

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 November 25, 2017

Commission File Number 0-20214

BED BATH & BEYOND INC.

(Exact name of registrant as specified in its charter)

New York

(State of incorporation)

11-2250488

(IRS Employer Identification No.)

650 Liberty Avenue, Union, New Jersey 07083
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: **908/688-0888**

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

Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, 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

Non-accelerated filer (Do not check if a smaller reporting company)

Accelerated filer

Smaller reporting company

Emerging growth company

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 7(a)(2)(B) of the Securities Act.

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

Yes No

Number of shares outstanding of the issuer's Common Stock:

Class	Outstanding at November 25, 2017
Common Stock - \$0.01 par value	142,412,779

BED BATH & BEYOND INC. AND SUBSIDIARIES

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BED BATH & BEYOND INC. AND SUBSIDIARIES

*Consolidated Balance Sheets
(in thousands, except per share data)
(unaudited)*

	November 25, 2017	February 25, 2017
Assets		
Current assets:		
Cash and cash equivalents	\$ 453,103	\$ 488,329
Merchandise inventories	3,199,669	2,905,660
Other current assets	287,719	197,912
Total current assets	3,940,491	3,591,901
Long term investment securities	107,709	89,592
Property and equipment, net	1,840,959	1,837,129
Goodwill	716,283	697,085
Other assets	583,436	606,948
Total assets	\$ 7,188,878	\$ 6,822,655
Liabilities and Shareholders' Equity		
Current liabilities:		
Accounts payable	\$ 1,455,355	\$ 1,179,088
Accrued expenses and other current liabilities	584,121	484,114
Merchandise credit and gift card liabilities	321,591	309,478
Current income taxes payable	-	59,821
Total current liabilities	2,361,067	2,032,501
Deferred rent and other liabilities	520,952	511,303
Income taxes payable	66,061	67,971
Long term debt	1,491,952	1,491,603
Total liabilities	4,440,032	4,103,378
Shareholders' equity:		
Preferred stock - \$0.01 par value; authorized - 1,000 shares; no shares issued or outstanding	-	-
Common stock - \$0.01 par value; authorized - 900,000 shares; issued 341,682 and 339,533, respectively; outstanding 142,413 and 146,274 shares, respectively	3,417	3,395
Additional paid-in capital	2,039,213	1,974,781
Retained earnings	11,170,287	11,003,890
Treasury stock, at cost; 199,269 and 193,259 shares, respectively	(10,422,816)	(10,215,539)
Accumulated other comprehensive loss	(41,255)	(47,250)
Total shareholders' equity	2,748,846	2,719,277
Total liabilities and shareholders' equity	\$ 7,188,878	\$ 6,822,655

See accompanying Notes to Consolidated Financial Statements.

BED BATH & BEYOND INC. AND SUBSIDIARIES

*Consolidated Statements of Earnings
(in thousands, except per share data)
(unaudited)*

	Three Months Ended		Nine Months Ended	
	November 25, 2017	November 26, 2016	November 25, 2017	November 26, 2016
Net sales	\$ 2,954,539	\$ 2,955,484	\$ 8,633,037	\$ 8,681,803
Cost of sales	1,913,478	1,862,710	5,523,302	5,448,544
Gross profit	1,041,061	1,092,774	3,109,735	3,233,259
Selling, general and administrative expenses	932,701	881,491	2,685,517	2,527,977
Operating profit	108,360	211,283	424,218	705,282
Interest expense, net	13,621	18,254	49,367	52,768
Earnings before provision for income taxes	94,739	193,029	374,851	652,514
Provision for income taxes	33,438	66,605	144,037	236,136
Net earnings	\$ 61,301	\$ 126,424	\$ 230,814	\$ 416,378
Net earnings per share - Basic	\$ 0.44	\$ 0.86	\$ 1.65	\$ 2.78
Net earnings per share - Diluted	\$ 0.44	\$ 0.85	\$ 1.64	\$ 2.76
Weighted average shares outstanding - Basic	138,418	147,643	139,872	149,842
Weighted average shares outstanding - Diluted	138,790	148,583	140,381	150,950
Dividends declared per share	\$ 0.150	\$ 0.125	\$ 0.450	\$ 0.375

See accompanying Notes to Consolidated Financial Statements.

BED BATH & BEYOND INC. AND SUBSIDIARIES*Consolidated Statements of Comprehensive Income**(in thousands, unaudited)*

	Three Months Ended		Nine Months Ended	
	November 25, 2017	November 26, 2016	November 25, 2017	November 26, 2016
Net earnings	\$ 61,301	\$ 126,424	\$ 230,814	\$ 416,378
Other comprehensive (loss) income:				
Change in temporary impairment of auction rate securities, net of taxes	(20)	(75)	190	(200)
Pension adjustment, net of taxes	1,750	267	2,354	930
Currency translation adjustment	(7,347)	(8,041)	3,451	(481)
Other comprehensive (loss) income	(5,617)	(7,849)	5,995	249
Comprehensive income	\$ 55,684	\$ 118,575	\$ 236,809	\$ 416,627

See accompanying Notes to Consolidated Financial Statements.

BED BATH & BEYOND INC. AND SUBSIDIARIES
Consolidated Statements of Cash Flows
(in thousands, unaudited)

	Nine Months Ended	
	November 25, 2017	November 26, 2016
Cash Flows from Operating Activities:		
Net earnings	\$ 230,814	\$ 416,378
Adjustments to reconcile net earnings to net cash provided by operating activities:		
Depreciation and amortization	227,407	215,164
Stock-based compensation	52,833	54,298
Deferred income taxes	17,114	36,857
Other	(273)	(1,090)
Increase in assets, net of effect of acquisitions:		
Merchandise inventories	(290,576)	(405,198)
Trading investment securities	(17,806)	(15,345)
Other current assets	(89,425)	(127,487)
Other assets	(5,034)	(10,289)
Increase (decrease) in liabilities, net of effect of acquisitions:		
Accounts payable	311,430	536,577
Accrued expenses and other current liabilities	90,947	90,595
Merchandise credit and gift card liabilities	11,926	6,408
Income taxes payable	(61,626)	(73,055)
Deferred rent and other liabilities	14,111	20,367
Net cash provided by operating activities	<u>491,842</u>	<u>744,180</u>
Cash Flows from Investing Activities:		
Redemption of held-to-maturity investment securities	-	86,240
Capital expenditures	(263,963)	(276,436)
Investment in unconsolidated joint venture	-	(3,318)
Payment for acquisitions, net of cash acquired	(6,097)	(200,477)
Net cash used in investing activities	<u>(270,060)</u>	<u>(393,991)</u>
Cash Flows from Financing Activities:		
Proceeds from exercise of stock options	10,161	20,258
Payment of deferred financing costs	(430)	-
Payment of dividends	(60,058)	(37,358)
Repurchase of common stock, including fees	(207,277)	(375,541)
Net cash used in financing activities	<u>(257,604)</u>	<u>(392,641)</u>
Effect of exchange rate changes on cash and cash equivalents	<u>596</u>	<u>(115)</u>
Net decrease in cash and cash equivalents	<u>(35,226)</u>	<u>(42,567)</u>
Cash and cash equivalents:		
Beginning of period	488,329	515,573
End of period	<u>\$ 453,103</u>	<u>\$ 473,006</u>

See accompanying Notes to Consolidated Financial Statements.

BED BATH & BEYOND INC. AND SUBSIDIARIES
Notes to Consolidated Financial Statements
(unaudited)

1) Basis of Presentation

The accompanying consolidated financial statements have been prepared without audit. In the opinion of management, the accompanying consolidated financial statements contain all adjustments (consisting of only normal recurring accruals and elimination of intercompany balances and transactions) necessary to present fairly the financial position of Bed Bath & Beyond Inc. and subsidiaries (the "Company") as of November 25, 2017 and February 25, 2017 and the results of its operations and comprehensive income for the three and nine months ended November 25, 2017 and November 26, 2016, respectively, and its cash flows for the nine months ended November 25, 2017 and November 26, 2016, respectively.

The accompanying unaudited consolidated financial statements are presented in accordance with the requirements for Form 10-Q and consequently do not include all the disclosures normally required by U.S. generally accepted accounting principles ("GAAP"). Reference should be made to Bed Bath & Beyond Inc.'s Annual Report on Form 10-K for the fiscal year ended February 25, 2017 for additional disclosures, including a summary of the Company's significant accounting policies, and to subsequently filed Forms 8-K.

Certain reclassifications have been made to the fiscal 2016 consolidated balance sheet and statement of cash flows to conform to the fiscal 2017 consolidated balance sheet and statement of cash flows presentation.

The Company accounts for its operations as two operating segments: North American Retail and Institutional Sales. The Institutional Sales operating segment, which is comprised of Linen Holdings, does not meet the quantitative thresholds under GAAP and therefore is not a reportable segment. Net sales outside of the U.S. for the Company were not material for the three and nine months ended November 25, 2017 and November 26, 2016.

The Company sells a wide assortment of domestics merchandise and home furnishings. Domestics merchandise includes categories such as bed linens and related items, bath items and kitchen textiles. Home furnishings include categories such as kitchen and tabletop items, fine tabletop, basic housewares, general home furnishings, consumables and certain juvenile products. Sales of domestics merchandise and home furnishings accounted for approximately 35.7% and 64.3% of net sales, respectively, for the three months ended November 25, 2017 and approximately 36.4% and 63.6% of net sales, respectively, for the three months ended November 26, 2016. Sales of domestics merchandise and home furnishings accounted for approximately 37.0% and 63.0% of net sales, respectively, for the nine months ended November 25, 2017 and approximately 37.3% and 62.7% of net sales, respectively, for the nine months ended November 26, 2016. As the Company operates in the retail industry, its results of operations are affected by general economic conditions and consumer spending habits.

2) Acquisitions

On June 13, 2016, the Company acquired One Kings Lane, Inc., an online authority in home décor and design, offering a unique collection of select home goods, designer and vintage items. Since the date of acquisition, the results of One Kings Lane's operations, which were not material, have been included in the Company's results of operations and no proforma disclosure of financial information has been presented. One Kings Lane is included in the North American Retail operating segment.

On November 23, 2016, the Company acquired PersonalizationMall.com, LLC ("PMall"), an industry-leading online retailer of personalized products, for an aggregate purchase price of approximately \$190.3 million. Since the date of acquisition, the result of PMall's operations, which were not material, have been included in the Company's results of operations and no proforma disclosure of financial information has been presented. PMall is included in the North American Retail operating segment.

In the third quarter of fiscal 2017, the Company has finalized the valuation of assets acquired and liabilities assumed. The following table summarizes the estimated fair value of the assets acquired and liabilities assumed at the date of acquisition.

(in millions)	As of November 23, 2016	
Current assets	\$	15.5
Property and equipment and other non-current assets		9.3
Goodwill		194.2
Intangible assets		10.4
Total assets acquired		229.4
Accounts payable and other liabilities		(39.1)
Total net assets acquired	\$	190.3

Included within intangible assets above is approximately \$10.0 million for tradenames, which is not subject to amortization. The tradenames and goodwill are expected to be deductible for tax purposes.

On January 27, 2017, the Company acquired certain assets including the brand, website and certain intellectual property assets and assumed certain contractual obligations of Chef Central, a retailer of kitchenware, cookware and homeware items catering to cooking and baking enthusiasts. Since the date of acquisition, the results of Chef Central's operations, which were not material, have been included in the Company's results of operations and no proforma disclosure of financial information has been presented. Chef Central is included in the North American Retail operating segment.

On March 6, 2017, the Company acquired Decorist, Inc., an online interior design platform that provides personalized home design services. Since the date of acquisition, the results of Decorist's operations, which were not material, have been included in the Company's results of operations for the three and nine months ended November 25, 2017, and no proforma disclosure of financial information has been presented. Decorist is included in the North American Retail operating segment.

3) Restructuring Activities

In the second quarter of fiscal 2017, the Company accelerated the realignment of its store management structure to support its customer-focused initiatives and omnichannel growth and expensed pre-tax cash restructuring charges of approximately \$16.9 million, primarily for severance and related costs in conjunction with this realignment. During the nine months ended November 25, 2017, the Company paid \$14.7 million of these costs.

4) Recent Accounting Pronouncements

In November 2015, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2015-17, *Income Taxes (Topic 740): Balance Sheet Classification of Deferred Taxes*. This guidance requires an entity to classify deferred tax assets and liabilities as noncurrent assets and liabilities on the balance sheet. ASU 2015-17 is effective for annual reporting periods beginning after December 15, 2016, including interim periods within that reporting period, with earlier adoption permitted. ASU 2015-17 can be adopted either prospectively or retrospectively to each prior reporting period presented. At the beginning of the first quarter of fiscal 2017, the Company adopted this guidance retrospectively, which resulted in decreases to other current assets of \$218.8 million and deferred rent and other liabilities of \$23.4 million and an increase to other assets of \$195.5 million as of February 25, 2017.

In March 2016, the FASB issued ASU 2016-09, *Compensation - Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting*, which simplifies several aspects of the accounting for share-based payment transactions, including the accounting for income taxes, forfeitures and statutory tax withholding requirements, as well as classification in the statement of cash flows. ASU 2016-09 requires, on a prospective basis, recognition of excess tax benefits and tax deficiencies (resulting from an increase or decrease in the fair value of an award from grant date to the vesting or exercise date) in the provision for income taxes as a discrete item in the period in which they occur. The ASU also changes the classification of excess tax benefits from a financing activity to an operating activity in the Company's consolidated statements of cash flows. In addition, ASU 2016-09 allows companies to make an accounting policy election to either estimate expected forfeitures or account for them as they occur. ASU 2016-09 is effective for fiscal years beginning after December 15, 2016, and interim periods within those years, with early adoption permitted. The Company adopted ASU 2016-09 during the first quarter of fiscal 2017. During the three and nine months ended November 25, 2017, the Company recognized in income tax expense discrete tax expenses of \$0.4 million and \$9.4 million related to tax deficiencies, respectively. Additionally, the Company elected to account for forfeitures as an estimate of the number of awards that are expected to vest, which is consistent with its accounting policy prior to adoption of ASU 2016-09. The Company adopted the provisions of ASU 2016-09 related to changes in the consolidated statements of cash flows on a retrospective basis. As such, excess tax benefits are now classified as an operating activity in the Company's Consolidated Statements of Cash Flows instead of as a financing activity. As a result, excess tax benefits of \$1.5 million for the nine months ended November 26, 2016 were reclassified from financing activities to operating activities. ASU 2016-09 also requires that the value of shares withheld from employees upon vesting of stock awards in order to satisfy any applicable tax withholding requirements is presented within financing activities in the Company's Consolidated Statements of Cash Flows, which is consistent with the Company's historical presentation, and therefore had no impact to the Company.

