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

FORM 10-Q

(Mark One)

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

For the quarterly period ended March 31, 2003

OR

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

For the transition period from _____ to _____

Commission file number: 0-28740

MIM CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation
or organization)

05-0489664
(I.R.S. Employer Identification No.)

100 Clearbrook Road, Elmsford, NY 10523
(Address of principal executive offices)

(914) 460-1600
(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 (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 120-2 of the Exchange Act). Yes No

On May 9, 2003, there were outstanding 22,188,767 shares of the Company's common stock, \$.0001 par value per share.

Pursuant to the provisions of Rule 12b-25 the registrant has omitted the disclosure required by Item 2 of Part I of this Quarterly Report on Form 10-Q.

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PART I FINANCIAL INFORMATION

Item 1. Financial Statements

MIM CORPORATION AND SUBSIDIARIES CONSOLIDATED BALANCE SHEETS (In thousands, except share amounts)

	March 31, 2003	December 31, 2002
	(Unaudited)	
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 1,364	\$ 5,751
Receivables, less allowance for doubtful accounts of \$3,564 and \$3,483 at March 31, 2003 and December 31, 2002, respectively	80,062	75,512
Inventory	5,947	9,320
Prepaid expenses and other current assets	2,025	2,104
	<u>89,398</u>	<u>92,687</u>
Total current assets	89,398	92,687
Property and equipment, net	7,279	7,388
Deferred income tax	3,046	3,046
Other assets, net	581	704
Goodwill, net	61,085	61,085
Intangible assets, net	16,924	17,321
	<u>\$ 178,313</u>	<u>\$ 182,231</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Current portion of capital lease obligations	\$ 571	\$ 634
Line of credit	674	4,608
Accounts payable	12,769	17,302
Claims payable	39,995	34,869
Payables to plan sponsors	23,492	23,921
Accrued expenses and other current liabilities	7,876	6,252
	<u>85,377</u>	<u>87,586</u>
Total current liabilities	85,377	87,586
Capital lease obligations, net of current portion	335	430

Other non current liabilities	7	7
	<u>85,719</u>	<u>88,023</u>
Total liabilities		
Stockholders' equity:		
Common stock, \$.0001 par value; 40,000,000 shares authorized, 21,951,430 and 22,964,694 shares outstanding at March 31, 2003, and December 31, 2002, respectively	2	2
Treasury stock, 2,198,076 and 1,398,183 shares at cost at March 31, 2003, and December 31, 2002, respectively	(8,002)	(2,934)
Additional paid-in capital	120,700	120,651
Accumulated deficit	(20,106)	(23,511)
	<u>92,594</u>	<u>94,208</u>
Total stockholders' equity		
Total liabilities and stockholders' equity	<u>\$ 178,313</u>	<u>\$ 182,231</u>

The accompanying notes are an integral part of these consolidated financial statements.

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MIM CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF INCOME
(In thousands, except per share amounts)

	Three Months Ended March 31,	
	2003	2002
	(Unaudited)	
Revenue	\$ 162,152	\$ 151,651
Cost of revenue	<u>143,551</u>	<u>135,623</u>
Gross profit	18,601	16,028
Selling, general and administrative expenses	12,227	9,929
TennCare reserve adjustment	-	(851)
Amortization of intangibles	447	256
	<u>5,927</u>	<u>6,694</u>
Income from operations		
Interest expense, net	(252)	(186)
	<u>5,675</u>	<u>6,508</u>
Income before provision for income taxes		
Provision for income taxes	2,270	1,301
	<u>3,405</u>	<u>5,207</u>
Net income		
Basic income per common share	<u>\$ 0.15</u>	<u>\$ 0.23</u>
Diluted income per common share	<u>\$ 0.15</u>	<u>\$ 0.22</u>
Weighted average common shares used in computing basic income per common share	<u>22,560</u>	<u>22,541</u>
Weighted average common shares used in computing diluted income per common share	<u>22,899</u>	<u>23,991</u>

The accompanying notes are an integral part of these consolidated financial statements.

MIM CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Three Months Ended March 31,	
	2003	2002
	(Unaudited)	
Cash flows from operating activities:		
Net income	\$ 3,405	\$ 5,207
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	913	1,087
Amortization	473	256
TennCare reserve adjustment	-	(851)
Non cash compensation expense	34	36
Provision for losses on receivables	397	169
Changes in assets and liabilities, net of acquired assets:		
Receivables, net	(4,947)	(4,463)
Inventory	3,372	(2,185)
Prepaid expenses and other current assets	79	(158)
Accounts payable	(4,533)	1,482
Claims payable	5,126	14,654
Payables to plan sponsors and others	(429)	(1,946)
Accrued expenses and other current liabilities	1,624	(321)
	5,514	12,967
Cash flows from investing activities:		
Purchase of property and equipment, net of disposals	(804)	(735)
Cost of acquisitions, net of cash acquired	-	(35,024)
Decrease in due from officer	-	2,132
Decrease in other assets	49	6
	(755)	(33,621)
Cash flows from financing activities:		
Net borrowings on line of credit	(3,934)	9,014
Purchase of treasury stock	(5,068)	-
Proceeds from exercise of stock options	14	1,287
Principal payments on capital lease obligations	(158)	(144)
	(9,146)	10,157
Net decrease in cash and cash equivalents	(4,387)	(10,497)
Cash and cash equivalents--beginning of period	5,571	12,487
Cash and cash equivalents--end of period	\$ 1,364	\$ 1,990

(continued)

The accompanying notes are an integral part of these consolidated financial statements.

