

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended **September 30, 2024**

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: **000-51222**

Dexcom
DEXCOM, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

33-0857544
(I.R.S. Employer Identification No.)

6340 Sequence Drive, San Diego, CA
(Address of principal executive offices)

92121
(Zip Code)

(858) 200-0200

(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 Par Value Per Share	DXCM	Nasdaq Global Select Market

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 has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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

As of October 17, 2024, there were 390,595,390 shares of the registrant's common stock outstanding.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

Except for historical financial information contained herein, the matters discussed in this Quarterly Report on Form 10-Q may be considered forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, and subject to the safe harbor created by the Private Securities Litigation Reform Act of 1995. Such statements include declarations regarding our operations, financial condition and prospects, and business strategies, and are based on management's intent, beliefs, expectations, and assumptions as of the date of this report. Investors are cautioned that any such forward-looking statements are not guarantees of future performance and involve a number of risks, uncertainties and other factors, some of which are beyond our control. Actual results could differ materially from those indicated or implied by such forward-looking statements. Important factors that could cause actual results to differ materially from those indicated by such forward-looking statements include, but are not limited to: (i) that the information is of a preliminary nature and may be subject to further adjustment; (ii) those risks and uncertainties identified under "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2023 filed with the Securities and Exchange Commission, or the SEC, on February 8, 2024, together with any updates identified under "Risk Factors" in our subsequently filed Quarterly Reports on Form 10-Q; and (iii) the other risks detailed from time-to-time in our other reports and registration statements filed with the SEC. Except as required by law, we undertake no obligation to revise or update publicly any forward-looking statements, whether as a result of new information, future events or otherwise.

AVAILABLE INFORMATION

Our website address is located at www.dexcom.com and our investor relations website is located at investors.dexcom.com. We file electronically with the SEC our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and other reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act. We make available on our website, free of charge, copies of these reports and other information as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. Information that is based on estimates, forecasts, projections, market research or similar methodologies is inherently subject to uncertainties and actual events or circumstances may differ materially from events and circumstances reflected in this information. Unless otherwise expressly stated, we obtained industry, business, market, and other data from reports, research surveys, studies, and similar data prepared by market research firms and other third parties, industry, medical and general publications, government data, and similar sources.

We announce material information to the public about us, our products, and other matters through a variety of means, including filings with the SEC, press releases, public conference calls, presentations, webcasts, and our investor relations website, in order to achieve broad, non-exclusionary distribution of information to the public and to comply with our disclosure obligations under Regulation FD. The information disclosed by the foregoing channels could be deemed to be material information. As such, we encourage investors, the media, and others to follow the channels listed above and review the information disclosed through such channels.

Except as expressly set forth in this Quarterly Report on Form 10-Q, the contents of our website and our investor relations website are not incorporated by reference into, or otherwise to be regarded as part of, this Quarterly Report on Form 10-Q or any other report or document we file with the SEC, and any references to websites are intended to be inactive textual references only.

"Dexcom", "Dexcom Clarity", "Dexcom One", and other trademarks of ours appearing in this Quarterly Report on Form 10-Q are our property. Other service marks, trademarks and trade names referred to in this Quarterly Report on Form 10-Q are the property of their respective owners.

PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

DexCom, Inc. Consolidated Balance Sheets (Unaudited)

(In millions, except share and par value data)

	September 30, 2024	December 31, 2023
Assets		
Current assets:		
Cash and cash equivalents	\$ 621.2	\$ 566.3
Short-term marketable securities	1,871.1	2,157.8
Accounts receivable, net	1,002.0	973.9
Inventory	586.3	559.6
Prepaid and other current assets	182.2	168.3
Total current assets	4,262.8	4,425.9
Property and equipment, net	1,318.8	1,113.1
Operating lease right-of-use assets	67.5	71.4
Goodwill	23.8	25.2
Intangibles, net	106.2	134.5
Deferred tax assets	486.5	419.4
Other assets	88.2	75.0
Total assets	<u>\$ 6,353.8</u>	<u>\$ 6,264.5</u>
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable and accrued liabilities	\$ 1,592.5	\$ 1,345.5
Accrued payroll and related expenses	105.8	171.0
Short-term operating lease liabilities	22.3	21.1
Deferred revenue	13.9	18.4
Total current liabilities	1,734.5	1,556.0
Long-term senior convertible notes	2,439.6	2,434.2
Long-term operating lease liabilities	71.1	80.1
Other long-term liabilities	129.6	125.6
Total liabilities	4,374.8	4,195.9
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$0.001 par value, 5.0 million shares authorized; no shares issued and outstanding at September 30, 2024 and December 31, 2023	—	—
Common stock, \$0.001 par value, 800.0 million shares authorized; 408.8 million and 390.6 million shares issued and outstanding, respectively, at September 30, 2024; and 407.2 million and 385.4 million shares issued and outstanding, respectively, at December 31, 2023	0.4	0.4
Additional paid-in capital	2,050.5	3,514.6
Accumulated other comprehensive income (loss)	63.4	(16.7)
Retained earnings	1,445.9	1,021.4
Treasury stock, at cost; 18.2 million shares at September 30, 2024 and 21.8 million shares at December 31, 2023	(1,581.2)	(2,451.1)
Total stockholders' equity	<u>1,979.0</u>	<u>2,068.6</u>
Total liabilities and stockholders' equity	<u>\$ 6,353.8</u>	<u>\$ 6,264.5</u>

See accompanying notes

DexCom, Inc.
Consolidated Statements of Operations
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
<i>(In millions, except per share data)</i>				
Revenue	\$ 994.2	\$ 975.0	\$ 2,919.5	\$ 2,587.8
Cost of sales	400.4	351.7	1,137.1	955.5
Gross profit	593.8	623.3	1,782.4	1,632.3
Operating expenses:				
Research and development	135.4	131.4	412.9	369.7
Selling, general and administrative	306.4	286.4	958.4	881.8
Total operating expenses	441.8	417.8	1,371.3	1,251.5
Operating income	152.0	205.5	411.1	380.8
Other income (expense), net	25.4	34.9	86.6	83.4
Income before income taxes	177.4	240.4	497.7	464.2
Income tax expense	42.8	119.7	73.2	179.0
Net income	\$ 134.6	\$ 120.7	\$ 424.5	\$ 285.2
Basic net income per share	\$ 0.34	\$ 0.31	\$ 1.08	\$ 0.74
Shares used to compute basic net income per share	394.2	386.6	394.6	386.7
Diluted net income per share	\$ 0.34	\$ 0.29	\$ 1.04	\$ 0.69
Shares used to compute diluted net income per share	410.2	426.8	414.7	428.3

See accompanying notes

DexCom, Inc.
Consolidated Statements of Comprehensive Income
(Unaudited)

<i>(In millions)</i>	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Net income	\$ 134.6	\$ 120.7	\$ 424.5	\$ 285.2
Other comprehensive income (loss), net of tax:				
Translation adjustments and other	96.8	(7.0)	77.8	(25.8)
Unrealized gain on marketable debt securities	4.6	0.7	2.3	1.8
Total other comprehensive income (loss), net of tax	101.4	(6.3)	80.1	(24.0)
Comprehensive income	<u>\$ 236.0</u>	<u>\$ 114.4</u>	<u>\$ 504.6</u>	<u>\$ 261.2</u>

See accompanying notes

DexCom, Inc.
Consolidated Statements of Stockholders' Equity
(Unaudited)

Three Months Ended September 30, 2024

<i>(In millions)</i>	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Retained Earnings	Treasury Stock	Total Stockholders' Equity
	Shares	Amount					
Balance at June 30, 2024	400.7	\$ 0.4	\$ 1,992.3	\$ (38.0)	\$ 1,311.3	\$ (831.7)	\$ 2,434.3
Issuance of common stock for Employee Stock Purchase Plan	0.3	—	14.8	—	—	—	14.8
Purchases of treasury stock, including excise tax	(10.4)	—	—	—	—	(749.5)	(749.5)
Share-based compensation expense	—	—	43.4	—	—	—	43.4
Net income	—	—	—	—	134.6	—	134.6
Other comprehensive income, net of tax	—	—	—	101.4	—	—	101.4
Balance at September 30, 2024	<u>390.6</u>	<u>\$ 0.4</u>	<u>\$ 2,050.5</u>	<u>\$ 63.4</u>	<u>\$ 1,445.9</u>	<u>\$ (1,581.2)</u>	<u>\$ 1,979.0</u>

Three Months Ended September 30, 2023

<i>(In millions)</i>	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Retained Earnings	Treasury Stock	Total Stockholders' Equity
	Shares	Amount					
Balance at June 30, 2023	386.1	\$ 0.4	\$ 2,269.0	\$ (29.3)	\$ 644.4	\$ (784.1)	\$ 2,100.4
Issuance of common stock under equity incentive plans	0.1	—	—	—	—	—	—
Issuance of common stock for Employee Stock Purchase Plan	0.1	—	14.3	—	—	—	14.3
Purchases of treasury stock, including excise tax	—	—	—	—	—	0.2	0.2
Conversions of 2023 Notes	10.6	—	(0.4)	—	—	—	(0.4)
Benefit of note hedge upon conversions of 2023 Notes	(10.5)	—	1,296.1	—	—	(1,296.1)	—
Share-based compensation expense	—	—	39.0	—	—	—	39.0
Net income	—	—	—	—	120.7	—	120.7
Other comprehensive loss, net of tax	—	—	—	(6.3)	—	—	(6.3)
Balance at September 30, 2023	<u>386.4</u>	<u>\$ 0.4</u>	<u>\$ 3,618.0</u>	<u>\$ (35.6)</u>	<u>\$ 765.1</u>	<u>\$ (2,080.0)</u>	<u>\$ 2,267.9</u>

See accompanying notes

DexCom, Inc.

Consolidated Statements of Stockholders' Equity

(Unaudited)

Nine Months Ended September 30, 2024							
(In millions)	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Retained Earnings	Treasury Stock	Total Stockholders' Equity
	Shares	Amount					
Balance at December 31, 2023	385.4	\$ 0.4	\$ 3,514.6	\$ (16.7)	\$ 1,021.4	\$ (2,451.1)	\$ 2,068.6
Issuance of common stock under equity incentive plans	1.2	—	—	—	—	—	—
Issuance of common stock for Employee Stock Purchase Plan	0.4	—	28.2	—	—	—	28.2
Issuance of common stock in connection with achievement of sales-based milestone, net of issuance costs	1.5	—	(188.1)	—	—	188.1	—
Purchases of treasury stock, including excise tax	(10.4)	—	—	—	—	(749.5)	(749.5)
Exercise and settlement of warrants	12.5	—	(1,431.3)	—	—	1,431.3	—
Share-based compensation expense	—	—	127.1	—	—	—	127.1
Net income	—	—	—	—	424.5	—	424.5
Other comprehensive income, net of tax	—	—	—	80.1	—	—	80.1
Balance at September 30, 2024	390.6	\$ 0.4	\$ 2,050.5	\$ 63.4	\$ 1,445.9	\$ (1,581.2)	\$ 1,979.0

Nine Months Ended September 30, 2023							
(In millions)	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Retained Earnings	Treasury Stock	Total Stockholders' Equity
	Shares	Amount					
Balance at December 31, 2022	386.3	\$ 0.4	\$ 2,258.1	\$ (11.6)	\$ 479.9	\$ (595.0)	\$ 2,131.8
Issuance of common stock under equity incentive plans	1.3	—	—	—	—	—	—
Issuance of common stock for Employee Stock Purchase Plan	0.3	—	26.6	—	—	—	26.6
Purchases of treasury stock, including excise tax	(1.6)	—	—	—	—	(188.9)	(188.9)
Conversions of 2023 Notes	10.6	—	(0.4)	—	—	—	(0.4)
Benefit of note hedge upon conversions of 2023 Notes	(10.5)	—	1,296.1	—	—	(1,296.1)	—
Purchase of capped call transactions, net of tax	—	—	(76.3)	—	—	—	(76.3)
Share-based compensation expense	—	—	113.9	—	—	—	113.9
Net income	—	—	—	—	285.2	—	285.2
Other comprehensive loss, net of tax	—	—	—	(24.0)	—	—	(24.0)
Balance at September 30, 2023	386.4	\$ 0.4	\$ 3,618.0	\$ (35.6)	\$ 765.1	\$ (2,080.0)	\$ 2,267.9

See accompanying notes

DexCom, Inc.

Consolidated Statements of Cash Flows

(Unaudited)

(In millions)	Nine Months Ended September 30,	
	2024	2023
Operating activities		
Net income	\$ 424.5	\$ 285.2
Adjustments to reconcile net income to cash provided by operating activities:		
Depreciation and amortization	159.9	133.5
Share-based compensation	127.1	113.9
Non-cash interest expense	5.6	5.8
Deferred income taxes	(68.1)	(136.5)
Other non-cash income and expenses	(63.3)	(48.3)
Changes in operating assets and liabilities:		
Accounts receivable, net	(27.6)	(72.9)
Inventory	(20.3)	(193.6)
Prepaid and other assets	(13.8)	13.2
Operating lease right-of-use assets and liabilities, net	(3.0)	(4.4)
Accounts payable and accrued liabilities	231.7	496.5
Accrued payroll and related expenses	(64.3)	16.6
Deferred revenue and other liabilities	(0.3)	5.9
Net cash provided by operating activities	688.1	614.9
Investing activities		
Purchases of marketable securities	(2,083.5)	(2,947.9)
Proceeds from sale and maturity of marketable securities	2,419.2	2,228.4
Purchases of property and equipment	(234.2)	(184.1)
Other investing activities	(5.3)	(18.5)
Net cash provided by (used in) investing activities	96.2	(922.1)
Financing activities		
Net proceeds from issuance of common stock	28.2	26.6
Purchases of treasury stock	(750.0)	(188.7)
Proceeds from issuance of senior convertible notes, net of issuance costs	—	1,230.6
Purchases of capped call transactions	—	(101.3)
Payments for conversions of senior convertible notes	—	(650.5)
Other financing activities	(11.4)	(3.4)
Net cash provided by (used in) financing activities	(733.2)	313.3
Effect of exchange rate changes on cash, cash equivalents and restricted cash	3.8	(4.6)
Increase in cash, cash equivalents and restricted cash	54.9	1.5
Cash, cash equivalents and restricted cash, beginning of period	567.5	643.3
Cash, cash equivalents and restricted cash, end of period	\$ 622.4	\$ 644.8
Reconciliation of cash, cash equivalents and restricted cash, end of period:		
Cash and cash equivalents	\$ 621.2	\$ 643.7
Restricted cash	1.2	1.1
Total cash, cash equivalents and restricted cash	\$ 622.4	\$ 644.8
Supplemental disclosure of non-cash investing and financing transactions:		
Shares issued for conversions of 2023 Notes	\$ —	\$ 1,316.4
Shares received under note hedge upon conversion of 2023 Notes	\$ —	\$ (1,296.1)
Acquisition of property and equipment included in accounts payable and accrued liabilities	\$ 77.6	\$ 47.0
Right-of-use assets obtained in exchange for operating lease liabilities	\$ 8.2	\$ 6.0
Right-of-use assets obtained in exchange for finance lease liabilities	\$ 11.8	\$ 1.8

See accompanying notes

DexCom, Inc.
Notes to Consolidated Financial Statements
(Unaudited)

1. Organization and Significant Accounting Policies

Organization and Business

We are a medical device company primarily focused on the design, development and commercialization of continuous glucose monitoring, or CGM, systems for the management of diabetes and metabolic health by patients, caregivers, and clinicians around the world. Unless the context requires otherwise, the terms “we,” “us,” “our,” the “company,” or “Dexcom” refer to DexCom, Inc. and its subsidiaries.

Basis of Presentation and Principles of Consolidation

We have prepared the accompanying unaudited consolidated financial statements in accordance with U.S. generally accepted accounting principles, or GAAP, for interim financial information and with the instructions to Form 10-Q and Article 10 of Securities and Exchange Commission, or SEC, Regulation S-X. Accordingly, they do not include all of the information and disclosures required by GAAP for complete financial statements. In the opinion of management, all adjustments, which include only normal recurring adjustments considered necessary for a fair presentation, have been included.

Operating results for the three and nine months ended September 30, 2024 are not necessarily indicative of the results that may be expected for the fiscal year ending December 31, 2024.

These consolidated financial statements should be read in conjunction with the audited consolidated financial statements and related notes thereto for the fiscal year ended December 31, 2023 included in the Annual Report on Form 10-K that we filed with the SEC on February 8, 2024.

These consolidated financial statements include the accounts of DexCom, Inc. and our wholly-owned subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation.

We have reclassified certain amounts previously reported in our financial statements to conform to the current presentation.

We determine the functional currencies of our international subsidiaries by reviewing the environment where each subsidiary primarily generates and expends cash. For international subsidiaries whose functional currencies are the local currencies, we translate the financial statements into U.S. dollars using period-end exchange rates for assets and liabilities and average exchange rates for each period for revenue, costs and expenses. We include translation-related adjustments in comprehensive income and in accumulated other comprehensive income (loss) in the equity section of our consolidated balance sheets. We record gains and losses resulting from transactions with customers and vendors that are denominated in currencies other than the functional currency and from certain intercompany transactions in other income (expense), net in our consolidated statements of operations.

Significant Accounting Policies

There were no material changes during the nine months ended September 30, 2024 to our significant accounting policies as described in Note 1 “*Organization and Significant Accounting Policies*” to the financial statements in Part II, Item 8 of our Annual Report on Form 10-K for the fiscal year ended December 31, 2023.

Use of Estimates

The preparation of consolidated financial statements in conformity with GAAP requires us to make certain estimates and assumptions that affect the amounts reported in our consolidated financial statements and the disclosures made in the accompanying notes. Areas requiring significant estimates include rebates, excess or obsolete inventories and the valuation of inventory, accruals for litigation contingencies, and the amount of our worldwide tax provision and the realizability of deferred tax assets. Despite our intention to establish accurate estimates and use reasonable assumptions, actual results may differ from our estimates.

Concentration of Credit Risk

Financial instruments which potentially subject us to concentrations of credit risk consist primarily of cash, cash equivalents, short-term marketable securities, and accounts receivable. We limit our exposure to credit risk by placing our cash and investments with a few major financial institutions. We have also established guidelines regarding diversification of our investments and their maturities that are designed to maintain principal and maximize liquidity. We review these guidelines periodically and modify them to take advantage of trends in yields and interest rates and changes in our operations and financial position.

Contract Balances

Contract balances represent amounts presented in our consolidated balance sheets when either we have transferred goods or services to the customer or the customer has paid consideration to us under the contract. These contract balances include accounts receivable and deferred revenue. Payment terms vary by contract type and type of customer and generally range from 30 to 90 days.

Accounts receivable as of September 30, 2024 included unbilled accounts receivable of \$16.1 million. We expect to invoice and collect all unbilled accounts receivable within twelve months.

We record deferred revenue when we have entered into a contract with a customer and cash payments are received or due prior to transfer of control or satisfaction of the related performance obligation.

Our performance obligations are generally satisfied within twelve months of the initial contract date. The deferred revenue balances related to performance obligations that will be satisfied after twelve months were \$5.2 million as of September 30, 2024 and \$7.4 million as of December 31, 2023. These balances are included in other long-term liabilities in our consolidated balance sheets. Revenue recognized in the period from performance obligations satisfied in previous periods was not material for the periods presented.

Net Income Per Share

Basic net income per share attributable to common stockholders is calculated by dividing the net income attributable to common stockholders by the weighted-average number of common shares outstanding during the period. Diluted net income per share is computed using the weighted average number of common shares outstanding during the period and, when dilutive, potential common share equivalents.

Potentially dilutive common shares consist of shares issuable from restricted stock units, or RSUs, performance stock units, or PSUs, warrants, our senior convertible notes, and collaborative sales-based milestones. Potentially dilutive common shares issuable upon vesting of RSUs, PSUs, and exercise of warrants are determined using the average share price for each period under the treasury stock method. Potentially dilutive common shares issuable upon conversion of our senior convertible notes are determined using the if-converted method. In periods of net losses, we exclude all potentially dilutive common shares from the computation of the diluted net loss per share for those periods as the effect would be anti-dilutive.