In May 2014, the FASB issued ASU 2014-09, *Revenue from Contracts with Customers (Topic 606)*. This guidance requires an entity to recognize revenue in a manner that depicts the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. The new standard also will result in enhanced disclosures about the nature, amount, timing and uncertainty of revenue and cash flows arising from contracts with customers. In July 2015, the FASB issued ASU 2015-14, *Revenue from Contracts with Customers (Topic 606): Deferral of the Effective Date*. This guidance deferred the effective date of ASU 2014-09 for one year from the original effective date. In accordance with the deferral, ASU 2014-09 is effective for annual reporting periods beginning after December 15, 2017, including interim periods within that reporting period. In 2016, the FASB issued several amendments to clarify various aspects of the implementation guidance. ASU 2014-09 can be adopted either retrospectively to each prior reporting period presented or as a cumulative-effect adjustment as of the date of adoption. The Company does not expect to adopt this ASU until required, and has not yet selected the transition method. The Company is in the process of analyzing its revenue streams and quantifying the effects to the areas discussed above, and expects the adoption to result in a change in the timing of revenue recognition for merchandise shipped to a customer and for its customer loyalty and rewards programs, as well as a change in the timing of recognizing advertising expense related to direct response advertising. The Company currently does not expect the adoption of this standard will have a material impact on its consolidated financial position, results of operations, or cash flows.

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)*. This guidance requires an entity to recognize lease liabilities and a right-of-use asset for all leases on the balance sheet and to disclose key information about the entity's leasing arrangements. ASU 2016-02 is effective for annual reporting periods beginning after December 15, 2018, including interim periods within that reporting period, with earlier adoption permitted. ASU 2016-02 must be adopted using a modified retrospective approach for all leases existing at, or entered into after the date of initial adoption, with an option to elect to use certain transition relief. The Company is currently evaluating the impact of this new standard on its consolidated financial statements and related disclosures, but expects that it will result in a significant increase in the assets and liabilities recorded on the consolidated balance sheet.

In January 2017, the FASB issued ASU 2017-01, *Business Combinations (Topic 805): Clarifying the Definition of a Business*. ASU 2017-01 requires that when substantially all of the fair value of the gross assets acquired (or disposed of) is concentrated in a single identifiable asset or a group of identifiable assets, the set of assets would not represent a business. Also, in order to be considered a business, an acquisition would have to include an input and a substantive process that together significantly contribute to the ability to produce outputs. Under the update, fewer sets of assets are expected to be considered businesses. ASU 2017-01 is effective for annual reporting periods beginning after December 15, 2017, including interim periods within that reporting period. The adoption of this guidance is not expected to have a significant effect on the Company's consolidated financial position, results of operations, or cash flows.

In January 2017, the FASB issued ASU 2017-04, *Intangibles – Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment*. ASU 2017-04 eliminates the requirement to calculate the implied fair value of goodwill to measure the amount of impairment loss, if any, under the second step of the current goodwill impairment test. Under the update, the goodwill impairment loss would be measured as the amount by which a reporting unit's carrying value exceeds its fair value, not to exceed the carrying amount of goodwill. ASU 2017-04 is effective for annual reporting periods beginning after December 15, 2019, with early adoption permitted. The adoption of this guidance is not expected to have a significant effect on the Company's consolidated financial position, results of operations, or cash flows.

5) Fair Value Measurements

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability (i.e., “the exit price”) in an orderly transaction between market participants at the measurement date. In determining fair value, the Company uses various valuation approaches, including quoted market prices and discounted cash flows. The hierarchy for inputs used in measuring fair value maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that the most observable inputs be used when available. Observable inputs are inputs that market participants would use in pricing the asset or liability developed based on market data obtained from independent sources. Unobservable inputs are inputs that reflect a company’s judgment concerning the assumptions that market participants would use in pricing the asset or liability developed based on the best information available under the circumstances. In certain cases, the inputs used to measure fair value may fall into different levels of the fair value hierarchy. In such cases, an asset or liability must be classified in its entirety based on the lowest level of input that is significant to the measurement of fair value. The fair value hierarchy is broken down into three levels based on the reliability of inputs as follows:

- Level 1 – Valuations based on quoted prices in active markets for identical instruments that the Company is able to access. Since valuations are based on quoted prices that are readily and regularly available in an active market, valuation of these products does not entail a significant degree of judgment.

- Level 2 – Valuations based on quoted prices in active markets for instruments that are similar, or quoted prices in markets that are not active for identical or similar instruments, and model-derived valuations in which all significant inputs and significant value drivers are observable in active markets.

- Level 3 – Valuations based on inputs that are unobservable and significant to the overall fair value measurement.

As of November 25, 2017, the Company’s financial assets utilizing Level 1 inputs included long term trading investment securities traded on active securities exchanges. The Company did not have any financial assets utilizing Level 2 inputs. Financial assets utilizing Level 3 inputs included long term investments in auction rate securities consisting of preferred shares of closed end municipal bond funds (See “Investment Securities,” Note 7).

Fair Value of Financial Instruments

The Company’s financial instruments include cash and cash equivalents, investment securities, accounts payable, long term debt and certain other liabilities. The Company’s investment securities include auction rate securities, which are stated at their approximate fair value. The book value of the financial instruments, excluding the Company’s long term debt, is representative of their fair values. The fair value of the Company’s long term debt is approximately \$1.380 billion as of November 25, 2017, which is based on quoted prices in active markets for identical instruments (i.e., Level 1 valuation), compared to the carrying value of approximately \$1.500 billion.

6) Cash and Cash Equivalents

Included in cash and cash equivalents are credit and debit card receivables from banks, which typically settle within five business days, of \$208.6 million and \$86.6 million as of November 25, 2017 and February 25, 2017, respectively.

7) Investment Securities

The Company’s investment securities as of November 25, 2017 and February 25, 2017 are as follows:

<i>(in millions)</i>	November 25, 2017	February 25, 2017
Available-for-sale securities:		
Long term	\$ 19.5	\$ 19.3
Trading securities:		
Long term	88.2	70.3
Total investment securities	<u>\$ 107.7</u>	<u>\$ 89.6</u>

Auction Rate Securities

As of November 25, 2017 and February 25, 2017, the Company's long term available-for-sale investment securities represented approximately \$20.3 million par value of auction rate securities consisting of preferred shares of closed end municipal bond funds, less temporary valuation adjustments of approximately \$0.7 million and \$1.0 million, respectively. Since these valuation adjustments are deemed to be temporary, they are recorded in accumulated other comprehensive loss, net of a related tax benefit, and did not affect the Company's net earnings.

Long Term Trading Investment Securities

The Company's long term trading investment securities, which are provided as investment options to the participants of the nonqualified deferred compensation plan, are stated at fair market value. The values of these trading investment securities included in the table above are approximately \$88.2 million and \$70.3 million as of November 25, 2017 and February 25, 2017, respectively.

8) Property and Equipment

As of November 25, 2017 and February 25, 2017, included in property and equipment, net is accumulated depreciation of approximately \$3.0 billion and \$2.8 billion, respectively.

9) Long Term Debt

Senior Unsecured Notes

On July 17, 2014, the Company issued \$300 million aggregate principal amount of 3.749% senior unsecured notes due August 1, 2024, \$300 million aggregate principal amount of 4.915% senior unsecured notes due August 1, 2034 and \$900 million aggregate principal amount of 5.165% senior unsecured notes due August 1, 2044 (collectively, the "Notes"). Interest on the Notes is payable semi-annually on February 1 and August 1 of each year.

The Notes were issued under an indenture (the "Base Indenture"), as supplemented by a first supplemental indenture (together, with the Base Indenture, the "Indenture"), which contains various restrictive covenants, which are subject to important limitations and exceptions that are described in the Indenture. The Company was in compliance with all covenants related to the Notes as of November 25, 2017.

Revolving Credit Agreement

On November 14, 2017, the Company replaced its existing \$250 million five year senior unsecured revolving credit facility agreement with various lenders with a new \$250 million five year senior unsecured revolving credit facility agreement ("Revolver") with various lenders maturing November 14, 2022. The new Revolver has essentially the same terms and requirements as the prior revolving credit facility agreement. During the nine months ended November 25, 2017, the Company did not have any borrowings under either Revolver.

The Revolver contains customary affirmative and negative covenants and also requires the Company to maintain a maximum leverage ratio. The Company was in compliance with all covenants related to the Revolver as of November 25, 2017.

Deferred financing costs associated with the Notes and the current and former Revolvers of approximately \$10.5 million were capitalized. In the accompanying Consolidated Balance Sheets, the deferred financing costs are included in long term debt, net of amortization, for the Notes, and are included in other assets, net of amortization, for the Revolver. These deferred financing costs for the Notes and the Revolver are being amortized over the term of each of the Notes and the term of the Revolver and such amortization is included in interest expense, net in the Consolidated Statements of Earnings. Interest expense related to the Notes and the Revolver, including the commitment fee and the amortization of deferred financing costs, was approximately \$18.2 million and \$17.9 million for the three months ended November 25, 2017 and November 26, 2016, respectively and \$54.7 million for both the nine months ended November 25, 2017 and November 26, 2016.

Lines of Credit

At November 25, 2017, the Company maintained two uncommitted lines of credit of \$100 million each, with expiration dates of August 29, 2018 and February 25, 2018, respectively. These uncommitted lines of credit are currently and are expected to be used for letters of credit in the ordinary course of business. During the first nine months of fiscal 2017, the Company did not have any direct borrowings under the uncommitted lines of credit. Although no assurances can be provided, the Company intends to renew both uncommitted lines of credit before the respective expiration dates.

10) Shareholders' Equity

The Company has authorization to make repurchases from time to time in the open market or through other parameters approved by the Board of Directors pursuant to existing rules and regulations.

Between December 2004 and September 2015, the Company's Board of Directors authorized, through several share repurchase programs, the repurchase of \$11.950 billion of its shares of common stock. The Company also acquires shares of its common stock to cover employee related taxes withheld on vested restricted stock and performance stock unit awards. In the first nine months of fiscal 2017, the Company repurchased approximately 6.0 million shares of its common stock for a total cost of approximately \$207.3 million, bringing the aggregate total of common stock repurchased to approximately 199.3 million shares for a total cost of approximately \$10.4 billion since the initial authorization in December 2004. The Company has approximately \$1.5 billion remaining of authorized share repurchases as of November 25, 2017.

During fiscal 2016, the Company's Board of Directors authorized a quarterly dividend program. During the nine months ended November 25, 2017 and November 26, 2016, quarterly dividends totaling \$0.45 and \$0.375 per share were declared by the Company's Board of Directors, of which \$0.30 and \$0.25 per share was paid, respectively. Subsequent to the end of the third quarter of fiscal 2017, on December 20, 2017, the Company's Board of Directors declared a quarterly dividend of \$0.15 per share to be paid on April 17, 2018 to shareholders of record as of the close of business on March 16, 2018. The Company expects to pay quarterly cash dividends on its common stock in the future, subject to the determination by the Board of Directors, based on an evaluation of the Company's earnings, financial condition and requirements, business conditions and other factors.

Cash dividends, if any, are accrued as a liability on the Company's consolidated balance sheets and recorded as a decrease to additional paid-in capital when declared.

11) Stock-Based Compensation

The Company measures all employee stock-based compensation awards using a fair value method and records such expense, net of estimated forfeitures, in its consolidated financial statements. Currently, the Company's stock-based compensation relates to restricted stock awards, stock options and performance stock units. The Company's restricted stock awards are considered nonvested share awards.

Stock-based compensation expense for the three and nine months ended November 25, 2017 was approximately \$15.9 million (\$10.3 million after tax or \$0.07 per diluted share) and approximately \$52.8 million (\$32.5 after tax or \$0.23 per diluted share), respectively. Stock-based compensation expense for the three and nine months ended November 26, 2016 was approximately \$16.7 million (\$11.0 million after tax or \$0.07 per diluted share) and approximately \$54.3 million (\$34.7 million after tax or \$0.23 per diluted share), respectively. In addition, the amount of stock-based compensation cost capitalized for the nine months ended November 25, 2017 and November 26, 2016 was approximately \$1.5 million and \$1.6 million, respectively.

Incentive Compensation Plans

The Company currently grants awards under the Bed Bath & Beyond 2012 Incentive Compensation Plan (the "2012 Plan"), which amended and restated the Bed Bath & Beyond 2004 Incentive Compensation Plan (the "2004 Plan"). The 2012 Plan includes an aggregate of 43.2 million common shares authorized for issuance and the ability to grant incentive stock options. Outstanding awards that were covered by the 2004 Plan continue to be in effect under the 2012 Plan.

The 2012 Plan is a flexible compensation plan that enables the Company to offer incentive compensation through stock options (whether nonqualified stock options or incentive stock options), restricted stock awards, stock appreciation rights, performance awards and other stock based awards, including cash awards. Under the 2012 Plan, grants are determined by the Compensation Committee for those awards granted to executive officers and by an appropriate committee for all other awards granted. Awards of stock options and restricted stock generally vest in five equal annual installments beginning one to three years from the date of grant. Awards of performance stock units generally vest over a period of four years from the date of grant dependent on the Company's achievement of performance-based tests and subject, in general, to the executive remaining in the Company's service on specified vesting dates.

