,618,759	3,346,821
Operating expenses:				
Research, development and engineering.....	185,796	303,946	523,991	780,509
Marketing and selling.....	91,561	128,426	247,597	340,718
General and administrative.....	105,689	133,291	258,105	343,998
Non-recurring items.....	2,515	--	7,515	40,000
Income from operations.....	330,109	826,239	581,551	1,841,596

Non-recurring income.....	--	--	20,000	68,158
Interest expense.....	11,952	12,665	35,328	38,154
Interest income.....	26,736	48,970	77,440	127,962
<hr/>				
Income before taxes and equity in net income/(loss) of joint venture.....	344,893	862,544	643,663	1,999,562
Provision for income taxes.....	106,637	258,763	199,761	599,807
<hr/>				
Income before equity in net income/(loss) of joint venture..	238,256	603,781	443,902	1,399,755
<hr/>				
Equity in net income/(loss) of joint venture.....	9,773	--	12,048	--
<hr/>				
Income from continuing operations..	248,029	603,781	455,950	1,399,755
<hr/>				
Provision for discontinuance of joint venture.....	(9,773)	--	(12,048)	--
<hr/>				
Net income.....	\$238,256	\$603,781	\$443,902	\$1,399,755
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Earnings per share:				
Basic - continuing operations...	\$0.31	\$0.75	\$0.59	\$1.74
Basic - discontinued operations.	(0.01)	--	(0.02)	--
<hr/>				
Total basic.....	\$0.30	\$0.75	\$0.57	\$1.74
<hr/>				
Diluted - continuing operations.	\$0.30	\$0.70	\$0.56	\$1.63
Diluted - discontinued operations	(0.01)	--	(0.02)	--
<hr/>				
Total diluted.....	\$0.29	\$0.70	\$0.54	\$1.63
<hr/>				
Weighted average number of shares:				
Basic.....	781,554	809,345	775,444	804,532
Diluted.....	824,248	862,071	816,946	858,585

See accompanying notes to consolidated condensed financial statements.

**APPLIED MATERIALS, INC.**  
**CONSOLIDATED CONDENSED BALANCE SHEETS\***

(In thousands)	October 31, 1999	July 30, 2000
<hr/>		
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents.....	\$868,121	\$1,342,835
Short-term investments.....	1,951,254	2,404,493
Accounts receivable, net.....	1,268,146	2,162,251
Inventories.....	727,107	1,132,625
Deferred income taxes.....	341,668	330,889
Other current assets.....	154,424	179,270
<hr/>		
Total current assets.....	5,310,720	7,552,363
<hr/>		
Property, plant and equipment, net.....	1,278,269	1,280,137
Other assets.....	425,521	386,323
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Total assets.....	\$7,014,510	\$9,218,823
<hr/>		
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Notes payable.....	\$5,789	\$40,409
Current portion of long-term debt.....	36,484	41,512
Accounts payable and accrued expenses.....	1,442,718	1,899,550
Income taxes payable.....	246,506	397,153
<hr/>		
Total current liabilities.....	1,731,497	2,378,624
<hr/>		
Long-term debt.....	584,357	574,336

Deferred income taxes and other liabilities.....	123,398	135,879
Total liabilities.....	2,439,252	3,088,839
Stockholders' equity:		
Common stock.....	7,932	8,111
Additional paid-in capital.....	1,443,723	1,614,615
Retained earnings.....	3,122,337	4,521,384
Accumulated other comprehensive income/(loss).....	1,266	(14,126)
Total stockholders' equity.....	4,575,258	6,129,984
Total liabilities and stockholders' equity.....	\$7,014,510	\$9,218,823

\* Amounts as of July 30, 2000 are unaudited. Amounts as of October 31, 1999 are audited.

See accompanying notes to consolidated condensed financial statements.

**APPLIED MATERIALS, INC.**  
**CONSOLIDATED CONDENSED STATEMENTS OF CASH FLOWS**  
**(UNAUDITED)**

(In thousands)	Nine Months Ended	
	August 1, 1999	July 30, 2000
Cash flows from operating activities:		
Net income.....	\$443,902	\$1,399,755
Adjustments required to reconcile net income to cash provided by operations:		
Depreciation and amortization.....	218,851	269,602
Deferred income taxes.....	2,541	9,483
Adjustment to conform Etec's fiscal year....	--	(708)
Changes in assets and liabilities, net of amounts acquired:		
Accounts receivable, net.....	(339,290)	(905,950)
Inventories.....	(31,204)	(415,573)
Other current assets.....	(29,983)	(28,171)
Other assets.....	(31,003)	(9,708)
Accounts payable and accrued expenses..	61,565	475,211
Income taxes payable.....	197,369	150,647
Other liabilities.....	12,422	14,003
Cash provided by operations.....	505,170	958,591
Cash flows from investing activities:		
Capital expenditures, net of retirements.....	(157,645)	(225,532)
Proceeds from sales of short-term investments...	721,010	1,415,241
Purchases of short-term investments.....	(1,196,244)	(1,868,480)
Cash used for investing.....	(632,879)	(678,771)
Cash flows from financing activities:		
Short-term debt activity, net.....	1,338	32,327
Long-term debt activity, net.....	(6,620)	(4,177)
Common stock transactions, net.....	114,471	171,071
Cash provided by financing.....	109,189	199,221
Effect of exchange rate changes on cash.....	(1,682)	(4,327)
Increase/(decrease) in cash and cash equivalents..	(20,202)	474,714
Cash and cash equivalents - beginning of period...	638,805	868,121
Cash and cash equivalents - end of period.....	\$618,603	\$1,342,835

For the nine months ended August 1, 1999, cash payments for interest were \$24,796 and net income tax refunds were \$10,960. For the nine months ended July 30, 2000, cash payments for interest and income taxes were \$22,336 and \$445,779, respectively.

**APPLIED MATERIALS, INC.**  
**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS (Unaudited)**  
**NINE MONTHS ENDED JULY 30, 2000**

1) Basis of Presentation

In the opinion of management, the unaudited interim consolidated condensed financial statements of Applied Materials, Inc. (Applied) included herein have been prepared on a basis consistent with the October 31, 1999 audited consolidated financial statements (as restated) and include all material adjustments, consisting of normal recurring adjustments, necessary to fairly present the information set forth therein. These unaudited interim consolidated condensed financial statements should be read in conjunction with the October 31, 1999 audited consolidated financial statements and notes thereto included in Applied's 1999 Annual Report, which is incorporated by reference in Applied's Form 10-K for the fiscal year ended October 31, 1999. Applied's results of operations for the three and nine months ended July 30, 2000 are not necessarily indicative of future operating results.