MIM CORPORATION AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(continued)
(In thousands)

	Three Months Ended March 31,	
	2003	2002
	(Unaudited)	
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:		
Cash paid during the period for interest	\$ 260	\$ 224
SUPPLEMENTAL DISCLOSURE OF NONCASH INFORMATION:		

The accompanying notes are an integral part of these consolidated financial statements.

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MIM CORPORATION AND SUBSIDIARIES
NOTES TO THE UNAUDITED CONSOLIDATED INTERIM FINANCIAL STATEMENTS
(In thousands, except per share amounts)

NOTE 1 - BASIS OF PRESENTATION

These unaudited consolidated interim financial statements should be read in conjunction with the MIM Corporation ("MIM") and Subsidiaries (collectively with MIM, the "Company") audited consolidated financial statements, notes and information included in MIM's Annual Report on Form 10-K for the fiscal year ended December 31, 2002 (the "Form 10-K") filed with the Commission. The audited consolidated financial statements have been prepared in accordance with accounting principals generally accepted in the United States ("GAAP") 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 GAAP 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. Operating results for the three months ended March 31, 2003 are not necessarily indicative of the results that may be expected for the year ending December 31, 2003. The accounting policies followed for interim financial reporting are similar to those disclosed in Note 2 of Notes to Consolidated Financial Statements included in Form 10-K. These accounting policies are described further below:

Consolidation

The consolidated financial statements include the accounts of MIM and its subsidiaries. All significant intercompany accounts and transactions have been eliminated in consolidation.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make certain estimates and assumptions. These estimates and assumptions affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Cash and Cash Equivalents

Cash and cash equivalents include demand deposits, overnight investments and money market accounts with maturities of 90 days or less.

Receivables

Receivables include amounts due from plan sponsors under the Company's PBM contracts, amounts due from pharmaceutical manufacturers for rebates, service fees resulting from the distribution of certain drugs through retail pharmacies and amounts due from certain third party payors.

Inventory

Inventory is stated at the lower of cost or market. Cost is determined using the first-in, first-out (FIFO) method. Inventory consists principally of purchased prescription drugs.

Claims Payable

The Company is responsible for covered prescriptions provided to plan members during the contract period. Claims payable includes estimates of certain prescriptions that were dispensed to members for whom the related claims had not yet been submitted.

Payables to Plan Sponsors

Payables to plan sponsors represent the sharing of pharmaceutical rebates with the plan sponsors and, on a limited basis, profit sharing plans with certain capitated contracts.

The Company estimates the portion of those pharmacy rebates that are shared with plan sponsors and adjusts pharmacy rebates payable to plan sponsors when the amounts are paid typically on a quarterly basis, or as significant events occur. These estimates are accrued periodically based on actual and estimated claims data and agreed upon contractual rebate sharing rates. The Company records any cumulative effect of these adjustments against costs as identified, and adjusts its estimates prospectively to consider recurring matters. Adjustments

Revenue Recognition

The Company generates revenue principally through the sale of prescription drugs which are dispensed either through a pharmacy participating in the Company's retail pharmacy network or a pharmacy owned by the Company. Revenue is derived under two types of agreements: (i) fee-for-service agreements, which accounted for approximately 91% of the Company's revenues in the three months ended March 31, 2003, and (ii) capitated agreements, which accounted for approximately 9%, or \$15,202, of the Company's revenues in the three months ended March 31, 2003.

Fee-For-Service Agreements. Fee-for-service agreements include (i) specialty and mail service agreements, where the Company dispenses prescription medications through its own pharmacy facilities and (ii) PBM agreements, where prescription medications are dispensed through pharmacies participating in the Company's retail pharmacy network. Under fee-for-service agreements, revenue is recognized either (a) when the pharmacy services are reported to the Company through the point of sale ("POS") claims processing system and the drug is dispensed to the member, in the case of a prescription filled through a pharmacy participating in the Company's retail pharmacy network, or (b) at the time the drug is dispensed, in the case of a prescription filled through a pharmacy owned by the Company.