The Company generally issues new shares for stock option exercises, restricted stock awards and vesting of performance stock units.

Stock Options

Stock option grants are issued at fair market value on the date of grant and generally become exercisable in either three or five equal annual installments beginning one year from the date of grant for options issued since May 10, 2010, and beginning one to three years from the date of grant for options issued prior to May 10, 2010, in each case, subject, in general, to the recipient remaining in the Company's service on specified vesting dates. Option grants expire eight years after the date of grant. All option grants are nonqualified. As of November 25, 2017, unrecognized compensation expense related to the unvested portion of the Company's stock options was \$20.2 million, which is expected to be recognized over a weighted average period of 3.0 years.

The fair value of the stock options granted was estimated on the date of the grant using a Black-Scholes option-pricing model that uses the assumptions noted in the following table.

Black-Scholes Valuation Assumptions (1)	Nine Months Ended	
	November 25, 2017	November 26, 2016
Weighted Average Expected Life (in years) (2)	6.7	6.6
Weighted Average Expected Volatility (3)	26.49%	26.96%
Weighted Average Risk Free Interest Rates (4)	2.17%	1.46%
Expected Dividend Yield (5)	1.60%	1.10%

(1) Forfeitures are estimated based on historical experience.

(2) The expected life of stock options is estimated based on historical experience.

(3) Expected volatility is based on the average of historical and implied volatility. The historical volatility is determined by observing actual prices of the Company's stock over a period commensurate with the expected life of the awards. The implied volatility represents the implied volatility of the Company's call options, which are actively traded on multiple exchanges, had remaining maturities in excess of twelve months, had market prices close to the exercise prices of the employee stock options and were measured on the stock option grant date.

(4) Based on the U.S. Treasury constant maturity interest rate whose term is consistent with the expected life of the stock options.

(5) Expected dividend yield is estimated based on anticipated dividend payouts.

Changes in the Company's stock options for the nine months ended November 25, 2017 were as follows:

(Shares in thousands)	Number of Stock Options	Weighted Average Exercise Price
Options outstanding, beginning of period	3,906	\$ 56.48
Granted	694	37.50
Exercised	(359)	28.33
Forfeited or expired	-	-
Options outstanding, end of period	4,241	\$ 55.76
Options exercisable, end of period	2,447	\$ 60.38

The weighted average fair value for the stock options granted during the first nine months of fiscal 2017 and 2016 was \$9.50 and \$11.87, respectively. The weighted average remaining contractual term for options outstanding as of November 25, 2017 was 4.3 years and the aggregate intrinsic value was \$0. The weighted average remaining contractual term for options exercisable as of November 25, 2017 was 2.9 years and the aggregate intrinsic value was \$0. The total intrinsic value for stock options exercised during the first nine months of fiscal 2017 and 2016 was \$3.9 million and \$9.0 million, respectively.

Net cash proceeds from the exercise of stock options for the first nine months of fiscal 2017 were \$10.2 million and the net associated income tax expense was \$0.2 million.

Restricted Stock

Restricted stock awards are issued and measured at fair market value on the date of grant and generally become vested in five equal annual installments beginning one to three years from the date of grant, subject, in general, to the recipient remaining in the Company's service on specified vesting dates. Vesting of restricted stock is based solely on time vesting. As of November 25, 2017, unrecognized compensation expense related to the unvested portion of the Company's restricted stock awards was \$150.8 million, which is expected to be recognized over a weighted average period of 4.7 years.

Changes in the Company's restricted stock for the nine months ended November 25, 2017 were as follows:

(Shares in thousands)	Number of Restricted Shares	Weighted Average Grant-Date Fair Value
Unvested restricted stock, beginning of period	3,492	\$ 58.12
Granted	1,738	35.54
Vested	(720)	59.46
Forfeited	(264)	50.20
Unvested restricted stock, end of period	<u>4,246</u>	<u>\$ 49.14</u>

Performance Stock Units

Performance stock units ("PSUs") are issued and measured at fair market value on the date of grant. Vesting of PSUs awarded to certain of the Company's executives is dependent on the Company's achievement of a performance-based test during a one-year period from the date of grant and during a three-year period from the date of grant and, assuming achievement of the performance-based test, time vesting over periods of up to four years, subject, in general, to the executive remaining in the Company's service on specified vesting dates. Performance during the one-year period will be based on Earnings Before Interest and Taxes ("EBIT") margin relative to a peer group of the Company and performance during the three-year period will be based on Return on Invested Capital ("ROIC") or a combination of EBIT margin and ROIC relative to such peer group. The awards based on EBIT margin and ROIC range from a floor of zero to a cap of 150% of target achievement. PSUs are converted into shares of common stock upon payment following vesting. Upon grant of the PSUs, the Company recognizes compensation expense related to these awards based on the assumption that 100% of the target award will be achieved. The Company evaluates the target assumption on a quarterly basis and adjusts compensation expense related to these awards, as appropriate. As of November 25, 2017, unrecognized compensation expense related to the unvested portion of the Company's performance stock units was \$29.4 million, which is expected to be recognized over a weighted average period of 1.9 years.

Changes in the Company's PSUs for the nine months ended November 25, 2017 were as follows:

(Shares in thousands)	Number of Performance Stock Units	Weighted Average Grant-Date Fair Value
Unvested performance stock units, beginning of period	1,014	\$ 55.19
Granted	660	37.50
Vested	(322)	57.28
Forfeited	-	-
Unvested performance stock units, end of period	<u>1,352</u>	<u>\$ 46.06</u>

12) Earnings per Share

The Company presents earnings per share on a basic and diluted basis. Basic earnings per share has been computed by dividing net earnings by the weighted average number of shares outstanding. Diluted earnings per share has been computed by dividing net earnings by the weighted average number of shares outstanding, including the dilutive effect of stock-based awards as calculated under the treasury stock method.

Stock-based awards for the three and nine months ended November 25, 2017 of approximately 8.3 million and 7.9 million, respectively, and November 26, 2016 of approximately 4.3 million and 4.5 million, respectively, were excluded from the computation of diluted earnings per share as the effect would be anti-dilutive.

13) Supplemental Cash Flow Information

The Company paid income taxes of \$201.9 million and \$272.0 million in the first nine months of fiscal 2017 and 2016, respectively. In addition, the Company had interest payments of approximately \$42.9 million in both the first nine months of fiscal 2017 and 2016.

The Company recorded an accrual for capital expenditures of \$22.9 million and \$15.6 million as of November 25, 2017 and November 26, 2016, respectively. In addition, the Company recorded an accrual for dividends payable of \$24.9 million and \$20.1 million as of November 25, 2017 and November 26, 2016, respectively.

14) Subsequent Events

On December 22, 2017, H.R.1 - An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, also known as the Tax Cuts and Jobs Act, (the "Act") was enacted. The Company is currently reviewing the components of the Act and evaluating its impact, which could be material on the Company's fiscal year 2017 consolidated financial statements and related disclosures, including a one-time, non-cash expense related to a decrease in the value of the Company's net deferred tax assets.

On December 27, 2017, the Company terminated its nonqualified deferred compensation plan ("NQDC"). After December 27, 2017, no participant deferrals will be accepted and all balances will be liquidated more than 12 months but less than 24 months after December 27, 2017. Until the final payment date, the NQDC will continue to operate in the ordinary course, except that no new participant deferrals will be credited to participant accounts under the NQDC.

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

Overview

Bed Bath & Beyond Inc. and subsidiaries (the "Company") is an omnichannel retailer selling a wide assortment of domestics merchandise and home furnishings which operates under the names Bed Bath & Beyond ("BBB"), Christmas Tree Shops, Christmas Tree Shops andThat! or andThat! (collectively, "CTS"), Harmon, Harmon Face Values, or Face Values (collectively, "Harmon"), buybuy BABY ("Baby") and World Market, Cost Plus World Market, or Cost Plus (collectively, "Cost Plus World Market"). Customers can purchase products either in-store, online, with a mobile device or through a customer contact center. The Company generally has the ability to have customer purchases picked up in-store or shipped direct to the customer from the Company's distribution facilities, stores or vendors. In addition, the Company operates Of a Kind, an e-commerce website that features specially commissioned, limited edition items from emerging fashion and home designers; One Kings Lane, an authority in home décor and design, offering a unique collection of select home goods, designer and vintage items; PersonalizationMall.com ("PMall"), an industry-leading online retailer of personalized products; Chef Central, a retailer of kitchenware, cookware and homeware items catering to cooking and baking enthusiasts; and Decorist, an online interior design platform that provides personalized home design services. The Company also operates Linen Holdings, a provider of a variety of textile products, amenities and other goods to institutional customers in the hospitality, cruise line, healthcare and other industries. Additionally, the Company is a partner in a joint venture which operates eight retail stores in Mexico under the name Bed Bath & Beyond.

The Company accounts for its operations as two operating segments: North American Retail and Institutional Sales. The Institutional Sales operating segment, which is comprised of Linen Holdings, does not meet the quantitative thresholds under U.S. generally accepted accounting principles and therefore is not a reportable segment.

The Company offers an extensive selection of high quality domestics merchandise and home furnishings across all channels, concepts and countries in which it operates and strives to provide a noticeably better shopping experience through best-in-class services and solutions.

The Company's mission is to be trusted by its customers as the expert for the home and heart-felt life events. These include certain life events that evoke strong emotional connections such as getting married, moving to a new home, having a baby, going to college and decorating a room, which the Company supports through its wedding and baby registries, mover and student life programs, and its design consultation services. The Company's ability to achieve its mission is driven by three broad objectives: first, to present a meaningfully differentiated and complete product assortment for the home, of the right quality product, at the right value; second, to provide services and solutions that enhance the usage and enjoyment of its offerings; and third, to deliver a convenient, engaging, and inspiring shopping experience that is intelligently personalized over time. The Company is undertaking a number of strategic initiatives to support each of these objectives, as well as to drive change across the organization in order to improve operational efficiencies and to create future growth. Through this focused approach, the Company believes it will further strengthen its competitive position to be the customer's first choice for the home and heart-felt life events.

The integration of retail store and customer facing digital channels allows the Company to provide its customers with a seamless shopping experience. In-store purchases are primarily fulfilled from that store's inventory, or may also be shipped to a customer from one of the Company's distribution facilities, from a vendor, or from another store. Online purchases, including web and mobile, can be shipped to a customer from the Company's distribution facilities, directly from vendors, or from a store. The Company's customers can also choose to pick up online orders in a store, as well as return online purchases to a store. Customers can also make online purchases through one of the Company's customer contact centers and in-store through The Beyond Store, the Company's proprietary, web-based platform. These capabilities allow the Company to better serve customers across various channels.

Operating in the highly competitive retail industry, the Company, along with other retail companies, is influenced by a number of factors including, but not limited to, general economic conditions including the housing market, unemployment levels and commodity prices; the overall macroeconomic environment and related changes in the retailing environment; consumer preferences, spending habits and adoption of new technologies; unusual weather patterns and natural disasters; competition from existing and potential competitors across all channels; potential supply chain disruption; the ability to find suitable locations at acceptable occupancy costs and other terms to support the Company's plans for new stores; and the ability to assess and implement technologies in support of the Company's development of its omnichannel capabilities. The Company cannot predict whether, when or the manner in which these factors could affect the Company's operating results.

The results of operations for the three and nine months ended November 25, 2017 include Decorist since the date of acquisition, March 6, 2017.

The following represents an overview of the Company's financial performance for the periods indicated:

- Net sales for the three months ended November 25, 2017 were \$2.955 billion, relatively flat as compared with the three months ended November 26, 2016. Net sales for the nine months ended November 25, 2017 were \$8.633 billion, a decrease of approximately 0.6% as compared with the nine months ended November 26, 2016.
- Comparable sales for the three months ended November 25, 2017 decreased by approximately 0.3%, as compared to a decrease of approximately 1.4% for the three months ended November 26, 2016. For the three months ended November 25, 2017, comparable sales consummated through customer facing digital channels continued to have strong growth over the corresponding period in the prior year, while comparable sales consummated in-store declined in the low-single-digit percentage range.

Comparable sales for the nine months ended November 25, 2017 decreased by approximately 1.7%, as compared to a decrease of approximately 1.1% for the nine months ended November 26, 2016. For the nine months ended November 25, 2017, comparable sales consummated through customer facing digital channels continued to have strong growth over the corresponding period in the prior year, while comparable sales consummated in-store declined in the mid-single-digit percentage range.

Comparable sales include sales consummated through all retail channels which have been operating for twelve full months following the opening period (typically four to six weeks). The Company is an omnichannel retailer with capabilities that allow a customer to use more than one channel when making a purchase, including in-store, online, with a mobile device or through a customer contact center, and have it fulfilled, in most cases, either through in-store customer pickup or by direct shipment to the customer from one of the Company's distribution facilities, stores or vendors.

Sales consummated on a mobile device while physically in a store location are recorded as customer facing digital channel sales. Customer orders taken in-store by an associate through The Beyond Store, the Company's proprietary, web-based platform are recorded as in-store sales. Customer orders reserved online and picked up in a store are recorded as in-store sales. In-store sales are reduced by sales originally consummated from customer facing digital channels and subsequently returned in-store.