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ materially from those estimates.

All historical financial information presented herein has been restated to reflect: 1) a two-for-one stock split in the form of a 100 percent stock dividend, effective March 15, 2000; and 2) the acquisition of Etec Systems, Inc. (Etec), which was completed on March 29, 2000 and accounted for as a pooling-of-interests.

During the fourth fiscal quarter of 1999, Applied Komatsu Technology, Inc. (AKT) became a wholly-owned subsidiary of Applied. Previously, AKT was a joint venture, in which Applied had a 50 percent ownership interest, that was accounted for as a discontinued operation. As a result of Applied's acquisition of AKT, certain prior year amounts were reclassified from discontinued operations to continuing operations. These reclassifications had no effect on net income for any affected prior period.

2) Business Combination

On March 29, 2000, Applied acquired Etec, a supplier of mask pattern generating equipment for the semiconductor and electronics industries, in a stock-for-stock merger accounted for as a pooling-of-interests. Applied issued approximately 29 million shares of its common stock in conjunction with this transaction, and recorded a one-time, pre-tax operating expense of \$40 million for costs associated with the merger. Additionally, Applied recorded a one-time, pre-tax operating expense of \$14 million (\$6.5 million in cost of products sold and \$7.5 million in general and administrative expenses) to conform Etec's accounting policies to those of Applied.

Prior to the merger, Etec's fiscal year end (July 31) was different than Applied's (last Sunday in October). Fiscal 1999 amounts included herein for Etec have not been conformed to Applied's fiscal year. Therefore, the three- and nine-month periods ended August 1, 1999 include Etec's three- and nine-month periods ended April 30, 1999, and the October 31, 1999 consolidated condensed balance sheet includes Etec's balances as of July 31, 1999. Fiscal 2000 amounts included herein for Etec have been conformed to Applied's fiscal year. As a result, Etec's net loss for the three months ended October 31, 1999 has been reflected as an adjustment to retained earnings in the first fiscal quarter of 2000. Etec's net sales and net loss for the three months ended October 31, 1999 were \$43 million and \$708,000, respectively.

Net sales and net income for each company from the beginning of the periods presented to the date of consummation of the merger (March 29, 2000) were as follows (in thousands):

	Three Months Ended		Nine Months Ended	
	August 1, 1999	July 30, 2000	August 1, 1999	July 30, 2000
Net sales:				
Applied.....	\$1,433,510	\$2,732,028	\$3,293,613	\$6,567,598
Etec.....	57,185	--	189,119	76,651 *
Combined.....	\$1,490,695	\$2,732,028	\$3,482,732	\$6,644,249
Net income:				
Applied.....	\$244,416	\$603,781	\$438,940	\$1,408,173
Etec.....	(6,160)	--	4,962	(8,418) *

Combined.....	\$238,256	\$603,781	\$443,902	\$1,399,755
	=====	=====	=====	=====

\* Does not include amounts subsequent to March 29, 2000. Such amounts have been included in the numbers presented for Applied.

### 3) Earnings Per Share

Basic earnings per share has been determined using the weighted average number of common shares outstanding during the period. Diluted earnings per share has been determined using the weighted average number of common shares and equivalents (representing the dilutive effect of stock options) outstanding during the period. Applied's net income has not been adjusted for any period presented for purposes of computing basic or diluted earnings per share.

For purposes of computing diluted earnings per share, weighted average common share equivalents do not include stock options with an exercise price that exceeded the average fair market value of Applied's common stock for the period. For the three months ended July 30, 2000, options to purchase approximately 1,195,000 shares of common stock at an average exercise price of \$90.79 were excluded from the computation, and for the nine months ended July 30, 2000, options to purchase approximately 2,627,000 shares of common stock at an average exercise price of \$85.12 were excluded from the computation.

### 4) Accounts Receivable, Net

Applied has agreements with various financial institutions to sell accounts receivable from selected customers. During the nine months ended August 1, 1999 and July 30, 2000, Applied sold \$645 million and \$1.1 billion, respectively, of accounts receivable under these agreements. At July 30, 2000, \$389 million of sold receivables remained outstanding and subject to certain recourse provisions. Applied does not expect these recourse provisions to have a material effect on its financial condition or results of operations. Discounting fees were not material for the three- and nine-month periods ended August 1, 1999 or July 30, 2000, and were recorded as interest expense.

### 5) Inventories

Inventories are stated at the lower of cost or market, with cost determined on a first-in, first-out (FIFO) basis. Components of inventories were as follows (in thousands):

	October 31, 1999	July 30, 2000
	-----	-----
Customer service spares.....	\$267,623	\$369,277
Raw materials.....	124,051	294,188
Work-in-process.....	246,953	293,191
Finished goods.....	88,480	175,969
	-----	-----
	\$727,107	\$1,132,625
	=====	=====

### 6) Other Assets

Components of other assets were as follows (in thousands):

	October 31, 1999	July 30, 2000
	-----	-----
Purchased technology, net.....	\$205,667	\$186,845
Goodwill, net.....	162,015	145,410
Other.....	57,839	54,068
	-----	-----
	\$425,521	\$386,323
	=====	=====

Purchased technology and goodwill are presented at cost, net of accumulated amortization, and are being amortized over their estimated useful lives of five to ten years using the straight-line method.

### 7) Accounts Payable and Accrued Expenses

Components of accounts payable and accrued expenses were as follows (in thousands):

	October 31, 1999	July 30, 2000
	-----	-----
Accounts payable.....	\$382,915	\$665,839
Compensation and benefits.....	302,433	317,167
Installation and warranty.....	236,272	325,812
Customer deposits.....	89,689	82,208
Other.....	431,409	508,524
	-----	-----
	\$1,442,718	\$1,899,550
	=====	=====

An accrual of \$5 million for restructuring actions taken in prior years, primarily in fiscal 1998, remains as of July 30, 2000, compared to \$16 million as of October 31, 1999, and is included above in Other. This balance is expected to be utilized in fiscal 2000 in accordance with the restructuring plan.

### 8) Non-recurring Items

During the first fiscal quarter of 1999, Applied recorded \$5 million of pre-tax, non-recurring operating expenses for costs incurred in connection with its December 1998 acquisition of Consilium, Inc. During the third fiscal quarter of 1999, Applied recorded \$3 million of pre-tax, non-recurring operating expenses in connection with a restructuring. During the second fiscal quarter of 2000, Applied recorded \$40 million of pre-tax, non-recurring operating expenses for costs incurred in connection with the Etec acquisition. See Note 2 of Notes to Consolidated Condensed Financial Statements in this Form 10-Q.