Gross Vs. Net Revenue Recognition For Certain PBM Contracts. Revenue generated under PBM agreements is classified as gross or net by the Company based on whether it is acting as a principal or agent in the fulfillment of prescriptions through its retail pharmacy network. In making this determination, the Company evaluates each contract using the indicators set forth in Emerging Issues Task Force No. 99-19 "Reporting Gross Revenue as a Principal vs. Net as an Agent" ("EITF 99-19"). When the Company independently has a contractual obligation to pay a network pharmacy provider for benefits provided to its plan sponsors members, and has other indicators of risk and reward, the Company includes payments from these plan sponsors as revenue and payments to the network pharmacy providers as cost of revenue ('gross') in accordance with EITF 99-19, as these transactions require the Company to assume credit risk and act as a principal. If the Company was merely administering plan sponsors' network pharmacy contracts in which the Company does not assume credit risk, but acts as an agent, the Company records only the administrative or dispensing fees as revenue ('net').

Capitated Agreements. The Company's capitated contracts with plan sponsors require the Company to provide covered pharmacy services to plan sponsor members in return for a fixed fee per Member per month paid by the plan Sponsor. Capitated contracts have terms varying from six months to three years. At such time as management estimates that a contract will sustain losses over its remaining contractual life, a reserve is established for these estimated losses. There are currently no expected loss contracts.

Co-payments. When prescriptions are filled and the Company is the participating pharmacy, the Company is entitled to receive co-payments from its members and record these co-payments as revenue when the amounts are deemed collectible and reasonably estimable. When prescriptions are filled through its retail pharmacy networks, the Company is not entitled to these amounts and does not account for co-payments in its financial statements as these amounts are never billed or collected by the Company and it has no legal right or obligation to co-payments collected by the pharmacies in its retail network.

Cost of Revenue

Cost of revenue includes pharmacy claims, fees paid to pharmacies and other direct costs associated with pharmacy management, claims processing operations and mail order services, offset by volume rebates received from pharmaceutical manufacturers. The Company does not maintain cost of revenue information with respect to product sales.

Income Taxes

The Company accounts for income taxes under the asset and liability method, and deferred taxes are determined based on the estimated future tax effects of differences between the financial statement and tax basis of assets and liabilities at currently enacted tax laws and rates.

Disclosure of Fair Value of Financial Instruments

The Company's financial instruments consist mainly of cash and cash equivalents, accounts receivable, accounts payable and short-term debt. The carrying amounts of cash and cash equivalents, accounts receivable, accounts payable and short-term debt approximate fair value due to their short-term nature.

Accounting for Stock-Based Compensation

The Company accounts for employee stock based compensation plans and non-employee director stock

incentive plans in accordance with APB Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB 25"). Stock options granted to non-employees are accounted for in accordance with SFAS No. 123, "Accounting for Stock-Based Compensation", as well as Emerging Issues Task Force No. 96-18, "Accounting for Equity Instruments That Are Issued To Other Than Employees for Acquiring, or In Conjunction with Selling, Goods or Services" ("EITF 96-18").

The fair value of the Company's compensation cost for stock option plans for employees and directors, had it been determined, in accordance with SFAS 123, would have been as follows for the three months ended:

	Three Months Ended March 31,	
	2003	2002
Net income, as reported	\$ 3,405	\$ 5,207
Add: Stock award-based employee compensation included in reported net income, net of related tax effect	\$ -	\$ -
Deduct: Total stock based employee expense determined under fair value based method for all awards, net of related tax effects	\$ (687)	\$ (808)
Pro forma net income	\$ 2,718	\$ 4,399
Earnings per share:		
Basic - as reported	\$ 0.15	\$ 0.23
Basic - pro forma	\$ 0.12	\$ 0.20
Diluted - as reported	\$ 0.15	\$ 0.22
Diluted - pro forma	\$ 0.12	\$ 0.18

As pro forma compensation expense for options granted is recorded over the vesting period, future pro forma compensation expense may be greater as additional options are granted.

NOTE 2 - EARNINGS PER SHARE

The following table sets forth the computation of basic income per common share and diluted income per common share:

	Three Months Ended March 31,	
	2003	2002
Numerator:		
Net income	\$ 3,405	\$ 5,207
Denominator - Basic:		
Weighted average number of common shares outstanding	22,560	22,541
Basic income per common share	\$ 0.15	\$ 0.23
Denominator - Diluted:		
Weighted average number of common shares outstanding	22,560	22,541
Common share equivalents of outstanding stock options	339	1,450
Total diluted shares outstanding	22,899	23,991
Diluted income per common share	\$ 0.15	\$ 0.22

NOTE 3 - OPERATING SEGMENTS

The Company operates in two distinct segments: (1) PBM Services, which is comprised of fully integrated pharmacy benefit management and mail services; and (2) Specialty Management and Delivery Services, which is comprised of specialty pharmacy distribution and clinical management services.

The accounting policies applied to the business segments are the same as those described in the summary of significant accounting policies as disclosed in Note 2 of Notes to Consolidated Financial Statements in the Form 10-K.