The following table sets forth the computation of basic and diluted net income per share for the periods shown:

<i>(In millions, except per share data)</i>	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Net income	\$ 134.6	\$ 120.7	\$ 424.5	\$ 285.2
Add back interest expense, net of tax attributable to assumed conversion of senior convertible notes	2.9	3.0	8.7	9.6
Net income - diluted	\$ 137.5	\$ 123.7	\$ 433.2	\$ 294.8
Net income per common share				
Basic	\$ 0.34	\$ 0.31	\$ 1.08	\$ 0.74
Diluted	\$ 0.34	\$ 0.29	\$ 1.04	\$ 0.69
Basic weighted average shares outstanding				
	394.2	386.6	394.6	386.7
Dilutive potential securities:				
Collaborative sales-based milestones	—	—	0.3	—
RSUs and PSUs	0.3	1.0	0.7	1.1
Senior convertible notes	15.7	27.6	15.7	28.7
Warrants	—	11.6	3.4	11.8
Diluted weighted average shares outstanding	410.2	426.8	414.7	428.3

Outstanding anti-dilutive securities not included in the calculations of diluted net income per share attributable to common stockholders were as follows:

<i>(In millions)</i>	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
RSUs and PSUs	2.2	—	1.3	—

Recent Accounting Guidance

Recently Issued Accounting Pronouncements

In November 2023, the Financial Accounting Standards Board, or FASB, issued Accounting Standards Update, or ASU, 2023-07, *Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures*. The ASU requires disclosure of significant segment expenses that are regularly provided to the chief operating decision maker, or CODM, and included within each reported measure of segment profit or loss. All disclosure requirements under ASU 2023-07 are required for public entities with a single reportable segment. The ASU is effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024, on a retrospective basis, with early adoption permitted. We will adopt ASU 2023-07 in the fourth quarter of 2024 on a retrospective basis, reflecting the application of the new standard in each prior reporting period. We expect the application of ASU 2023-07 to improve and enhance our segment reporting disclosures.

In December 2023, the FASB issued ASU 2023-09, *Improvements to Income Tax Disclosures*. The ASU requires greater disaggregation of information about a reporting entity's effective tax rate reconciliation as well as information on income taxes paid. The ASU applies to all entities subject to income taxes and is intended to help investors better understand an entity's exposure to potential changes in jurisdictional tax legislation and assess income tax information that affects cash flow forecasts and capital allocation decisions. The ASU is effective for annual periods beginning after December 15, 2024, with early adoption permitted. The ASU should be applied on a prospective basis although retrospective application is permitted. We are currently evaluating the impact of this standard on our disclosures.

On March 6, 2024, the SEC adopted SEC Release Nos. 33-11275; 34-99678, *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, to require the disclosure of certain climate-related information in registration statements and annual reports, including Scope 1 and 2 emissions and information about climate-related risks that have materially impacted, or are reasonably likely to have a material impact on, a company's business strategy, results of operations, or financial condition. In addition, under the final rules, certain disclosures related to severe weather events and other natural conditions will be required in audited financial statements. The disclosure requirements would have begun phasing in for our reports and registration statements including financial information in the fiscal year ending December 31, 2025, however, in April 2024, the SEC issued an order staying the final rules until the completion of judicial review. The SEC has since indicated that it intends to establish a new implementation period following the stay order. We are currently evaluating the impact of this final rule on our disclosures.

2. Development and Other Agreements

Collaboration with Verily Life Sciences

On November 20, 2018, we entered into an Amended and Restated Collaboration and License Agreement with Verily Life Sciences LLC (an Alphabet Company) and Verily Ireland Limited (collectively, "Verily"), which we refer to as the Restated Collaboration Agreement. This replaced our original Collaboration and License Agreement with Verily dated August 10, 2015, as amended in October 2016, including the royalty obligations provisions under that original agreement. Pursuant to the Restated Collaboration Agreement, we and Verily agreed to jointly develop a certain next-generation CGM product, and potentially additional CGM products, for which we will have exclusive commercialization rights.

The Restated Collaboration Agreement also provides us with an exclusive license to use intellectual property of Verily resulting from the collaboration, and certain Verily patents, in the development, manufacture and commercialization of blood-based or interstitial glucose monitoring products more generally (subject to certain exclusions, which are outside of the CGM field as it is commonly understood). It also provides us with non-exclusive license rights under Verily's other intellectual property rights to develop, manufacture and commercialize those kinds of glucose monitoring products and certain CGM-product companion software functionalities. In connection with the Restated Collaboration Agreement, we developed, launched and commercialized a CGM product in connection with the collaboration.

In consideration of Verily's performance of its obligations under the joint development plan of the Restated Collaboration Agreement, the licenses granted to us and the amendment of the original agreement, we made upfront, incentive, and the product regulatory approval payments, and payments for contingent sales-based milestones upon the achievement of certain revenue targets.

We account for the contingent milestones payable in shares of our common stock as equity instruments within the scope of ASC Topic 718. The product regulatory approval and sales-based milestones are accounted for as performance-based awards that vest when the performance conditions have been achieved and are recognized when the achievement of the respective contingent milestone is deemed probable. The value of the contingent milestones is based on our closing stock price on December 28, 2018, which was \$29.57 per share.

Upfront and Incentive payments

In the fourth quarter of 2018, we made an initial payment for an upfront fee of \$250.0 million through the issuance of 7.4 million shares of our common stock. We recorded a \$217.7 million charge in our consolidated statements of operations during 2018 relating to the issuance of this common stock because this milestone payment did not meet the capitalization criteria. The value of the charge was based on our closing stock price of \$29.57 per share on December 28, 2018, the date on which we obtained the necessary regulatory approvals and represents the date the performance-based awards were issued. In 2019, we made a cash incentive payment of \$3.2 million due to the completion of certain development obligations and we recorded these payments as research and development expense in our consolidated statements of operations.

Contingent milestones

In the fourth quarter of 2021, we determined the achievement of the regulatory approval milestone to be probable and recorded an \$87.1 million research and development charge in our consolidated statements of operations. This charge is associated with in-process research and development obtained in an asset acquisition prior to regulatory approval and therefore does not have an alternative future use.

In the first quarter of 2022, we received regulatory approval and issued 2.9 million shares of our common stock in connection with our achievement of the related milestone.

In the fourth quarter of 2022, we received approval from the Food and Drug Administration and determined the achievement of the sales-based milestones to be probable. As such, we capitalized the full value of the sales-based milestones, \$152.4 million, as an intangible asset. The sales-based milestones are contingent upon the achievement of certain revenue targets. The value of the sales-based milestones is based on: 1) 5.2 million shares of our common stock, as agreed upon in November 2018 and 2) our closing stock price on December 28, 2018 of \$29.57 per share. December 28, 2018 is the date on which we obtained the necessary regulatory approvals and represents the date the performance-based awards were issued. The intangible asset will be amortized using the straight-line method over its estimated useful life of 64 months through March 2028. The related amortization expense is recognized in cost of sales in our consolidated statements of operations.

In the fourth quarter of 2023, we issued 3.7 million shares of our common stock in connection with our achievement of the first sales-based milestone.

In the first quarter of 2024, we issued 1.5 million shares of our common stock in connection with our achievement of the second sales-based milestone.

All milestones were paid in cash or shares of our common stock, at our election.

3. Fair Value Measurements

Assets and Liabilities Measured at Fair Value on a Recurring Basis

We estimate the fair value of our Level 1 financial instruments, which are in active markets, using unadjusted quoted market prices for identical instruments.

We obtain the fair values for our Level 2 financial instruments, which are not in active markets, from a primary professional pricing source that uses quoted market prices for identical or comparable instruments, rather than direct observations of quoted prices in active markets. Fair values obtained from this professional pricing source can also be based on pricing models whereby all significant observable inputs, including maturity dates, issue dates, settlement dates, benchmark yields, reported trades, broker-dealer quotes, issue spreads, benchmark securities, bids, offers or other market related data, are observable or can be derived from, or corroborated by, observable market data for substantially the full term of the asset. We validate the quoted market prices provided by our primary pricing service by comparing the fair values of our Level 2 marketable securities portfolio balance provided by our primary pricing service against the fair values provided by our investment managers.

The following table summarizes financial assets that we measured at fair value on a recurring basis as of September 30, 2024, classified in accordance with the fair value hierarchy:

(In millions)	Fair Value Measurements Using			Total
	Level 1	Level 2	Level 3	
Cash equivalents	\$ 315.4	\$ —	\$ —	\$ 315.4
Debt securities, available-for-sale:				
U.S. government agencies ⁽¹⁾	—	1,038.1	—	1,038.1
Commercial paper	—	391.1	—	391.1
Corporate debt	—	441.9	—	441.9
Total debt securities, available-for-sale	—	1,871.1	—	1,871.1
Other assets ⁽²⁾	21.2	—	—	21.2
Total assets measured at fair value on a recurring basis	\$ 336.6	\$ 1,871.1	\$ —	\$ 2,207.7

⁽¹⁾ Includes debt obligations issued by U.S. government-sponsored enterprises or U.S. government agencies.

⁽²⁾ Includes assets which are primarily held pursuant to a deferred compensation plan for senior management, which consist mainly of mutual funds.

The following table summarizes financial assets that we measured at fair value on a recurring basis as of December 31, 2023, classified in accordance with the fair value hierarchy:

(In millions)	Fair Value Measurements Using			Total
	Level 1	Level 2	Level 3	
Cash equivalents	\$ 315.9	\$ —	\$ —	\$ 315.9
Debt securities, available-for-sale:				
U.S. government agencies ⁽¹⁾	—	1,612.5	—	1,612.5
Commercial paper	—	184.7	—	184.7
Corporate debt	—	360.6	—	360.6
Total debt securities, available-for-sale	—	2,157.8	—	2,157.8
Other assets ⁽²⁾	15.2	—	—	15.2
Total assets measured at fair value on a recurring basis	\$ 331.1	\$ 2,157.8	\$ —	\$ 2,488.9

⁽¹⁾ Includes debt obligations issued by U.S. government-sponsored enterprises or U.S. government agencies.

⁽²⁾ Includes assets which are held pursuant to a deferred compensation plan for senior management, which consist mainly of mutual funds.

There were no transfers into or out of Level 3 securities during the three and nine months ended September 30, 2024 and September 30, 2023.

Fair Value of Senior Convertible Notes

The fair value, based on trading prices (Level 1 inputs), of our senior convertible notes were as follows as of the dates indicated:

<i>(In millions)</i>	September 30, 2024	December 31, 2023
Senior Convertible Notes due 2025	\$ 1,152.3	\$ 1,262.8
Senior Convertible Notes due 2028	1,107.1	1,281.8
Total fair value of outstanding senior convertible notes	<u>\$ 2,259.4</u>	<u>\$ 2,544.6</u>

See Note 5 “Debt—Senior Convertible Notes” to the consolidated financial statements in Part I, Item I of this Quarterly Report on Form 10-Q for more information regarding the carrying values of our senior convertible notes.

Foreign Currency and Derivative Financial Instruments

We enter into foreign currency forward contracts to hedge monetary assets and liabilities denominated in foreign currencies. Our foreign currency forward contracts are not designated as hedging instruments. Therefore, changes in the fair values of these contracts are recognized in earnings, thereby offsetting the current earnings effect of the related foreign currency assets and liabilities. The duration of these contracts is generally one month. The derivative gains and losses are included in other income (expense), net in our consolidated statements of operations.

As of September 30, 2024 and December 31, 2023, the notional amounts of outstanding foreign currency forward contracts were \$66.0 million and \$71.0 million, respectively. The resulting impact on our consolidated financial statements from currency hedging activities was not significant for the three and nine months ended September 30, 2024 and September 30, 2023.

Our foreign currency exposures vary but are primarily concentrated in the Australian Dollar, the British Pound, the Canadian Dollar, the Euro, and the Malaysian Ringgit. We monitor the costs and the impact of foreign currency risks upon our financial results as part of our risk management program. We do not use derivative financial instruments for speculation or trading purposes or for activities other than risk management. We do not require and are not required to pledge collateral for these financial instruments and we do not carry any master netting arrangements to mitigate the credit risk.

Assets and Liabilities Measured at Fair Value on a Non-Recurring Basis

In accordance with authoritative guidance, we measure certain non-financial assets and liabilities at fair value on a non-recurring basis. These measurements are usually performed using the discounted cash flow method or cost method and Level 3 inputs. These include items such as non-financial assets and liabilities initially measured at fair value in a business combination and non-financial long-lived assets measured at fair value for an impairment assessment. In general, non-financial assets, including goodwill, intangible assets, and property and equipment, are measured at fair value when there are indicators of impairment and are recorded at fair value only when an impairment is recognized.

We hold certain other investments that we do not measure at fair value on a recurring basis. The carrying values of these investments were \$44.3 million as of September 30, 2024 and \$38.5 million as of December 31, 2023. We include the carrying values of these investments in other assets in our consolidated balance sheets. It is impracticable for us to estimate the fair value of these investments on a recurring basis due to the fact that these entities are privately held and limited information is available. We monitor the information that becomes available from time to time and adjust the carrying values of these investments if there are identified events or changes in circumstances that have a significant effect on the fair values.

There were no significant impairment losses on assets and liabilities measured at fair value on a non-recurring basis during the three and nine months ended September 30, 2024 and September 30, 2023.

4. Balance Sheet Details and Other Financial Information

Short-Term Marketable Securities

Short-term marketable securities, consisting of available-for-sale debt securities, were as follows as of the dates indicated:

(In millions)	September 30, 2024			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Market Value
Debt securities, available-for-sale:				
U.S. government agencies ⁽¹⁾	\$ 1,035.4	\$ 2.8	\$ (0.1)	\$ 1,038.1
Commercial paper	391.3	—	(0.2)	391.1
Corporate debt	441.0	1.0	(0.1)	441.9
Total debt securities, available-for-sale	<u>\$ 1,867.7</u>	<u>\$ 3.8</u>	<u>\$ (0.4)</u>	<u>\$ 1,871.1</u>

⁽¹⁾ Includes debt obligations issued by U.S. government-sponsored enterprises or U.S. government agencies.

(In millions)	December 31, 2023			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Market Value
Debt securities, available-for-sale:				
U.S. government agencies ⁽¹⁾	\$ 1,611.8	\$ 1.2	\$ (0.5)	\$ 1,612.5
Commercial paper	184.8	—	(0.1)	184.7
Corporate debt	360.8	0.1	(0.3)	360.6
Total debt securities, available-for-sale	<u>\$ 2,157.4</u>	<u>\$ 1.3</u>	<u>\$ (0.9)</u>	<u>\$ 2,157.8</u>

⁽¹⁾ Includes debt obligations issued by U.S. government-sponsored enterprises or U.S. government agencies.

As of September 30, 2024, the estimated market values of our short-term debt securities with contractual maturities up to 12 months and up to 18 months were \$1.65 billion and \$217.3 million, respectively. As of December 31, 2023, the estimated market value of our short-term debt securities with contractual maturities up to 12 months was \$2.16 billion. Gross realized gains and losses on sales of our short-term debt securities for the three and nine months ended September 30, 2024 and September 30, 2023 were not significant.

We periodically review our portfolio of debt securities to determine if any investment is impaired due to credit loss or other potential valuation concerns. For debt securities where the fair value of the investment is less than the amortized cost basis, we have assessed at the individual security level for various quantitative factors including, but not limited to, the nature of the investments, changes in credit ratings, interest rate fluctuations, industry analyst reports, and the severity of impairment. Unrealized losses on available-for-sale debt securities at September 30, 2024 were primarily due to changes in interest rates, including market credit spreads, and not due to increased credit risks associated with specific securities. Accordingly, we have not recorded an allowance for credit losses. We do not intend to sell these investments and it is not more likely than not that we will be required to sell the investments before recovery of their amortized cost bases, which may be at maturity.

Inventory

(In millions)	September 30, 2024	December 31, 2023
Raw materials	\$ 288.9	\$ 319.5
Work-in-process	49.8	30.0
Finished goods	247.6	210.1
Total inventory	<u>\$ 586.3</u>	<u>\$ 559.6</u>

Prepaid and Other Current Assets

<i>(In millions)</i>	September 30, 2024	December 31, 2023
Prepaid expenses	\$ 62.5	\$ 58.7
Prepaid inventory	21.2	31.5
Deferred compensation plan assets	19.2	15.2
Income tax receivables	31.7	13.6
Other current assets	47.6	49.3
Total prepaid and other current assets	<u>\$ 182.2</u>	<u>\$ 168.3</u>

Property and Equipment

<i>(In millions)</i>	September 30, 2024	December 31, 2023
Land and land improvements	\$ 50.5	\$ 34.5
Building	266.9	190.5
Furniture and fixtures	38.3	36.9
Computer software and hardware	76.8	65.8
Machinery and equipment	883.5	683.3
Leasehold improvements	290.6	283.4
Construction in progress	349.2	328.1
Total cost	1,955.8	1,622.5
Less: accumulated depreciation and amortization	(637.0)	(509.4)
Total property and equipment, net	<u>\$ 1,318.8</u>	<u>\$ 1,113.1</u>

Other Assets

<i>(In millions)</i>	September 30, 2024	December 31, 2023
Long-term investments	\$ 46.3	\$ 38.5
Long-term deposits	15.1	14.4
Other assets	26.8	22.1
Total other assets	<u>\$ 88.2</u>	<u>\$ 75.0</u>

Accounts Payable and Accrued Liabilities

<i>(In millions)</i>	September 30, 2024	December 31, 2023
Accounts payable trade	\$ 326.6	\$ 276.4
Accrued tax, audit, and legal fees	38.5	42.6
Accrued rebates	1,159.9	950.7
Accrued warranty	5.8	12.6
Income tax payable	5.8	7.5
Deferred compensation plan liabilities	19.2	15.2
Other accrued liabilities	36.7	40.5
Total accounts payable and accrued liabilities	<u>\$ 1,592.5</u>	<u>\$ 1,345.5</u>

Accrued Payroll and Related Expenses

<i>(In millions)</i>	September 30, 2024	December 31, 2023
Accrued wages, bonus and taxes	\$ 78.2	\$ 139.8
Other accrued employee benefits	27.6	31.2
Total accrued payroll and related expenses	<u>\$ 105.8</u>	<u>\$ 171.0</u>

Other Long-Term Liabilities

<i>(In millions)</i>	September 30, 2024	December 31, 2023
Finance lease obligations	\$ 58.2	\$ 58.6
Deferred revenue, long-term	5.2	7.4
Asset retirement obligation	16.1	15.7
Other tax liabilities	44.8	38.7
Other liabilities	5.3	5.2
Total other long-term liabilities	<u>\$ 129.6</u>	<u>\$ 125.6</u>

Other Income (Expense), Net

<i>(In millions)</i>	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Interest and dividend income	\$ 32.0	\$ 41.5	\$ 104.5	\$ 101.2
Interest expense	(4.7)	(4.9)	(14.1)	(15.4)
Other expense, net	(1.9)	(1.7)	(3.8)	(2.4)
Total other income (expense), net	<u>\$ 25.4</u>	<u>\$ 34.9</u>	<u>\$ 86.6</u>	<u>\$ 83.4</u>

Accumulated Other Comprehensive Income (Loss), Net of Tax

<i>(In millions)</i>	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Translation Adjustments and Other:				
Beginning balance	\$ (36.0)	\$ (26.6)	\$ (17.0)	\$ (7.8)
Translation adjustments and other	96.8	(7.0)	77.8	(25.8)
Ending balance	<u>\$ 60.8</u>	<u>\$ (33.6)</u>	<u>\$ 60.8</u>	<u>\$ (33.6)</u>
Investments:				
Beginning balance	\$ (2.0)	\$ (2.7)	\$ 0.3	\$ (3.8)
Unrealized gain on marketable debt securities	4.6	0.7	2.3	1.8
Ending balance	<u>\$ 2.6</u>	<u>\$ (2.0)</u>	<u>\$ 2.6</u>	<u>\$ (2.0)</u>
Accumulated other comprehensive income (loss)	<u>\$ 63.4</u>	<u>\$ (35.6)</u>	<u>\$ 63.4</u>	<u>\$ (35.6)</u>

5. Debt

Senior Convertible Notes

The carrying amounts of our senior convertible notes were as follows as of the dates indicated:

<i>(In millions)</i>	September 30, 2024	December 31, 2023
Principal amount:		
Senior Convertible Notes due 2025	\$ 1,207.5	\$ 1,207.5
Senior Convertible Notes due 2028	1,250.0	1,250.0
Total principal amount	2,457.5	2,457.5
Unamortized debt issuance costs	(17.9)	(23.3)
Carrying amount of senior convertible notes	<u>\$ 2,439.6</u>	<u>\$ 2,434.2</u>

For our senior convertible notes for which the if-converted value exceeded the principal amount, the amount in excess of principal was as follows as of the dates indicated:

<i>(In millions)</i>	September 30, 2024	December 31, 2023
Senior Convertible Notes due 2025	\$ —	\$ 56.1
Senior Convertible Notes due 2028	—	33.6
Total by which the notes' if-converted value exceeds their principal amount	<u>\$ —</u>	<u>\$ 89.7</u>

The following table summarizes the components of interest expense and the effective interest rates for our senior convertible notes for the periods shown:

<i>(In millions)</i>	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Cash interest expense:				
Contractual coupon interest ⁽¹⁾	\$ 1.9	\$ 1.8	\$ 5.8	\$ 7.0
Non-cash interest expense:				
Amortization of debt issuance costs	1.8	2.0	5.4	5.5
Total interest expense recognized on senior notes	<u>\$ 3.7</u>	<u>\$ 3.8</u>	<u>\$ 11.2</u>	<u>\$ 12.5</u>
Effective interest rate:				
Senior Convertible Notes due 2023 ⁽²⁾	*	1.1 %	*	1.1 %
Senior Convertible Notes due 2025	0.5 %	0.5 %	0.5 %	0.5 %
Senior Convertible Notes due 2028	0.7 %	0.7 %	0.7 %	0.7 %

⁽¹⁾ Interest on our unsecured senior convertible notes due 2023, or the 2023 Notes, began accruing upon issuance and was payable semi-annually on June 1 and December 1 of each year until the 2023 Notes matured on December 1, 2023. Interest on our unsecured senior convertible notes due 2025, or the 2025 Notes, began accruing upon issuance and is payable semi-annually on May 15 and November 15 of each year. Interest on our unsecured senior convertible notes due 2028, or the 2028 Notes, began accruing upon issuance and is payable semi-annually on May 15 and November 15 of each year.