### 9) Non-recurring Income

During the first fiscal quarter of 1999, Applied received a \$20 million payment from ASM International, N.V. (ASMI) related to a prior litigation settlement and recorded the amount as non-recurring income. During the second fiscal quarter of 2000, Applied recorded an additional \$68 million of pre-tax, non-operating income related to the ASMI litigation settlement. This amount consisted of: 1) the final cash payment from ASMI of \$35 million related to an outstanding note receivable; and 2) a net gain of \$33 million on the exercise of ASMI warrants and subsequent sale of the resulting shares.

### 10) Stockholders' Equity

#### *Comprehensive Income*

Components of comprehensive income, on an after-tax basis, are as follows (in thousands):

	Three Months Ended		Nine Months Ended	
	August 1, 1999	July 30, 2000	August 1, 1999	July 30, 2000
Net income.....	\$238,256	\$603,781	\$443,902	\$1,399,755
Foreign currency translation adjustments.....	(4,971)	(8,674)	(16,393)	(15,392)
Comprehensive income.....	\$233,285	\$595,107	\$427,509	\$1,384,363

#### *Stock Repurchase Program*

Since March 1996, Applied has systematically repurchased shares of its common stock in the open market to partially fund its stock-based employee benefit and incentive plans. During the nine months ended August 1, 1999, Applied repurchased 1,640,000 shares of its common stock at an average price of \$24.27, for a total cash outlay of \$40 million. During the nine months ended July 30, 2000, Applied repurchased 751,000 shares at an average price of \$80.06, for a total cash outlay of \$60 million.

#### *Stock Dividend*

On February 15, 2000, Applied's Board of Directors approved a two-for-one stock split in the form of a 100 percent stock dividend. Shares issuable pursuant to the stock dividend were distributed on March 15, 2000 to stockholders of record as of February 25, 2000. All historical share and per share amounts presented herein have been restated to reflect the stock split.

### 11) Segment Information

In fiscal 1999, Applied adopted Statement of Financial Accounting Standards No. 131 (SFAS 131), "Disclosures About Segments of an Enterprise and Related Information." Applied operates in one segment for the manufacture, marketing and servicing of semiconductor wafer fabrication equipment. All material operating units qualify for aggregation under SFAS 131 due to their similar: economic characteristics; nature of products and services; procurement, manufacturing and distribution processes; and customer base. Since Applied operates in one segment, all required information regarding segment revenues, profit and total assets can be obtained from the consolidated condensed financial statements.

### 12) Recent Accounting Pronouncements

In June 1998, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 133 (SFAS 133), "Accounting for Derivative Instruments and Hedging Activities." Applied will adopt SFAS 133 in the first fiscal quarter of 2001, and does not expect the adoption to have a material effect on its financial condition or results of operations.

In December 1999, the Securities and Exchange Commission issued Staff Accounting Bulletin No. 101 (SAB 101), "Revenue Recognition in Financial Statements." SAB 101 provides guidance on the recognition, presentation and disclosure of revenue in financial statements. Applied is required to adopt SAB 101 in the fourth fiscal quarter of 2001. Management has not yet determined the potential effect of the implementation of SAB 101 on Applied's financial condition or results of operations. However, since the implementation of SAB 101 could result in changes to the timing of Applied's revenue recognition, its effect could be material and adverse to Applied's financial condition and results of operations in the period of implementation.

## **Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

Certain information contained in this Quarterly Report on Form 10-Q is forward-looking in nature. All statements included in this Quarterly Report on Form 10-Q or made by management of Applied Materials, Inc. and its subsidiaries (Applied), other than statements of historical fact, are forward-looking statements. Examples of forward-looking statements include statements regarding Applied's future financial results, operating results, business strategies, projected costs, products, competitive positions and plans and objectives of management for future operations. In some cases, forward-looking statements can be identified by terminology

such as "may," "will," "should," "would," "expects," "plans," "anticipates," "believes," "estimates," "predicts," "potential," "continue," or the negative of these terms or other comparable terminology. Any expectations based on these forward-looking statements are subject to risks and uncertainties and other important factors, including those discussed in the section below entitled "Trends, Risks and Uncertainties" and in Note 12 of Notes to Consolidated Condensed Financial Statements in this Form 10-Q. Other risks and uncertainties are disclosed in Applied's prior SEC filings, including its Annual Report on Form 10-K for the fiscal year ended October 31, 1999. These and many other factors could affect Applied's future financial and operating results, and could cause actual results to differ materially from expectations based on forward-looking statements made in this document or elsewhere by Applied or on its behalf.

All historical financial information presented herein has been restated to reflect the acquisition of Etec Systems, Inc. (Etec), which was completed on March 29, 2000 and accounted for as a pooling-of-interests.

## **Results of Operations**

Applied is a supplier of semiconductor manufacturing equipment and services to the global semiconductor industry. Historically, the semiconductor and semiconductor manufacturing equipment industries have been cyclical; for this and other reasons, Applied's results of operations for the three and nine months ended July 30, 2000 may not necessarily be indicative of future operating results.

During the last fiscal quarter of 1998 and first fiscal quarter of 1999, the semiconductor and semiconductor manufacturing equipment industries began to emerge from a severe downturn and entered a period of expansion. As a result of the industry expansion, new orders and net sales have increased sequentially each quarter since the beginning of fiscal 1999. Strong demand for Applied's products has been driven by semiconductor manufacturers' needs for additional capacity and new technology to meet strong consumer demand for Internet, communications and digital devices. In addition, the semiconductor industry has been transitioning to smaller device sizes, new materials, such as copper, and 300mm wafer processing, all of which require new manufacturing equipment.

Applied received record new orders of \$3.3 billion for the third fiscal quarter of 2000 versus \$2.9 billion for the second fiscal quarter of 2000 and \$1.5 billion for the third fiscal quarter of 1999. New orders by region were as follows (dollars in millions):

	Three Months Ended			
	April 30, 2000		July 30, 2000	
	(\$)	(%)	(\$)	(%)
North America*	735	25	985	30
Taiwan	741	25	505	15
Japan	425	15	773	24
Europe	410	14	485	15
Korea	290	10	230	7
Asia-Pacific	327	11	297	9
<b>Total</b>	<b>2,928</b>	<b>100</b>	<b>3,275</b>	<b>100</b>

\* Primarily the United States.

New orders for the third fiscal quarter of 2000 represented the sixth consecutive quarter of sequential growth. The increase in new orders was primarily due to the factors mentioned above. Applied's backlog at July 30, 2000 was \$3.7 billion, compared to \$3.2 billion at April 30, 2000 and \$2.4 billion at January 30, 2000.