Stores relocated or expanded are excluded from comparable sales if the change in square footage would cause meaningful disparity in sales over the prior period. In the case of a store to be closed, such store's sales are not considered comparable once the store closing process has commenced. One Kings Lane is excluded from the comparable sales calculation for the three and nine months ended November 25, 2017 and will continue to be excluded until after the currently in process re-platforming of One King Lane's systems and integration of its support services have been in place for a period of time such that there would be a meaningful comparison in One Kings Lane's sales over the prior period. PMall, Chef Central and Decorist are also excluded from the comparable sales calculation for the three and nine months ended November 25, 2017 and Chef Central and Decorist will continue to be excluded until after the anniversary of the respective acquisition. PMall will be included in the comparable sales calculation in the fourth quarter of fiscal 2017 as the anniversary of the acquisition passed in November 2017. Linen Holdings is excluded from the comparable sales calculations and will continue to be excluded on an ongoing basis as it represents non-retail activity.

- Gross profit for the three months ended November 25, 2017 was \$1.041 billion, or 35.2% of net sales, compared with \$1.093 billion, or 37.0% of net sales, for the three months ended November 26, 2016. Gross profit for the nine months ended November 25, 2017 was \$3.110 billion, or 36.0% of net sales, compared with \$3.233 billion, or 37.2% of net sales, for the nine months ended November 26, 2016.
- Selling, general and administrative expenses ("SG&A") for the three months ended November 25, 2017 were \$932.7 million, or 31.6% of net sales, compared with \$881.5 million, or 29.8% of net sales, for the three months ended November 26, 2016. Selling, general and administrative expenses for the nine months ended November 25, 2017 were \$2.686 billion, or 31.1% of net sales, compared with \$2.528 billion, or 29.1% of net sales, for the nine months ended November 26, 2016.

- Interest expense, net for the three and nine months ended November 25, 2017 was \$13.6 million and \$49.4 million, respectively, compared with \$18.3 million and \$52.8 million for the three and nine months ended November 26, 2016.
- The effective tax rate for the three months ended November 25, 2017 was 35.3%, as compared with 34.5% for the three months ended November 26, 2016. The tax rates included other discrete tax items resulting in net benefits of approximately \$3.3 million and \$6.0 million for the three months ended November 25, 2017 and November 26, 2016, respectively.

The effective tax rate for the nine months ended November 25, 2017 was 38.4%, as compared with 36.2% for the nine months ended November 26, 2016. For the nine months ended November 25, 2017, the effective tax rate included the effect of the adoption of ASU 2016-09, *Compensation – Stock Compensation (Topic 718): Improvements to Share-Based Payment Accounting*, (“ASU 2016-09, *Stock Compensation*”), which increased income tax expense by approximately \$9.4 million. Also, the tax rates included other discrete tax items resulting in net benefits of approximately \$8.5 million and \$9.4 million, respectively, for the nine months ended November 25, 2017 and November 26, 2016.

- For the three months ended November 25, 2017, net earnings per diluted share were \$0.44 (\$61.3 million), as compared with net earnings per diluted share of \$0.85 (\$126.4 million) for the three months ended November 26, 2016. The decrease in net earnings per diluted share for the three months ended November 25, 2017 is the result of the decrease in net earnings due to the items described above, partially offset by the impact of the Company’s repurchases of its common stock.

For the nine months ended November 25, 2017, net earnings per diluted share were \$1.64 (\$230.8 million), as compared with net earnings per diluted share of \$2.76 (\$416.4 million) for the nine months ended November 26, 2016. The decrease in net earnings per diluted share for the nine months ended November 25, 2017 is the result of the decrease in net earnings due to the items described above, partially offset by the impact of the Company’s repurchases of its common stock. For the nine months ended November 25, 2017, net earnings per diluted share included the unfavorable impacts of the cash restructuring charges associated with the acceleration of the realignment of its store management structure of approximately \$0.08, and the adoption of ASU 2016-09, *Stock Compensation* of approximately \$0.07.

Capital expenditures for the nine months ended November 25, 2017 and November 26, 2016 were \$264.0 million and \$276.4 million, respectively. In the first nine months of fiscal 2017, more than 40% of the capital expenditures were for technology projects, including investments in the Company’s digital capabilities, and the development and deployment of new systems and equipment in its stores. The remaining capital expenditures were primarily related to investments in stores, the Company’s new Las Vegas distribution facility, which began shipping to customers during the third quarter of fiscal 2017, and its new customer contact center in Florida. The Company continues to review and prioritize its capital needs and remains committed to making the required investments in its infrastructure to help position the Company for continued growth and success.

The Company continues to make the investments and add the resources necessary to position itself for long-term success. Key areas of investment include: continuing to improve the presentation and content as well as the functionality, general search and navigation across its customer facing digital channels; improving customer data integration and customer relations management capabilities; continuing to enhance service offerings to its customers; continuing to strengthen and deepen its information technology, analytics, marketing and e-commerce groups; and creating more flexible fulfillment options that will improve the Company’s delivery capabilities and lower the Company’s shipping costs. These and other investments are expected to, among other things, provide a seamless and compelling customer experience across the Company’s omnichannel retail platform.

During the nine months ended November 25, 2017, the Company opened 20 new stores and closed eight stores. The Company plans to continue to actively manage its real estate portfolio in order to permit store sizes, layouts, locations and offerings to evolve over time to optimize market profitability and will renovate or reposition stores within markets when appropriate. Over the past several years, the Company's pace of its store openings has slowed, and the Company has increased the number of store closings. If the Company cannot reach acceptable terms with its landlords as leases come up for renewal, the Company would expect the pace of store closings to increase as a result of its assumptions regarding bricks and mortar store traffic in future years as well as the continuation of the Company's market optimization strategy. As of November 25, 2017, the Company has opened 20 new stores, with the potential of two or so more openings before the end of fiscal 2017. Also, the Company plans to close approximately 15 stores, all of which would result in a net reduction of five BBB stores in fiscal 2017. Additionally, the Company expects to continue to invest in technology related projects, including the deployment of new systems and equipment in its stores, enhancements to the Company's customer facing digital channels, ongoing investment in its data warehouse and data analytics and the continued development and deployment of a new point of sale system.

During fiscal 2016, the Company's Board of Directors authorized a quarterly dividend program. During the nine months ended November 25, 2017 and November 26, 2016, quarterly dividends totaling \$0.45 and \$0.375 per share were declared by the Company's Board of Directors, of which \$0.30 and \$0.25 per share was paid, respectively. Subsequent to the end of the third quarter of fiscal 2017, on December 20, 2017, the Company's Board of Directors declared a quarterly dividend of \$0.15 per share to be paid on April 17, 2018 to shareholders of record as of the close of business on March 16, 2018. The Company expects to pay quarterly cash dividends on its common stock in the future, subject to the determination by the Board of Directors, based on an evaluation of the Company's earnings, financial condition and requirements, business conditions and other factors.

During the three and nine months ended November 25, 2017, the Company repurchased approximately 0.9 million and 6.0 million shares, respectively, of its common stock at a total cost of approximately \$23.6 million and \$207.3 million, respectively. During the three and nine months ended November 26, 2016, the Company repurchased approximately 1.8 million and 8.3 million shares, respectively, of its common stock at a total cost of approximately \$76.0 million and \$375.5 million, respectively. The Company's share repurchase program may be influenced by several factors, including business and market conditions. The Company reviews its alternatives with respect to its capital structure on an ongoing basis.

Results of Operations

Net Sales

Net sales for the three months ended November 25, 2017 were \$2.955 billion, relatively flat as compared with net sales for the corresponding quarter last year, primarily due to a decrease of approximately 0.3% in comparable sales, offset by an increase in the Company's non-comparable sales including One Kings Lane, PMall and new stores.

Net sales for the nine months ended November 25, 2017 were \$8.633 billion, a decrease of \$48.8 million or approximately 0.6% compared with net sales of \$8.682 billion for the corresponding nine months last year, due to a decrease of approximately 1.7% in comparable sales, partially offset by an increase of approximately 1.1% in non-comparable sales including One Kings Lane, PMall and new stores.

The decrease in comparable sales for the three and nine months ended November 25, 2017 was approximately 0.3% and 1.7%, respectively, as compared to a decrease of approximately 1.4% and 1.1% for the three and nine months ended November 26, 2016. The decrease in comparable sales for the three and nine months ended November 25, 2017 was due to a decrease in the number of transactions in stores, partially offset by an increase in the average transaction amount.

The Company's comparable sales metric considers sales consummated through all retail channels – in-store, online, with a mobile device or through a customer contact center. Customers today may take advantage of the Company's omnichannel environment by using more than one channel when making a purchase. The Company believes in an integrated and seamless customer experience. A few examples are: a customer may be assisted by an in-store associate to create a wedding or baby registry, while the guests may ultimately purchase a gift from the Company's websites; or a customer may research a particular item, and read other customer reviews on the Company's websites before visiting a store to consummate the actual purchase; or a customer may reserve an item online for in-store pick up; or while in a store, a customer may make the purchase on a mobile device for in home delivery from either a distribution facility, a store or directly from a vendor. In addition, the Company accepts returns in-store without regard to the channel in which the purchase was consummated, therefore resulting in reducing store sales by sales originally consummated through customer facing digital channels. As the Company's retail operations are integrated and it cannot reasonably track the channel in which the ultimate sale is initiated, the Company can however provide directional information on where the sale was consummated.

For the three months ended November 25, 2017, comparable sales consummated through customer facing digital channels continued to have strong growth over the corresponding period in the prior year, while comparable sales consummated in-store declined in the low-single-digit percentage range. For the nine months ended November 25, 2017, comparable sales consummated through customer facing digital channels continued to have strong growth over the corresponding period in the prior year, while comparable sales consummated in-store declined in the mid-single-digit percentage range.

For the three and nine months ended November 25, 2017, comparable sales represented \$2.825 billion and \$8.257 billion of net sales, respectively. For the three and nine months ended November 26, 2016, comparable sales represented \$2.843 billion and \$8.367 billion of net sales, respectively.

Domestics merchandise includes categories such as bed linens and related items, bath items and kitchen textiles. Home furnishings include categories such as kitchen and tabletop items, fine tabletop, basic housewares, general home furnishings, consumables and certain juvenile products. Sales of domestics merchandise and home furnishings for the Company accounted for approximately 35.7% and 64.3% of net sales, respectively, for the three months ended November 25, 2017 and approximately 36.4% and 63.6% of net sales for the three months ended November 26, 2016. Sales of domestics merchandise and home furnishings for the Company accounted for approximately 37.0% and 63.0% of net sales, respectively, for the nine months ended November 25, 2017 and approximately 37.3% and 62.7% of net sales for the nine months ended November 26, 2016.

Gross Profit

Gross profit for the three months ended November 25, 2017 was \$1.041 billion, or 35.2% of net sales, compared with \$1.093 billion, or 37.0% of net sales, for the three months ended November 26, 2016. The decrease in the gross profit margin as a percentage of net sales for the three months ended November 25, 2017 was primarily attributed to, in order of magnitude: a decrease in merchandise margin; an increase in coupon expense, resulting from increases in redemptions and the average coupon amount; and an increase in net direct to customer shipping expense.

Gross profit for the nine months ended November 25, 2017 was \$3.110 billion, or 36.0% of net sales, compared with \$3.233 billion, or 37.2% of net sales, for the nine months ended November 26, 2016. The decrease in the gross profit margin as a percentage of net sales for the nine months ended November 25, 2017 was primarily attributed to, in order of magnitude: a decrease in merchandise margin; an increase in net direct to customer shipping expense; and an increase in coupon expense, resulting from increases in redemptions and the average coupon amount.

Selling, General and Administrative Expenses

SG&A for the three months ended November 25, 2017 was \$932.7 million, or 31.6% of net sales, compared with \$881.5 million, or 29.8% of net sales, for the three months ended November 26, 2016. The increase in SG&A, as a percentage of net sales was primarily attributable to, in order of magnitude: an increase in advertising expenses, due in part to the growth in digital advertising; an increase in technology expenses and related depreciation and an increase in payroll and payroll related items (including medical insurance).

SG&A for the nine months ended November 25, 2017 was \$2.686 billion, or 31.1% of net sales, compared with \$2.528 billion, or 29.1% of net sales, for the nine months ended November 26, 2016. The increase in SG&A, as a percentage of net sales was primarily attributable to, in order of magnitude: an increase in advertising expenses, due in part to the growth in digital advertising; an increase in payroll and payroll related items (including salaries); an increase in technology expenses and related depreciation; and the store management restructuring charges.

Operating Profit

Operating profit for the three months ended November 25, 2017 was \$108.4 million, or 3.7% of net sales, compared with \$211.3 million, or 7.1% of net sales, during the comparable period last year. For the nine months ended November 25, 2017, operating profit was \$424.2 million, or 4.9% of net sales, compared with \$705.3 million, or 8.1% of net sales, during the comparable period last year. The changes in operating profit as a percentage of net sales were the result of the reductions in gross profit margin and the increases in SG&A as a percentage of net sales as described above.

The Company believes operating margin compression is likely to continue in fiscal 2017 as a result of several items, including, as a percentage of net sales, a decrease in merchandise margin and increases in, net direct to customer shipping expense; coupon expense; payroll and payroll-related expense; advertising expense; cash restructuring charges associated with the acceleration of the realignment of its store management structure; and technology expenses, including depreciation related to the Company's ongoing investments. In addition, operating margin compression is likely to continue due to increases in the overall expense structure for the accelerated spending associated with the Company's organizational changes and transformational initiatives, as well as the unfavorable impacts of Hurricanes Harvey, Irma and Maria.

Interest Expense, net

Interest expense, net for the three months ended November 25, 2017 was \$13.6 million compared to \$18.3 million for the three months ended November 26, 2016. For the three months ended November 25, 2017 and November 26, 2016, interest expense, net primarily related to interest on the senior unsecured notes issued in July 2014. The decrease in interest expense, net was primarily the result of a \$4.7 million favorable change in the value of the Company's nonqualified deferred compensation plan ("NQDC") investments. This favorable change was fully offset by a corresponding unfavorable change in the NQDC liability recorded in SG&A. These changes resulted in no net impact to the consolidated statement of earnings.