⁽²⁾ The effective interest rate presented represents the rate applicable for the period outstanding. The 2023 Notes matured on December 1, 2023 and are no longer outstanding.

* Not applicable as no notes were outstanding in the relevant period.

Convertible Debt Summary

The following table summarizes key details of the 2023 Notes, 2025 Notes, and 2028 Notes:

Senior Convertible Notes	Offering Completion Date	Maturity Date	Stated Interest Rate	Aggregate Principal Amount Issued	Net Proceeds ⁽¹⁾	Initial Conversion Rate ⁽²⁾ (per \$1,000 principal amount)	Conversion Price (per share)	Settlement Methods ⁽³⁾
2023 Notes ⁽⁴⁾	November 2018	December 1, 2023	0.75%	\$850.0 million	\$836.6 million	24.3476 shares	\$41.07	Cash and/or shares
2025 Notes	May 2020	November 15, 2025	0.25%	\$1.21 billion	\$1.19 billion	6.6620 shares	\$150.11	Cash and/or shares
2028 Notes	May 2023	May 15, 2028	0.375%	\$1.25 billion	\$1.23 billion	6.1571 shares	\$162.41	Cash and/or shares

⁽¹⁾ Net proceeds are calculated by deducting the initial purchasers' discounts and estimated costs directly related to the offering from the aggregate principal amount of the applicable series of notes.

⁽²⁾ Subject to adjustments as defined in the applicable indentures.

⁽³⁾ The 2025 Notes and 2028 Notes may be settled in cash, stock, or a combination thereof, solely at our discretion. The 2023 Notes, while outstanding, could be settled in cash, stock, or a combination thereof, solely at our discretion.

⁽⁴⁾ The 2023 Notes matured on December 1, 2023 and are no longer outstanding.

We use the if-converted method for assumed conversion of our senior convertible notes to compute the weighted average shares of common stock outstanding for diluted earnings per share.

No principal payments are due on any of our senior convertible notes prior to maturity. Other than restrictions relating to certain fundamental changes and consolidations, mergers or asset sales and customary anti-dilution adjustments, the indentures relating to our senior convertible notes include customary terms and covenants, including certain events of default after which the senior convertible notes may be due and payable immediately.

2023 Note Hedge

In connection with the offering of the 2023 Notes, in November 2018 we entered into convertible note hedge transactions, or the 2023 Note Hedge, with two of the initial purchasers of the 2023 Notes, which we refer to as the 2023 Counterparties, entitling us to purchase up to 20.7 million shares of our common stock. The 2023 Note Hedge expired on December 1, 2023. See below for a description of conversion activity related to the 2023 Notes and shares received as the result of exercising the remaining portion of the 2023 Note Hedge in 2023.

2023 Warrants

In November 2018, we also sold warrants, or the 2023 Warrants, to the 2023 Counterparties to acquire up to 20.7 million shares of our common stock. The 2023 Warrants required net share settlement and a pro-rated number of warrants expired on each of the 60 scheduled trading days following March 1, 2024. We received \$183.8 million in cash proceeds from the sale of the 2023 Warrants, which we recorded in additional paid-in capital during 2018. The 2023 Warrants could have had a dilutive effect on our earnings per share to the extent that the price of our common stock during a given measurement period exceeded the strike price of the 2023 Warrants. The strike price of the 2023 Warrants was initially \$49.60 per share, subject to certain adjustments under the terms of the warrant agreements. We use the treasury share method for assumed conversion of the 2023 Warrants when computing the weighted average common shares outstanding for diluted earnings per share.

On February 13, 2024, we entered into a warrant termination agreement with one of the 2023 Counterparties to terminate outstanding warrants to purchase an aggregate of 10.3 million shares of our common stock. In consideration of the termination of these warrants, we delivered 6.0 million shares of our common stock to the holder.

During the first quarter of 2024, a portion of the 2023 Warrants was exercised and we issued 1.9 million shares of our common stock in addition to the aforementioned 6.0 million shares issued in connection with the warrant termination agreement.

During the second quarter of 2024, the remaining portion of the 2023 Warrants was exercised and we issued 4.6 million shares of our common stock in connection with the exercise.

2028 Capped Call Transactions

In May 2023, in connection with the offering of the 2028 Notes, we entered into privately negotiated capped call transactions, or the 2028 Capped Calls, with certain financial institutions. The 2028 Capped Calls cover, subject to anti-dilution adjustments substantially similar to those applicable to the 2028 Notes, the number of shares of our common stock initially underlying the 2028 Notes. The 2028 Capped Calls are expected generally to reduce potential dilution to our common stock upon conversion of the 2028 Notes and/or offset any cash payments that we are required to make in excess of the principal amount of converted 2028 Notes, as the case may be, with such reduction and/or offset subject to a cap. The 2028 Capped Calls have an initial cap price of \$212.62 per share, subject to adjustments, which represents a premium of 80% over the closing price of our common stock of \$118.12 per share on the Nasdaq Global Select Market on May 2, 2023. The cost to purchase the 2028 Capped Calls of \$101.3 million was recorded as a reduction to additional paid-in capital in our consolidated balance sheets as the 2028 Capped Calls met the criteria for classification in stockholders' equity.

Conversion Activity for Senior Convertible Notes

The 2023 Notes matured on December 1, 2023 and all outstanding principal was settled. There was no conversion activity for the 2025 Notes or 2028 Notes for the nine months ended September 30, 2024. See the following table for the details of conversion activity for the 2023 Notes for the fiscal year ended December 31, 2023:

Fiscal Period	Converted Notes	Aggregate Principal Amount Converted	Shares Issued for Settlement	Shares Received from Exercise of 2023 Note Hedge
1/1/2023 - 12/31/2023	2023 Notes	\$774.8 million	12.2 million	12.2 million

Conversion Rights for Senior Convertible Notes

Holders of our outstanding senior convertible notes have the right to require us to repurchase for cash all or a portion of their notes at 100% of their principal amount, plus any accrued and unpaid interest, upon the occurrence of a fundamental change (as defined in the applicable indenture relating to the notes). We are also required to increase the conversion rate for holders who convert their notes in connection with certain fundamental changes occurring prior to the maturity date or following the delivery by Dexcom of a notice of redemption.

The following table outlines the conversion options related for each of our senior convertible notes:

Summary of Conversions Rights at the Option of the Holders for the 2025 Notes and 2028 Notes, which we refer to collectively as the Notes

Conversion Rights at the Option of the Holders	Holders of the Notes have the ability to convert all or a portion of their notes in multiples of \$1,000 principal amount, at their option prior to 5:00 p.m., New York City time, on the business day immediately preceding August 15, 2025 and February 15, 2028 for the 2025 Notes and 2028 Notes, respectively, only under the following circumstances:
Circumstance 1⁽¹⁾	During any calendar quarter commencing after the applicable period (and only during such calendar quarter), if the last reported sale price of Dexcom's common stock for at least 20 trading days (whether or not consecutive) during the period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the applicable conversion price for the Notes on each applicable trading day
Circumstance 2	During the five business day period after any five consecutive trading day period in which the trading price per \$1,000 principal amount of the Notes for each trading day of that five consecutive trading day period was less than 98% of the product of the last reported sale price of Dexcom's common stock and the applicable conversion rate of the Notes on each such trading day
Circumstance 3	If we call any or all of the Notes for redemption, at any time prior to the close of business on the scheduled trading day immediately preceding the redemption date (only with respect to the notes called or deemed called for redemption)
Circumstance 4	Upon the occurrence of specified corporate events
Circumstance 5⁽²⁾	Holders of the Notes may convert all or a portion of their Notes regardless of the foregoing circumstances prior to the close of business on the business day immediately preceding the maturity date for the 2025 Notes and prior to the close of business on the second scheduled trading day immediately preceding the maturity date for the 2028 Notes

⁽¹⁾ Circumstance 1 is available after the calendar quarter ended September 30, 2020 and September 30, 2023 for the 2025 Notes and 2028 Notes, respectively.

⁽²⁾ Circumstance 5 is available on or after August 15, 2025 and February 15, 2028 for the 2025 Notes and 2028 Notes, respectively.

Summary of Conversion Right at the Option of the Company for the 2025 Notes and 2028 Notes

Conversion Right at Our Option⁽¹⁾	Dexcom may redeem for cash all or part of the Notes, at its option, if the last reported sale price of our common stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which Dexcom provides notice of redemption. The redemption price will be equal to 100% of the principal amount of the Notes to be redeemed plus accrued and unpaid interest to, but excluding, the redemption date
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⁽¹⁾ Dexcom does not have the right to redeem the Notes prior to May 20, 2023 and May 20, 2026 for the 2025 Notes and 2028 Notes, respectively. Dexcom has the right to redeem the notes on or after May 20, 2023 and prior to August 15, 2025 for the 2025 Notes, and on or after May 20, 2026 and prior to February 15, 2028 for the 2028 Notes.

Revolving Credit Agreement

Terms of the Revolving Credit Agreement

In June 2023, we entered into the First Amendment to the Second Amended and Restated Credit Agreement, as amended, or the Amended Credit Agreement, which we had previously entered into in October 2021. The Amended Credit Agreement is a five-year revolving credit facility, or the Credit Facility, that provides for an available principal amount of \$200.0 million which can be increased up to \$500.0 million at our option subject to customary conditions and approval of our lenders. The Amended Credit Agreement will mature on October 13, 2026. Borrowings under the Amended Credit Agreement are available for general corporate purposes, including working capital and capital expenditures.

Information related to availability and outstanding borrowings on our Amended Credit Agreement is as follows as of the date indicated:

<i>(In millions)</i>	September 30, 2024
Available principal amount	\$ 200.0
Letters of credit sub-facility	25.0
Outstanding borrowings	—
Outstanding letters of credit	7.6
Total available balance	\$ 192.4

Revolving loans under the Amended Credit Agreement bear interest at our choice of one of three base rates plus a range of applicable rates that are based on our leverage ratio. The minimum and maximum range of applicable rates per annum with respect to any ABR Loan, Term Benchmark Revolving Loan, or RFR Revolving Loan, each as defined in the Amended Credit Agreement under the captions “ABR Spread”, “Term Benchmark”, and “RFR Spread”, or “Unused Commitment Fee Rate”, respectively, are outlined in the following table:

Range	ABR Spread	Term Benchmark/RFR Spread	Unused Commitment Fee Rate
Minimum	0.375%	1.375%	0.175%
Maximum	1.000%	2.000%	0.250%

Our obligations under the Amended Credit Agreement are guaranteed by our existing and future wholly-owned domestic subsidiaries, and are secured by a first-priority security interest in substantially all of the assets of Dexcom and the guarantors, including all or a portion of the equity interests of our domestic subsidiaries and first-tier foreign subsidiaries but excluding real property and intellectual property (which is subject to a negative pledge). The Amended Credit Agreement contains covenants that limit certain indebtedness, liens, investments, transactions with affiliates, dividends and other restricted payments, subordinated indebtedness and amendments to subordinated indebtedness documents, and sale and leaseback transactions of Dexcom or any of its domestic subsidiaries. The Amended Credit Agreement also requires us to maintain a maximum leverage ratio and a minimum fixed charge coverage ratio. We were in compliance with these covenants as of September 30, 2024.

As of September 30, 2024, we have no other material guarantee facilities or lines of credit.

6. Contingencies

Litigation

We are subject to various claims, complaints and legal actions that arise from time to time in the normal course of business, including commercial insurance, product liability, intellectual property and employment related matters. In addition, from time to time we may bring claims or initiate lawsuits against various third parties with respect to matters arising out of the ordinary course of our business, including commercial and employment related matters.

Between June 2021 through the nine months ended September 30, 2024, we and certain Abbott Diabetes Care, Inc. (“Abbott”) entities have served patent infringement complaints against each other in multiple jurisdictions against certain continuous glucose monitoring products of each company.

Abbott’s patent infringement trial, “D1”, against Dexcom commenced in the U.S.D.C., District of Delaware in March 2024. In the lead up to trial, the U.S.D.C., District of Delaware invalidated one of Abbott’s patents on factory calibration and Abbott dropped four other patents from the litigation. The claims litigated were isolated to the inserter mechanism and the wearable seal and mount of Dexcom’s G6. On March 22, 2024, a jury returned a mixed verdict. The jury found that Dexcom infringes one patent, that Dexcom did not infringe a second patent, and that Dexcom also did not infringe a third patent, which the jury also found invalid. The jury found that any infringement was not willful. It could not reach unanimity as to a fourth patent. No determination of damages was made or awarded. Dexcom has challenged the sole finding of infringement and continues to defend itself vigorously. We analyzed the potential for a loss from this litigation in accordance with ASC 450, Contingencies. We believe it is not probable that we will have an unfavorable outcome and incur a material loss contingency due to our beliefs about our position in the case. In addition, the jury did not award damages for the one patent they believe we infringed nor can we reasonably estimate the amount of loss we would incur if we do not prevail. As a result, we have not recorded an accrual for a contingent liability.

Due to uncertainty surrounding the other patent litigation procedures initiated by Dexcom and Abbott throughout multiple jurisdictions, as well as the securities class action litigation and the derivative action, we are unable to reasonably estimate the ultimate outcome of any of the litigation matters at this time. We intend to protect our intellectual property and defend against these claims vigorously in all of these actions.

We do not believe we are party to any other currently pending legal proceedings, the outcome of which could have a material adverse effect on our business, financial condition, or results of operations. There can be no assurance that existing or future legal proceedings arising in the ordinary course of business or otherwise will not have a material adverse effect on our business, financial condition, or results of operations.

7. Income Taxes

We estimate our annual effective tax rate to be 23.1% for the full year 2024, which differs from the U.S. federal statutory rate due to state and foreign income taxes, federal taxation of international operations, and nondeductible executive compensation, partially offset by federal tax credits generated. Our actual effective tax rate of 14.7% for the nine months ended September 30, 2024 was primarily due to income tax expense from normal, recurring operations, partially offset by excess tax benefits recognized for share-based compensation for employees, net of disallowed executive compensation, and the Verily milestone payment.

The Organization for Economic Co-operation and Development has a framework to implement a global minimum corporate tax of 15% for companies with global revenues and profits above certain thresholds (referred to as Pillar 2), with certain aspects of Pillar 2 effective January 1, 2024 and other aspects effective January 1, 2025. While it is uncertain whether the United States will enact legislation to adopt Pillar 2, certain countries in which we operate have adopted legislation, and other countries in which we operate are in the process of introducing legislation to implement Pillar 2. We have assessed the impact of Pillar 2 on our financial statements and the impact is immaterial.

In June 2024, the State of California enacted S.B. 167, which suspends the use of net operating losses (“NOLs”) for the tax period from January 1, 2024 to December 31, 2026 for net business income of \$1.0 million or more, as well as limits the utilization of research and development tax credits to \$5.0 million each year. The State of California also passed S.B. 175 to provide for a potential early sunset of NOLs in either 2025 or 2026 if necessary. We have analyzed the effect of both these laws on our financial statements. We are estimating \$2.8 million utilization of our California research and development tax credits for tax year ending December 31, 2024, resulting in a corresponding valuation allowance release of the same amount.

8. Stockholders' Equity

Share-Based Compensation

Our share-based compensation expense is associated with RSUs, PSUs, and our Employee Stock Purchase Plan, or ESPP. The following table summarizes our share-based compensation expense included in our consolidated statements of operations for the periods shown:

(In millions)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Cost of sales	\$ 3.6	\$ 3.9	\$ 11.4	\$ 11.1
Research and development	13.1	11.4	38.5	34.3
Selling, general and administrative	26.7	23.7	77.2	68.5
Total share-based compensation expense	\$ 43.4	\$ 39.0	\$ 127.1	\$ 113.9

As of September 30, 2024, unrecognized estimated compensation costs related to RSUs and PSUs totaled \$253.2 million and are expected to be recognized over a weighted-average period of approximately 1.8 years.

Share Repurchase Program and Treasury Shares

In the first quarter of 2024, we issued 7.9 million treasury shares to settle a portion of the 2023 Warrants. In the second quarter of 2024, we issued 4.6 million treasury shares to settle the remaining portion of the 2023 Warrants. See Note 5 "Debt—Senior Convertible Notes" to the consolidated financial statements for more information.

In the first quarter of 2024, we issued 1.5 million treasury shares in connection with our achievement of the second sales-based milestone under the Restated Collaboration Agreement. See Note 2 "Development and Other Agreements—Collaboration with Verily Life Sciences" to the consolidated financial statements for more information.

In July 2024, our Board of Directors authorized and approved a share repurchase program of up to \$750.0 million of our outstanding common stock, with a repurchase period ending no later than June 30, 2025 (the "2024 Share Repurchase Program"). Repurchases of our common stock under the 2024 Share Repurchase Program were permitted to be made from time to time in the open market, in privately negotiated transactions or by other methods, including through the use of trading plans intended to qualify under Rule 10b5-1 under the Exchange Act, at our discretion, and in accordance with the limitations set forth in Rule 10b-18 promulgated under the Exchange Act and other applicable federal and state laws and regulations.

In the third quarter of 2024, we repurchased 10.4 million shares of our common stock for \$750.0 million under the 2024 Share Repurchase Program.

Repurchased shares of our common stock are held as treasury shares until they are reissued or retired. We have not yet determined the ultimate disposition of repurchased shares and consequently we continue to hold them as treasury shares rather than retiring them. Authorization of future stock repurchase programs is subject to the final determination of our Board of Directors.

9. Business Segment and Geographic Information

Reportable Segments

An operating segment is identified as a component of a business that has discrete financial information available and for which the CODM must decide the level of resource allocation. In addition, the guidance for segment reporting indicates certain quantitative materiality thresholds. None of the components of our business meet the definition of an operating segment.

We currently consider our operations to be, and manage our business globally within, one reportable segment, which is consistent with how our President and Chief Executive Officer, who is our CODM, reviews our business, makes investment and resource allocation decisions, and assesses operating performance.

Disaggregation of Revenue

We disaggregate revenue by geographic region and by major sales channel. We have determined that disaggregating revenue into these categories achieves the ASC Topic 606 disclosure objectives of depicting how the nature, amount, timing and uncertainty of revenue and cash flows are affected by economic factors.

Revenue by Geographic Region

During the three and nine months ended September 30, 2024 and September 30, 2023, no individual country outside the United States generated revenue that represented more than 10% of our total revenue. The following table sets forth revenue by our two primary geographical markets, the United States and International, based on the geographic location to which we deliver the components, for the periods shown:

<i>(In millions)</i>	Three Months Ended September 30, 2024		Three Months Ended September 30, 2023	
	Amount	% of Total	Amount	% of Total
United States	\$ 701.9	71 %	\$ 713.6	73 %
International	292.3	29 %	261.4	27 %
Total revenue	\$ 994.2	100 %	\$ 975.0	100 %

<i>(In millions)</i>	Nine Months Ended September 30, 2024		Nine Months Ended September 30, 2023	
	Amount	% of Total	Amount	% of Total
United States	\$ 2,087.0	71 %	\$ 1,856.2	72 %
International	832.5	29 %	731.6	28 %
Total revenue	\$ 2,919.5	100 %	\$ 2,587.8	100 %

Revenue by Customer Sales Channel

We sell our CGM systems through a direct sales organization and through distribution arrangements that allow distributors to sell our products. The following table sets forth revenue by major sales channel for the periods shown:

<i>(In millions)</i>	Three Months Ended September 30, 2024		Three Months Ended September 30, 2023	
	Amount	% of Total	Amount	% of Total
Distributor	\$ 843.3	85 %	\$ 839.7	86 %
Direct	150.9	15 %	135.3	14 %
Total revenue	\$ 994.2	100 %	\$ 975.0	100 %

<i>(In millions)</i>	Nine Months Ended September 30, 2024		Nine Months Ended September 30, 2023	
	Amount	% of Total	Amount	% of Total
Distributor	\$ 2,482.2	85 %	\$ 2,197.4	85 %
Direct	437.3	15 %	390.4	15 %
Total revenue	\$ 2,919.5	100 %	\$ 2,587.8	100 %

ITEM 2 - MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

This Quarterly Report on Form 10-Q, including the following Management's Discussion and Analysis of Financial Condition and Results of Operations, contains forward-looking statements that are not purely historical regarding Dexcom's or its management's intentions, beliefs, expectations and strategies for the future. These forward-looking statements fall within the meaning of the federal securities laws that relate to future events or our future financial performance. In some cases, you can identify forward-looking statements by terminology such as "may," "will," "expect," "plan," "anticipate," "believe," "estimate," "intend," "potential" or "continue" or the negative of these terms or other comparable terminology. Forward-looking statements are made as of the date of this Quarterly Report on Form 10-Q, deal with future events, are subject to various risks and uncertainties, and actual results could differ materially from those anticipated in the forward looking statements. The risks and uncertainties that could cause actual results to differ materially are more fully described under "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2023 filed with the SEC on February 8, 2024, together with any updates identified under "Risk Factors" in Part II, Item 1A of this Quarterly Report on Form 10-Q, elsewhere in this Quarterly Report on Form 10-Q, and in our other reports filed with the SEC. We assume no obligation to update any of the forward-looking statements after the date of this Quarterly Report on Form 10-Q or to conform these forward-looking statements to actual results. You should read the following discussion and analysis together with our consolidated financial statements and related notes in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Overview

Who We Are

We are a medical device company primarily focused on the design, development and commercialization of continuous glucose monitoring, or CGM, systems for the management of diabetes and metabolic health by patients, caregivers, and clinicians around the world.