Net sales for the third fiscal quarter of 2000 increased 25 percent from the second fiscal quarter of 2000, and increased 83 percent from the third fiscal quarter of 1999. Net sales for the third fiscal quarter of 2000 achieved a record for the fifth consecutive quarter. Net sales for the nine months ended July 30, 2000 increased 91 percent from the comparable period in 1999. The increase in net sales was due primarily to the factors mentioned above. Net sales by region were as follows (dollars in millions):

	Three Months Ended				Nine Months Ended			
	August 1, 1999		July 30, 2000		August 1, 1999		July 30, 2000	
	(\$)	(%)	(\$)	(%)	(\$)	(%)	(\$)	(%)
North America*	498	33	720	26	1,299	37	1,666	25
Taiwan	366	25	673	25	659	19	1,743	26
Japan	261	17	366	13	620	18	1,047	16
Europe	217	15	399	15	500	15	964	14
Korea	58	4	251	9	222	6	643	10
Asia-Pacific	91	6	323	12	183	5	581	9
<b>Total</b>	<b>1,491</b>	<b>100</b>	<b>2,732</b>	<b>100</b>	<b>3,483</b>	<b>100</b>	<b>6,644</b>	<b>100</b>



\* Primarily the United States.

Applied's gross margin was 50.9 percent for the third fiscal quarter of 2000, compared to 50.1 percent for the second fiscal quarter of 2000 and 48.0 percent for the third fiscal quarter of 1999. Gross margin for the nine months ended July 30, 2000 was 50.4 percent, compared to 46.5 percent for the comparable period of fiscal 1999. Increases from prior year periods were caused primarily by higher business volume. During the second fiscal quarter of 2000, Applied recorded a one-time, pre-tax expense of \$6.5 million in cost of products sold to conform Etec's accounting policies to those of Applied.

Excluding non-recurring items, operating expenses were 21 percent of net sales for the three months ended July 30, 2000, compared to 26 percent for the third fiscal quarter of 1999, and 22 percent of sales for the first nine months of fiscal 2000, compared to 30 percent for the nine months ended August 1, 1999. The decreases can be attributed primarily to increased business volume in fiscal 2000. In terms of absolute dollars, operating expenses for the three and nine months ended July 30, 2000 were significantly higher than those for the comparable periods of fiscal 1999. Research and development spending increased primarily to support the semiconductor industry's transition to 300mm wafer processing, new materials (including copper) and smaller chip features. Marketing, selling, general and administrative expenses increased to support Applied's increased business volume. During the second fiscal quarter of 2000, Applied recorded a one-time, pre-tax operating expense of \$7.5 million in general and administrative expenses to conform Etec's accounting policies to those of Applied.

There were no non-recurring items or income for the third fiscal quarter of 2000. For prior periods, see Notes 8 and 9 of Notes to Consolidated Condensed Financial Statements in this Form 10-Q.

Net interest income for the three and nine months ended July 30, 2000 was \$36 million and \$90 million, respectively, compared to \$15 million and \$42 million for the comparable periods of fiscal 1999. The increases can be attributed primarily to higher average cash and investment balances.

Applied's effective income tax rate for the three months ended July 30, 2000 was 30 percent, compared to 31 percent for the three months ended August 1, 1999. The lower rate resulted primarily from a shift in the geographic composition of pre-tax income to entities operating in countries with lower tax rates.

### **Financial Condition, Liquidity and Capital Resources**

Applied's financial condition at July 30, 2000 remained strong, with a ratio of current assets to current liabilities of 3.2:1, compared to 3.1:1 at October 31, 1999. Applied had cash, cash equivalents and short-term investments of \$3.7 billion at July 30, 2000.

For the nine months ended July 30, 2000, cash, cash equivalents and short-term investments increased by \$928 million. Significant sources of cash were net income (excluding depreciation and amortization expense), proceeds from stock issuances, and increases in income taxes payable and accounts payable and accrued expenses. These sources of cash were partially offset by uses of working capital, particularly increases in accounts receivable and inventories, and capital expenditures required to support Applied's increased business volume. For further details, see the Consolidated Condensed Statements of Cash Flows in this Form 10-Q.

Applied utilized programs to sell accounts receivable of \$1.1 billion during the nine months ended July 30, 2000. Receivable sales have the effect of increasing cash and reducing accounts receivable and days sales outstanding. For further details regarding accounts receivable sales, see Note 4 of Notes to Consolidated Condensed Financial Statements in this Form 10-Q.

As of July 30, 2000, Applied's principal sources of liquidity consisted of \$3.7 billion of cash, cash equivalents and short-term investments and approximately \$600 million of existing credit facilities. Applied's liquidity is affected by many factors, some of which are based on the normal ongoing operations of the business, and others of which relate to the uncertainties of global economies and the semiconductor and semiconductor equipment industries. Although Applied's cash requirements fluctuate based on the timing and extent of these factors, Applied believes that cash generated from operations, together with the liquidity provided by existing cash balances and borrowing capability, will be sufficient to satisfy liquidity requirements for the next 12 months.

### **Trends, Risks and Uncertainties**

#### **The industry that Applied serves is highly volatile and unpredictable.**

The semiconductor industry has historically been cyclical because of sudden changes in customer capacity requirements and demand for semiconductors, which may affect the timing and amounts of capital equipment purchases by customers. The health of the semiconductor manufacturing equipment industry is affected by these semiconductor industry cycles, the timing, length and severity of which are difficult to predict. Although semiconductors are used in many different products, the markets for those products are interrelated to various degrees. During periods of rapid growth, Applied must be able to acquire and/or develop sufficient manufacturing capacity and inventory to meet customer demand, and to attract, hire, assimilate and retain a sufficient number of qualified people. During periods of declining demand for semiconductor manufacturing equipment, customers may reduce purchases, delay delivery of products and/or cancel orders. Therefore, Applied must be able to quickly and effectively align its cost structure with prevailing market conditions, to manage its inventory levels in order to reduce the possibility of future inventory write-downs resulting from obsolescence, and to motivate and retain key employees. If Applied is unable to achieve its objectives in a timely manner during these industry cycles, there could be a material adverse effect on its financial condition and results of operations.

#### **Applied operates in a highly competitive industry characterized by increasingly rapid technological changes.**

Applied's competitive advantage and future success depend on its ability to successfully: develop new products and technologies;

develop new markets in the semiconductor industry for its products and services; introduce new products to the marketplace in a timely manner; qualify new products with its customers; and commence and adjust production to meet customer demands. The introduction of new products and technologies, including those to support the transition to 300mm systems, grows increasingly complex over time. If Applied does not develop and introduce new products and technologies in a timely manner in response to changing market conditions or customer requirements, its financial condition and results of operations could be materially and adversely affected.