Segment Reporting Information

	Three Months Ended March 31,	
	2003	2002
Revenues:		
PBM Services	\$ 108,040	\$ 118,678
Specialty Management and Delivery Services	54,112	32,974
	\$ 162,152	\$ 151,652
Depreciation expense:		
PBM Services	\$ 861	\$ 1,069
Specialty Management and Delivery Services	52	18
	\$ 913	\$ 1,087
Income from operations:		
PBM Services	\$ 2,306	\$ 3,320
Specialty Management and Delivery Services	3,621	3,374
	\$ 5,927	\$ 6,694
Total assets:		
PBM Services	\$ 75,385	\$ 88,343
Specialty Management and Delivery Services	102,928	97,536
	\$ 178,313	\$ 185,879
Capital expenditures:		
PBM Services	\$ 404	\$ 254
Specialty Management and Delivery Services	400	426
	\$ 804	\$ 680

NOTE 4 - ACQUISITIONS

On January 31, 2002, the Company acquired all of the issued and outstanding capital stock of Vitality Home Infusion Services, Inc. ("Vitality"). Vitality is a New York-based provider of specialty pharmaceutical services. Vitality provides such services on a national basis to chronically ill and genetically impaired patients, particularly focusing on oncology, infectious disease, immunology and rheumatary disease.

The aggregate purchase price for Vitality was \$46,416 (including \$1,416 in transaction costs), payable \$35,000 in cash and 612,419 shares of MIM common stock valued on the closing date at \$10,355, including 20,002 shares of common stock, valued at \$355, as part of MIM's transaction costs. The common stock of MIM was valued using the average market price for the twenty consecutive trading days prior to the date of the purchase agreement. The purchase price for Vitality has been allocated to assets and liabilities based on management's best estimates of fair value and based on a final valuation performed by an independent outside valuation firm.

NOTE 5 - TENNCARE(R) RESERVE ADJUSTMENTS

There were no TennCare(R) reserve adjustments in the current quarter of 2003. The TennCare(R) reserve adjustment of \$851 in the first quarter of 2002 was a result of the collection of receivables from Xantus Healthplans of Tennessee, Inc., which were previously reserved.

NOTE 6 - TREASURY STOCK

On February 27, 2003, the Executive Committee of the Board of Directors approved a stock repurchase

program authorizing the Company to repurchase up to an aggregate of \$10 million of its Common Stock in open market or private transactions. As of March 31, 2003, the Company has repurchased 799,893 shares of its Common Stock in the open market at an aggregate purchase price of \$5.1 million.

NOTE 7 - SUBSEQUENT EVENTS

On May 14, 2003, E. David Corvese, founder and a former Director of the Company, filed a suit against the Company in Delaware Chancery Court seeking indemnification of \$2.4 million he paid to settle certain claims and charges of the federal government and State of Tennessee. He also seeks a declaration that he is not obligated to repay the Company for legal fees, costs and expenses previously advanced to him to defend those claims and charges. MIM intends to defend the suit vigorously and to assert several substantive defenses. The Company believes that the resolution of the suit will not have a material adverse effect on its financial position.

* * * *

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Item 3. Quantitative and Qualitative Disclosure About Market Risk

The Company's exposure to market risk for changes in interest relate primarily to the Company's debt. At March 31, 2003 the Company did not have any long-term debt. The Company does not invest in, or otherwise use, derivative financial instruments.

At March 31, 2003, the carrying values of cash and cash equivalents, accounts receivable, accounts payable, claims payable, payables to Plan Sponsors and others, and debt approximate fair value due to their short-term nature.

Because management does not believe that its exposure to interest rate market risk is material at this time, the Company has not developed or implemented a strategy to manage this market risk through the use of derivative financial instruments or otherwise. The Company will assess the significance of interest rate market risk from time to time and will develop and implement strategies to manage that market risk as appropriate.

Item 4. Controls and Procedures

Under the supervision and with the participation of management, including the Chief Executive Officer and Chief Financial Officer, the effectiveness of the design and operation of disclosure controls and procedures has been evaluated within 90 days of the filing date of this Quarterly Report on Form 10-Q and, based on that evaluation the Chief Executive Officer and Chief Financial Officer have concluded that these controls and procedures are effective. There were no significant changes in internal controls or in other factors that could significantly affect these controls subsequent to the date of that evaluation.

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PART II OTHER INFORMATION

Item 2. Changes in Securities and Use of Proceeds

On January 31, 2002, the Company issued 612,419 shares of its common stock in connection with the acquisition of Vitality (see Note 4 of Notes to Unaudited Consolidated Financial Statements).

Item 6. Exhibits and Reports on Form 8-K

(a) Exhibits.