We received approval from the Food and Drug Administration, or FDA, and commercialized our first product in 2006. We launched our latest generation system, the Dexcom G6[®] integrated Continuous Glucose Monitoring System, or G6, in 2018, and we launched the Dexcom G7[®], or G7, in 2023. In August 2024, we launched Stelo, our new biosensor designed for adults with prediabetes and Type 2 diabetes who do not use insulin, as the first over-the-counter glucose biosensor in the U.S.

Unless the context requires otherwise, the terms "we," "us," "our," the "company," or "Dexcom" refer to DexCom, Inc. and its subsidiaries.

Global Presence

We have built a direct sales organization in North America and certain international markets to call on health care professionals, such as endocrinologists, physicians and diabetes educators, who can educate and influence patient adoption of continuous glucose monitoring. To complement our direct sales efforts, we have entered into distribution arrangements in North America and several international markets that allow distributors to sell our products.

Future Developments

Product Development: We plan to develop future generations of technologies that are focused on improved performance and convenience and that will enable intelligent insulin administration. Over the longer term, we plan to continue to develop and improve networked platforms with open architecture, connectivity and transmitters capable of communicating with other devices. We also intend to expand our efforts to accumulate CGM patient data and metrics and apply predictive modeling and machine learning to generate interactive CGM insights that can inform patient behavior.

Partnerships: We also continue to pursue and support development partnerships with insulin pump companies and companies or institutions developing insulin delivery systems, including automated insulin delivery systems.

New Opportunities: We are also exploring how to extend our offerings to other opportunities, including for people with Type 2 diabetes that are non-insulin using, people with pre-diabetes, people who are obese, people who are pregnant, and people in the hospital setting. Eventually, we may apply our technological expertise to products beyond glucose monitoring.

Critical Accounting Estimates

The discussion and analysis of our financial condition and results of operations are based on our consolidated financial statements, which we have prepared in accordance with GAAP. The preparation of these consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements as well as the reported revenue and expenses during the reporting periods. On an ongoing basis, we evaluate our estimates and judgments. We base our estimates on historical experience and on various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

We believe that the estimates, assumptions and judgments involved in the accounting policies described in “*Management’s Discussion and Analysis of Financial Condition and Results of Operations*” in Part II, Item 7 of our Annual Report on Form 10-K for the fiscal year ended December 31, 2023, have the greatest potential impact on our financial statements, so we consider them to be our critical accounting policies and estimates. There were no material changes to our critical accounting estimates during the nine months ended September 30, 2024.

Overview of Financial Results

The most important financial indicators that we use to assess our business are revenue, gross profit, operating income, net income, and operating cash flow.

Key Highlights for the Three Months Ended September 30, 2024 include the following:

Revenue \$994.2 million up 2% from the same period in 2023	Gross Profit \$593.8 million down 5% from the same period in 2023	Operating Income \$152.0 million down 26% from the same period in 2023	Net Income \$134.6 million up 12% from the same period in 2023	Operating Cash Flow \$199.5 million down 26% from the same period in 2023
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We ended the third quarter of 2024 with cash, cash equivalents and short-term marketable securities totaling \$2.49 billion.

Results of Operations

Financial Overview

Three Months Ended September 30, 2024 Compared to Three Months Ended September 30, 2023

(In millions, except per share amounts)	Three Months Ended September 30,				2024 - 2023	
	2024	% of Revenue ⁽¹⁾	2023	% of Revenue ⁽¹⁾	\$ Change	% Change
Revenue	\$ 994.2	100 %	\$ 975.0	100 %	\$ 19.2	2 %
Cost of sales	400.4	40 %	351.7	36 %	48.7	14 %
Gross profit	593.8	59.7 %	623.3	63.9 %	(29.5)	(5)%
Operating expenses:						
Research and development	135.4	14 %	131.4	13 %	4.0	3 %
Selling, general and administrative	306.4	31 %	286.4	29 %	20.0	7 %
Total operating expenses	441.8	44 %	417.8	43 %	24.0	6 %
Operating income	152.0	15 %	205.5	21 %	(53.5)	(26)%
Other income (expense), net	25.4	3 %	34.9	4 %	(9.5)	(27)%
Income before income taxes	177.4	18 %	240.4	25 %	(63.0)	(26)%
Income tax expense	42.8	4 %	119.7	12 %	(76.9)	(64)%
Net income	\$ 134.6	14 %	\$ 120.7	12 %	\$ 13.9	12 %
Basic net income per share	\$ 0.34	**	\$ 0.31	**	\$ 0.03	10 %
Diluted net income per share	\$ 0.34	**	\$ 0.29	**	\$ 0.05	17 %

⁽¹⁾ The sum of the individual percentages may not equal the total due to rounding.

** Not meaningful

Revenue

We generate our revenue from the sale of disposable sensors and our reusable transmitter and receiver, collectively referred to as Reusable Hardware. We expect that the revenue we generate from the sales of our products will fluctuate from quarter to quarter. We typically experience seasonality, with lower sales in the first quarter of each year compared to the immediately preceding fourth quarter. This seasonal sales pattern relates to U.S. annual insurance deductible resets and unfunded flexible spending accounts.

Cost of sales

Cost of sales includes direct labor and materials costs related to each product sold or produced, including assembly, test labor and scrap, as well as factory overhead supporting our manufacturing operations. Factory overhead includes facilities, material procurement and control, manufacturing engineering, quality assurance, supervision and management. These costs are primarily salary, fringe benefits, share-based compensation, facility expense, supplies and purchased services. All of our manufacturing costs are included in cost of sales. In addition, amortization of certain licensing related intangibles are also included in cost of sales.

Research and development

Our research and development expenses primarily consist of engineering and research expenses related to our sensing technology, clinical trials, regulatory expenses, quality assurance programs, employee compensation, and business process outsourcers.

Selling, general and administrative

Our selling, general and administrative expenses primarily consist of employee compensation for our executive, financial, sales, marketing, information technology and administrative functions. Other significant expenses include commissions, marketing and advertising, IT software license costs, insurance, professional fees for our outside legal counsel and independent auditors, litigation expenses, patent application expenses and consulting expenses.

Other income (expense), net

Other income (expense), net consists primarily of interest and dividend income on our cash, cash equivalents and short-term marketable securities portfolio, foreign currency transaction gains and losses due to the effects of foreign currency fluctuations, realized and unrealized gains and losses on equity investments, and interest expense related to our senior convertible notes.

Three Months Ended September 30, 2024 Compared to Three Months Ended September 30, 2023

Revenue and Gross Profit Margin %



(In millions)	Three Months Ended September 30,				2024 - 2023	
	2024		2023		Change in Revenue	
	Revenue	% of Total	Revenue	% of Total	\$	%
United States	\$ 701.9	71%	\$ 713.6	73%	\$ (11.7)	(2)%
International	292.3	29%	261.4	27%	30.9	12%
Total Revenue	\$ 994.2	100%	\$ 975.0	100%	\$ 19.2	2%

Three Months Ended September 30, 2024 Compared to Three Months Ended September 30, 2023

Revenue

The revenue increase was primarily driven by increased sales volume of our disposable sensors due to the continued growth of our worldwide customer base. We added approximately 600,000 net users to our worldwide customer base in 2023. The increase in revenue was offset by pricing headwinds due to greater rebate eligibility and channel mix.

Disposable sensor and other revenue comprised approximately 96% of total revenue and Reusable Hardware revenue comprised approximately 4% of total revenue for the three months ended September 30, 2024. Disposable sensor and other revenue comprised approximately 90% of total revenue and Reusable Hardware revenue comprised approximately 10% of total revenue for the three months ended September 30, 2023.

Cost of sales & Gross profit

Cost of sales and gross profit increased primarily due to an increase in sales volume driven by the addition of approximately 600,000 net users to our worldwide customer base in 2023.

The decrease in gross profit margin percentage in the third quarter of 2024 compared to the third quarter of 2023 was primarily driven by product and channel mix changes and a \$24.6 million non-cash inventory build charge.

**Three Months Ended September 30, 2024 Compared to
Three Months Ended September 30, 2023**

***Research and
development expense***

Research and development expense increased primarily due to \$4.5 million in clinical trials, supplies and other support costs and \$2.7 million in software and data costs, offset by a \$2.8 million decrease in compensation and related costs.

We continue to believe that focused investments in research and development are critical to our future growth and competitive position in the marketplace, and to the development of new and updated products and services that are central to our core business strategy.

***Selling, general and
administrative expense***

Selling, general and administrative expense increased primarily due to \$13.6 million in advertising and marketing costs and \$5.4 million in software and data costs, offset by a \$7.1 million decrease in compensation and related costs.

***Other income (expense),
net***

Other income (expense), net, decreased primarily due to a \$9.5 million decrease in interest and dividend income on our cash, cash equivalents, and marketable securities portfolio. The decrease in interest income was related to a change in market interest rates, as well as a decrease in the average invested balances compared to the same period in 2023.

Income tax expense

The income tax expense recorded for the three months ended September 30, 2024 was primarily attributable to income tax expense from normal, recurring operations and discrete impacts of certain foreign tax return filings.

The income tax expense recorded for the three months ended September 30, 2023 was primarily attributable to income tax expense from normal, recurring operations, discrete income tax expense related to an intra-entity transfer of certain intellectual property, and decrease in the state tax rate applied to beginning of year deferred tax assets.

The decrease in our effective tax rate for the three months ended September 30, 2024 compared to the same period in 2023 is primarily attributable to impacts of the prior year tax restructuring.

Results of Operations

Financial Overview

Nine Months Ended September 30, 2024 Compared to Nine Months Ended September 30, 2023

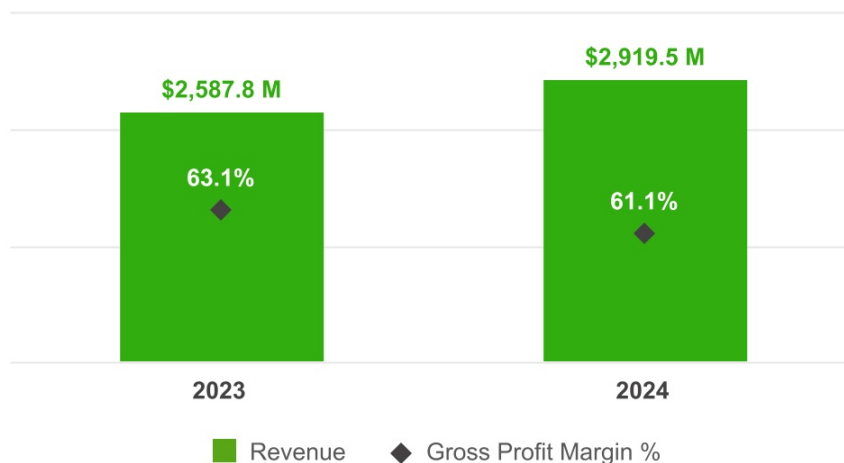
(In millions, except per share amounts)	Nine Months Ended September 30,				2024 - 2023	
	2024	% of Revenue ⁽¹⁾	2023	% of Revenue ⁽¹⁾	\$ Change	% Change
Revenue	\$ 2,919.5	100 %	\$ 2,587.8	100 %	\$ 331.7	13 %
Cost of sales	1,137.1	39 %	955.5	37 %	181.6	19 %
Gross profit	1,782.4	61.1 %	1,632.3	63.1 %	150.1	9 %
Operating expenses:						
Research and development	412.9	14 %	369.7	14 %	43.2	12 %
Selling, general and administrative	958.4	33 %	881.8	34 %	76.6	9 %
Total operating expenses	1,371.3	47 %	1,251.5	48 %	119.8	10 %
Operating income	411.1	14 %	380.8	15 %	30.3	8 %
Other income (expense), net	86.6	3 %	83.4	3 %	3.2	4 %
Income before income taxes	497.7	17 %	464.2	18 %	33.5	7 %
Income tax expense	73.2	3 %	179.0	7 %	(105.8)	(59)%
Net income	\$ 424.5	15 %	\$ 285.2	11 %	\$ 139.3	49 %
Basic net income per share	\$ 1.08	**	\$ 0.74	**	\$ 0.34	46 %
Diluted net income per share	\$ 1.04	**	\$ 0.69	**	\$ 0.35	51 %

⁽¹⁾ The sum of the individual percentages may not equal the total due to rounding.

** Not meaningful

Nine Months Ended September 30, 2024 Compared to Nine Months Ended September 30, 2023

Revenue and Gross Profit Margin %



(In millions)	Nine Months Ended September 30,				2024 - 2023	
	2024		2023		Change in Revenues	
	Revenue	% of Total	Revenue	% of Total	\$	%
United States	\$ 2,087.0	71%	\$ 1,856.2	72%	\$ 230.8	12%
International	832.5	29%	731.6	28%	100.9	14%
Total Revenue	\$ 2,919.5	100%	\$ 2,587.8	100%	\$ 331.7	13%

Nine Months Ended September 30, 2024 Compared to Nine Months Ended September 30, 2023

Revenue

The revenue increase was primarily driven by increased sales volume of our disposable sensors due to the continued growth of our worldwide customer base. We added approximately 600,000 net users to our worldwide customer base in 2023. The increase in revenue was offset by pricing headwinds due to greater rebate eligibility and channel mix.

Disposable sensor and other revenue comprised approximately 94% of total revenue and Reusable Hardware revenue comprised approximately 6% of total revenue for the nine months ended September 30, 2024. Disposable sensor and other revenue comprised approximately 89% of total revenue and Reusable Hardware revenue comprised approximately 11% of total revenue for the nine months ended September 30, 2023.

Cost of sales & Gross profit

Cost of sales and gross profit increased primarily due to an increase in sales volume driven by the addition of approximately 600,000 net users to our worldwide customer base in 2023.

The decrease in gross profit margin percentage in 2024 compared to 2023 was primarily driven by product and channel mix changes and a \$24.6 million non-cash inventory build charge.

**Nine Months Ended September 30, 2024 Compared to
Nine Months Ended September 30, 2023**

***Research and
development expense***

Research and development expense increased primarily due to \$16.6 million in clinical trials, supplies and other support costs, \$11.3 million in compensation and related costs, and \$6.2 million in software and data costs.

We continue to believe that focused investments in research and development are critical to our future growth and competitive position in the marketplace, and to the development of new and updated products and services that are central to our core business strategy.

***Selling, general and
administrative expense***

Selling, general and administrative expense increased primarily due to \$19.5 million in advertising and marketing costs, \$17.8 million in compensation and related costs, \$15.0 million in software and data costs, and \$10.4 million in travel related expenses.

Income tax expense

The income tax expense recorded for the nine months ended September 30, 2024 was primarily attributable to income tax expense from normal, recurring operations at an estimated annual effective tax rate of 23.1%, partially offset by discrete excess tax benefits recognized for share-based compensation for employees, net of nondeductible executive compensation, the Verily milestone payment, and the impacts of certain foreign tax return filings.

The income tax expense recorded for the nine months ended September 30, 2023 was primarily attributable to income tax expense from normal, recurring operations, discrete income tax expense related to an intra-entity asset transfer of certain intellectual property, and decrease in the state tax rate applied to the beginning of year deferred tax assets, partially offset by excess tax benefits recognized for share-based compensation for employees, net of disallowed executive compensation.

The decrease in our effective tax rate for the nine months ended September 30, 2024 compared to the same period in 2023 is primarily attributable to impacts of the prior year tax restructuring and the Verily milestone payment.

Liquidity and Capital Resources

Overview, Capital Resources, and Capital Requirements

Our principal sources of liquidity are our existing cash, cash equivalents and marketable securities, cash generated from operations, proceeds from our senior convertible notes issuances, and access to our Credit Facility. Our primary uses of cash have been for research and development programs, selling and marketing activities, capital expenditures, acquisitions of businesses, and debt service costs.

We expect that cash provided by our operations may fluctuate in future periods as a result of a number of factors, including fluctuations in our operating results, working capital requirements and capital deployment decisions. We have historically invested our cash primarily in U.S. dollar-denominated, investment grade, highly liquid obligations of U.S. government agencies, commercial paper, corporate debt, and money market funds. Certain of these investments are subject to general credit, liquidity and other market risks. The general condition of the financial markets and the economy may increase those risks and may affect the value and liquidity of investments and restrict our ability to access the capital markets.

Our future capital requirements will depend on many factors, including but not limited to:

The evolution of the international expansion of our business and the revenue generated by sales of our approved products and any future products;

Our ability to efficiently scale our operations to meet demand for our current and any future products;

The success of our research and development efforts;

The expenses we incur in manufacturing, developing, selling and marketing our products;

The costs, timing and risks of delays of additional regulatory approvals;

The costs of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights;

The quality levels of our products and services;

The emergence of competing or complementary technological developments;

The terms and timing of any collaborative, licensing and other arrangements that we may establish; and

The third-party reimbursement of our products for our customers;

The rate of progress and cost of our clinical trials and other development activities;

The acquisition of businesses, products and technologies and our ability to integrate and manage any acquired businesses, products and technologies.

We expect that existing cash and short-term investments and cash flows from our future operations will generally be sufficient to fund our ongoing core business. As current borrowing sources become due, we may be required to access the capital markets for additional funding. As we assess inorganic growth strategies, we may need to supplement our internally generated cash flow with outside sources. In the event that we are required to access the debt market, we believe that we will be able to secure reasonable borrowing rates. As part of our liquidity strategy, we will continue to monitor our current level of earnings and cash flow generation as well as our ability to access the market in light of those earning levels.

A substantial portion of our operations are located in the United States, and the majority of our sales since inception have been made in U.S. dollars. We will be exposed to additional foreign currency exchange risk related to our international operations as we expand our manufacturing internationally and as our business continues to increase in international markets. See “*Foreign Currency Exchange Risk*” in Part II, Item 7A of our Annual Report on Form 10-K for the fiscal year ended December 31, 2023, for more information.

Main Sources of Liquidity

Cash, cash equivalents and short-term marketable securities

Our cash, cash equivalents and short-term marketable securities totaled \$2.49 billion as of September 30, 2024. None of those funds were restricted and \$2.30 billion (approximately 92%) of those funds were located in the United States.

Cash flows from Operations

For the nine months ended September 30, 2024, we had positive cash flows of \$688.1 million from operating activities. We anticipate that we will continue to generate positive cash flows from operations for the foreseeable future.

Senior Convertible Notes

We received net proceeds of \$1.19 billion in May 2020 from the 2025 Notes offering, and net proceeds of \$1.23 billion in May 2023 from the 2028 Notes offering. We used \$282.6 million of the net proceeds from the offering of the 2025 Notes to repurchase a portion of our senior convertible notes due in 2022. We used \$289.9 million of the net proceeds from the offering of the 2028 Notes to purchase capped call transactions and repurchase shares of our common stock in May 2023. We intend to use the remainder of the net proceeds from the 2025 Notes offering and 2028 Notes offering for general corporate purposes and capital expenditures, including working capital needs. We may also use the net proceeds to expand our current business through in-licensing or acquisitions of, or investments in, other businesses, products or technologies; however, we do not have any significant commitments with respect to any such acquisitions or investments at this time.

In connection with the 2028 Notes offering, we purchased the 2028 Capped Calls. See Note 5 “*Debt*” to the consolidated financial statements in Part I, Item 1 of this Quarterly Report on Form 10-Q for more information about our senior convertible notes and the 2028 Capped Calls.