**Applied is exposed to the risks of operating a global business.**

Managing Applied's global operations presents challenges that could materially and adversely affect demand for Applied's systems and related services. These challenges include cultural diversities, periodic economic downturns, trade balance issues, political instability and fluctuations in interest and currency exchange rates, among other risks.

**Failure of critical suppliers to deliver sufficient quantities of product in a timely and cost-effective manner could negatively affect Applied's business.**

Applied uses numerous vendors to supply parts, components and subassemblies (collectively "parts") for the manufacture and support of its products. In addition, some key parts may be obtained only from a single supplier or a limited group of suppliers. If Applied does not receive a sufficient quantity of parts in a timely and cost-effective manner to meet its production requirements, Applied's results of operations may be materially and adversely affected.

**Applied is exposed to risks associated with acquisitions.**

Applied has made, and may in the future make, acquisitions of, or significant investments in, businesses with complementary products, services and/or technologies. Acquisitions involve numerous risks, including, but not limited to: 1) difficulties and increased costs in connection with integration of the personnel, operations, technologies and products of acquired companies; 2) diversion of management's attention from other operational matters; 3) the potential loss of key employees of acquired companies; 4) lack of synergy, or the inability to realize expected synergies, resulting from the acquisition; and 5) acquired intangible assets becoming impaired as a result of technological advancements or worse-than-expected performance of the acquired company. In addition, the Financial Accounting Standards Board has indicated that it plans to rescind the pooling-of-interests method of acquisition accounting. This could result in significant charges from amortization of intangible assets recorded in connection with future acquisitions, and may alter Applied's acquisition strategy. Mergers and acquisitions, including Applied's acquisition of Etec, are inherently risky and the inability to effectively manage these risks could materially and adversely affect Applied's business, financial condition and results of operations.

**Applied is subject to risks of non-compliance with environmental regulations.**

Applied is subject to environmental regulations in connection with its business operations, including but not limited to regulations related to the development, manufacturing and use of its products. From time to time, Applied receives notices alleging violations of these regulations. It is Applied's policy to respond promptly to these notices and to take any necessary corrective actions. Failure or inability to comply with existing or future environmental regulations could result in significant remediation liabilities, the imposition of fines and/or the suspension or termination of development, manufacturing or use, each of which could have a material adverse effect on Applied's financial condition and results of operations.

**Applied is exposed to various risks related to legal proceedings or claims.**

Applied currently is, and in the future may be, involved in legal proceedings or claims regarding patent infringement, intellectual property rights, antitrust, environmental regulations, contracts and other matters (see Part II below). These legal proceedings and claims, whether with or without merit, could be time-consuming and expensive to defend, and could divert management's attention and resources. There can be no assurance regarding the outcome of current or future legal proceedings or claims. If Applied is not able to resolve a claim, negotiate a settlement of the matter, obtain necessary licenses on commercially reasonable terms, and/or successfully prosecute or defend its position, Applied's financial condition and results of operations could be materially and adversely affected.

**Manufacturing interruptions or delays could affect Applied's ability to meet customer demand.**

Applied's business depends on its ability to manufacture products that meet the rapidly changing demands of its customers. Significant interruptions of manufacturing operations as a result of natural disasters, software issues, infrastructure failure, or other cause, could result in delayed product deliveries or manufacturing inefficiencies, any or all of which could materially and adversely affect Applied's financial condition and results of operations.

**Item 3. Quantitative and Qualitative Disclosures About Market Risk**

Applied purchases forward exchange and currency option contracts to hedge certain existing firm commitments and foreign currency denominated transactions expected to occur during the next year. Gains and losses on these contracts are recognized in income when the related transactions being hedged are recognized. Because the effect of movements in currency exchange rates on forward exchange and currency option contracts generally offsets the related effect on the underlying items being hedged, these financial instruments are not expected to subject Applied to risks that would otherwise result from changes in currency exchange rates. Net foreign currency gains and losses were not material for the three or nine months ended July 30, 2000.

Applied has performed an analysis to assess the potential financial effect of reasonably possible near-term changes in interest and foreign currency exchange rates. Based upon Applied's analysis, the effect of such rate changes is not expected to be material to Applied's cash flows, financial condition or results of operations.

## PART II. OTHER INFORMATION

### Item 1. Legal Proceedings

#### Varian and Novellus

On June 13, 1997, Applied filed a lawsuit against Varian Associates, Inc. (Varian) captioned Applied Materials, Inc. v. Varian Associates, Inc. (case no. C-97-20523-RMW) in the United States District Court for the Northern District of California. This lawsuit alleges infringement of several of Applied's patents for physical vapor deposition (PVD) technology. The complaint was later amended on July 7, 1997 to include Novellus Systems, Inc. (Novellus) as a defendant as a result of Novellus' acquisition of Varian's thin film systems PVD business. Applied seeks damages for past infringement, a permanent injunction, treble damages for willful infringement, pre-judgment interest and attorneys' fees. Varian answered the complaint by denying all allegations, counterclaiming for declaratory judgment of invalidity and unenforceability and alleging conduct by Applied in violation of antitrust laws. On June 23, 1997, Novellus filed a separate lawsuit against Applied captioned Novellus Systems, Inc. v. Applied Materials, Inc. (case no. C-97-20551-EAI) in the United States District Court for the Northern District of California. Novellus' lawsuit alleges infringement by Applied of three PVD technology patents that were formerly owned by Varian. On July 8, 1997, Varian filed a separate lawsuit against Applied captioned Varian Associates, Inc. v. Applied Materials, Inc. (case no. C-97-20597-PVT) in the United States District Court for the Northern District of California. Varian's lawsuit alleges a broad range of conduct by Applied in violation of federal antitrust laws and state unfair competition and business practice laws. On July 16, 1999, Varian was granted permission to file a First Amended Complaint in that action. On November 8, 1999, the Court granted in part Applied's partial motion to dismiss the First Amended Complaint. On December 10, 1999, Varian filed its Second Amended Complaint and Applied has answered. Discovery has commenced in these actions. The Court has scheduled trial of all patent claims for April 2001. No other trial dates have been set. Applied believes it has meritorious claims and defenses and intends to pursue them vigorously.

#### Plasma Physics

On April 17, 2000, Applied filed a lawsuit in the United States District Court for the Eastern District of New York captioned Applied Materials, Inc. v. Plasma Physics Corp. ("PPC") and Solar Physics Corp. ("SPC") (case no. CV-00-2199). The lawsuit seeks a judicial declaration that Applied's chemical vapor deposition equipment does not infringe two patents owned by PPC and exclusively licensed to SPC ("the two patents") and/or that those patents are invalid or unenforceable. On July 31, 2000, PPC and SPC answered the complaint and filed a conditional counterclaim alleging infringement by Applied of the two patents. PPC and SPC seek an injunction prohibiting future infringement and an award of costs, expenses and attorneys' fees. The counterclaim is conditional because PPC and SPC have stated that they will not sue Applied for infringement of the two patents if the Court dismisses the lawsuit initiated by Applied for lack of subject matter jurisdiction. No trial date has been set.