Interest expense, net for the nine months ended November 25, 2017 was \$49.4 million compared to \$52.8 million for the nine months ended November 26, 2016. For the nine months ended November 25, 2017 and November 26, 2016 interest expense, net primarily related to interest on the senior unsecured notes issued in July 2014. The decrease in interest expense, net was primarily the result of a \$2.6 million favorable change in the value of the Company's NQDC investments. This favorable change was fully offset by a corresponding unfavorable change in the NQDC liability recorded in SG&A. These changes resulted in no net impact to the consolidated statement of earnings.

Income Taxes

The effective tax rate for the three months ended November 25, 2017 was 35.3% compared with 34.5% for the three months ended November 26, 2016. The tax rate for the three months ended November 25, 2017 and November 26, 2016 included net benefits of approximately \$3.3 million and \$6.0 million, respectively, due to discrete tax events occurring during these quarters.

The effective tax rate for the nine months ended November 25, 2017 was 38.4% compared with 36.2% for the nine months ended November 26, 2016. For the nine months ended November 25, 2017, the effective tax rate included the effect of the adoption of ASU 2016-09, *Stock Compensation*, which increased income tax expense by approximately \$9.4 million. The effect of this adoption in fiscal 2017 is expected to vary by quarter, and as anticipated, was heavily weighted toward the first quarter. The adoption of the standard does not affect the Company's cash outflows for income taxes. Also, the tax rate for the nine months ended November 25, 2017 and November 26, 2016 included net benefits of approximately \$8.5 million and \$9.4 million, respectively, due to discrete tax events occurring during the first nine months of fiscal 2017 and 2016.

Potential volatility in the effective tax rate from year to year may occur as the Company is required each year to determine whether new information changes the assessment of both the probability that a tax position will effectively be sustained and the appropriateness of the amount of recognized benefit.

On December 22, 2017, H.R.1 - An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, also known as the Tax Cuts and Jobs Act, (the "Act") was enacted. The Company is currently reviewing the components of the Act and evaluating its impact, which could be material on the Company's fiscal year 2017 consolidated financial statements and related disclosures, including a one-time, non-cash expense related to a decrease in the value of the Company's net deferred tax assets.

Net Earnings

As a result of the factors described above, net earnings for the three and nine months ended November 25, 2017 were \$61.3 million and \$230.8 million, respectively, compared with \$126.4 million and \$416.4 million, respectively, for the corresponding period in fiscal 2016.

Growth

In the 24-year period from the beginning of fiscal 1992 to the end of the third quarter of fiscal 2017, the chain has grown from 34 stores to 1,558 stores plus the Company's interactive platforms, including websites and applications, and distribution facilities. Total store square footage, net of openings and closings, grew from approximately 0.9 million square feet at the beginning of fiscal 1992 to approximately 43.8 million square feet at the end of the third quarter of fiscal 2017.

In addition, as of November 25, 2017, the Company has distribution facilities totaling approximately 7.2 million square feet, supporting the growth of its customer facing digital channels as well as its stores and its institutional sales segment. During the third quarter of fiscal 2017, the Company's newest distribution facility in Las Vegas, Nevada began shipping to customers. The new facility will replace a smaller distribution facility in that area, which will close in late 2017, and provide additional capacity to support the growth of the Company's customer facing digital channels.

The Company plans to continue to invest in its infrastructure and its operations, including its digital, web and mobile capabilities, to reach its long-term objectives, including providing a better omnichannel experience for its customers. As of November 25, 2017, the Company has opened 20 new stores, with the potential of two or so more openings before the end of fiscal 2017. Also, the Company plans to close approximately 15 stores, all of which would result in a net reduction of five BBB stores in fiscal 2017. Also, the Company is committed to the continued growth of its merchandise categories and channels and is growing the number of items it is able to have shipped directly to customers from a vendor. The continued growth of the Company is dependent, in part, upon the Company's ability to execute these and other key initiatives successfully.

The Company has built its management structure with a view towards its growth and believes that, as a result, it has the necessary management depth.

Liquidity and Capital Resources

The Company has been able to finance its operations, including its growth and acquisitions, substantially through internally generated funds. For fiscal 2017, the Company believes that it can continue to finance its operations, including its growth, cash dividends, planned capital expenditures, debt service obligations and share repurchases, through existing and internally generated funds. The Company believes it will end fiscal 2017 with approximately the same or slightly higher cash and investment balances than fiscal 2016. In addition, if necessary, the Company could borrow under its \$250 million revolving credit facility or the available balances under its lines of credit. Capital expenditures for fiscal 2017 are planned to be approximately \$350 million to \$400 million, subject to the timing and composition of projects, with approximately half for information technology projects in support of the Company's growing omnichannel capabilities. In addition, the Company reviews its alternatives with respect to its capital structure on an ongoing basis.

Fiscal 2017 compared to Fiscal 2016

Net cash provided by operating activities for the nine months ended November 25, 2017 was \$491.8 million, compared with \$744.2 million in the corresponding period in fiscal 2016. Year over year, the Company experienced a decrease in net earnings, and an increase in cash used by the net components of working capital (primarily accounts payable, partially offset by merchandise inventories and other current assets).

Retail inventory was approximately \$3.1 billion as of November 25, 2017, a decrease of approximately 2.2% compared to retail inventory as of November 26, 2016.

Net cash used in investing activities for the nine months ended November 25, 2017 was \$270.1 million, compared with \$394.0 million in the corresponding period of fiscal 2016. For the nine months ended November 25, 2017, net cash used in investing activities was primarily due to \$264.0 million of capital expenditures. For the nine months ended November 26, 2016, net cash used in investing activities was primarily due to \$276.4 million of capital expenditures and \$200.5 million of payments related to acquisitions, net of acquired cash, partially offset by \$86.2 million of redemptions of investment securities.

Net cash used in financing activities for the nine months ended November 25, 2017 was \$257.6 million, compared with \$392.6 million in the corresponding period of fiscal 2016. The decrease in net cash used in financing activities was primarily due to a decrease in common stock repurchases of \$168.3 million, partially offset by an increase in the amount paid for dividends of \$22.7 million.

Seasonality

The Company's business is subject to seasonal influences. Generally, its sales volumes are higher in the calendar months of August, November and December, and lower in February.

Critical Accounting Policies

See "Critical Accounting Policies" under Item 7 of the Company's Annual Report on Form 10-K for the fiscal year ended February 25, 2017 ("2016 Form 10-K"), filed with the Securities and Exchange Commission ("SEC") and incorporated by reference herein. There were no changes to the Company's critical accounting policies during the first nine months of fiscal 2017.

Forward-Looking Statements

This Form 10-Q may contain forward-looking statements. Many of these forward-looking statements can be identified by use of words such as may, will, expect, anticipate, approximate, estimate, assume, continue, model, project, plan, and similar words and phrases. The Company's actual results and future financial condition may differ materially from those expressed in any such forward-looking statements as a result of many factors. Such factors include, without limitation: general economic conditions including the housing market, a challenging overall macroeconomic environment and related changes in the retailing environment; consumer preferences, spending habits and adoption of new technologies; demographics and other macroeconomic factors that may impact the level of spending for the types of merchandise sold by the Company; civil disturbances and terrorist acts; unusual weather patterns and natural disasters; competition from existing and potential competitors across all channels; pricing pressures; liquidity; the ability to achieve anticipated cost savings, and to not exceed anticipated costs, associated with organizational changes; the ability to attract and retain qualified employees in all areas of the organization; the cost of labor, merchandise and other costs and expenses; potential supply chain disruption due to trade restrictions, political instability, labor disturbances, product recalls, financial or operational instability of suppliers or carriers, and other items; the ability to find suitable locations at acceptable occupancy costs and other terms to support the Company's plans for new stores; the ability to establish and profitably maintain the appropriate mix of digital and physical presence in the markets it serves; the ability to assess and implement technologies in support of the Company's development of its omnichannel capabilities; uncertainty in financial markets; volatility in the price of the Company's common stock and its effect, and the effect of other factors, on the Company's capital allocation strategy; disruptions to the Company's information technology systems including but not limited to security breaches of systems protecting consumer and employee information; reputational risk arising from challenges to the Company's or a third party supplier's compliance with various laws, regulations or standards, including those related to labor, health, safety, privacy or the environment; reputational risk arising from third-party merchandise or service vendor performance in direct home delivery or assembly of product for customers; changes to statutory, regulatory and legal requirements, including without limitation proposed changes affecting international trade; changes to, or new, tax laws or interpretation of existing tax laws; new, or developments in existing, litigation, claims or assessments; changes to, or new, accounting standards; foreign currency exchange rate fluctuations; and the integration of acquired businesses. The Company does not undertake any obligation to update its forward-looking statements.

Available Information

The Company makes available as soon as reasonably practicable after filing with the SEC, free of charge, through its website, www.bedbathandbeyond.com, the Company's annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports, electronically filed or furnished pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

The Company's exposure to market risk for changes in interest rates relates primarily to the Company's investment securities. The Company's market risks at November 25, 2017 are similar to those disclosed in Item 7A of the Company's 2016 Form 10-K.

As of November 25, 2017, the Company's investments include cash and cash equivalents of approximately \$453.1 million and long term investments in auction rate securities of approximately \$19.5 million at weighted average interest rates of 0.54% and 0.15%, respectively. The book value of these investments is representative of their fair values.

The Company's senior unsecured notes have fixed interest rates and are not subject to interest rate risk. As of November 25, 2017, the fair value of the senior unsecured notes was \$1.380 billion, which is based on quoted prices in active markets for identical instruments compared to the carrying value of approximately \$1.500 billion.

Item 4. Controls and Procedures

(a) Disclosure Controls and Procedures

The Company's management, with the participation of its Principal Executive Officer and Principal Financial Officer, have reviewed and evaluated the effectiveness of the Company's disclosure controls and procedures (as defined in Exchange Act Rules 240.13a-15(e) and 15d-15(e)) as of November 25, 2017 (the end of the period covered by this quarterly report on Form 10-Q). Based on that evaluation, the Principal Executive Officer and the Principal Financial Officer have concluded that the Company's current disclosure controls and procedures are effective to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Securities Exchange Act of 1934 is (i) recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and (ii) accumulated and communicated to our management, including our Principal Executive Officer and Principal Financial Officer, to allow timely decisions regarding required disclosure.

(b) *Changes in Internal Control over Financial Reporting*

There were no changes in the Company's internal controls over financial reporting that occurred during the Company's most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, the Company's internal controls over financial reporting.

PART II - OTHER INFORMATION

Item 1. Legal Proceedings

The Company is party to various legal proceedings arising in the ordinary course of business, which the Company does not believe to be material to the Company's business or financial condition.

Item 1A. Risk Factors

In addition to the other information set forth in this Form 10-Q, carefully consider the factors discussed under "Risk Factors" in the Company's 2016 Form 10-K as filed with the Securities and Exchange Commission. These risks could materially adversely affect the Company's business, financial condition and results of operations. These risks are not the only risks the Company faces. The Company's operations could also be affected by additional factors that are not presently known to the Company or by factors that the Company currently considers immaterial to its business.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

The Company's purchases of its common stock during the third quarter of fiscal 2017 were as follows:

Period	Total Number of Shares Purchased (1)	Average Price Paid per Share (2)	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs (1)	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs (1) (2)
August 27, 2017 - September 23, 2017	544,200	\$ 27.74	544,200	\$ 1,537,804,782
September 24, 2017 - October 21, 2017	262,800	\$ 22.73	262,800	\$ 1,531,832,486
October 22, 2017 - November 25, 2017	122,200	\$ 20.32	122,200	\$ 1,529,349,716
Total	929,200	\$ 25.35	929,200	\$ 1,529,349,716

(1) Between December 2004 and September 2015, the Company's Board of Directors authorized, through several share repurchase programs, the repurchase of \$11.950 billion of its shares of common stock. The Company has authorization to make repurchases from time to time in the open market or through other parameters approved by the Board of Directors pursuant to existing rules and regulations. Shares purchased, as indicated in this table, also include shares withheld to cover employee related taxes on vested restricted shares and performance stock unit awards.

(2) Excludes brokerage commissions paid by the Company.

Item 5. Other Information.

On December 27, 2017, in accordance with Treasury Regulation Section 1.409A-3(j)(4)(ix)(C), the Company terminated the Bed Bath & Beyond Inc. Nonqualified Deferred Compensation Plan 2016 Restatement, effective January 1, 2016 (see Exhibit 10.1 to the Company's Form 10-Q filed with the Commission on July 6, 2016), and its predecessor plan, the Bed Bath & Beyond Inc. Nonqualified Deferred Compensation Plan, adopted December 23, 2008 and frozen effective January 1, 2016 (see Exhibit 10.2 to the Company's Form 10-Q filed with the Commission on July 6, 2016) and all similar arrangements (together, the "Nonqualified Deferred Compensation Plans").

After December 27, 2017, no participant deferrals will be accepted and all balances will be liquidated more than 12 months but less than 24 months after December 27, 2017. Until the final payment date, the Nonqualified Deferred Compensation Plans will continue to operate in the ordinary course, except that no new participant deferrals will be credited to participant accounts under the Nonqualified Deferred Compensation Plans. All of the Company's named executive officers have accounts under the Nonqualified Deferred Compensation Plans.

On December 27, 2017, the Board of Directors of Bed Bath & Beyond Inc. (the "Company") amended Article II, Section 11B(1) of its Amended By-Laws (the "Amendment"). The Amendment clarifies that, for purposes of calculating the Required Ownership Percentage (as defined in Article II, Section 11B(2) of the Amended By-Laws) for proxy access purposes, a shareholder is not deemed to own shares with respect to which the shareholder's economic interest has been reduced or otherwise hedged as a result of any transaction, including a short sale. The Amendment became effective on December 27, 2017. The foregoing is qualified in its entirety by reference to the text of the Company's Amended By-Laws, a copy of which is attached as Exhibit 3.1.