Revolving Credit Agreement

As of September 30, 2024, we had no outstanding borrowings, \$7.6 million in outstanding letters of credit, and a total available balance of \$192.4 million under the Amended Credit Agreement. We monitor counterparty risk associated with the institutional lenders that are providing the Credit Facility. We currently believe that the Credit Facility will be available to us should we choose to borrow under it. Revolving loans will be available for general corporate purposes, including working capital and capital expenditures. See Note 5 “*Debt*” to the consolidated financial statements in Part I, Item 1 of this Quarterly Report on Form 10-Q for more information on the Amended Credit Agreement.

Short-term Liquidity Requirements

Our short-term liquidity requirements primarily consist of regular operating costs, interest payments related to our senior convertible notes, capital expenditures for the development of our manufacturing facilities and office spaces, and short-term material cash requirements as described below. As of September 30, 2024, we had a working capital ratio of 2.46 and a quick ratio of 2.01, which indicates that our current assets are more than enough to cover our short-term liabilities. We expect to have significant capital expenditures for the next year to scale-up capacity in Mesa, Arizona and drive our strategic initiatives of building out our manufacturing facilities and/or equipment in Malaysia and Ireland.

We believe that our cash, cash equivalents, and marketable securities balances, projected cash contributions from our commercial operations, and borrowings under our Credit Facility will be sufficient to meet our anticipated seasonal working capital needs, all capital expenditure requirements, material cash requirements as described below, and other liquidity requirements associated with our operations for at least the next 12 months. We may use cash to repurchase shares of our common stock or for other strategic initiatives that strengthen our foundation for long-term growth.

Long-term Liquidity Requirements

Our long-term liquidity requirements primarily consist of interest and principal payments related to our senior convertible notes, capital expenditures for the development of our manufacturing facilities and office spaces, and long-term material cash requirements as described below. As of September 30, 2024, we had a debt-to-assets ratio of 0.38, which indicates that our total assets are more than enough to cover our short-term and long-term debts. As demand grows for our products, we will continue to expand global operations to meet demand through investments in manufacturing and operations. We expect to meet our long-term liquidity requirements from our main sources of

liquidity as described above to support our future operations, capital expenditures, acquisitions, and other liquidity requirements associated with our operations beyond the next 12 months.

As of September 30, 2024, we have outstanding senior convertible notes that will mature in November 2025 and May 2028. However, the outstanding principal of our senior convertible notes could be converted into cash and/or shares of our common stock prior to maturity once certain conditions are met. See Note 5 “*Debt—Senior Convertible Notes*” to the consolidated financial statements in Part I, Item 1 of this Quarterly Report on Form 10-Q for information on conversion rights prior to maturity.

Material Cash Requirements

From time to time in the ordinary course of business, we enter into a variety of purchase arrangements including but not limited to, purchase arrangements related to capital expenditures, components used in manufacturing, and research and development activities. See “*Contractual Obligations*” below for more information.

Our obligations under the 2025 Notes and 2028 Notes include both principal and interest payments. Although the 2025 Notes and 2028 Notes mature in November 2025 and May 2028, respectively, they may be converted into cash and/or shares of our common stock prior to maturity if certain conditions are met. Any conversion prior to maturity may result in repayment of the principal amounts due under the Notes sooner than the scheduled repayment.

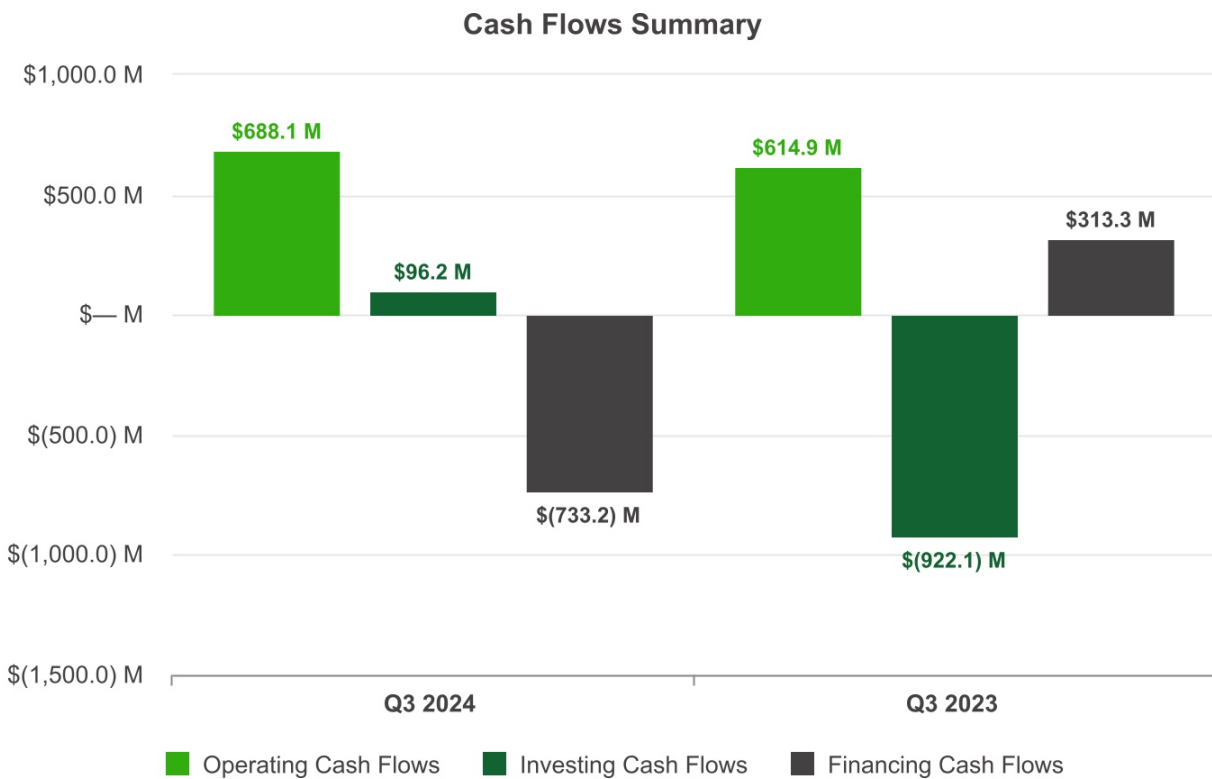
As market conditions warrant, we may, from time to time, repurchase our outstanding debt securities or shares of our common stock, in the open market, in privately negotiated transactions, by exchange transaction or otherwise. Such repurchases, if any, will depend on prevailing market conditions, our liquidity and other factors and may be commenced or suspended at any time. The amounts involved and total consideration paid may be material. See Note 8 “*Stockholder’s Equity—Share Repurchase Program and Treasury Shares*” to the consolidated financial statements in Part I, Item 1 of this Quarterly Report on Form 10-Q for more information about our 2024 Share Repurchase Program.

See Note 5 “*Debt*” to the consolidated financial statements in Part I, Item 1 of this Quarterly Report on Form 10-Q for more information about the terms of the Amended Credit Agreement, our senior convertible notes, and the 2028 Capped Calls.

We are party to various leasing arrangements, primarily for office, manufacturing and warehouse space that expire at various times through December 2030, excluding any renewal options. We also have land leases in Penang, Malaysia that expire in 2082 and Athenry, Ireland that expire in 3023 for our international manufacturing facilities. We anticipate incurring significant expenditures related to our Malaysia manufacturing facility and equipment over the next year and the build-out of the Ireland manufacturing facility and equipment over the next five years. See Note 6 “*Leases and Other Commitments—Leases*” to the consolidated financial statements in Part II, Item 8 of our Annual Report for the fiscal year ended December 31, 2023 for more information about our leases.

Cash Flows

The following table sets forth a summary of our cash flows for the periods indicated. See the consolidated financial statements in Part I, Item 1 of this Quarterly Report on Form 10-Q for the complete consolidated statements of cash flows for these periods.



As of September 30, 2024, we had \$2.49 billion in cash, cash equivalents and short-term marketable securities, which is a decrease of \$231.8 million compared to \$2.72 billion as of December 31, 2023.

The primary cash flows during the nine months ended September 30, 2024 and September 30, 2023 are described below. See the consolidated financial statements in Part I, Item 1 of this Quarterly Report on Form 10-Q for complete consolidated statements of cash flows for these periods.

		Nine Months Ended	
		September 30, 2024	September 30, 2023
Operating Cash Flows	<p>+ \$424.5 million of net income, \$161.2 million of net non-cash adjustments, and a net increase of \$102.4 million in changes of working capital balances</p> <p>Net non-cash adjustments were primarily related to depreciation and amortization, share-based compensation, and deferred income taxes</p>	<p>+ \$285.2 million of net income, \$68.4 million of net non-cash adjustments, and a net increase of \$261.3 million in changes of working capital balances</p> <p>Net non-cash adjustments were primarily related to depreciation and amortization and share-based compensation</p>	
Investing Cash Flows	<p>+ \$335.7 million in net proceeds from marketable securities</p> <p>- \$234.2 million in capital expenditures</p>	<p>- \$719.5 million in net purchases of marketable securities</p> <p>- \$184.1 million in capital expenditures</p> <p>- \$19.5 million in purchases of equity investments</p>	
Financing Cash Flows	<p>+ \$28.2 million in proceeds from issuance of common stock under our employee stock plans</p> <p>- \$750.0 million in purchases of treasury stock</p>	<p>+ \$1.23 billion in proceeds from issuance of senior convertible notes, net of issuance costs</p> <p>+ \$26.6 million in proceeds from issuance of common stock under our employee stock plans</p> <p>- \$650.5 million in payments for conversions of senior convertible notes</p> <p>- \$188.7 million in purchases of treasury stock</p> <p>- \$101.3 million in purchases of capped call transactions</p>	

Contractual Obligations

We presented our contractual obligations as of December 31, 2023 in Note 6 “*Leases and Other Commitments*” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2023. There were no material changes to our lease obligations during the nine months ended September 30, 2024. As of September 30, 2024, we had approximately \$1.26 billion of open purchase orders and contractual obligations in the ordinary course of business, the majority of which are due within one year. See Note 5 “*Debt—Senior Convertible Notes*” to the consolidated financial statements in Part I, Item 1 of this Quarterly Report on Form 10-Q for more information on our senior convertible notes.

Recent Accounting Guidance

See Note 1 “*Organization and Significant Accounting Policies*” to the consolidated financial statements in Part I, Item 1 of this Quarterly Report on Form 10-Q for more information regarding recently issued accounting pronouncements and the potential impact on our consolidated financial statements, if any.

ITEM 3 - QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

There were no material changes to our quantitative and qualitative disclosures about market risk during the nine months ended September 30, 2024. See Part II, Item 7A “*Quantitative and Qualitative Disclosures about Market Risk*” of our Annual Report on Form 10-K for the fiscal year ended December 31, 2023, for a detailed discussion of our market risks.

ITEM 4 - CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Regulations under the Exchange Act require public companies to maintain “disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act. Disclosure controls and procedures include, without limitation, controls and other procedures that are designed to ensure that information required to be disclosed in the reports that we file or submit under the Exchange Act is accumulated and timely communicated to management, including our Chief Executive Officer (our principal executive officer) and Chief Financial Officer (our principal financial officer), recorded, processed, summarized, and reported within the time periods specified in the SEC’s rules and forms. Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, conducted an evaluation of the effectiveness of our disclosure controls and procedures as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on their evaluation as of September 30, 2024, our Chief Executive Officer and our Chief Financial Officer concluded that our disclosure controls and procedures were effective at a reasonable assurance level as of such date.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the most recently completed fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Limitation on Effectiveness of Controls

It should be noted that any system of controls, including ours, however well designed and operated, can provide only reasonable, and not absolute, assurance that the objectives of the system are met. The design of any control system is based, in part, upon the benefits of the control system relative to its costs. Control systems can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. In addition, over time, controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of these and other inherent limitations of control systems, we cannot guarantee that any design will succeed in achieving its stated goals under all potential future conditions, regardless of how remote.

PART II. OTHER INFORMATION

ITEM 1 - LEGAL PROCEEDINGS

We are subject to various claims, complaints and legal actions that arise from time to time in the normal course of business, including commercial insurance, product liability, intellectual property and employment related matters. In addition, from time to time we may bring claims or initiate lawsuits against various third parties with respect to matters arising out of the ordinary course of our business, including commercial and employment related matters.

Litigation with Abbott

Since June 2021, we and certain Abbott Diabetes Care, Inc. (“Abbott”) entities have served patent infringement complaints against each other in multiple jurisdictions against certain continuous glucose monitoring products of each company.

In June 2021, we initiated patent infringement litigation against Abbott in the United States (U.S.D.C., Western District of Texas) and Germany (National Court (“N.C.”) in Mannheim). In May 2023, we filed additional patent infringement actions in Germany (N.C. in Munich). In July and August 2023, we initiated patent infringement litigation in the United Patent Court (“UPC”) (Paris & Munich) and in Spain (Commercial Courts of Barcelona).

In October and November 2023, we initiated patent infringement litigation in Germany (N.C. in Munich) and in the UPC (Paris & Munich). In January 2024, we initiated patent infringement litigation in Germany (N.C. in Hamburg).

In July 2024, after hearings in May and June in the Paris and Munich divisions of the UPC, each division issued a decision revoking our patents asserted against Abbott. In late 2024 and early 2025, hearings in the Paris, Munich and Stockholm divisions of the UPC are scheduled wherein Dexcom asserts two patents against Abbott and Abbott asserts three patents against Dexcom.

In July 2021, one day after we initiated litigation in the U.S.D.C., Western District of Texas, Abbott initiated patent infringement litigation against Dexcom in the United States (U.S.D.C., Delaware (“D1”). Shortly thereafter, Abbott filed additional patent infringement litigation actions in the United Kingdom (Business and Property Courts of England and Wales) and Germany (N.C. in Mannheim and Dusseldorf).

In response to the lawsuits initiated by Abbott in the United Kingdom, Dexcom also filed patent infringement counterclaims in the Business and Property Courts of England and Wales. Three trials on liability have already been conducted in the United Kingdom. On October 18, 2023 and June 28, 2024, judgment was handed down in favor of Dexcom, finding the Abbott patents to be invalid and not infringed. On January 15, 2024, judgment was handed down invalidating both Abbott and Dexcom’s patents.

In December 2021, Abbott filed a breach of contract lawsuit against Dexcom in the United States (U.S.D.C., District of Delaware) alleging that Dexcom breached the parties’ Settlement and License Agreement dated July 2, 2014 (“SLA”). The U.S.D.C., District of Delaware consolidated Abbott’s breach of contract lawsuit with Dexcom’s patent infringement lawsuit which had been transferred from the U.S.D.C., Western District of Texas (“D3”). Dexcom asserted counterclaims that Abbott also breached the SLA. A jury trial on Abbott’s breach of contract claims commenced on July 10, 2023. On July 14, 2023, the jury verdict determined that Abbott was not licensed to thirteen claims of certain Dexcom patents and that Abbott was licensed to five claims. In April 2022, Abbott initiated the inter partes review (“IPR”) process on the asserted claims of Dexcom’s patents in D3. The U.S. Patent and Trademark Office (the “PTO”) denied institution of one of Dexcom’s patents and instituted IPR on the other four. Ultimately, in November 2023, the PTO issued its Final Written Decision, upholding claims of two Dexcom patents to be patentable, which cover factory calibration and certain alarms and alerts, and two to be unpatentable, which cover certain sensor code and sensor configurations. We will continue to enforce the remaining claims of the patents asserted in Delaware at a trial set for January 11, 2027.

In February 2023, Abbott filed patent infringement litigation against us in Germany (N.C. in Hamburg and Munich). In March 2023, Abbott filed a patent infringement litigation in the United States (U.S.D.C., Delaware (“D4”)) and we filed counterclaims for patent infringement in that action in June 2023. The D4 Court recently set a February 15, 2027 trial date for Abbott’s offensive case and a March 8, 2027 trial date for Dexcom’s offensive case. In June 2023, Abbott filed patent infringement litigation actions in the United Kingdom (Business and Property Courts of England and Wales). In response to the lawsuits initiated by Abbott in the United Kingdom, Dexcom also filed patent infringement counterclaims in that jurisdiction. Two trials are set to occur in the United Kingdom in late 2024 and early 2025, with two Dexcom patents asserted and one Abbott patent asserted.

Abbott's patent infringement trial, "D1", against Dexcom commenced in the U.S.D.C., District of Delaware in March 2024. In the lead up to trial, the U.S.D.C., District of Delaware invalidated one of Abbott's patents on factory calibration and Abbott dropped four other patents from the litigation. The claims litigated were isolated to the inserter mechanism and the wearable seal and mount of Dexcom's G6. On March 22, 2024, a jury returned a mixed verdict. The jury found that Dexcom infringes one patent, that Dexcom did not infringe a second patent, and that Dexcom also did not infringe a third patent, which the jury also found invalid. The jury found that any infringement was not willful. It could not reach unanimity as to a fourth patent. No determination of damages was made or awarded. Dexcom has challenged the sole finding of infringement and continues to defend itself vigorously.

Commencing in January 2024, patent infringement hearings between Abbott and Dexcom were scheduled to take place in Germany wherein each sought damages and injunctive relief against the other. All but one of Abbott's offensive hearings were either stayed or cancelled entirely due to parallel invalidity proceedings and nullity decisions. After a February 28, 2024 hearing in Munich wherein Abbott asserted patent infringement claims against Dexcom, Dexcom received a favorable non-infringement decision. On July 24, 2024, Dexcom received a decision from the Munich court related to the July 3, 2024 hearing, staying our offensive infringement proceedings pending the outcome of an opposition proceeding. On July 31, 2024, Dexcom received a decision from the Munich courts related to hearings in April 2024, dismissing our claims for infringement. Dexcom and Abbott each await a decision from the Munich court on infringement proceedings which took place in September 2024.

Due to uncertainty surrounding patent litigation procedures initiated by Dexcom and Abbott throughout multiple jurisdictions, we are unable to reasonably estimate the ultimate outcome of any of the litigation matters at this time. We intend to protect our intellectual property and defend against Abbott's claims vigorously in all of these actions.

Securities Class Action Litigation

On August 21, 2024, a putative class action complaint was filed against us and certain of our executive officers in the United States District Court for the Southern District of California (captioned *Alonzo v. DexCom, Inc.*, Case No. 24-cv-1485) alleging violations of the Securities Exchange Act for allegedly making false and misleading statements between January 8, 2024 and July 25, 2024 with respect to our expected revenue for fiscal 2024 and ability to capitalize on our growth potential. The complaint seeks unspecified compensatory damages and attorney's fees and costs. On October 3, 2024, the court granted the parties joint motion to defer our deadline to respond to the complaint until after appointment of lead plaintiff.

On October 8, 2024, a second, substantially similar, putative class action complaint was filed against us and certain of our officers in the United States District Court for the Southern District of California (captioned *Oakland County Employees' Retirement System v. DexCom, Inc.*, Case No. 24-cv-1804), alleging violations of the Securities Exchange Act for allegedly making false and misleading statements between April 28, 2023 and July 25, 2024. On October 9, 2024, a third, substantially similar, putative class action complaint was filed against us and certain of our officers in the United States District Court for the Southern District of California (captioned *Carnes v. DexCom, Inc.*, Case No. 24-cv-1809).

Derivative Actions

On September 13, 2024, a putative stockholder filed a derivative lawsuit against us and certain of our current and former executive officers and directors in the United States District Court for the Southern District of California (captioned *Silva v. Sayer, et al.*, Case No. 24-cv-1645). On October 7, 2024, another putative stockholder filed a second derivative lawsuit against us and certain of our current and former executive officers and directors in the United States District Court for the Southern District of California (captioned *Malone v. Sayer, et al.*, Case No. 24-cv-1799). The derivative complaints allege factual allegations largely tracking allegations made in the Securities Class Action Litigation and seek, among other things, damages and restitution to be paid to the Company by the individual defendants, punitive damages, and attorney's fees and costs. On October 16, 2024, the parties filed a joint motion to consolidate the two derivative actions and stay the consolidated action until (i) the dismissal of the Securities Class Action, with prejudice, and exhaustion of all appeals related thereto; or (ii) the denial of any motion to dismiss the Securities Class Action in whole or in part.

We intend to vigorously defend against such claims; however, we cannot be certain of the outcome of our ongoing proceedings and, if determined adversely to us, our business and financial condition may be adversely affected.

We do not believe we are party to any other currently pending legal proceedings, the outcome of which could have a material adverse effect on our business, financial condition, or results of operations. There can be no assurance that existing or future legal proceedings arising in the ordinary course of business or otherwise will not have a material adverse effect on our business, financial condition, or results of operations.

ITEM 1A - RISK FACTORS

There were no material changes to the risk factors previously disclosed and included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2023. Our short and long-term success is subject to numerous risks and uncertainties, many of which involve factors that are difficult to predict or beyond our control. Before making a decision to invest in, hold or sell our common stock, stockholders and potential stockholders should carefully consider the risks and uncertainties described in Part I, Item 1A, “*Risk Factors*” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2023, which could materially and adversely affect our business, financial condition, results of operations and prospects. In that case, the value of our common stock could decline and stockholders may lose all or part of their investment.