Applied is subject to various other legal proceedings and claims, either asserted or unasserted, that arise in the ordinary course of business. Although the outcome of these claims cannot be predicted with certainty, Applied does not believe that any of these other legal matters will have a material adverse effect on its financial condition or results of operations.

### Item 5. Other Information

The ratio of earnings to fixed charges for the nine months ended August 1, 1999 and July 30, 2000, and for each of the last five fiscal years, was as follows:

Fiscal Year					Nine Months Ended	
1995	1996	1997	1998	1999	August 1, 1999	July 30, 2000
18.81x	19.44x	19.01x	7.56x	14.03x	12.10x	22.01x

### Item 6. Exhibits and Reports on Form 8-K

a) Exhibits are numbered in accordance with the Exhibit Table of Item 601 of Regulation S-K:

3(ii)(a) Amendment to the Bylaws of Applied Materials, Inc. dated as of June 22, 2000.

3(ii)(b) Bylaws of Applied Materials, Inc., as amended and restated through June 22, 2000.

27.0 Financial Data Schedule for the nine months ended July 30, 2000: filed electronically.

b) Applied did not file any reports on Form 8-K during its third fiscal quarter of 2000.

## 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.

APPLIED MATERIALS, INC.

September 7, 2000

By: /s/ Joseph R. Bronson

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Joseph R. Bronson  
*Senior Vice President, Office of the President,  
Chief Financial Officer and Chief Administrative Officer*

By: /s/ Patrick Crom

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Patrick Crom  
*Vice President, Global Controller and  
Chief Accounting Officer*

## EXHIBIT INDEX

EXHIBIT NUMBER -----	DESCRIPTION -----
3(ii)(a)	Amendment to the Bylaws of Applied Materials, Inc. dated as of June 22, 2000.
3(ii)(b)	Bylaws of Applied Materials, Inc., as amended and restated through June 22, 2000.
27.0	Financial Data Schedule for the nine months ended July 30, 2000: filed electronically.

RESOLUTIONS OF THE  
BOARD OF DIRECTORS OF  
APPLIED MATERIALS, INC.

Adopted on June 22, 2000

AMENDMENT TO BYLAWS

RESOLVED that Section 2.13 of the Bylaws of this Company be amended to read in full as follows:

"2.13 Proxies. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by a proxy, but no such proxy shall be voted or acted upon after one year from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only so long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally."

RESOLVED, FURTHER, that Section 4.1 of the Bylaws of this Company be amended to read in full as follows:

"4.1 Committees of Directors. To the fullest extent provided by law, the board of directors may, by resolution passed by a majority of the whole board, designate one or more committees, each committee to consist of one or more of the directors of the corporation. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors, or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it."

BYLAWS

OF

APPLIED MATERIALS, INC.  
(a Delaware corporation)

(Amended to June 22, 2000)

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BYLAWS  
OF  
APPLIED MATERIALS, INC.

ARTICLE I

OFFICES

1.1 Registered Office. The registered office of the corporation in the State of Delaware shall be Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of the registered agent of the corporation at such location is The Corporation Trust Company.

1.2 Other Offices. The corporation may also have offices at such other places both within and without the State of Delaware as the board of directors may from time to time determine or the business of the corporation may require.

ARTICLE II

STOCKHOLDERS

2.1 Place of Meetings. Meetings of stockholders shall be held at such place, either, within or without the State of Delaware, as may be designated by the board of directors. In the absence of any such designation, stockholders' meetings shall be held at the corporation's principal executive offices.

2.2 Annual Meeting. The annual meeting of stockholders shall be held each year on a date and at a time designated by the board of directors. At the meeting, directors shall be elected and any other proper business may be transacted.

2.3 Special Meeting. Special meetings of the stockholders may be called at any time by the board of directors, or by the chairman of the board, or by the president of the corporation.

If a special meeting is called by any person or persons other than the board of directors, the request shall be in writing, specifying the time of such meeting and the general nature of

the business proposed to be transacted, and shall be delivered personally or sent by registered mail or by telegraphic or other facsimile transmission to the chairman of the board, the president, any vice president, or the secretary of the corporation. No business may be transacted at such special meeting otherwise than specified in such notice. The officer receiving the request shall cause notice to be promptly given to the stockholders entitled to vote, in accordance with the provisions of Sections 4 and 5 of this Article II, that a meeting will be held at the time requested by the person or persons calling the meeting, not less than 35 nor more than 60 days after the receipt of the request. If the notice is not given within 20 days after the receipt of the request, the person or persons requesting the meeting may give the notice. Nothing contained in this paragraph of this Section 3 shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the board of directors may be held.

**2.4 Notice of Stockholders' Meetings.** All notices of meetings with stockholders shall be in writing and shall be sent or otherwise given in accordance with Section 2.5 of these bylaws not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting. The notice shall specify the place, date, and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

**2.5 Advance Notice of Stockholder Nominees.** No nominations for director of the corporation by any person other than the board of directors shall be presented to any meeting of stockholders unless the person making the nomination is a record stockholder and shall have delivered a written notice to the secretary of the corporation no later than the close of business forty-five days prior to the month and day of mailing the prior year's proxy statement. Such notice shall (i) set forth the name and address of the person advancing such nomination and the nominee, together with such information concerning the person making the nomination and the nominee as would be required by the appropriate Rules and Regulations of the Securities and Exchange Commission to be included in a proxy statement soliciting proxies for the election of such nominee, and (ii) shall include the duly executed written consent of such nominee to serve as director if elected.

No proposal by any person other than the board of directors shall be submitted for the approval of the stockholders at any regular or special meeting of the stockholders of the corporation unless the person advancing such proposal shall have delivered a written notice to the secretary of the corporation no later than the close of business forty-five days prior to the month and day of mailing the prior year's proxy statement. Such notice shall set forth the name and address of the person advancing the proposal, any material interest of such person in the proposal, and such other information concerning the person making such proposal and the proposal itself as would be required by the appropriate Rules and Regulations of the Securities and Exchange Commission to be included in a proxy statement soliciting proxies for the proposal.