- Exhibit 3.1 Amended and restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Company's Registration Statement on Form S-1, File No. 333-05327)
- Exhibit 3.2 Amended and Restated By-Laws of MIM Corporation
- Exhibit 4.1 Amended and Restated Rights Agreement, dated as of December 3, 2002 between MIM Corporation and American Stock Transfer and Trust Company (incorporated by reference to Exhibit 4.1 to Post-Effective Amendment No. 3 to the Company's Form 8-A/A dated December 4, 2002.
- Exhibit 99.1 Section 906 Certification of Richard H. Friedman
- Exhibit 99.2 Section 906 Certification of James S. Lusk

(b) Reports on Form 8-K

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.

MIM CORPORATION

Date: May 15, 2003

/s/ James S. Lusk
James S. Lusk
Chief Financial Officer

CERTIFICATION

I, Richard H. Friedman, certify that:

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

Date: May 15, 2003

/s/ Richard H. Friedman
Chief Executive Officer

CERTIFICATION

I, James S. Lusk, certify that:

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

Date: May 15, 2003

/s/ James S. Lusk

Chief Financial Officer

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EXHIBIT INDEX

Exhibit Number	Description
3.2	Amended and Restated By-Laws of MIM Corporation
99.1	Section 906 Certification of Richard H. Friedman
99.2	Section 906 Certification of James S. Lusk

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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 MIM Corporation (the "Company") on Form 10-Q for the quarterly period ended March 31, 2003, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, James S. Lusk, Executive Vice President and Chief Financial Officer of the Company, do hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

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

Date: May 15, 2003

/s/ James S. Lusk

James S. Lusk

A signed original of this written statement required by Section 906 has been provided to MIM Corporation and will be retained by MIM Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

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 MIM Corporation (the "Company") on Form 10-Q for the quarterly period ended March 31, 2003, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Richard H. Friedman, Chairman and Chief Executive Officer of the Company, do hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

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

Date: May 15, 2003

/s/ Richard H. Friedman

Richard H. Friedman

A signed original of this written statement required by Section 906 has been provided to MIM Corporation and will be retained by MIM Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

BY-LAWS

of

MIM Corporation
(a Delaware corporation)

ARTICLE 1
OFFICES

Section 1.01. Offices. The Corporation may have offices at such 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 2
MEETINGS OF STOCKHOLDERS

Section 2.01. Place of Meeting. Meetings of the stockholders shall be held at such place, within the State of Delaware or elsewhere, as may be fixed from time to time by the Board of Directors. If no place is so fixed for a meeting, it shall be held at the Corporation's then principal executive office.

Section 2.02. Annual Meeting. The annual meeting of stockholders shall be held, unless the Board of Directors shall fix some other hour or date therefor, at 10:00 o'clock A.M. on the third Wednesday of May in each year, if not a legal holiday under the laws of Rhode Island, and, if a legal holiday, then on the next succeeding secular day not a legal holiday under the laws of Rhode Island, at which the stockholders shall elect by plurality vote a Board of Directors, and transact such other business as may properly be brought before the meeting.

Section 2.03. Notice of Annual Meetings. Written notice of the annual meeting stating the place, date and hour of the meeting shall be given to each stockholder entitled to vote at such meeting not less than 10 days nor more than 60 days before the date of the meeting.

Section 2.04. List of Stockholders. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business 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 the examination of 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.

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Section 2.05. Special Meetings. Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the Certificate of Incorporation, may be called by the Chairman or the Vice Chairman and shall be called by the Chief Operating Officer or Secretary at the request in writing of a majority of the Board of Directors. Such request shall state the purpose or purposes of the proposed meeting. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 2.06. Notice of Special Meetings. Written notice of a special meeting stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called, shall be given to each stockholder entitled to vote at such meeting not less than 10 days nor more than 60 days before the date of the meeting.

Section 2.07. Quorum; Voting. 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. If, however, such quorum shall not be present or represented at any meeting of the stockholders, 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 shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented any business may be transacted which might have been transacted at the meeting as originally notified. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. When a quorum is present at any meeting, except for elections of directors, which shall be decided by plurality vote, 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 express provision of statute or of the Certificate of Incorporation, a different vote is required, in which case such express provision shall govern and control the decision of such question. Unless otherwise provided in the Certificate of

Incorporation, each stockholder shall at every meeting of stockholders be entitled to one vote in person or by proxy for each share of the capital stock having voting power held by such stockholder, but no shares shall be voted pursuant to a proxy more than three years after the date of the proxy unless the proxy provides for a longer period.

Section 2.08. Action Without a Meeting. Unless otherwise restricted by the Certificate of Incorporation, any action required or permitted to be taken at any annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing setting forth the action so taken shall be signed by the holders of outstanding stock having not less than the

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minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in the State, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty days after the earliest dated consent delivered in the manner required by this Section to the corporation, written consents signed by a sufficient number of stockholders to take action are delivered in the manner required by this Section to the Corporation. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

Section 2.09. Nominations and Stockholder Business.