Furthermore, additional risks and uncertainties of which we are currently unaware, or which we currently consider to be immaterial, could have a material adverse effect on our business, financial condition, results of operations or prospects. Refer to our disclaimer regarding forward-looking statements at the beginning of Part I, Item 1 of this Quarterly Report on Form 10-Q.

ITEM 2 - UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Purchases of Equity Securities by the Issuer

The following table provides information regarding repurchases of our shares of common stock during the three months ended September 30, 2024:

Period	Total number of shares purchased ⁽²⁾	Average price paid per share ⁽¹⁾	Total number of shares purchased as part of publicly announced program ⁽²⁾	Maximum dollar value of shares that may yet be purchased under the program (in millions) ⁽²⁾
7/01/2024 - 7/31/2024	2,674,792	\$ 69.43	2,674,792	\$ 564.3
8/01/2024 - 8/31/2024	7,756,404	\$ 72.75	7,756,404	\$ —
9/01/2024 - 9/30/2024	—	\$ —	—	\$ —

⁽¹⁾ Average price paid per share includes broker commissions.

⁽²⁾ On July 25, 2024, we announced that our Board of Directors authorized and approved a share repurchase program of up to \$750.0 million of our outstanding common stock, with a repurchase period ending no later than June 30, 2025.

ITEM 3 - DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4 - MINE SAFETY DISCLOSURES

None.

ITEM 5 - OTHER INFORMATION

Trading Plans

During the three months ended September 30, 2024, the following Section 16 officers and directors adopted, modified, or terminated a “Rule 10b5-1 trading arrangement” (as defined in Item 408 of Regulation S-K of the Exchange Act) intended to satisfy the affirmative defense of Rule 10b5-1(c):

Name	Title	Action	Action Date	Aggregate Number of Shares to be Sold	Expiration Date ⁽¹⁾
Jereme M. Sylvain	Executive Vice President, Chief Financial Officer	Termination ⁽²⁾	8/6/2024	6,863 ⁽³⁾	11/21/2024
Jereme M. Sylvain	Executive Vice President, Chief Financial Officer	Adoption ⁽²⁾	8/6/2024	10,500	8/6/2025

⁽¹⁾ Each trading arrangement permitted or permits transactions through and including the date listed in the table.

⁽²⁾ Represents the modification, as described in Rule 10b5-1(c)(1)(iv) under the Exchange Act, of a written plan originally adopted on November 21, 2023 that was intended to satisfy the affirmative defense conditions of Rule 10b5-1(c), as then in effect, under the Exchange Act.

⁽³⁾ As of the date of termination, 3,363 shares of our common stock had been sold under the plan.

Each of the Rule 10b5-1 trading arrangements disclosed in the above table was made in accordance with our insider trading policy. Transactions made pursuant to such trading arrangements will be disclosed publicly in Section 16 filings with the SEC in accordance with applicable securities laws, rules and regulations.

No Section 16 officers or directors adopted, modified, or terminated a “non-Rule 10b5-1 trading arrangement” (as defined in Item 408 of Regulation S-K of the Exchange Act) during the three months ended September 30, 2024.

Amendment to Bylaws

On and effective as of October 22, 2024, our Board of Directors (the “Board”) approved an amendment and restatement of our bylaws (the “Amended and Restated Bylaws”), to, among other things:

- Revise the notice deadline for the submission of proposals or nominations under our advance notice bylaw to provide that such notices must generally be received no earlier than 120 days and no later than 90 days prior to the anniversary of the prior year’s annual meeting;
- Address the effectiveness of Rule 14a-19 under the Securities Exchange Act of 1934, as amended (*i.e.*, federal proxy rules regarding the use of “universal” proxy cards in contested director elections), including by requiring that any nominating stockholder represent and provide evidence that such stockholder is soliciting the holders of shares representing at least 67% of the voting power of the company;
- Require that a stockholder directly or indirectly soliciting proxies from other stockholders use a proxy card color other than white, which is to be reserved for exclusive use by the Board; and
- Update the procedural mechanics and disclosure requirements relating to director nominations submitted by stockholders, including by:
 - enhancing the disclosure requirements in connection with director nominations by stockholders to include (i) additional information regarding the stockholder making the director nomination(s), their affiliates and the director nominee(s), and (ii) a requirement that such information is to be updated as of the record date for the applicable meeting;
 - requiring any notice of director nomination be accompanied by written questionnaires required of our directors completed and signed by any proposed director nominee(s); and
 - limiting the number of nominees a stockholder may nominate for election at a meeting to the number of directors to be elected at such meeting.

Additional amendments were made to align the Amended and Restated Bylaws more closely with the Delaware General Corporation Law, provide us more flexibility to conduct virtual stockholder meetings and to implement clarifying, conforming, technical or ministerial changes.

In light of the change to the notice deadline under our advance notice bylaw described above, stockholders wishing to present nominations for director or proposals for consideration at the 2025 annual meeting of stockholders under these provisions of our bylaws must submit their nominations or proposals in writing so that they are delivered to our Chief Legal Officer at our principal executive offices not earlier than January 22, 2025, and not later than February 21, 2025.

The foregoing description of the Amended and Restated Bylaws does not purport to be complete and is qualified in its entirety by reference to the full text of the Amended and Restated Bylaws, a copy of which is included as Exhibit 3.1 to this Quarterly Report on Form 10-Q and incorporated herein by reference.

Retirement of Chief Commercial Officer

On October 24, 2024, we announced that Teri Lawver, Dexcom's EVP, Chief Commercial Officer, will step down from her position and transition to the role of Special Advisor to the Chief Executive Officer of Dexcom effective November 7, 2024, and that her employment with Dexcom will end effective December 31, 2024 (the "Separation Date"). Ms. Lawver has agreed to provide transitional consulting services to Dexcom from the Separation Date through March 31, 2025 (such period, the "Consulting Period") pursuant to a consulting agreement by and between Dexcom and Ms. Lawver, dated October 21, 2024 (the "Consulting Agreement").

Subject to Ms. Lawver's execution and non-revocation of a general release of claims against Dexcom and her compliance with certain covenants set forth in a separation agreement by and between Dexcom and Ms. Lawver, dated October 22, 2024 (the "Separation Agreement"), Ms. Lawver will receive cash severance equivalent to seven months of her current base salary, payable following the conclusion of the Consulting Period.

In consideration of Ms. Lawver providing consulting services to Dexcom, (i) Ms. Lawver will receive fees equivalent to her current monthly base salary for each month during the Consulting Period, and (ii) Ms. Lawver's equity awards outstanding as of the Separation Date will continue to vest pursuant to their existing terms during the Consulting Period.

Ms. Lawver has waived her rights to any benefits under our Amended and Restated Severance and Change in Control Plan.

The foregoing descriptions of the Separation Agreement and the Consulting Agreement are not complete and are qualified in their entirety by reference to the full text of the Separation Agreement and the Consulting Agreement, which will be filed as exhibits to Dexcom's Annual Report on Form 10-K for the year ending December 31, 2024.

ITEM 6 - EXHIBITS

Exhibit Number	Exhibit Description	Incorporated by Reference				Provided Herewith
		Form	File No.	Date of First Filing	Exhibit Number	
3.1	Amended and Restated Bylaws of DexCom, Inc.	—	—	—	—	X
31.01	Certification of Chief Executive Officer Pursuant to Securities Exchange Act Rule 13a-14(a).	—	—	—	—	X
31.02	Certification of Chief Financial Officer Pursuant to Securities Exchange Act Rule 13a-14(a).	—	—	—	—	X
32.01**	Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350 and Securities Exchange Act Rule 13a-14(b).	—	—	—	—	X
32.02**	Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350 and Securities Exchange Act Rule 13a-14(b).	—	—	—	—	X
101.INS	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document					X
101.SCH	Inline XBRL Taxonomy Extension Schema Document					X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document					X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document					X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document					X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document					X
104	Cover Page Interactive Data File - the cover page from the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2024 is formatted in Inline XBRL					X

** This certification is not deemed “filed” for purposes of Section 18 of the Exchange Act, or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that Dexcom specifically incorporates it by reference.

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.

DEXCOM, INC.
(Registrant)

Dated: October 24, 2024

By:

/s/ KEVIN R. SAYER

Kevin R. Sayer,
Chairman of the Board of Directors,
President and Chief Executive Officer
(Principal Executive Officer)

Dated: October 24, 2024

By:

/s/ JEREME M. SYLVAIN

Jereme M. Sylvain,
Executive Vice President and Chief Financial Officer
(Principal Financial and Accounting Officer)

AMENDED & RESTATED BYLAWS

OF

DEXCOM, INC.

(a Delaware corporation)

As amended October 22, 2024

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AMENDED & RESTATED BYLAWS

OF

DEXCOM, INC.

(a Delaware corporation)

ARTICLE I

STOCKHOLDERS

Section 1.1. Annual Meetings. An annual meeting of stockholders shall be held for the election of directors at such date and time as the Board of Directors shall each year fix. The meeting may be held either at a place, within or without the State of Delaware, or by means of remote communication as the Board of Directors in its sole discretion may determine. Any business properly brought before the meeting may be transacted at the annual meeting.

Section 1.2. Special Meetings. Special meetings of stockholders for any purpose or purposes may be called at any time by the Board of Directors, and shall be called upon the request of the Chairperson of the Board of Directors, the Chief Executive Officer, the President, the Lead Independent Director or a majority of the members of the Board of Directors. Special meetings may not be called by any other person or persons. Meetings may be held either at a place, within or without the State of Delaware, or by means of remote communication as the Board of Directors in its sole discretion may determine.

Section 1.3. Notice of Meetings. Notice of all meetings of stockholders shall be given in writing or by electronic transmission in the manner provided by law (including, without limitation, as set forth in Section 7.1(b) of these Bylaws) stating the date, time and place of the meeting (including means of remote communication as provided by the Delaware General Corporation Law, as amended (the “**DGCL**”), if any, by which stockholders and proxy holders may be deemed to be present in person and vote) and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by applicable law or the Certificate of Incorporation of the Corporation, such notice shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder of record entitled to vote at such meeting.

Section 1.4. Adjournments; Postponements; Cancellations. The chairperson of any meeting of stockholders shall have the power to adjourn such meeting to another time, date and place (if any). Notice need not be given of any adjourned meeting (including adjournments due to a technical failure to convene or continue the meeting by remote communication) if the time, date and place thereof (and, to the extent applicable, the means of remote communication) are announced at the meeting at which the adjournment is taken or displayed during the time scheduled for the meeting on the electronic network used for the virtual meeting, or set forth in the notice of the meeting; *provided, however*, that if the adjournment is for more than thirty (30) days, or if after the adjournment, a new record date is fixed for the adjourned meeting, then a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. At the adjourned meeting the Corporation may transact any business that might have been transacted at the original meeting. The Board of Directors may postpone or cancel any previously scheduled special or annual meeting of stockholders at any time before or after the notice for such meeting has been sent to the stockholders, and the Corporation shall publicly announce such postponement or cancellation, including the new date, time and place of the meeting in accordance with Section 1.3.

Section 1.5. Quorum. At each meeting of stockholders, the holders of a majority of the shares of issued and outstanding stock entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business, unless otherwise required by applicable law. Where a separate vote by a class or classes or series is required for a matter, a majority of the shares of issued and outstanding stock of such class or classes or series entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to such vote on such matter. If a quorum shall fail to attend any meeting, the chairperson of the meeting may adjourn the meeting. Shares of the Corporation’s stock belonging to the Corporation (or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation are held, directly or indirectly, by the Corporation) shall neither be entitled to vote nor be counted for quorum purposes; *provided, however*, that the foregoing shall not limit the right of the Corporation or any other corporation to vote any shares of the Corporation’s stock held by it in a fiduciary capacity and to count such shares for purposes of determining a quorum.

Section 1.6. Organization. Meetings of stockholders shall be presided over by the Chairperson of the Board of Directors or such person as the Chairperson of the Board of Directors may designate, or, in the absence of such person, the Chief Executive Officer or such person as the Chief Executive Officer may designate, or, in the absence of such person, such person as may be chosen by the holders of a majority of the shares entitled to vote that are present, in person or by proxy, at the meeting. Such person shall be chairperson of the meeting and, subject to Section 1.12 hereof, shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seems to him or her to be in order. The Secretary of the Corporation (the "**Secretary**") shall act as secretary of the meeting, but in such person's absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 1.7. Voting. Unless otherwise provided by applicable law, the Certificate of Incorporation of the Corporation or these Bylaws, every matter other than the election of directors shall be decided by the affirmative vote of the holders of a majority of the shares of issued and outstanding stock entitled to vote thereon that are present in person or represented by proxy at the meeting and are voted for or against the matter; *provided* that, where a separate vote by a class or classes or series is required for a matter, the matter be decided by the affirmative vote of the holders of a majority of the shares of issued and outstanding stock of such class or classes or series entitled to vote thereon that are present in person or represented by proxy at the meeting and are voted for or against the matter. Unless otherwise provided by applicable law or the Certificate of Incorporation of the Corporation, and subject to the provisions of Section 1.9 of these Bylaws, each stockholder shall be entitled to one (1) vote for each share of stock held by such stockholder. For purposes of these Bylaws, abstentions or shares as to which a stockholder gives no authority or discretion, including broker non-votes, will not count as votes for or against any matter, but abstentions and broker non-votes will be considered for purposes of establishing a quorum under Section 1.5.

Section 1.8. Proxies. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. Such a proxy may be prepared, transmitted and delivered in any manner permitted by applicable law. Every proxy is revocable at the pleasure of the stockholder executing it unless the proxy states that it is irrevocable and applicable law makes it irrevocable. A stockholder may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary a revocation of the proxy or a new proxy bearing a later date no later than the time designated in the order of business for so delivering such proxies.

Section 1.9. Fixing Date for Determination of Stockholders of Record. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or 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 precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action. If no record date is fixed by the Board of Directors, then the record date shall be as provided by applicable law. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 1.10. List of Stockholders Entitled to Vote. A complete list of stockholders entitled to vote at any meeting of stockholders, arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of each stockholder, shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least ten (10) days ending on the day before the meeting date, either on a reasonably accessible electronic network as permitted by law (provided that the information required to gain access to the list is provided with the notice of the meeting) or during ordinary business hours at the principal place of business of the Corporation.

Section 1.11. Inspectors of Elections. The Corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors of election to act at the meeting and make a written report thereof. The Corporation may designate one or more persons to act as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector of election, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability.

Section 1.12. Notice of Stockholder Business; Nominations.

- (a) Annual Meeting of Stockholders.

(i) Nominations of persons for election to the Board of Directors and the proposal of business to be considered by the stockholders shall be made at an annual meeting of stockholders (A) pursuant to the Corporation's notice of such meeting, (B) by or at the direction of the Board of Directors or (C) by any stockholder of the Corporation who was a stockholder of record at the time of giving of the Solicitation Notice, as that term is defined below, provided for in this Section 1.12, who is entitled to vote at such meeting and who complies with the procedures set forth in this Section 1.12.

(ii) For nominations or proposals of business to be properly brought before an annual meeting by a stockholder pursuant to Section 1.12(a)(i)(C), such business must be a proper matter for stockholder action, and the stockholder, or the beneficial owner on whose behalf any such nomination or proposal is made, must provide the Chief Legal Officer of the Corporation with a notice setting forth (such notice, a "**Solicitation Notice**"): (A) as to each person whom the stockholder proposes to nominate for election or reelection as a director (1) all information relating to such person that would be required to be disclosed in solicitations of proxies for election of directors, or would be 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 any proxy statement for the applicable meeting as a nominee and to serving as a director if elected; (2) completed and signed questionnaires required of the Corporation's directors (which questionnaire shall be provided by the Corporation at the request of the stockholder); (3) a statement whether such person, if elected, intends to tender, promptly following such person's election or re-election, an irrevocable resignation effective upon such person's failure to receive the required vote for re-election at the next meeting at which such person would face re-election and upon acceptance of such resignation by the Board of Directors, in accordance with the Corporation's Corporate Governance Principles for the Board of Directors; and (4) a representation that such person, if elected, would be in compliance and will comply with applicable law and all applicable corporate governance, code of conduct and business ethics, conflict of interest, corporate opportunities, confidentiality and stock ownership and trading policies and guidelines of the Corporation; (B) 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 the beneficial owner, if any, on whose behalf the proposal is made; (C) as to the stockholder giving the Solicitation Notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made, (1) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, (2) the class and number of shares of the Corporation that are owned beneficially and held of record by such stockholder and such beneficial owner, and a representation and agreement that such stockholder will notify the Chief Legal Officer of the Corporation in writing within five (5) business days after the record date for the meeting of the class and number of shares of the Corporation that are owned beneficially and held of record by such stockholder and such beneficial owner as of such record date, (3) a description of any agreement, arrangement or understanding (whether or not in writing) with respect to the nomination or proposal between or among such stockholder and such beneficial owner, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing including, without limitation, any agreements that would be required to be disclosed pursuant to Item 5 or Item 6 of Schedule 13D under the Exchange Act (regardless of whether a Schedule 13D is required), and a representation and agreement that such stockholder will notify the Chief Legal Officer of the Corporation in writing of any such agreement, arrangement or understanding that has been entered into or is in effect as of the record date for the meeting within five (5) business days after the record date for such meeting, (4) a description of any agreement, arrangement or understanding (whether or not in writing) (including, without limitation, any derivative or short positions, profit interests, options, warrants, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) that has been entered into or is in effect as of the date of such stockholder's Solicitation Notice by, or on behalf of, such stockholder or such beneficial owner, the effect or intent of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner, with respect to shares of stock of the Corporation, and a representation and agreement that such stockholder will notify the Chief Legal Officer of the Corporation in writing of any such agreement, arrangement or understanding that has been entered into or is in effect as of the record date for the meeting within five (5) business days after the record date for such meeting, (5) a description of any other agreement, arrangement or understanding (whether or not in writing) between or among such stockholder or such beneficial owner and any other person relating to acquiring, holding, voting or disposing of any shares, including the number of shares that are subject to such agreement, arrangement or understanding, and a representation and agreement that such stockholder will notify the Chief Legal Officer of the Corporation in writing of any agreement, arrangement or understanding of the type described in this clause (C)(5) that has been entered into or is in effect as of the record date for the meeting within five (5) business days after the record date for such meeting, (6) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such nomination or proposal, and (7) a representation that such stockholder or such beneficial owner will, in the case of a proposal, deliver a proxy statement and form of proxy to holders of at least the percentage of the Corporation's voting shares required under applicable law to carry such proposal, or, in the case of a nomination or

nominations, deliver a proxy statement and form of proxy to holders of outstanding shares of capital stock of the Corporation representing at least 67% of the voting power of shares of capital stock entitled to vote on the election of directors. The information required under clause (C)(7) of this Section 1.12(a)(ii) shall be supplemented by such stockholder or such beneficial owner and delivered to the Chief Legal Officer of the Corporation at the principal executive offices of the Corporation not less than five (5) business days prior to the meeting or any adjournment or postponement thereof, with reasonable documentary evidence (as determined by the Chief Legal Officer of the Corporation in good faith) that such stockholder and/or such beneficial owner complied with such representation under clause (C)(7) of this Section 1.12(a)(ii). Additionally, such stockholder or such beneficial owner must, in the case of a proposal, have delivered a proxy statement and form of proxy to holders of at least the percentage of the Corporation's voting shares required under applicable law to carry such proposal, or, in the case of a nomination or nominations, have delivered a proxy statement and form of proxy to holders of outstanding shares of capital stock of the Corporation representing at least 67% of the voting power of shares of capital stock entitled to vote on the election of directors. If a stockholder who submits a Solicitation Notice pursuant to this Section 1.12 no longer intends to solicit proxies in accordance with its representations contained in its Solicitation Notice, such stockholder shall inform the Corporation of this change by delivering notice thereof in writing to the Chief Legal Officer of the Corporation at the principal executive offices of the Corporation not later than two (2) business days after the occurrence of such change and such nomination or proposal shall be disregarded, notwithstanding that proxies in respect of such nomination or proposal may have been received by the Corporation.

(iii) To be timely, a Solicitation Notice must be delivered to the Chief Legal Officer of the Corporation at the principal executive offices of the Corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred and twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; *provided, however*, that in the event that the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, a Solicitation Notice by the stockholder to be timely must be so delivered not earlier than the close of business on the one hundred and twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made by the Corporation.

(iv) Notwithstanding anything in Section 1.12(a)(iii) 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 by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least ninety (90) days prior to the first anniversary of the preceding year's annual meeting (or, if the annual meeting is held more than thirty (30) days before or sixty (60) days after such anniversary date, at least ninety (90) days prior to such annual meeting), a Solicitation Notice required by this Section 1.12 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 Chief Legal Officer of the Corporation at the principal executive office of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

(b) *Special Meetings of Stockholders.* 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 such meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of such meeting (i) by or at the direction of the Board of Directors or (ii) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time of giving of notice of the special meeting, who shall be entitled to vote at the meeting and who complies with the procedures set forth in this Section 1.12 for an annual meeting; provided that, in the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder may nominate a person or persons (as the case may be), for election to such position(s) as specified in the Corporation's notice of meeting, if the Solicitation Notice required by Section 1.12(a)(ii) shall be delivered to the Chief Legal Officer of the Corporation at the principal executive offices of the Corporation not earlier than the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting.