**2.6 Manner of Giving Notice; Affidavit of Notice.** Written notice of any meeting of stockholders, if mailed, is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his address as it appears on the records of the corporation. An affidavit of the secretary or an assistant secretary or of the transfer agent of the corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

**2.7 Quorum.** The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the certificate of incorporation. Except as otherwise required by law, the certificate of incorporation or these bylaws, the affirmative vote of the majority of such quorum shall be deemed the act of the stockholders. If, however, such quorum is not present or represented at any meeting of the stockholders, then either (i) the chairman of the meeting or (ii) the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.

**2.8 Adjourned Meeting; Notice.** When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business that might have been transacted at the original meeting. 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 shall be given to each stockholder of record entitled to vote at the meeting.

**2.9 Conduct of Business.** The chairman of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of business.

**2.10 Voting.** Except as may be otherwise provided in the certificate of incorporation, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder. Voting may be by voice or by ballot as the presiding

officer of the meeting of the stockholders shall determine. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by such stockholder's proxy, and shall state the number of shares voted.

**2.11 Waiver of Notice.** Whenever notice is required to be given under any provision of the General Corporation Law of Delaware or of the certificate of incorporation or these bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice unless so required by the certificate of incorporation or these bylaws.

**2.12 Record Date for Stockholder Notice; Voting; Giving Consents.** In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or 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 10 days before the date of such meeting, nor more than 60 days prior to any other action.

If the board of directors does not so fix a record date:

(i) The record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

(ii) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting.

**2.13 Proxies.** Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by a proxy, but no such proxy shall be voted or acted upon after one year from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the corporation generally.

## ARTICLE III

### DIRECTORS

**3.1 Powers.** The business and affairs of the corporation shall be managed by or under the direction of the board of directors, except as otherwise provided in the General Corporation Law of the State of Delaware or in the certificate of incorporation.

**3.2 Number of Directors.** The board of directors shall consist of ten (10) persons until changed by a proper amendment of this Section 3.2.

No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

**3.3 Election, Qualification and Term of Office of Directors.** Except as provided in Section 3.4 of these bylaws, directors shall be elected at each annual meeting of stockholders. Directors need not be stockholders. Each director, including a director elected to fill a vacancy, shall hold office until his successor is elected and qualified or until his earlier resignation or removal.

Elections of directors need not be by written ballot.

**3.4 Resignation and Vacancies.** Any director may resign at any time upon written notice to the attention of the secretary of the corporation. When one or more directors so resigns and the resignation is effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this section in the filling of other vacancies.

Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the certificate of incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

If at any time, by reason of death or resignation or other cause, the corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the certificate of incorporation or these bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the General Corporation Law of Delaware.

If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole board (as constituted immediately prior to any such increase), then the Court of Chancery may, upon application of any stockholder or stockholders holding at least ten percent (10%) of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the General Corporation Law of Delaware as far as applicable.

The stockholders may elect a director at any time to fill any vacancy not filled by the directors.

If a vacancy is the result of action taken by the shareholders under Section 3.13 of these bylaws, then the vacancy shall be filled by the holders of a majority of the shares then entitled to vote at an election of directors.

**3.5 Place of Meetings; Meetings by Telephone.** The board of directors of the corporation may hold meetings, both regular and special, either within or outside the State of Delaware.

Members of the board of directors, or any committee designated by the board of directors, may participate in a meeting of the board of directors, or any committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this bylaw shall constitute presence in person at the meeting.

**3.6 Regular Meetings.** Regular meetings of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by the board.

**3.7 Special Meetings; Notice.** Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairman of the board, the president, any vice president, the secretary or any two directors.

Notice of the time and place of special meetings shall be delivered personally or by telephone to each director or sent by first-class mail or telegram, charges prepaid, addressed to each director at that director's address as it is shown on the records of the corporation.

If the notice is mailed, it shall be deposited in the United States mail at least four days before the time of the holding of the meeting. If the notice is delivered personally or by telephone or by telegram, it shall be delivered personally or by telephone or to the telegraph company at least 48 hours before the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. The notice need not specify the purpose or the place of the meeting, if the meeting is to be held at the principal executive office of the corporation.

**3.8 Quorum.** At all meetings of the board of directors, a majority of the authorized number of directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board of directors, except as may be otherwise specifically provided by statute or by the certificate of incorporation. If a quorum is not present at any meeting of the board of directors, then the directors present thereat may adjourn the meeting from time to time, without notice other than the announcement at the meeting, until a quorum is present.

A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

**3.9 Waiver of Notice.** Whenever notice is required to be given under any provision of the General Corporation Law of Delaware or of the certificate of incorporation or these bylaws, a written waiver thereof, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the directors, or members of a committee of directors, need be specified in any written waiver of notice unless so required by the certificate of incorporation or these bylaws.

**3.10 Board Action by Written Consent Without a Meeting.** Any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof, may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing and the writing or writings are filed with the minutes of proceedings of the board or committee.

**3.11 Fees and Compensation of Directors.** The board of directors shall have the authority to fix the compensation of directors.

**3.12 Approval of Loans to Officers.** The corporation may lend money to, or guarantee any obligations of, or otherwise assist any officer or other employee of the corporation or any of its subsidiaries, including any officer or employee who is a director of the corporation or any of its subsidiaries, whenever, in the judgment of the directors, such loan, guaranty or assistance, or an employee benefit or employee financial assistance plan adopted by the board of directors or any committee thereof authorizing any such loan, guaranty or assistance, may reasonably be expected to benefit the corporation. The loan, guaranty or other assistance may be with or without interest and may be unsecured, or secured in such a manner as the board of directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in this section contained shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

**3.13 Removal of Directors.** Any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

**3.14 Chairman of the Board of Directors.** The corporation may also have, at the discretion of the board of directors, a chairman of the board of directors who may be considered an officer of the corporation.

**3.15 Retirement of Directors.** No member of the board of directors shall stand for reelection to membership on the board of directors after attaining age 70. The provisions of Section 3.15 of these bylaws may be waived under extraordinary circumstances as to specific members by action of the board of directors.

## COMMITTEES

4.1 Committees of Directors. To the fullest extent provided by law, the board of directors may, by resolution passed by a majority of the whole board, designate one or more committees, each committee to consist of one or more of the directors of the corporation. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors, or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it.

4.2 Committee Minutes. Each committee shall keep regular minutes of its meetings and report the same to the board of directors when required.