(a) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board of Directors and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders (i) pursuant to the Corporation's notice of meeting, (ii) by or at the direction of the Board of Directors or (iii) by any stockholder of the Corporation who (x) was a stockholder of record at the time of giving of notice provided for in Section 2.09(a)(2), (y) is entitled to vote at the meeting and (z) complied with the notice procedures set forth in Section 2.09(a)(2).

(2) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of paragraph (a)(1) of this Section 2.09, the stockholder must have given timely notice thereof in writing to the secretary of the Corporation. To be timely, a stockholder's notice shall be delivered to the secretary at the principal executive offices of the Corporation not less than 60 days nor more than 90 days prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced by more than 30 days or delayed by more than 60 days from such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the 90th day prior to such annual meeting and not later than the close of business on the later of the 60th day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made. Such stockholder's notice shall set forth (i) as to each person whom the stockholder proposes to nominate for election or reelection as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act") (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (ii) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and of the beneficial owners, if any, on whose behalf the proposal is made; and (iii) as to the stockholder giving the notice and the

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beneficial owners, if any, on whose behalf the nomination or proposal is made, (x) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owners, if any, and (y) the class and number of shares of stock of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owners, if any.

(3) Notwithstanding anything in the second sentence of paragraph (a)(2) of this Section 2.09 to the contrary, in the event that the number of directors to be elected to the Board of Directors is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the Corporation at least 70 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by paragraph (a)(2) of this Section 2.09 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the secretary at the principal executive offices of the Corporation not later than the close of business on the tenth day following the day on which such public announcement is first made by the Corporation.

(b) Special Meetings of Stockholders.

(1) 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.

(2) Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected (i) pursuant to the Corporation's notice of meeting, (ii) by or at the direction of the Board of Directors or (iii) provided that the Board of Directors has determined that directors shall be elected at such special meeting, by any stockholder of the Corporation who (x) has given timely notice thereof meeting the requirements of Section 2.09(b)(3), (y) is a stockholder of record at the time of giving of such notice and (z) is entitled to vote at the meeting.

(3) To be timely, a stockholder's notice referred to in Section 2.09(b)(2) must have been delivered to the secretary of the Corporation at the principal executive offices of the Corporation not earlier than the 90th day prior to such special meeting and not later than the close of business on the later of the 60th day prior to such special meeting or the tenth day following the day on which public announcement is made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. Such stockholder's notice shall set forth (i) as to each person whom the stockholder proposes to nominate for election or reelection as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); and (ii) as to the stockholder giving the notice and the beneficial owners, if any, on whose behalf the nomination is made, (x) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owners, if any, and (y) the class and number of shares of stock of the Corporation which are owned beneficially and of record by such stockholder and such beneficial owners, if any.

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(c) General.

(1) Only such persons who are nominated in accordance with the procedures set forth in this Section 2.09 shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 2.09. The presiding officer of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the procedures set forth in this Section 2.09 and, if any proposed nomination or business is not in compliance with this Section 2.09, to declare that such defective nomination or proposal be disregarded.

(2) For purposes of this Section 2.09, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14, or 15(d) of the Exchange Act.

(3) Notwithstanding the foregoing provisions of this Section 2.09, a stockholder shall also comply with all applicable requirements of state law and of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 2.09. Nothing in this Section 2.09 shall 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.

ARTICLE 3
DIRECTORS

Section 3.01. Number and Term of Office. The number of directors of the Corporation shall be such number as shall be designated from time to time by resolution of the Board of Directors and initially shall be two. The directors shall be elected at the annual meeting of the stockholders, except as provided in Section 3.02 hereof. Each director elected shall hold office for a term of one year and shall serve until his successor is elected and qualified or until his earlier death, resignation or removal. Directors need not be stockholders.

Section 3.02. Vacancies. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced. If there are no directors in office, then an election of directors may be held in the manner provided by statute. If, at the time of filling any vacancy or any newly created directorship, the directors then in office shall constitute less than a majority of the whole board (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least 10 percent of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office.

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Section 3.03. Resignations. Any director may resign at any time by giving written notice to the Board of Directors, the Chairman, the Chief Operating Officer, the Secretary or any Assistant Secretary. Such resignation shall take effect at the time of receipt thereof or at any later time specified therein; and, unless

otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 3.04. Direction of Management. The business of the Corporation shall be managed 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 By-Laws directed or required to be exercised or done by the stockholders.

Section 3.05. Place of Meetings. The Board of Directors of the Corporation may hold meetings, both regular and special, either within or without the State of Delaware.

Section 3.06. Annual Meeting. Immediately after each annual election of directors, the Board of Directors shall meet for the purpose of organization, election of officers, and the transaction of other business, at the place where such election of directors was held or, if notice of such meeting is given, at the place specified in such notice. Notice of such meeting need not be given. In the absence of a quorum at said meeting, the same may be held at any other time and place which shall be specified in a notice given as hereinafter provided for special meetings of the Board of Directors, or as shall be specified in a written waiver signed by the directors, if any, not attending and participating in the meeting.