(c) General.

(i) Only such persons who are nominated in accordance with the procedures set forth in this Section 1.12 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 1.12. Except as otherwise provided by law or these Bylaws, the chairperson of the meeting shall have the power and duty to determine whether a nomination or any proposal for business to be brought before the meeting was made in accordance with the procedures set forth in this Section 1.12 and, if any nomination or proposal is not in compliance herewith, to declare that no vote shall be taken with respect to such defective nomination or proposal, in each case notwithstanding that proxies with respect to such nomination or proposal may have been received by the Corporation; *provided, however*, in the event the Corporation receives proxies for disqualified or withdrawn nominees for the Board of Directors, any votes for such disqualified or withdrawn nominees in the proxies will be treated as abstentions.

(ii) For purposes of this Section 1.12, the term "**public announcement**" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission (the "**SEC**") pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(iii) Notwithstanding the foregoing provisions of this Section 1.12, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth herein. Nothing in this Section 1.12 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.

(iv) The number of nominees a stockholder giving a Solicitation Notice or the beneficial owner, if any, on whose behalf a nomination is made may propose to nominate for election at an annual meeting shall not exceed the number of directors to be elected at such meeting.

(v) To the extent any stockholder uses its own proxy card in connection with directly or indirectly soliciting proxies from other stockholders, such proxy card must use a color other than white, which shall be reserved for exclusive use by the Board of Directors.

Section 1.13. Stockholder Nominations Included in the Corporation's Proxy Materials

(a) *Inclusion of Nominees in Proxy Statement.* Subject to the provisions of this Section 1.13, if expressly requested in the relevant Nomination Notice (as defined below), the Corporation shall include in its proxy statement for any annual meeting of stockholders:

(i) the names of any person or persons nominated for election (each, a "**Nominee**"), which shall also be included on the Corporation's form of proxy and ballot, by any Eligible Holder (as defined below) or group of up to twenty (20) Eligible Holders that has (individually and collectively, in the case of a group) satisfied, as determined by the Board of Directors, all applicable conditions and complied with all applicable procedures set forth in this Section 1.13 (such Eligible Holder or group of Eligible Holders being a "**Nominating Stockholder**");

(ii) disclosure about each Nominee and the Nominating Stockholder required under the rules of the SEC or other applicable law to be included in the proxy statement;

(iii) any statement included by the Nominating Stockholder in the Nomination Notice for inclusion in the proxy statement in support of each Nominee's election to the Board (subject, without limitation, to Section 1.13(e)(ii)), if such statement does not exceed 500 words and fully complies with Section 14 of the Exchange Act and the rules and regulations thereunder, including Rule 14a-9 (the "**Supporting Statement**"); and

(iv) any other information that the Corporation or the Board of Directors determines, in their discretion, to include in the proxy statement relating to the nomination of each Nominee, including, without limitation, any statement in opposition to the nomination, any of the information provided pursuant to this Section 1.13 and any solicitation materials or related information with respect to a Nominee.

(v) For purposes of this Section 1.13, any determination to be made by the Board of Directors may be made by the Board of Directors, a committee of the Board of Directors or any officer of the Corporation designated by the Board of Directors or a committee of the Board of Directors, and any such determination shall be final and binding on the Corporation, any Eligible Holder, any Nominating Stockholder, any Nominee and any other person, so long as such determination is made in good faith (without any further requirements). The chairperson of any annual meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall have the power and duty to determine whether a Nominee has been nominated in accordance with the requirements of this Section 1.13 and, if not so nominated, shall direct and declare at the meeting that such Nominee shall not be considered.

(b) Maximum Number of Nominees.

(i) The Corporation shall not be required to include in the proxy statement for an annual meeting of stockholders more Nominees than that number of directors constituting the greater of (A) two (2) or (B) twenty percent (20%) of the total number of directors of the Corporation on the last day on which a Nomination Notice may be submitted pursuant to this Section 1.13 (rounded down to the nearest whole number) (the "**Maximum Number**"). The Maximum Number for a particular annual meeting shall be reduced by: (1) Nominees who the Board itself decides to nominate for election at such annual meeting; (2) Nominees who have been accepted for nomination and subsequently cease to satisfy, or Nominees of Nominating Stockholders that have been accepted for nomination and subsequently cease to satisfy, the eligibility requirements in this Section 1.13, as determined by the Board; (3) Nominees whose nomination is withdrawn by the Nominating Stockholder or who become unwilling to serve on the Board; and (4) the number of incumbent directors who had been Nominees with respect to any of the preceding two (2) annual meetings of stockholders and whose reelection at the upcoming annual meeting is being recommended by the Board. In addition to any reductions in the Maximum Number for a particular annual meeting pursuant to the preceding sentence, the Maximum Number shall be reduced (but not below one (1)) by the number of director candidates for whom the Chief Legal Officer of the Corporation shall have received a notice pursuant to Section 1.12 of these Bylaws that a stockholder intends to nominate a candidate for director at such annual meeting (whether or not such notice is subsequently withdrawn or made the subject of a settlement with the Corporation). In the event that one or more vacancies for any reason occurs on the Board after the deadline for submitting a Nomination Notice as set forth in Section 1.13(d) below but before the date of the annual meeting, and the Board resolves to reduce the size of the board in connection therewith, the Maximum Number shall be calculated based on the number of directors in office as so reduced.

(ii) If the number of Nominees pursuant to this Section 1.13 for any annual meeting of stockholders exceeds the Maximum Number then, promptly upon notice from the Corporation, each Nominating Stockholder will select one Nominee for inclusion in the proxy statement until the Maximum Number is reached, going in order of the amount (largest to smallest) of the ownership position as disclosed in each Nominating Stockholder's Nomination Notice, with the process repeated if the Maximum Number is not reached after each Nominating Stockholder has selected one Nominee. If, after the deadline for submitting a Nomination Notice as set forth in Section 1.13(d), a Nominating Stockholder or a Nominee ceases to satisfy the eligibility requirements in this Section 1.13, as determined by the Board, a Nominating Stockholder withdraws its nomination or a Nominee becomes unwilling to serve on the Board, whether before or after the mailing or other distribution of the definitive proxy statement, then the nomination shall be disregarded, and the Corporation: (1) shall not be required to include in its proxy statement or on any ballot or form of proxy the disregarded Nominee or any successor or replacement nominee proposed by the Nominating Stockholder or by any other Nominating Stockholder and (2) may otherwise communicate to its stockholders, including without limitation by amending or supplementing its proxy statement or ballot or form of proxy, that a Nominee will not be included as a nominee in the proxy statement or on any ballot or form of proxy and will not be voted on at the annual meeting.

(c) Eligibility of Nominating Stockholder.

(i) An "**Eligible Holder**" is a person who has either (1) been a record holder of the shares of common stock used to satisfy the eligibility requirements in this Section 1.13(c) continuously for the three (3) year period specified in Subsection (ii) below or (2) provides to the Chief Legal Officer of the Corporation, within the time period referred to in Section 1.13(d), evidence of continuous ownership of such shares for such three (3) year period from one or more securities intermediaries in a form that the Board determines would be deemed acceptable for purposes of a shareholder proposal under Rule 14a-8(b)(2) under the Exchange Act (or any successor rule).

(ii) An Eligible Holder or group of up to twenty (20) Eligible Holders may submit a nomination in accordance with this Section 1.13 only if the person or group (in the aggregate) has continuously owned at least the Minimum Number (as defined below) of shares of the Corporation's common stock throughout the three (3) year period preceding and including the date of submission of the Nomination Notice, and continues to own at least the Minimum Number through the date of the annual meeting. Two or more funds that are (A) under common management and investment control, (B) under common management and funded primarily by a single employer, or (C) a "group of investment companies," as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended, shall be treated as one Eligible Holder if such Eligible Holder shall provide together with the Nomination Notice documentation reasonably satisfactory to the Corporation that demonstrates that the funds meet the criteria set forth in (A), (B) or (C) hereof. For the avoidance of doubt, in the event of a nomination by a group of Eligible Holders, any and all requirements and obligations for an individual Eligible Holder that are set forth in this Section 1.13, including the minimum holding period, shall apply to each member of such group; provided, however, that the Minimum Number shall apply to the ownership of the group in the aggregate. Should any stockholder cease to satisfy the eligibility requirements in this Section 1.13, as determined by the Board, or withdraw from a group of Eligible Holders at any time prior to the annual meeting of stockholders, the group of Eligible Stockholders shall only be deemed to own the shares held by the remaining members of the group.

(iii) The "**Minimum Number**" of shares of the Corporation's common stock means three percent (3%) of the number of outstanding shares of common stock as of the most recent date for which such amount is given in any quarterly or annual filing, securities registration or other filing by the Corporation with the SEC prior to the submission of the Nomination Notice.

(iv) For purposes of this Section 1.13, an Eligible Holder "owns" only those outstanding shares of the Corporation as to which the Eligible Holder possesses both:

(A) the full voting and investment rights pertaining to the shares; and

(B) the full economic interest in (including the opportunity for profit and risk of loss on) such shares;

(v) provided that the number of shares calculated in accordance with Sections 1.13(c)(iv)(A) and 1.13(c)(iv)(B) shall not include any shares: (1) purchased or sold by such Eligible Holder or any of its affiliates in any transaction that has not been settled or closed, (2) loaned or sold short by such Eligible Holder, (3) borrowed by such Eligible Holder or any of its affiliates for any purpose or purchased by such Eligible Holder or any of its affiliates pursuant to an agreement to resell or subject to any other obligation to resell to another person, or (4) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such Eligible Holder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding shares of the Corporation, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of: (x) reducing in any manner, to any extent or at any time in the future, such Eligible Holder's or any of its affiliates' full right to vote or direct the voting of any such shares, and/or (y) hedging, offsetting, or altering to any degree, gain or loss arising from the full economic ownership of such shares by such Eligible Holder or any of its affiliates.

(vi) An Eligible Holder "owns" shares held in the name of a nominee or other intermediary so long as the Eligible Holder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. An Eligible Holder's ownership of shares shall be deemed to continue during any period in which the Eligible Holder has delegated any voting power by means of a proxy, power of attorney, or other similar instrument or arrangement that is revocable at any time by the Eligible Holder. An Eligible Holder's ownership of shares shall be deemed to continue during any period in which the Eligible Holder has loaned such shares provided that the Eligible Holder has the power to recall such loaned shares on five (5) business days' notice, has recalled such loaned shares as of the date of the Nomination Notice and continues to hold such shares through the date of the annual meeting. The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. Whether outstanding shares of the Corporation are "owned" for these purposes shall be determined by the Board.

(vii) No Eligible Holder shall be permitted to be in more than one group constituting a Nominating Stockholder, and if any Eligible Holder appears as a member of more than one group, it shall be deemed to be a member of the group that has the largest ownership position as reflected in the Nomination Notice.

(d) **Nomination Notice.** To nominate a Nominee, the Nominating Stockholder must, no earlier than 5:00 PM, Pacific Time on the one hundred and fiftieth (150th) day and no later than 5:00 PM, Pacific Time on the one hundred and twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting of stockholders, deliver to the Chief Legal Officer of the Corporation at the principal executive office of the Corporation all of the information and documents set forth in paragraphs (i)-(iv) below (collectively, the "**Nomination Notice**"); provided, however, that if (and only if) the date of the annual meeting of stockholders is more than thirty (30) days before or more than sixty (60) days after such anniversary date (an annual meeting date outside such period being referred to herein as an "**Other Meeting Date**"), notice by the Nominating Stockholder must be so delivered no earlier than 5:00 PM, Pacific Time on the one hundred and twentieth (120th) day prior to such annual meeting and no later than 5:00 PM, Pacific Time on the later of (A) the ninetieth (90th) day prior to such Other Meeting Date and (B) the tenth (10th) day following the day on which the Other Meeting Date is first announced or disclosed by the Corporation. In no event shall the public announcement or disclosure of an Other Meeting Date commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. For purposes of this Section 1.13, the Nomination Notice shall include the following:

(i) A Schedule 14N (or any successor form) relating to each Nominee, completed and filed with the SEC by the Nominating Stockholder as applicable, in accordance with SEC rules;

(ii) A written notice, in a form deemed satisfactory by the Board, of the nomination of each Nominee that includes the following additional information, agreements, representations and warranties by the Nominating Stockholder (including each group member):

- (A) the details of any relationship that existed within the past three (3) years and that would have been described pursuant to Item 6(e) of Schedule 14N (or any successor item) if it existed on the date of submission of the Schedule 14N;
- (B) a representation and warranty that the Nominating Stockholder acquired the securities of the Corporation in the ordinary course of business and did not acquire, and is not holding, securities of the Corporation for the purpose or with the effect of influencing or changing control of the Corporation;
- (C) a representation and warranty that each Nominee's candidacy or, if elected, Board membership would not violate applicable state or federal law or the rules of any stock exchange on which the Corporation's securities are traded;
- (D) a representation and warranty that each Nominee:
- (1) does not have any direct or indirect relationship with the Corporation that would cause the Nominee to be considered not independent pursuant to the Corporation's Corporate Governance Guidelines as most recently published on its website and otherwise qualifies as independent under the rules of the primary stock exchange on which the Corporation's shares of common stock are traded;
 - (2) meets the audit committee and compensation committee independence requirements under the rules of the primary stock exchange on which the Corporation's shares of common stock are traded;
 - (3) is a "non-employee director" for the purposes of Rule 16b-3 under the Exchange Act (or any successor rule);
 - (4) is an "outside director" for the purposes of Section 162(m) of the Internal Revenue Code (or any successor provision); and
 - (5) is not and has not been subject to any event specified in Rule 506(d)(1) of Regulation D (or any successor rule) under the Securities Act of 1933, as amended (the "**Securities Act**") or Item 401(f) of Regulation S-K (or any successor rule) under the Exchange Act, without reference to whether the event is material to an evaluation of the ability or integrity of such Nominee;
- (E) a representation and warranty that the Nominating Stockholder satisfies the eligibility requirements set forth in Section 1.13(c) and has provided evidence of ownership to the extent required by Section 1.13(c)(i);
- (F) a representation and warranty that the Nominating Stockholder intends to continue to satisfy the eligibility requirements described in Section 1.13(c) through the date of the annual meeting and a statement regarding the Nominating Stockholder's intent with respect to continued ownership of the Minimum Number of shares for at least one (1) year following the annual meeting;
- (G) details of any position of a Nominee as an officer or director of any competitor (that is, any entity that produces products or provides services that compete with or are alternatives to the products produced or services provided by the Corporation or its affiliates) of the Corporation, within the three (3) years preceding the submission of the Nomination Notice;
- (H) a representation and warranty that the Nominating Stockholder will not engage in a "solicitation" within the meaning of Rule 14a-1(l) (without reference to the exception in Rule 14a-1(l)(2)(iv)) under the Exchange Act (or any successor rules) with respect to the annual meeting, other than with respect to a Nominee or any nominee of the Board;
- (I) a representation and warranty that the Nominating Stockholder will not use any proxy card other than the Corporation's proxy card in soliciting stockholders in connection with the election of a Nominee at the annual meeting;
- (J) if desired, a Supporting Statement; and
- (K) in the case of a nomination by a group, the designation by all group members of one group member that is authorized to act on behalf of all group members with respect to matters relating to the nomination, including withdrawal of the nomination;
- (iii) An executed agreement, in a form deemed satisfactory by the Board, pursuant to which the Nominating Stockholder (including each group member) agrees:

(A) to comply with all applicable laws, rules and regulations in connection with the nomination, solicitation and election;

(B) to file any written solicitation materials with the Corporation's stockholders relating to one or more of the Corporation's directors or director nominees or any Nominee with the SEC, regardless of whether any such filing is required under rule or regulation or whether any exemption from filing is available for such materials under any rule or regulation;

(C) to assume all liability stemming from an action, suit or proceeding concerning any actual or alleged legal or regulatory violation arising out of any communication by the Nominating Stockholder or any of its Nominees with the Corporation, its stockholders or any other person in connection with the nomination or election of directors, including, without limitation, the Nomination Notice;

(D) to indemnify and hold harmless (jointly with all other group members, in the case of a group member) the Corporation and each of its directors, officers and employees individually against any liability, loss, damages, expenses or other costs (including attorneys' fees incurred in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers or employees arising out of or relating to a failure or alleged failure of the Nominating Stockholder or any of its Nominees to comply with, or any breach or alleged breach of, its or their obligations, agreements or representations under this Section 1.13;

(E) in the event that any information included in the Nomination Notice, or any other communication by the Nominating Stockholder (including with respect to any group member), with the Corporation, its stockholders or any other person in connection with the nomination or election ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made not misleading), or that the Nominating Stockholder (including any group member) has failed to continue to satisfy the eligibility requirements described in Section 1.13(c), to promptly (and in any event within forty-eight (48) hours of discovering such misstatement, omission or failure) notify the Chief Legal Officer of the Corporation and any other recipient of such communication of (A) the misstatement or omission in such previously provided information and of the information that is required to correct the misstatement or omission or (B) such failure; and

(iv) An executed agreement, in a form deemed satisfactory by the Board, by each Nominee:

(A) to provide to the Corporation all information relating to such Nominee that is required to be disclosed in solicitations of proxies for the election of directors, or is otherwise required, pursuant to Regulation 14A under the Exchange Act (including such Nominee's written consent to being named in the proxy statement as a nominee and to serving as a director if elected);

(B) to provide to the Corporation such other information and certifications, including completion of the Corporation's director questionnaire, as it may reasonably request;

(C) at the reasonable request of the Nominating and Corporate Governance Committee, to meet with the Nominating and Corporate Governance Committee to discuss matters relating to the nomination of such Nominee to the Board, including the information provided by such Nominee to the Corporation in connection with his or her nomination and such Nominee's eligibility to serve as a member of the Board;

(D) that such Nominee has read and agrees, if elected, to serve as a member of the Board, to adhere to the Corporation's Corporate Governance Guidelines, Code of Business Conduct and Ethics, Related-Party Transactions Policy and any other Corporation policies and guidelines applicable to directors; and

(E) that such Nominee is not and will not become a party to (i) any compensatory, payment or other financial agreement, arrangement or understanding with any person or entity in connection with his or her nomination, service or action as a director of the Corporation that has not been disclosed to the Corporation or (ii) any agreement, arrangement or understanding with, or any commitment or assurance to, any person or entity as to how such Nominee, if elected as a director of the Corporation, will act or vote on any issue or question, that (a) has not been disclosed to the Corporation or (b) could limit or interfere with such Nominee's ability to comply, if elected as a director of the Corporation, with its fiduciary duties under applicable law.

(v) The information and documents required by this Section 1.13(d) to be provided by the Nominating Stockholder shall be: (i) provided with respect to and executed by each group member, in the case of information applicable to group members; and (ii) provided with respect to the persons specified in Instruction 1 to Items 6(c) and (d) of Schedule 14N (or any successor item) in the case of a Nominating Stockholder or group member that is an entity. The Nomination Notice shall be deemed submitted on the date on which all the information and documents referred to in this Section 1.13(d) (other than such information and documents contemplated to be provided after the date the Nomination Notice is provided) have been delivered to or, if sent by mail, received by the Chief Legal Officer of the Corporation.

(e) Exceptions.

(i) Notwithstanding anything to the contrary contained in this Section 1.13, the Corporation may omit from its proxy statement any Nominee and any information concerning such Nominee (including a Nominating Stockholder's Supporting Statement) and no vote on such Nominee will occur (notwithstanding that proxies in respect of such vote may have been received by the Corporation), and the Nominating Stockholder may not, after the last day on which a Nomination Notice would be timely, cure in any way any defect preventing the nomination of such Nominee, if:

(A) the Nominating Stockholder or the designated lead group member, as applicable, or any qualified representative thereof, does not appear at the meeting of stockholders to present the nomination submitted pursuant to this Section 1.13, the Nominating Stockholder withdraws its nomination or the chairperson of the annual meeting declares that such nomination was not made in accordance with the procedures prescribed by this Section 1.13 and shall therefore be disregarded;

(B) the Board determines that such Nominee's nomination or election to the Board would result in the Corporation violating or failing to be in compliance with the Corporation's bylaws or certificate of incorporation or any applicable law, rule or regulation to which the Corporation is subject, including any rules or regulations of the primary stock exchange on which the Corporation's common stock is traded;

(C) such Nominee was nominated for election to the Board pursuant to this Section 1.13 at one of the Corporation's two preceding annual meetings of stockholders and either withdrew or became ineligible or received a vote of less than twenty five percent (25%) of the shares of common stock entitled to vote for such Nominee;

(D) such Nominee is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in a criminal proceeding within the past ten (10) years;

(E) such Nominee has been, within the past three (3) years, an officer or director of a competitor, as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914, as amended; or

(F) the Corporation is notified, or the Board determines, that the Nominating Stockholder or the Nominee has failed to continue to satisfy the eligibility requirements described in Section 1.13(c), any of the representations and warranties made in the Nomination Notice ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made not misleading), such Nominee becomes unwilling or unable to serve on the Board or any material violation or breach occurs of the obligations, agreements, representations or warranties of the Nominating Stockholder or such Nominee under this Section 1.13;

(ii) Notwithstanding anything to the contrary contained in this Section 1.13, the Corporation may omit from its proxy statement, or may supplement or correct, any information, including all or any portion of the Supporting Statement or any other statement in support of a Nominee included in the Nomination Notice, if the Board determines that:

(A) such information is not true in all material respects or omits a material statement necessary to make the statements made not misleading;

(B) such information directly or indirectly impugns the character, integrity or personal reputation of, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation, with respect to, any person or other argumentum ad hominem; or

(C) the inclusion of such information in the proxy statement would otherwise violate the SEC proxy rules or any other applicable law, rule or regulation.