Item 6. Exhibits

The exhibits to this Report are listed in the Exhibit Index included elsewhere herein.

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.

BED BATH & BEYOND INC.
(Registrant)

Date: December 28, 2017

By: /s/ Susan E. Lattmann
Susan E. Lattmann
Chief Financial Officer and Treasurer
(Principal Financial and Accounting Officer)

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Exhibit</u>
3.1	Amended By-Laws of Bed Bath & Beyond Inc.
10.1*	Amendment dated as of November 1, 2017 to Employment Agreement between the Company and Susan Lattmann
31.1	Certification of Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of Principal Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32	Certification of Principal Executive Officer and Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document

* This is a management contract or compensatory plan or arrangement.

AMENDED BY-LAWS
OF
BED BATH & BEYOND INC.
(a New York Corporation)

ARTICLE I – OFFICES

The Corporation may have such offices within and without the State of New York as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II – MEETINGS OF SHAREHOLDERS

Section 1. Place of Meetings. All meetings of the shareholders shall be held at such place within or without the State of New York as the Board of Directors may from time to time determine.

Section 2. Annual Meetings. The annual meeting of the shareholders for the election of directors and for the transaction of such other business as may properly be brought before the meeting shall be held on such date and at such hour as shall from time to time be fixed by the Board of Directors. The Board of Directors acting by resolution may postpone and reschedule any previously scheduled annual meeting of shareholders.

Section 3. Special Meetings.

A. General. Special meetings of the shareholders for any purpose or purposes may be called by the Board of Directors, the Chairman or the Chief Executive Officer. Subject to Section 3(B) of this Article II, a special meeting of shareholders shall be called by the Secretary of the Corporation upon the written request of the record holders of at least 50% of the voting power of the outstanding shares of the Corporation (the “Requisite Percentage”). Business to be conducted at a special meeting may only be brought before the meeting pursuant to the Corporation’s notice of meeting.

B. Shareholder Requested Special Meetings.

1. Except in accordance with this Section 3(B), shareholders shall not be permitted to propose business to be brought before a special meeting of the shareholders. In order for a Shareholder Requested Special Meeting (as defined below) to be called, one or more requests for a special meeting (a “Special Meeting Request”) must be signed by the Requisite Percentage of record holders (or their duly authorized agents) and must be delivered to the Secretary at the principal executive offices of the Corporation by registered mail, return receipt requested. Each Special Meeting Request shall (i) set forth a statement of the specific purpose or purposes of the special meeting and the matters proposed to be acted on at such special meeting (including the text of any resolutions proposed for consideration), (ii) bear the date of signature of each such shareholder (or duly authorized agent) signing the Special Meeting Request, (iii) set forth (A) as to each shareholder who signed such request (or on whose behalf the Special Meeting Request is signed), the name and address of such shareholder, as they appear on the Corporation’s books, (B) the Shareholder Ownership Information (as defined in Section 10(A)(1)(c) of this Article II) with respect to such shareholder of record and any beneficial owner on whose behalf the Special Meeting Request is made, including documentary evidence of such shareholder’s or beneficial owner’s record and beneficial ownership of any class or series of shares of the Corporation or Derivative Instruments (as defined in Section 10(A)(1)(c) of this Article II) included in the Shareholder Ownership Information with respect to such shareholder of record and any beneficial owner, (iv) set forth all information relating to each such shareholder that must be disclosed in solicitations of proxies for election of directors in an election contest (even if an election contest is not involved), or is otherwise required, in each case pursuant to the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and the rules and regulations promulgated thereunder and (v) include a representation that the shareholder and any beneficial owners who submit the Special Meeting Request intends to appear in person at the special meeting to present the proposal(s) or business proposed to be brought before such special meeting. In addition, each requesting shareholder shall promptly provide any other information reasonably requested by the Corporation in connection with the matters proposed to be acted on at such special meeting. Any requesting shareholder may revoke his, her or its request for a special meeting at any time by written revocation delivered to the Secretary at the principal executive offices of the Corporation. If any such revocation(s) are received by the Secretary after the Secretary’s receipt of Special Meeting Request(s) from the Requisite Percentage of record holders, and as a result of such revocation(s), there no longer are unrevoked Special Meeting Request(s) from the Requisite Percentage of record holders to call a special meeting, the Board of Directors shall have the discretion to determine whether or not to proceed with the special meeting, which determination shall be binding on the Corporation and its shareholders.

2. The Secretary shall not be required to call a special meeting upon shareholder request (a “Shareholder Requested Special Meeting”) if (i) the Special Meeting Request does not comply with this Section 3(B), (ii) the Board of Directors calls an annual or special meeting of shareholders to be held not later than one hundred twenty (120) days after the date on which valid Special Meeting Requests submitted by the Requisite Percentage of record holders (or their duly authorized agents) in accordance with this Section 3(B) have been delivered to the Secretary (the “Delivery Date”) and the purpose(s) of such meeting include (among other matters properly before such meeting) the purpose(s) specified by the Requisite Percentage of record holders (or their duly authorized agents) in the Special Meeting Request, (iii) the Special Meeting Request is received by the Corporation during the period commencing ninety (90) days prior to the first anniversary of the date of the immediately preceding annual meeting and ending on the date of the next annual meeting, (iv) an identical or substantially similar item (a “Similar Item”) was presented at any meeting of shareholders held within ninety (90) days prior to the Delivery Date (and for purposes of this clause (iv), the election of directors shall be deemed a “Similar Item” with respect to all items of business involving the election or removal of directors), (v) the Special Meeting Request relates to an item of business that is not a proper subject for shareholder action under applicable law or (vi) the Special Meeting Request was made in a manner that involved a violation of the Exchange Act or the rules and regulations promulgated thereunder or other applicable law. The Board of Directors shall determine in good faith whether the requirements set forth in this Section 3(B)(2) have been satisfied, which determination shall be binding on the Corporation and its shareholders.

3. Except as provided in the next sentence, any special meeting shall be held at such date and time as may be fixed by the Board of Directors in accordance with these By-laws and applicable law. In the case of a Shareholder Requested Special Meeting, such meeting shall be held at such date and time as may be fixed by the Board of Directors; provided, however, that the date of any Shareholder Requested Special Meeting shall be not more than sixty (60) days after the record date for such meeting (the “Meeting Record Date”), which shall be fixed in accordance with Section 5 of this Article II; provided further that, if the Board of Directors fails to designate, within ten (10) days after the Delivery Date, a date and time for a Shareholder Requested Special Meeting, then such meeting shall be held at 9:00 a.m. local time on the 60th day after the Meeting Record Date (or, if that day shall not be a business day, then on the next preceding business day); and provided further that in the event that the Board of Directors fails to designate a place for a Shareholder Requested Special Meeting within ten (10) days after the Delivery Date, then such meeting shall be held at the Corporation’s principal executive offices. In fixing a date and time for any Shareholder Requested Special Meeting, the Board of Directors may consider such factors as it deems relevant within the good faith exercise of business judgment, including, without limitation, the nature of the matters to be considered, the facts and circumstances surrounding any request for meeting and any plan of the Board of Directors to call an annual meeting or a special meeting, which determination shall be binding on the Corporation and its shareholders. The Board of Directors shall provide written notice of such special meeting to the shareholders in accordance with Section 4 of this Article II.

4. Business transacted at any Shareholder Requested Special Meeting shall be limited to the specific purpose(s) stated in the Special Meeting Request(s); provided, however, that nothing herein shall prohibit the Board of Directors from submitting matters to the shareholders at any Shareholder Requested Special Meeting.

Section 4. Notice of Meetings. Written notice of each annual and special meeting of shareholders shall state the date, time, place and purpose or purposes of each such meeting of shareholders and, unless it is the annual meeting, shall indicate that it is being issued at the direction of the person or persons requesting the meeting.

Section 5. Fixing Record Date. For the purpose of determining the shareholders entitled to notice of or to vote at any meeting of the shareholders or any adjournment thereof, or to express consent to or dissent from any taking of corporate action without a meeting, or for the purpose of determining shareholders entitled to receive payment of any dividend or other distribution or the allotment of any rights, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a date as the record date for any such determination of shareholders. Such date shall not be less than ten (10) nor more than sixty (60) days before the date of any such meeting, nor more than sixty (60) days before any other action. If no record date is fixed, it shall be determined by statute; provided, however, that if no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, the close of business on the day before the first notice is given shall be the record date. When a determination of shareholders of record entitled to notice of or to vote at any meeting of shareholders has been made as provided in this Section 5, such determination shall apply to any adjournment thereof, unless the Board of Directors fixes a new record date for the adjourned meeting or further notice is required by statute.

Section 6. Quorum. Unless otherwise provided by statute or by the Certificate of Incorporation, the holders of a majority of the votes of shares issued and outstanding and entitled to vote thereat, represented in person or by proxy, shall constitute a quorum at any meeting of shareholders for the transaction of business. When a quorum is once present to organize a meeting, it shall not be broken by the subsequent withdrawal of any shareholders. At any time a quorum is not present at a meeting of the shareholders, a majority of the shareholders present in person or by proxy and entitled to vote thereat may adjourn the meeting from time to time, without notice other than an announcement at the meeting of the place, date and hour of the adjourned meeting, until a quorum shall be present, and at the adjourned meeting at which a quorum is present any business may be transacted that might have been transacted at the meeting as originally called.

Section 7. Waivers. Notice of meeting need not be given to any shareholder who signs and submits a waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any shareholder at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting shall constitute a waiver of notice by such shareholder.

Section 8. Proxies. Every shareholder entitled to vote at a meeting of shareholders or to express consent or dissent without a meeting may authorize another person or other persons to act for him or her by proxy, in the manner and to the extent provided by statute.

Section 9. Qualification of Voters. Every shareholder of record shall be entitled at every meeting of the shareholders to one vote for each share standing in his or her name on the record of shareholders of the Corporation, unless otherwise provided by statute, by the Certificate of Incorporation or by these By-laws.

Section 10. Notice of Shareholder Business and Nominations.

A. Annual Meeting of Shareholders.

1. Nominations for Election to the Board of Directors.

(a) Nominations of persons for election to the Board of Directors may be made at an annual meeting of shareholders only (i) pursuant to the Corporation's notice of meeting (or any supplement thereto), (ii) by or at the direction of the Board of Directors (iii) by any shareholder or a group of shareholders of the Corporation pursuant to Section 11 of this Article II or (iv) by any shareholder of the Corporation who (x) was a shareholder of record at the time of giving of notice provided for in this Section 10(A)(1) and at the time of the annual meeting, (y) is entitled to vote at the meeting and (z) complies with the notice procedures set forth in this Section 10(A)(1) as to such nomination; clauses (iii) and (iv) shall be the exclusive means for a shareholder to make nominations before an annual meeting of shareholders.

(b) Without qualification, for any nominations to be properly brought before an annual meeting by a shareholder pursuant to Section 10(A)(1)(a)(iii) of this Article II, the shareholder must have given Timely Notice (as defined below) thereof in writing to the Secretary of the Corporation. To be timely, a shareholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 90th day prior to the first anniversary of the preceding year's annual meeting and not earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's annual meeting of shareholders; provided, however, that if either (x) the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date or (y) no annual meeting of shareholders was held in the previous year, notice by the shareholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or if the first public announcement of the date of such annual meeting is less than one hundred (100) days prior to the date of such annual meeting, the 10th day following the date on which notice of the date of the meeting is given to shareholders or made public, whichever occurs first (such notice, within such time periods, "Timely Notice"). In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a shareholder's notice as described above.

(c) To be in proper form, a shareholder's notice to the Secretary pursuant to this Section 10(A)(1) must: (i) set forth, as to the shareholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made (x) the name and address of such shareholder, as they appear on the Corporation's books, and of such beneficial owner, if any, (y) (A) the class or series and number of shares of the Corporation which are, directly or indirectly, owned beneficially and of record by such shareholder and such beneficial owner, (B) any option, warrant, convertible security, stock appreciation right or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise (a "Derivative Instrument") directly or indirectly owned beneficially by such shareholder and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation, (C) any proxy, contract, arrangement, understanding or relationship pursuant to which such shareholder has a right to vote any shares of any security of the Corporation, (D) any short interest in any security of the Corporation (for purposes of this By-law a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (E) any rights to dividends on the shares of the Corporation owned beneficially by such shareholder that are separated or separable from the underlying shares of the Corporation, (F) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such shareholder is a general partner or, directly or indirectly, beneficially owns an interest in a general partner and (G) any performance-related fees (other than an asset-based fee) that such shareholder is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice, including, without limitation, any such interests held by members of such shareholder's immediate family sharing the same household (which information shall be supplemented by such shareholder and beneficial owner, if any, not later than ten (10) days after the record date for the meeting to disclose such ownership as of the record date) (the information required to be disclosed pursuant to this clause 10(A)(1)(c)(i)(y), the "Shareholder Ownership Information"), and (z) any other information relating to such shareholder and beneficial owner, if any, that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the election of directors in a contested election pursuant to the Exchange Act and the rules and regulations promulgated thereunder; (ii) set forth, as to each person, if any, whom the shareholder proposes to nominate for election or reelection to the Board of Directors (x) all information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected) and (y) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three (3) years, and any other material relationships, between or among such shareholder and beneficial owner, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the shareholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; and (iii) with respect to each nominee for election or reelection to the Board of Directors, include a completed and signed questionnaire, representation and agreement required by Section 12 of this Article II. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable shareholder's understanding of the independence, or lack thereof, of such nominee.