Section 3.07. Regular Meetings. Regular meetings of the Board of Directors may be held without notice at such time and place as shall from time to time be determined by the Board.

Section 3.08. Special Meetings. Special meetings of the Board of Directors may be called by the Chairman or the Vice Chairman on 2 days' notice to each director; either personally (including telephone), or in the manner specified in Section 4.01; special meetings shall be called by the Chairman, the Vice Chairman or the Secretary in like manner and on like notice on the written request of two directors.

Section 3.09. Quorum; Voting. At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business; and at all meetings of any committee of the Board, a majority of the members of such committee shall constitute a quorum for the transaction of business. The act of a majority of the directors present at any meeting of the Board of Directors or any committee thereof at which there is a quorum present shall be the act of the Board of Directors or such committee, as the case may be, except as may be otherwise specifically provided by statute or by the Certificate of Incorporation. If a quorum shall not be present at any meeting of the Board of Directors or committee thereof, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

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Section 3.10. Action 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.

Section 3.11. Participation in Meetings. One or more directors may participate in any meeting of the Board or committee thereof by means of conference telephone or similar communications equipment by which all persons participating can hear each other.

Section 3.12. Committees of Directors. 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. Any such committee, to the extent provided in the resolution, shall have and may exercise all of the powers and authority of the Board of Directors and may authorize the seal of the Corporation to be affixed to all papers which may require it, but no such committee shall have the power or authority in reference to amending the Certificate of Incorporation (except that a committee may, to the extent authorized in the resolution providing for the issuance of shares of stock adopted by the Board of Directors, fix any preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of assets of the Corporation or the conversion into, or the exchange of such shares for, shares of any other class or classes or any other series of the same or any other class or classes of stock of the Corporation), adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution, or amending the By-Laws of the Corporation; and, unless the resolution expressly so provides, no such committee shall have the power or authority to declare a dividend, to authorize the issuance of stock, or to adopt a certificate of ownership and merger. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when requested.

Section 3.13. Compensation of Directors. Each director shall be entitled to receive such compensation, if any, as may from time to time be fixed by the Board of Directors. Members of special or standing committees may be allowed like compensation for attending committee meetings. Directors may also be reimbursed by the Corporation for all reasonable expenses incurred in traveling to and from the place of each meeting of the Board or of any such committee or otherwise incurred in the performance of their duties as directors. No payment

ARTICLE 4
NOTICES

Section 4.01. Notices. Whenever, under the provisions of law or of the Certificate of Incorporation or of these By-Laws, notice is required to be given to any director or stockholder, such requirement shall not be construed to necessitate personal notice. Such notice may in every instance be effectively given by depositing a writing in a post office or letter box, in a postpaid, sealed wrapper, or by dispatching a prepaid telegram, cable, telecopy or telex or by delivering a writing in a sealed wrapper prepaid to a courier service guaranteeing delivery within 2 business days, in each case addressed to such director or stockholder, at his address as it appears on the records of the Corporation in the case of a stockholder and at his business address (unless he shall have filed a written request with the Secretary that notices be directed to a different address) in the case of a director. Such notice shall be deemed to be given at the time it is so dispatched.

Section 4.02. Waiver of Notice. Whenever, under the provisions of law or of the Certificate of Incorporation or of these By-Laws, notice is required to be given, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent thereto. Neither the business nor the purpose of any meeting need be specified in such a waiver.

ARTICLE 5
OFFICERS

Section 5.01. Number. The officers of the Corporation shall be a Chief Executive Officer, a Secretary and a Treasurer, and may also include a Chairman, Vice Chairman, one or more Executive Vice Presidents and/or Vice Presidents, one or more Assistant Secretaries and Assistant Treasurers, and such other officers as may be elected by the Board of Directors. Any number of offices may be held by the same person.

Section 5.02. Election and Term of Office. The officers of the Corporation shall be elected by the Board of Directors. Officers shall hold office at the pleasure of the Board.

Section 5.03. Removal. Any officer may be removed at any time by the Board of Directors. Any vacancy occurring in any office of the Corporation may be filled by the Board of Directors.

Section 5.04. Chairman and Vice Chairman.

(a) The Chairman, if there is one, shall preside at all meetings of the Board of Directors and of the stockholders and shall perform such other duties, if any, as may be specified by the Board from time to time.

(b) The Vice Chairman, if there is one, shall preside at all meetings of the Board of Directors and of the stockholders in the absence of the Chairman, and shall perform such other duties, if any, as may be specified by the Board from time to time.

Section 5.05. Chief Executive Officer. The Chief Executive Officer shall be the chief executive officer of the Corporation and shall have overall responsibility for the management of the business and operations of the Corporation and shall see that all orders and resolutions of the Board are carried into effect. In the absence of the Chairman and the Vice Chairman, he shall preside over meetings of the Board of Directors and of the stockholders of the Corporation. In general, he shall perform all duties incident to the office of Chief Executive Officer, and such other duties as from time to time may be assigned to him by the Board.