The Corporation may solicit against, and include in the proxy statement its own statement relating to, any Nominee.

ARTICLE II

BOARD OF DIRECTORS

Section 2.1. *Number; Qualifications.* The Board of Directors shall consist of one or more members. The number of authorized directors shall be fixed from time to time by resolution of the Board of Directors. No decrease in the authorized number of directors constituting the Board of Directors shall shorten the term of any incumbent director. Directors need not be stockholders of the Corporation.

Section 2.2. *Election; Resignation; Removal; Vacancies.* Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, each director shall be elected to hold office for a term expiring at the next annual meeting of stockholders or until such director's earlier death, designation or removal, as provided in the Certificate of Incorporation of the Corporation. Any director may resign at any time upon notice to the Corporation given in writing or by electronic transmission. Subject to the rights of the holders of any series of Preferred Stock, any director may be removed from the Board with or without cause by the affirmative vote of the holders of a majority of the voting power of the then outstanding shares of capital stock of the Corporation then entitled to vote at an election of directors. Subject to the rights of the holders of any series of Preferred Stock, any vacancy occurring in the Board of Directors for any cause, and any newly created directorship resulting from any increase in the authorized number of directors, shall, unless as otherwise provided by law, be filled only by the affirmative vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director. Any director elected to fill a vacancy created by a newly created directorship shall hold office for a term expiring at the next annual meeting of stockholders or until such director's earlier death, resignation or removal. No decrease in the authorized number of directors shall shorten the term of any incumbent director. A nominee for director shall be elected to the Board of Directors if the votes cast for such nominee's election exceed the votes cast against such nominee's election; provided, however, that directors shall be elected by a plurality of the votes cast at any meeting of stockholders for which (i) the Secretary receives a notice that a stockholder has nominated a person for election to the Board of Directors in compliance with the advance notice requirements for stockholder nominees for director set forth in Sections 1.12 and 1.13 of these Bylaws and (ii) such nomination has not been withdrawn by such stockholder on or before the tenth (10th) day before the Corporation first mails its notice of meeting for such meeting to the stockholders. If directors are to be elected by a plurality of the votes cast, stockholders shall not be permitted to vote against a nominee.

Section 2.3. *Regular Meetings.* Regular meetings of the Board of Directors may be held at such places, within or without the State of Delaware, and at such times as the Board of Directors may from time to time determine. Notice of regular meetings need not be given if the date, times and places thereof are fixed by resolution of the Board of Directors.

Section 2.4. *Special Meetings.* Special meetings of the Board of Directors may be called by the Chairperson of the Board of Directors, the President, the Lead Independent Director or a majority of the members of the Board of Directors then in office and may be held at any time, date or place, within or without the State of Delaware, as the person or persons calling the meeting shall fix. Notice of the time, date and place of such meeting shall be given, orally, in writing or by electronic transmission (including electronic mail), by the person or persons calling the meeting to all directors at least four (4) days before the meeting if the notice is mailed, or at least twenty-four (24) hours before the meeting if such notice is given by telephone, hand delivery, electronic mail or other means of electronic transmission. Unless otherwise indicated in the notice, any and all business may be transacted at a special meeting.

Section 2.5. *Remote Meetings Permitted.* Members of the Board of Directors, or any committee of the Board, may participate in a meeting of the Board or such committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to conference telephone or other communications equipment shall constitute presence in person at such meeting.

Section 2.6. *Quorum; Vote Required for Action.* At all meetings of the Board of Directors a majority of the total number of authorized directors shall constitute a quorum for the transaction of business. Except as otherwise provided herein or in the Certificate of Incorporation of the Corporation, or required by law, the vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 2.7. *Organization.* Meetings of the Board of Directors shall be presided over by the Chairperson of the Board of Directors, or in such person's absence by the Lead Independent Director, or in such person's absence by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in such person's absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 2.8. *Written Action by Directors.* 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 such committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee, respectively. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 2.9. *Powers.* The Board of Directors may, except as otherwise required by law or the Certificate of Incorporation of the Corporation, exercise all such powers and do all such acts and things as may be exercised or done by the Corporation.

Section 2.10. *Compensation of Directors.* Directors, as such, may receive, pursuant to a resolution of the Board of Directors, fees and other compensation for their services as directors, including without limitation their services as members of committees of the Board of Directors.

ARTICLE III

COMMITTEES

Section 3.1. *Committees.* The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting of such committee who are not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent provided in a resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation and may authorize the seal of the Corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority in reference to the following matters: (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval or (ii) adopting, amending or repealing any bylaw of the Corporation.

Section 3.2. *Committee Rules.* Unless the Board of Directors otherwise provides, each committee designated by the Board of Directors may make, alter and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article II of these Bylaws.

Adequate provision shall be made for notice to members of all meetings, and all matters shall be determined by a majority vote of the members present. Action may be taken by any committee without a meeting if all members thereof consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of the proceedings of such committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

ARTICLE IV

OFFICERS

Section 4.1. *Generally.* The officers of the Corporation shall consist of a Chief Executive Officer and/or a President, one or more Vice Presidents, a Secretary, a Treasurer and such other officers, including a Chairperson of the Board of Directors and/or Chief Financial Officer, as may from time to time be appointed by the Board of Directors. All officers shall be elected by the Board of Directors. Each officer shall hold office until such person's successor is elected and qualified or until such person's earlier resignation or removal. Any number of offices may be held by the same person. Any officer may resign at any time upon written notice to the Corporation. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise may be filled by the Board of Directors.

Section 4.2. *Chief Executive Officer.* Subject to the control of the Board of Directors and such supervisory powers, if any, as may be given by the Board of Directors, the powers and duties of the Chief Executive Officer of the Corporation are:

- (a) To act as the general manager and, subject to the control of the Board of Directors, to have general supervision, direction and control of the business and affairs of the Corporation;
- (b) To preside at all meetings of the stockholders;
- (c) To call meetings of the stockholders to be held at such times and, subject to the limitations prescribed by law or by these Bylaws, at such places as he or she shall deem proper; and

(d) To affix the signature of the Corporation to all deeds, conveyances, mortgages, guarantees, leases, obligations, bonds, certificates and other papers and instruments in writing which have been authorized by the Board of Directors or which, in the judgment of the Chief Executive Officer, should be executed on behalf of the Corporation; to sign certificates for shares of stock of the Corporation; and, subject to the direction of the Board of Directors, to have general charge of the property of the Corporation and to supervise and control all officers, agents and employees of the Corporation.

The President shall be the Chief Executive Officer of the Corporation unless the Board of Directors shall designate another officer to be the Chief Executive Officer. If there is no President, and the Board of Directors has not designated any other officer to be the Chief Executive Officer, then the Chairperson of the Board of Directors shall be the Chief Executive Officer.

Section 4.3. Chairperson of the Board. The Chairperson of the Board of Directors shall have the power to preside at all meetings of the Board of Directors and shall have such other powers and duties as provided in these Bylaws and as the Board of Directors may from time to time prescribe.

Section 4.4. Lead Independent Director. The Board may, in its discretion elect a Lead Independent Director from among its members that are "Independent Directors" (as defined below). He or she shall preside at all meetings at which the Chairperson of the Board is not present and shall exercise such other powers and duties as may from time to time be assigned to him or her by the Board or as prescribed by these Bylaws. For purposes of these Bylaws, "Independent Director" has the meaning ascribed to such term under the rules of The NASDAQ Stock Market or other stock exchange upon which the Corporation's common stock is primarily traded.

Section 4.5. President. The President shall be the Chief Executive Officer of the Corporation unless the Board of Directors shall have designated another officer as the Chief Executive Officer of the Corporation. Subject to the provisions of these Bylaws and to the direction of the Board of Directors, and subject to the supervisory powers of the Chief Executive Officer (if the Chief Executive Officer is an officer other than the President), and subject to such supervisory powers and authority as may be given by the Board of Directors to the Chairperson of the Board of Directors, and/or to any other officer, the President shall have the responsibility for the general management the control of the business and affairs of the Corporation and the general supervision and direction of all of the officers, employees and agents of the Corporation (other than the Chief Executive Officer, if the Chief Executive Officer is an officer other than the President) and shall perform all duties and have all powers that are commonly incident to the office of President or that are delegated to the President by the Board of Directors.

Section 4.6. Vice President. Each Vice President shall have all such powers and duties as are commonly incident to the office of Vice President, or that are delegated to him or her by the Board of Directors or the Chief Executive Officer. A Vice President may be designated by the Board to perform the duties and exercise the powers of the Chief Executive Officer in the event of the Chief Executive Officer's absence or disability.

Section 4.7. Chief Financial Officer. The Chief Financial Officer shall be the Treasurer of the Corporation unless the Board of Directors shall have designated another officer as the Treasurer of the Corporation. Subject to the direction of the Board of Directors and the Chief Executive Officer, the Chief Financial Officer shall perform all duties and have all powers that are commonly incident to the office of Chief Financial Officer.

Section 4.8. Treasurer. The Treasurer shall have custody of all monies and securities of the Corporation. The Treasurer shall make such disbursements of the funds of the Corporation as are authorized and shall render from time to time an account of all such transactions. The Treasurer shall also perform such other duties and have such other powers as are commonly incident to the office of Treasurer, or as the Board of Directors or the Chief Executive Officer may from time to time prescribe.

Section 4.9. Secretary. The Secretary shall issue or cause to be issued all authorized notices for, and shall keep, or cause to be kept, minutes of all meetings of the stockholders and the Board of Directors. The Secretary shall have charge of the corporate minute books and similar records and shall perform such other duties and have such other powers as are commonly incident to the office of Secretary, or as the Board of Directors or the Chief Executive Officer may from time to time prescribe.

Section 4.10. Delegation of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding any provision hereof.

Section 4.11. Removal. Any officer of the Corporation shall serve at the pleasure of the Board of Directors and may be removed at any time, with or without cause, by the Board of Directors. Such removal shall be without prejudice to the contractual rights of such officer, if any, with the Corporation.

ARTICLE V

STOCK

Section 5.1. Certificates. Shares of stock of the Corporation shall be represented by certificates in such form as the officers of the Corporation may from time to time prescribe or shall be uncertificated. If shares of stock of the Corporation are represented by certificates, then such certificates shall be numbered and registered, shall exhibit the holder's name and the number of shares, and shall be signed by or in the name of the Corporation by the Chairperson or Vice-Chairperson of the Board of Directors, or the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, of the Corporation. Any or all of the signatures on the certificate may be a facsimile. At all times that the Corporation's stock is listed on a U.S. national securities exchange, (a) the shares of stock of the Corporation shall comply with all direct registration system eligibility requirements established by such exchange, including, without limitation, any requirement that shares of stock of the Corporation be eligible for issue in book-entry form, and (b) all issuances and transfers of shares of stock of the Corporation shall be entered on the books of the Corporation with all information necessary to comply with such direct registration system eligibility requirements, including the name and address of the person to whom the shares of stock are issued, the number of shares of stock issued and the date of issue.

Section 5.2. Lost, Stolen or Destroyed Stock Certificates. Except as provided in this Section 5.2, no new certificate of stock in the Corporation shall be issued in place of any certificate previously issued by the Corporation, alleged to have been lost, stolen or destroyed. 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 such owner's legal representative, to agree to indemnify the Corporation and/or 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.

Section 5.3. Other Regulations. The issue, transfer, conversion and registration of shares of stock of the Corporation shall be governed by such other regulations as the Board of Directors may establish in both the certificated and uncertificated forms.

ARTICLE VI

INDEMNIFICATION

Section 6.1. Indemnification of Officers and Directors. Each person who was or is made a party to, or is threatened to be made a party to, or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**Proceeding**"), by reason of the fact that such person (or a person of whom such person is the legal representative), is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director or officer of another corporation, or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by the DGCL, against all expenses, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes and penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith, provided such person acted in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful. Such indemnification shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of such person's heirs, executors and administrators. Notwithstanding the foregoing, the Corporation shall indemnify any such person seeking indemnity in connection with a Proceeding (or part thereof) initiated by such person only if such Proceeding (or part thereof) was authorized by the Board of Directors of the Corporation, or if such indemnification is authorized by an agreement approved by the Board of Directors.

Section 6.2. Advance of Expenses. The Corporation shall pay all expenses (including attorneys' fees) incurred by such a director or officer in defending any such Proceeding as they are incurred in advance of its final disposition; *provided, however*, that if the DGCL then so requires, the payment of such expenses incurred by such a director or officer in advance of the final disposition of such Proceeding shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it should be determined ultimately that such director or officer is not entitled to be indemnified under this Article VI or otherwise; and *provided, further*, that the Corporation shall not be required to advance any expenses to a person against whom the Corporation directly brings a claim, in a Proceeding, alleging that such person has breached such person's duty of loyalty to the Corporation, committed an act or omission not in good faith or that involves intentional misconduct or a knowing violation of law, or derived an improper personal benefit from a transaction.

Section 6.3. Non-Exclusivity of Rights. The rights conferred on any person in this Article VI shall not be exclusive of any other right that such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation of the Corporation, Bylaw, agreement, vote or consent of stockholders or disinterested directors, or otherwise. Additionally, nothing in this Article VI shall limit the ability of the Corporation, in its discretion, to indemnify or advance expenses to persons whom the Corporation is not obligated to indemnify or advance expenses pursuant to this Article VI.

Section 6.4. Indemnification Contracts. The Board of Directors is authorized to cause the Corporation to enter into indemnification contracts with any director, officer, employee or agent of the Corporation, or any person serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including employee benefit plans, providing indemnification rights to such person. Such rights may be greater than those provided in this Article VI.

Section 6.5. Effect of Amendment. Any amendment, repeal or modification of any provision of this Article VI shall be prospective only, and shall not adversely affect any right or protection conferred on a person pursuant to this Article VI and existing at the time of such amendment, repeal or modification.

ARTICLE VII

NOTICES

Section 7.1. Notice.

(a) Except as otherwise specifically provided in these Bylaws (including, without limitation, Section 7.1(b) below) or required by law, all notices required to be given pursuant to these Bylaws shall be in writing and may in every instance be effectively given by hand delivery (including use of a delivery service), by depositing such notice in the mail, postage prepaid, or by sending such notice by overnight express courier, electronic mail or other means of electronic transmission. Any such notice shall be addressed to the person to whom notice is to be given at such person's address as it appears on the records of the Corporation. The notice shall be deemed given (i) in the case of hand delivery, when received by the person to whom notice is to be given or by any person accepting such notice on behalf of such person, (ii) in the case of delivery by mail, upon deposit in the mail, (iii) in the case of delivery by overnight express courier, when dispatched, and (iv) in the case of delivery via electronic mail or other means of electronic transmission, when dispatched.

(b) Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation of the Corporation, or these Bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the Chief Legal Officer of the Corporation. Any such consent shall be deemed revoked if (i) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (ii) such inability becomes known to the Secretary or an Assistant Secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice; *provided, however*, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Notice given pursuant to this Section 7.1(b) shall be deemed given: (i) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (ii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (iii) if by any other form of electronic transmission, when directed to the stockholder.

(c) An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Corporation that the notice has been given in writing or by a form of electronic transmission shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

Section 7.2. Waiver of Notice. Whenever notice is required to be given under any provision of these Bylaws, a written waiver of notice, signed by the person entitled to notice, or waiver by electronic transmission by such person, 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, directors or members of a committee of directors need be specified in any waiver of notice.

ARTICLE VIII

INTERESTED DIRECTORS

Section 8.1. *Interested Directors; Quorum.* No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof that authorizes the contract or transaction, or solely because such director's or officer's votes are counted for such purpose, if: (i) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors constitute less than a quorum; (ii) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof, or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

ARTICLE IX

MISCELLANEOUS

Section 9.1. *Fiscal Year.* The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.

Section 9.2. *Seal.* The Board of Directors may provide for a corporate seal, which shall have the name of the Corporation inscribed thereon and shall otherwise be in such form as may be approved from time to time by the Board of Directors.

Section 9.3. *Form of Records.* Any records maintained by the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be kept on or by means of, or be in the form of, any information storage device or method or one or more electronic networks or databases (including one or more distributed electronic networks or databases), provided that the records so kept can be converted into clearly legible paper form within a reasonable time. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect such records pursuant to any provision of the DGCL.

Section 9.4. *Reliance Upon Books and Records.* A member of the Board of Directors or a member of any committee designated by the Board of Directors shall, in the performance of such person's duties, be fully protected in relying in good faith upon records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees of the Board of Directors, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 9.5. *Certificate of Incorporation Governs.* In the event of any conflict between the provisions of the Certificate of Incorporation of the Corporation and Bylaws, the provisions of the Certificate of Incorporation of the Corporation shall govern.

Section 9.6. *Severability.* If any provision of these Bylaws shall be held to be invalid, illegal, unenforceable or in conflict with the provisions of the Certificate of Incorporation of the Corporation, then such provision shall nonetheless be enforced to the maximum extent possible consistent with such holding and the remaining provisions of these Bylaws (including without limitation, all portions of any section of these Bylaws containing any such provision held to be invalid, illegal, unenforceable or in conflict with the Certificate of Incorporation of the Corporation, that are not themselves invalid, illegal, unenforceable or in conflict with the Certificate of Incorporation of the Corporation) shall remain in full force and effect.

ARTICLE X

AMENDMENT

Section 10.1. *Amendments.* Stockholders of the Corporation holding a majority of the Corporation's outstanding voting stock then entitled to vote at an election of directors shall have the power to adopt, amend or repeal Bylaws. To the extent provided in the Certificate of Incorporation of the Corporation, the Board of Directors of the Corporation shall also have the power to adopt, amend or repeal Bylaws of the Corporation.

ARTICLE XI

EXCLUSIVE FORUM

Section 11.1. *Delaware Forum.* Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for: (a) any derivative action or proceeding brought on behalf of the Corporation; (b) any action asserting a claim of breach of a fiduciary duty owed by, or other wrongdoing by, any director, officer, stockholder, employee or agent of the Corporation to the Corporation or the Corporation's stockholders; (c) any action asserting a claim against the Corporation or any director, officer, stockholder, employee or agent of the Corporation arising pursuant to any provision of the DGCL, the Certificate of Incorporation of the Corporation or these Bylaws or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware; (d) any action to interpret, apply, enforce or determine the validity of the Certificate of Incorporation or these Bylaws; or (e) any action asserting a claim against the Corporation or any director, officer, stockholder, employee or agent of the Corporation governed by the internal affairs doctrine.

Section 11.2. *Exclusive Federal Forum.* Unless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, the federal district courts of the United States shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act.

Any person or entity purchasing or otherwise acquiring or holding any interest in any security of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XI.

**CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Jereme M. Sylvain, certify that:

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

October 24, 2024

By: /s/ JEREME M. SYLVAIN
Jereme M. Sylvain
Executive Vice President and Chief Financial Officer
(Principal Financial and Accounting Officer)

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350

The undersigned, Kevin R. Sayer, President and Chief Executive Officer of DexCom, Inc. (the "Company"), pursuant to 18 U.S.C. §1350, hereby certifies that:

(i) the quarterly report on Form 10-Q for the quarter ended September 30, 2024 of the Company (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: October 24, 2024

/s/ KEVIN R. SAYER

Kevin R. Sayer
Chairman of the Board of Directors, President and
Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350

The undersigned, Jereme M. Sylvain, Executive Vice President and Chief Financial Officer of DexCom, Inc. (the "Company"), pursuant to 18 U.S.C. §1350, hereby certifies that:

- (i) the quarterly report on Form 10-Q for the quarter ended September 30, 2024 of the Company (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: October 24, 2024

/s/ JEREME M. SYLVAIN

Jereme M. Sylvain

Executive Vice President and Chief Financial Officer
(Principal Financial and Accounting Officer)