(d) Notwithstanding anything in the second sentence of paragraph 10(A)(1)(b) to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation 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 one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a shareholder's notice required by this Section 10(A)(1) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

2. *Proposals of Business to be Brought Before an Annual Meeting.*

(a) The proposal of business to be considered by the shareholders may be made at an annual meeting of shareholders only (i) pursuant to the Corporation's notice of meeting (or any supplement thereto), (ii) by or at the direction of the Board of Directors or (iii) by any shareholder of the Corporation who (x) was a shareholder of record at the time of giving of notice provided for in this Section 10(A)(2) and at the time of the annual meeting, (y) is entitled to vote at the meeting and (z) complies with the notice procedures set forth in this Section 10(A)(2) as to such business; clause (iii) shall be the exclusive means for a shareholder to submit business (other than matters properly brought under Rule 14a-8 under the Exchange Act and included in the Corporation's notice of meeting) before an annual meeting of shareholders.

(b) Without qualification, for any business to be properly brought before an annual meeting by a shareholder pursuant to Section 10(A)(2)(a)(iii) of this Article II, the shareholder must have given Timely Notice (as defined in Section 10(A)(1)(b) of this Article II) thereof in writing to the Secretary of the Corporation and such business must otherwise be a proper matter for shareholder action. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a shareholder's notice as described above.

(c) To be in proper form, a shareholder's notice to the Secretary must: (i) set forth, as to the shareholder giving the notice and the beneficial owner, if any, on whose behalf the proposal is made (x) the name and address of such shareholder, as they appear on the Corporation's books, and of such beneficial owner, if any, (y) the Shareholder Ownership Information (as defined in Section 10(A)(1)(c) of this Article II) with respect to such shareholder of record and any beneficial owner on whose behalf the proposal is made, and (z) any other information relating to such shareholder and beneficial owner, if any, that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the proposal pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder; and (ii) set forth (x) a brief description of the business desired to be brought before the meeting (including the text of any resolutions proposed for consideration), the reasons for conducting such business at the meeting and any material interest of such shareholder and beneficial owner, if any, in such business and (y) a description of all agreements, arrangements and understandings between such shareholder and beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by such shareholder.

B . Special Meetings of Shareholders. Only such business shall be conducted at a special meeting of shareholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of shareholders at which directors are to be elected pursuant to the Corporation's notice of 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 shareholder of the Corporation who (x) is a shareholder of record at the time of giving of notice provided for in this Section 10(B) and at the time of the special meeting, (y) is entitled to vote at the meeting, and (z) complies with the notice procedures set forth in this Section 10(B) as to such nomination. In the event the Corporation calls a special meeting of shareholders for the purpose of electing one or more directors to the Board of Directors, any such shareholder entitled to vote in such election of directors 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 shareholder's notice required by Section 10(A)(1)(c) of this Article II with respect to any nomination (including the completed and signed questionnaire, representation and agreement required by Section 12 of this Article II) shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the 120th day prior to the date of such special meeting and not later than the close of business on the later of the 90th day prior to the date of such special meeting or, if the first public announcement of the date of such special meeting is less than one hundred (100) days prior to the date of such special meeting, the 10th day following the day on which public announcement is first made of the date of such special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall any adjournment or postponement of a special meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of a shareholder's notice as described above.

C. General.

1. Only such persons who are nominated in accordance with the procedures set forth in this Section 10 shall be eligible to serve as directors and only such business shall be conducted at a meeting of shareholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 10. Except as otherwise provided by statute, the Certificate of Incorporation or these By-laws, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 10 and, if any proposed nomination or business is not in compliance with this Section 10, to declare that such defective proposal or nomination shall be disregarded. Notwithstanding the foregoing provisions of this Section 10(C), if the shareholder (or a qualified representative of the shareholder) does not appear at the annual or special meeting of shareholders of the Corporation to present a nomination or business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

2. The Board of Directors shall be entitled to make such rules or regulations for the conduct of meetings of shareholders as it shall deem necessary, appropriate, convenient or desirable. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures, and to do all such acts as, in the judgment of such chairman, are necessary, appropriate, convenient or desirable for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to shareholders of record of the Corporation and their duly authorized and constituted proxies, and such other persons as the chairman of the meeting shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comment by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. Unless, and to the extent, otherwise determined by the Board of Directors or the chairman of the meeting, meetings of shareholders shall not be required to be held in accordance with rules of parliamentary procedure.

3. For purposes of this Section 10, “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 pursuant to Section 13, 14 and 15(d) of the Exchange Act.

4. Notwithstanding the foregoing provisions of this Section 10, a shareholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 10; provided, however, that any references in these By-laws to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the requirements applicable to nominations to be considered pursuant to Sections 10(A)(1) or 10(B) of this Article II, or proposals as to any other business to be considered pursuant to Section 10(A)(2) of this Article II. Nothing in this By-law shall be deemed to affect any rights (i) of shareholders to request inclusion of proposals in the Corporation’s proxy statement pursuant to Rule 14a-8 under the Exchange Act, or (ii) of the holders of any series of Preferred Stock if and to the extent provided for under law, the Certificate of Incorporation or these By-laws.

Section 11. Proxy Access.

A. General Requirements.

1. Whenever the Board of Directors solicits proxies with respect to the election of directors at an annual meeting of shareholders, subject to the provisions of this Section 11, the Corporation shall include in its proxy materials for such annual meeting the name, together with the Required Information (as defined below), of any person nominated for election (the “Shareholder Nominee”) to the Board of Directors by a shareholder or group of no more than 20 shareholders (counting as one shareholder, for this purpose, any two or more funds that are (i) under common management and investment control, (ii) under common management and funded primarily by the same employer or (iii) 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) that (i) satisfies the requirements of this Section 11 (such shareholder or shareholder group, including each member thereof to the extent the context requires, the “Eligible Shareholder”) and (ii) expressly elects at the time of providing the notice required by this Section 11 (the “Notice of Proxy Access Nomination”) to have its Shareholder Nominee included in the Corporation’s proxy materials pursuant to this Section 11. For purposes of this Section 11, the “Required Information” means (i) information provided to the Secretary of the Corporation by the Eligible Shareholder concerning the Shareholder Nominee and the Eligible Shareholder that is required to be disclosed in the Corporation’s proxy materials by the rules under the Exchange Act and (ii) if the Eligible Shareholder so elects, a written statement, not to exceed 500 words, in support of each of its Stockholder Nominee(s)’ candidacy. Notwithstanding anything to the contrary contained in this Section 11, the Corporation may (i) omit from its proxy materials any information that (x) is untrue in any material respect, (y) omits to state a material fact necessary in order to make the information, in light of the circumstances under which they are made, not misleading or (z) would violate any applicable law or regulation and (ii) solicit against, and include in the proxy materials its own statement relating to, any Eligible Shareholder or any Shareholder Nominee.

2. If the Eligible Shareholder consists of a group of shareholders, any and all requirements and obligations for an individual Eligible Shareholder that are set forth in this Section 11, including the Minimum Holding Period (as defined below), shall apply to each member of such group; provided, however, that the Required Ownership Percentage (as defined below) shall apply to the ownership of the group in the aggregate. No shareholder shall be permitted to join more than one group of shareholders to become an Eligible Shareholder pursuant to this Section 11 per each annual meeting.

3. To be timely, the Notice of Proxy Access Nomination must be received by the Secretary of the Corporation no earlier than the close of business on the 150th day prior to and no later than the close of business on the 120th day prior to the first anniversary of the date that the Corporation mailed its proxy statement for the previous year's annual meeting of shareholders (such 120th day, the "Final Proxy Access Nomination Date"); provided, however, that if either (i) the date of the annual meeting is more than thirty (30) days before or after the first anniversary of the previous year's annual meeting or (ii) no annual meeting of shareholders was held in the previous year, the Notice of Proxy Access Nomination must be received by the Secretary of the Corporation between the dates, or by the date, publicly announced by the Corporation (such date(s) shall be a reasonable time before the Corporation mails its proxy statement for such annual meeting) and the Final Proxy Access Nomination Date shall be the latest of such date(s).

4. The maximum number of Shareholder Nominees nominated by all Eligible Shareholders that will be included in the Corporation's proxy materials with respect to an annual meeting of shareholders shall not exceed the greater of (i) two and (ii) 20% of the total number of directors in office as of the Final Proxy Access Nomination Date (rounded down to the nearest whole number) (the "Proxy Access Nominee Maximum"). If the Board of Directors resolves to reduce the size of the Board of Directors after the Final Proxy Access Nomination Date but before the date of the annual meeting, the maximum number of Shareholder Nominees included in the Corporation's proxy materials shall be calculated based on the number of directors in office as so reduced. The following persons shall be counted as a Shareholder Nominee for purposes of determining whether the Proxy Access Nominee Maximum has been reached:

- (a) any person serving on the Board of Directors as of the Final Proxy Access Nomination Date who (1) will be included as a management nominee for the Board of Directors in the Corporation's proxy materials for the annual meeting to which the Proxy Access Nominee Maximum determination relates and (2) was included in the Corporation's proxy materials as a Shareholder Nominee pursuant to this Section 11 for either of the two preceding annual meetings; or
- (b) any individual nominated by an Eligible Shareholder for inclusion in the Corporation's proxy materials pursuant to this Section 11 and:
 - i. whom the Board of Directors decides to nominate as a nominee of the Board of Directors; or
 - ii. whose nomination is subsequently withdrawn (whether before or after the Final Proxy Access Nomination Date).

5. Any Eligible Shareholder submitting more than one Shareholder Nominee for inclusion in the Corporation's proxy materials pursuant to this Section 11 shall rank such Shareholder Nominees based on the order that the Eligible Shareholder desires such Shareholder Nominees to be selected for inclusion in the Corporation's proxy materials if the total number of Shareholder Nominees submitted by Eligible Shareholders pursuant to this Section 11 exceeds the Proxy Access Nominee Maximum. If the number of Shareholder Nominees submitted by Eligible Shareholders pursuant to this Section 11 exceeds the Proxy Access Nominee Maximum, the highest ranking Shareholder Nominee who meets the requirements of this Section 11 from each Eligible Shareholder will be selected for inclusion in the Corporation's proxy materials until the Proxy Access Nominee Maximum is reached. Selection will be in order of the amount (from largest to smallest) of shares of the Corporation's common stock each Eligible Shareholder disclosed as owned in its respective Notice of Proxy Access Nomination. If the Proxy Access Nominee Maximum is not reached after the highest ranking Shareholder Nominee who meets the requirements of this Section 11 from each Eligible Shareholder has been selected, this process will continue as many times as necessary, following the same order each time, until the Proxy Access Nominee Maximum is reached.

B. Eligible Shareholder and Shareholder Nominee Requirements.

1. For purposes of this Section 11, an Eligible Shareholder shall be deemed to “own” only those outstanding shares of common stock of the Corporation as to which the shareholder 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 from and risk of loss on) such shares;

provided that the number of shares calculated in accordance with clauses (a) and (b) shall not include (x) any shares with respect to which such shareholder’s economic interest has been reduced or otherwise hedged as a result of any transaction, including a short sale, or (y) any shares:

- (A) sold by such shareholder or any of its affiliates in any transaction that has not been settled or closed, including any short sale;
- (B) borrowed by such shareholder or any of its affiliates for any purposes or purchased by such shareholder or any of its affiliates pursuant to an agreement to resell; or
- (C) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such shareholder 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 shares of common stock of the Corporation, in any such case which instrument or agreement has, or is intended to have, or if exercised by either party would have, the purpose or effect of:
 - i. reducing in any manner, to any extent or at any time in the future, such shareholder’s or its affiliates’ full right to vote or direct the voting of any such shares; and/or
 - ii. hedging, offsetting or altering to any degree any gain or loss realized or realizable from maintaining the full economic ownership of such shares by such shareholder or its affiliates.

A shareholder shall “own” shares held in the name of a nominee or other intermediary so long as the shareholder (i) retains the right to instruct how the shares are voted with respect to the election of directors and the right to direct the disposition thereof and (ii) possesses the full economic interest in the shares, in each case subject to the provisos in paragraphs (A), (B) and (C) above. A shareholder’s ownership of shares shall be deemed to continue during any period in which the shareholder has (i) delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement which is revocable at any time by the shareholder or (ii) loaned such shares provided that the shareholder has the power to recall such loaned shares on five business days’ notice. The terms “owned,” “owning” and other variations of the word “own” shall have correlative meanings. For purposes of this Section 11, the term “affiliate” or “affiliates” shall have the meaning ascribed thereto by Rule 12b-2 under the Exchange Act.

2. In order to make a nomination pursuant to this Section 11, an Eligible Shareholder (i) must have owned the Required Ownership Percentage (as defined below) of the Corporation’s outstanding common stock (the “Required Shares”) continuously for the Minimum Holding Period (as defined below) as of both the date the Notice of Proxy Access Nomination is received by the Secretary of the Corporation in accordance with this Section 11 and the record date for determining the shareholders entitled to vote at the annual meeting of shareholders and (ii) must continue to own the Required Shares through the date of such annual meeting. For purposes of this Section 11, the “Required Ownership Percentage” is 3% or more, and the “Minimum Holding Period” is 3 years or more.