4.3 Meetings and Action of Committees. Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of Article III of these bylaws, Section 3.5 (place of meetings and meetings by telephone), Section 3.6 (regular meetings), Section 3.7 (special meetings and notice), Section 3.8 (quorum), Section 3.9 (waiver of notice), and Section 3.10 (action without a meeting), with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the board of directors and its members; provided, however, that the time of regular meetings of committees may be determined either by resolution of the board of directors or by resolution of the committee, that special meetings of committees may also be called by resolution of the board of directors and that notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The board of directors may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

## ARTICLE V

### OFFICERS

5.1 Officers. The officers of the corporation shall be a president, a chief financial officer (who may be a vice president or treasurer of the corporation) and a secretary. The corporation may also have, at the discretion of the board of directors, a chairman of the board of directors, one or more senior vice presidents and one or more other officers. One or more officers may be appointed in accordance with the provisions of Section 5.3 of these bylaws. Any number of offices may be held by the same person.

5.2 Election of Officers. The officers of the corporation, except such officers as may be appointed in accordance with the provisions of Sections 5.3 or 5.5 of these bylaws, shall be elected by the board of directors.

5.3 Appointed Officers. The chief executive officer of the corporation, or such other officer as the board of directors shall select, may appoint, or the board of directors may appoint, such officers and agents of the corporation as, in his or their judgment, are necessary to conduct the business of the corporation. Each such officer shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the board of directors or the chief executive officer may from time to time determine.

5.4 Removal and Resignation of Officers. Any officer may be removed, either with or without cause, by an affirmative vote of the majority of the board of directors at any regular or special meeting of the board or, except in the case of an officer elected by the board of directors, by the chief executive officer or such other officer upon whom such power of removal may be conferred by the board of directors.

Any officer may resign at any time by giving written notice to the corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

5.5 Vacancies in Offices. Any vacancy occurring in any office of the corporation shall be filled by the board of directors, except for vacancies in the offices of subordinate officers which may be filled pursuant to Section 5.3

hereof.

**5.6 Chairman of the Board.** The chairman of the board, if such an officer be elected, shall, if present, preside at meetings of the board of directors and the stockholders and exercise and perform such other powers and duties as may be from time to time assigned by the board of directors or prescribed by the bylaws.

**5.7 President.** Subject to such supervisory powers, if any, as may be given by the board of directors to the chairman of the board, the president shall be the chief executive officer of the corporation and shall, subject to the control of the board of directors, have general supervision, direction, and control of the business and the officers of the corporation. In the absence or nonexistence of a chairman of the board, he shall preside at all meetings of the stockholders and at all meetings of the board of directors. He shall have the general powers and duties of management usually vested in the office of president of a corporation and shall have such other powers and duties as may be prescribed by the board of directors or these bylaws.

**5.8 Senior Vice Presidents and Vice Presidents.** In the absence or disability of the president, the vice presidents, if any, in order of their rank as fixed by the board of directors or, if not ranked, a vice president designated by the board of directors, shall perform all the duties of the president and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the board of directors, these bylaws, the president or the chairman of the board.

**5.9 Secretary.** The secretary shall keep or cause to be kept, at the principal executive office of the corporation or such other place as the board of directors may direct, a book of minutes of all meetings and actions of directors, committees of directors, and stockholders. The minutes shall show the time and place of each meeting, the names of those present at directors' meetings or committee meetings, the number of shares present or represented at stockholders' meetings, and the proceedings thereof.

The secretary shall keep, or cause to be kept, at the principal executive office of the corporation or at the office of the corporation's transfer agent or registrar, as determined by resolution of the board of directors, a share register, or a duplicate share register, showing the names of all stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates evidencing such shares, and the number and date of cancellation of every certificate surrendered for cancellation.

The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the board of directors required to be given by law or by these bylaws. He shall keep the seal of the corporation, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the board of directors or by these bylaws.

**5.10 Chief Financial Officer.** The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital retained earnings, and shares. The books of account shall at all reasonable times be open to inspection by any director.

The chief financial officer shall deposit all moneys and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the board of directors. He shall disburse the funds of the corporation as may be ordered by the board of directors, shall render to the president and directors, whenever they request it, an account of all his transactions as chief financial officer and of the financial condition of the corporation, and shall have other powers and perform such other duties as may be prescribed by the board of directors or the bylaws.

**5.11 Representation of Shares of Other Corporations.** The chairman of the board, the president, any vice president, the treasurer, the secretary or assistant secretary of this corporation, or any other person authorized by the board of directors or the president or a vice president, is authorized to vote, represent, and exercise on behalf of this corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

**5.12 Authority and Duties of Officers.** In addition to the foregoing authority and duties, all officers of the corporation shall respectively have such authority and perform such duties in the management of the business of the corporation as may be designated from time to time by the board of directors.

## ARTICLE VI

### RECORDS AND REPORTS

6.1 Maintenance and Inspection of Records. The corporation shall, either at its principal executive offices or at such place or places as designated by the board of directors, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these bylaws as amended to date, accounting books, and other records.

Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its stockholders, and its other books and records and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent is the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing that authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in Delaware or at its principal place of business.

6.2 Inspection by Directors. Any director shall have the right to examine the corporation's stock ledger, a list of its stockholders, and its other books and records for a purpose reasonably related to his position as a director. The Court of Chancery is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The Court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger, and the stock list and to make copies or extracts therefrom. The Court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the Court may deem just and proper.

## ARTICLE VII

### GENERAL MATTERS

7.1 Execution of Corporate Contracts and Instruments. The board of directors, except as otherwise provided in these bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the board of directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

7.2 Stock Certificates; Partly Paid Shares. The shares of a corporation shall be represented by certificates, provided that the board of directors of the corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Notwithstanding the adoption of such a resolution by the board of directors, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of the corporation by the chairman or vice-chairman of the board of directors, or the president or vice president, and by the chief financial officer, the treasurer, or an assistant treasurer, or the secretary or an assistant secretary of such corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

The corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, or upon the books and records of the corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.



7.3 Special Designation on Certificates. If the corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the 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 that the corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that 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, the designations, the preferences, and the 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.

7.4 Lost Certificates. The corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or his legal representative to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

7.5 Construction; Definitions. Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the Delaware General Corporation Law shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a corporation and a natural person.

7.6 Dividends. The directors of the corporation, subject to any restrictions contained in the General Corporation Law of Delaware or the certificate of incorporation, may declare and pay dividends upon the shares of its capital stock. Dividends may be paid in cash, in property, or in shares of the corporation's capital stock.

The directors of the corporation may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

7.7 Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the board of directors and may be changed by the board of directors.

7.8 Seal. The board of directors may adopt a corporate seal, and may use the same by causing it or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

## ARTICLE VIII

### AMENDMENTS

8.1 Amendments. The bylaws of the corporation may be altered, amended or repealed or new bylaws may be adopted by either the (i) board of directors or (ii) stockholders upon the affirmative vote of the holders of not less than a majority of the total voting power of all issued and outstanding shares of stock in this corporation entitled to vote thereon.