Section 5.06. Executive Vice Presidents and Vice Presidents. The Executive Vice Presidents and Vice Presidents shall perform such duties and have such authority as may be specified in these By-Laws or by the Board of Directors or the Chief Executive Officer.

Section 5.07. Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all the proceedings of the meetings of the stockholders and of the Board of Directors in a book to be kept for that purpose and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or the President. He shall have custody of the corporate seal of the Corporation and he, or an Assistant Secretary, shall have authority to affix the same to any instrument, and when so affixed it may be attested by his signature or by the signature of such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his signature.

Section 5.08. Assistant Secretaries. The Assistant Secretary or Secretaries shall, in the absence or disability of the Secretary, perform the duties and exercise the authority of the Secretary and shall perform such other duties and have such other authority as the Board of Directors or the Chief Executive Officer may from time

to time prescribe.

Section 5.09. Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all monies and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the Corporation as may be ordered by the Board of Directors or the Chief Executive Officer or the Chief Financial Officer, taking proper vouchers for such disbursements, and shall render to the Board of Directors when the Board so requires, an account of all his transactions as Treasurer and of the financial condition of the Corporation.

Section 5.10. Assistant Treasurers. The Assistant Treasurer or Treasurers shall, in the absence or disability of the Treasurer, perform the duties and exercise the authority of the Treasurer and shall perform such other duties and have such other authority as the Board of Directors may from time to time prescribe.

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ARTICLE 6 INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 6.01. Indemnification. Any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director or officer of the Corporation, or is or was serving while a director or officer of the Corporation at the request of the Corporation as a director, officer, employee, agent, fiduciary or other representative of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, shall be indemnified by the Corporation against expenses (including attorneys' fees), judgments, fines, excise taxes and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding to the full extent permissible under Delaware law.

Section 6.02. Advances. Any person claiming indemnification within the scope of Section 6.01 shall be entitled to advances from the Corporation for payment of the expenses of defending actions against such person in the manner and to the full extent permissible under Delaware law.

Section 6.03. Procedure. On the request of any person requesting indemnification under Section 6.01, the Board of Directors or a committee thereof shall determine whether such indemnification is permissible or such determination shall be made by independent legal counsel if the Board or committee so directs or if the Board or committee is not empowered by statute to make such determination.

Section 6.04. Other Rights. The indemnification and advancement of expenses provided by this Article 6 shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any insurance or other agreement, vote of shareholders or disinterested directors or otherwise, both as to actions in their official capacity and as to actions in another capacity while holding an office, and shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such person.

Section 6.05. Insurance. The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee, agent, fiduciary or other representative of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of these By-laws.

Section 6.06. Modification. The duties of the Corporation to indemnify and to advance expenses to a director or officer provided in this Article 6 shall be in the nature of a contract between the Corporation and each such director or officer, and no amendment or repeal of any provision of this Article 6 shall alter, to the detriment of such director or officer, the right of such person to the advancement of expenses or indemnification related to a claim based on an act or failure to act which took place prior to such amendment, repeal or termination.

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ARTICLE 7 CERTIFICATES OF STOCK

Section 7.01. Stock Certificates. Every holder of stock in the Corporation shall be entitled to have a certificate in the form prescribed by the Board of Directors signed on behalf of the Corporation by the Chairman or Vice Chairman or Chief Executive Officer or Chief Operating Officer or an Executive Vice President or Vice President and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, representing the number of shares owned by him in the Corporation. Any or all 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 such person were such

officer, transfer agent, or registrar at the date of issue.

Section 7.02. Lost Certificates. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 7.03. Transfers of Stock. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

Section 7.04. Fixing Record Date. The Board of Directors of the Corporation may fix a record date for the purpose of determining the stockholders entitled to notice of, or to vote at, any meeting of stockholders or any adjournment thereof, or to consent to corporate action in writing without a meeting, or to receive payment of any dividend or other distribution or allotment of any rights, or to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action. Such record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and such record date shall not be (i) in the case of such a meeting of stockholders, more than 60 nor less than 10 days before the date of the meeting of stockholders, or (ii) in the case of consents in writing without a meeting, more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors, or (iii) in other cases, more than 60 days prior to the payment or allotment or change, conversion or exchange or 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 unless the Board of Directors fixes a new record date for the adjourned meeting.

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Section 7.05. Registered Stockholders. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of stock to receive dividends and to vote as such owner, and shall be entitled to hold liable for calls and assessments a person registered on its books as the owner of stock, and shall not be bound to recognize any equitable or other claim to, or interest in, such stock 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.

ARTICLE 8 AMENDMENTS

Section 8.01. Amendments. These By-Laws may be altered, amended or repealed, and new By-Laws 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 By-Laws be contained in the notice of such special meeting.

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