3. In order to make a nomination pursuant to this Section 11, within the time period specified in this Section 11 for delivering the Notice of Proxy Access Nomination, an Eligible Shareholder must provide the following information in writing to the Secretary of the Corporation:

- (a) the number of shares it is deemed to own for the purposes of this Section 11;
 - (b) written statement(s), from a person and in a form acceptable for purposes of a shareholder proposal under Rule 14a-8(b)(2) under the Exchange Act, verifying that, as of a date within seven calendar days prior to the date the Notice of Proxy Access Nomination is received by the Secretary of the Corporation, the Eligible Shareholder owns, and has owned continuously for the Minimum Holding Period, the Required Shares;
 - (c) the Eligible Shareholder's agreement to provide, within five business days after the record date for the annual meeting, written statement(s), from a person and in a form acceptable for purposes of a shareholder proposal under Rule 14a-8(b)(2) under the Exchange Act, verifying the Eligible Shareholder's continuous ownership of the Required Shares through the record date;
 - (d) a copy of the Schedule 14N that has been filed with the Securities and Exchange Commission as required by Rule 14a-18 under the Exchange Act;
 - (e) the information, representations and agreements that are the same as those that would be required to be set forth in a shareholder's notice of nomination pursuant to Section 10(A)(1)(c) of this Article II;
 - (f) a representation that the Eligible Shareholder:
 - i. acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control at the Corporation, and does not presently have such intent;
 - ii. will maintain ownership of the Required Shares through the date of the annual meeting;
 - iii. has not nominated and will not nominate for election any individual as a director at the annual meeting, other than its Shareholder Nominee(s) pursuant to this Section 11;
 - iv. has not engaged and will not engage in, and has not and will not be a "participant" in another person's, "solicitation," within the meaning of Rule 14a-1(l) under the Exchange Act, in support of the election of any individual as a director at the annual meeting other than its Shareholder Nominee(s) or a nominee of the Board of Directors;
 - v. agrees to comply with all applicable laws and regulations with respect to any solicitation in connection with the annual meeting or applicable to the filing and use, if any, of soliciting material;
 - vi. will provide facts, statements and other information in all communications with the Corporation and its shareholders that are or will be true and correct in all material respects and that do not or will not omit to state a material fact necessary in order to make the communications, in light of the circumstances under which they were made, not misleading; and
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- (g) an undertaking that the Eligible Shareholder agrees to:
 - i. assume all liability stemming from any legal or regulatory violation arising out of the Eligible Shareholder's communications with the shareholders of the Corporation or out of the information that the Eligible Shareholder provided to the Corporation, in each case in connection with the Eligible Shareholder's use of this Section 11 or efforts to elect its Shareholder Nominee(s);
 - ii. indemnify and hold harmless the Corporation and each of its directors, officers and employees individually against any liability, loss or damages 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 any nomination submitted by the Eligible Shareholder pursuant to this Section 11; and
 - iii. in the case of a nomination by a group of shareholders that together is an Eligible Shareholder, the designation by all group members of one group member that is authorized to act on behalf of all such members with respect to the nomination and matters related thereto, including withdrawal of the nomination.

4. In order to be eligible for nomination pursuant to this Section 11, within the time period specified in this Section 11 for delivering the Notice of Proxy Access Nomination, a Shareholder Nominee must deliver to the Secretary of the Corporation:

- (a) a consent of such Shareholder Nominee to being named in the proxy materials as a nominee and to serving as a director if elected;
- (b) the information required with respect to such Shareholder Nominee if he were a person nominated for election or reelection as a director pursuant to Section 12 of this Article II;
- (c) a written representation and agreement that such Shareholder Nominee:
 - i. will submit all questionnaires required by the Corporation of its directors and director nominees; and
 - ii. will provide facts, statements and other information in all communications with the Corporation and its shareholders that are or will be true and correct in all material respects and that do not or will not omit to state a material fact necessary in order to make the communications, in light of the circumstances under which they were made, not misleading;
- (d) such additional information requested by the Corporation as necessary to permit the Board of Directors to determine if such Shareholder Nominee is independent under the listing standards of the principal U.S. exchange upon which the common stock of the Corporation is listed, any applicable rules of the Securities and Exchange Commission and any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the Corporation's directors; and

5. If any information or communications provided by the Eligible Shareholder or the Shareholder Nominee to the Corporation or its shareholders (i) ceases to be true and correct in all material respects or (ii) requires disclosure of a new material fact to make the information or communications, in light of the circumstances under which they were made, not misleading, each Eligible Shareholder or Shareholder Nominee, as the case may be, shall promptly notify the Secretary of the Corporation of any defect in such previously provided information and of the information that is required to correct any such defect.

C. Disqualification.

1. The Corporation shall not be required to include, pursuant to this Section 11, a Shareholder Nominee in its proxy materials for any annual meeting of shareholders:

- (a) for which the Secretary of the Corporation receives a notice that a shareholder has nominated a person for election to the Board of Directors pursuant to the advance notice requirements for shareholder nominees for director set forth in Section 10(A)(1) of this Article II;
 - (b) if the Eligible Shareholder who has nominated such Shareholder Nominee has engaged in or is currently engaged in, or has been or is a “participant” in another person’s, “solicitation,” within the meaning of Rule 14a-1(l) under the Exchange Act, in support of the election of any individual as a director at the annual meeting other than its Shareholder Nominee(s) or a nominee of the Board of Directors;
 - (c) if the Shareholder Nominee is or becomes a party to any compensatory, payment, reimbursement, indemnification or other financial agreement, arrangement or understanding with any person or entity other than the Corporation or a wholly owned subsidiary of the Corporation, or has received or will receive any such compensation, reimbursement, indemnification or other payment from any person or entity other than the Corporation or a wholly owned subsidiary of the Corporation, in each case in connection with candidacy or service as a director of the Corporation (other than agreements providing only for indemnification and/or reimbursement of out-of-pocket expenses in connection with candidacy as a director) unless the amount(s) of compensation, source(s) of compensation, payment criteria, form and timing of compensation, and all other material terms and conditions with respect to such compensatory, payment, reimbursement, indemnification or other financial agreements, arrangements or understandings are accurately disclosed by such Shareholder Nominee to the Corporation’s shareholders in timely filed and distributed proxy solicitation disclosures in connection with the annual meeting;
 - (d) who is not independent under the listing standards of any principal U.S. exchange upon which the common stock of the Corporation is listed, any applicable rules of the Securities and Exchange Commission and any publicly disclosed standards used by the Board of Directors in determining and disclosing independence of the Corporation’s directors;
 - (e) whose election as a director would cause the Corporation to be in violation of these By-laws, the Certificate of Incorporation, the rules and listing standards of any principal U.S. exchange upon which the common stock of the Corporation is listed, or any applicable state or federal law, rule or regulation;
 - (f) who is or has been, within the past three (3) years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914;
 - (g) who is subject to an event for which disclosure would be required by Item 401(f) of Regulation S-K in the proxy statement for the annual meeting;
 - (h) who is subject to any disqualification event specified in Rule 506(d) under the Securities Act of 1933, as amended;
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- (i) if such Shareholder Nominee, or the Eligible Shareholder that nominated such Shareholder Nominee, has provided information to the Corporation or its shareholders in respect to such nomination that was untrue in any material respect or that omitted to state a material fact necessary in order to make the information, in light of the circumstances under which they were provided, not misleading; or
- (j) if such Shareholder Nominee, or the Eligible Shareholder that nominated such Shareholder Nominee, fails to comply with his, her or its obligations pursuant to these By-laws, including, but not limited to, this Section 11.

2. Notwithstanding anything to the contrary set forth herein, the Board of Directors or the chairman of the meeting may declare the nomination of a Shareholder Nominee by an Eligible Shareholder to be invalid, and such nomination shall be disregarded notwithstanding that proxies in respect of such vote may have been received by the Corporation, if:

- (a) such Shareholder Nominee and/or such Eligible Shareholder has breached his, her or its obligations under this Section 11; or
- (b) such Eligible Shareholder (or a qualified representative thereof) does not appear at the annual meeting to present such nomination pursuant to this Section 11.

3. Any Shareholder Nominee who is included in the Corporation's proxy materials for a particular annual meeting of shareholders but either:

- (a) withdraws from or becomes ineligible or unavailable for election at the annual meeting; or
- (b) does not receive at least 25% of the votes cast in favor of such Shareholder Nominee's election

will be ineligible to be a Shareholder Nominee pursuant to this Section 11 for the next two annual meetings.

For the avoidance of doubt, this Section 11(C)(3) shall not prevent any shareholder from nominating any person to the Board of Directors pursuant to and in accordance with Section 10(A)(1) of this Article II.

D. Effective Date. This Section 11 shall become effective immediately following the conclusion of the Corporation's 2017 annual meeting of shareholders.

Section 12. Submission of Questionnaire, Representation and Agreement. To be eligible to be a nominee for election or reelection as a director of the Corporation, a person must deliver (in accordance with the time periods prescribed for delivery of notice under Section 10 of this Article II) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such person (A) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (2) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law, (B) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, and (C) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation.

Section 13. **List of Shareholders.** A list of shareholders as of the record date, certified by the corporate officer responsible for its preparation or by a transfer agent, shall be produced at any meeting upon the request thereat or prior thereto of any shareholder. If the right to vote at any meeting is challenged, the inspectors of the election, or the chairman of the meeting, shall require such list of shareholders to be produced as evidence of the right of the persons challenged to vote at such meeting, and all persons who appear from such list to be shareholders entitled to vote thereat may vote at such meeting.

Section 14. **Inspectors of Election.** Prior to the holding of each annual or special meeting of the shareholders, one or more inspectors of election to serve thereat shall be appointed by the Board of Directors. If there shall be a failure to appoint an inspector, or if, at any such meeting, the inspector or inspectors so appointed shall be absent or shall fail to act or the office shall become vacated, the chairman of the meeting may appoint such inspector or inspectors of election to act thereat. The inspector or inspectors of election so appointed to act at any meeting of the shareholders, before entering upon the discharge of their duties, shall be sworn faithfully to execute the duties of inspector at such meeting, with strict impartiality and according to the best of his or her ability, and the oath so taken shall be subscribed by such inspector. Such inspector or inspectors of election shall take charge of the polls, and, after the voting on any question, shall make a certificate of the results of the vote taken. No director or candidate for the office of director shall act as an inspector of an election of directors. Inspectors need not be shareholders.

ARTICLE III – BOARD OF DIRECTORS

Section 1. **Number, Qualification and Term of Office.** The business of the Corporation shall be managed under the direction of the Board of Directors. The number of directors that shall constitute the whole Board of Directors shall be fixed exclusively by one or more resolutions adopted by the Board of Directors. The directors need not be residents of the State of New York and need not be shareholders. No decrease in the number of directors shall shorten the term of an incumbent director. Members of the Board of Directors shall be elected at each annual meeting of shareholders in accordance with and subject to the provisions of the Certificate of Incorporation. Directors so elected shall serve until their successors have been elected and qualified or until an earlier resignation, removal or other displacement from office as provided in these By-laws.

Section 2. **Place of Meetings.** The Board of Directors may hold its meetings, regular or special, at such place or places, within or without the State of New York, as the Board of Directors may from time to time determine or as may be specified in the notice of any meeting.

Section 3. **Annual Meetings.** An annual meeting of the Board of Directors shall be held following the annual meeting of the shareholders for the purposes of electing officers of the Corporation and the committees of the Board of Directors and transacting any other business which may properly come before the meeting. Notice of annual meetings of the Board of Directors need not be given in order legally to constitute the meeting, provided a quorum shall be present.

Section 4. **Regular Meetings.** Regular meetings of the Board of Directors shall be held at times and dates fixed by the Board of Directors or at such other times and dates as the Chairman or Chief Executive Officer shall determine and as shall be specified in the notice of such meetings. Notice of regular meetings of the Board of Directors need not be given except as otherwise required by statute or these By-laws.

Section 5. **Special Meetings.** Special meetings of the Board of Directors may be called by the Secretary of the Corporation upon the written request of the Chairman or Chief Executive Officer, or any two directors.

Section 6. **Notice of Meetings.** Notice of each special meeting of the Board of Directors (and of each regular meeting for which notice shall be required) shall be given by the Secretary as hereinafter provided in this Section 6, which notice shall state the time, place and, if required by statute or these By-laws, the purposes of such meeting. Notice of each such meeting shall be mailed, postage thereon prepaid, to each director, by first-class mail, at least four days before the day on which such meeting is to be held, or shall be sent by facsimile transmission or comparable medium, or be delivered personally or by telephone, at least twenty-four hours before the time at which such meeting is to be held. Any meeting of the Board of Directors shall be a legal meeting without notice thereof having been given, if all the directors of the Corporation then holding office shall be present thereat.

Section 7. **Waivers.** Notice of a meeting need not be given to any director who signs a waiver of notice, whether before or after the meeting. The attendance of any director at a meeting without protesting prior to the meeting or at its commencement the lack of notice of such meeting, shall constitute a waiver of notice by such director.

Section 8. Quorum. Unless otherwise provided by statute, the Certificate of Incorporation or these By-laws, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business or of any specified item of business. At any time a quorum is not present at a meeting of the Board of Directors, a majority of the directors participating may adjourn the meeting from time to time until a quorum shall be present thereat; and notice of any adjournment to another time or place shall be given to the directors who were absent at the time of the adjournment and, unless the new time and place are announced at the meeting to be adjourned, to the other directors.

Section 9. Meeting Participation Without Physical Presence. Any one or more members of the Board of Directors or of any committee thereof may participate in a meeting of the Board of Directors or of such committee by means of conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

Section 10. Action of the Board. Unless otherwise provided by statute, the Certificate of Incorporation or these By-laws, the vote of a majority of the directors at any meeting at which a quorum is present shall be the act of the Board of Directors. Each director shall have one vote regardless of the number of shares, if any, which he or she may hold.

Section 11. Action by Consent Without a Meeting. Any action required or permitted to be taken by the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board of Directors or of such committee consent in writing to the adoption of a resolution authorizing such action. The written consent or consents to each such action, including the resolutions adopted thereby, shall be filed with the minutes of the proceedings of the Board of Directors or of the committee taking such action.

Section 12. Executive and other Committees. The Board of Directors, by resolution adopted by a majority of the entire Board of Directors, may designate from among its members an executive committee and other committees, each consisting of one (1) or more directors, and each of which shall have all the authority of the Board of Directors to the extent provided in the resolution, except as otherwise provided by statute. Each such committee shall serve at the pleasure of the Board of Directors and shall keep minutes of its meetings and report the same to the Board of Directors as and when requested by the Board of Directors and shall observe such other procedures with respect to its meetings as are provided in these By-laws or, to the extent not provided herein, as may be provided by the Board of Directors in the resolution appointing such committee or as may be adopted by the Board of Directors thereafter.

Section 13. Voting. Unless otherwise provided by statute or by the Certificate of Incorporation, the vote required for (i) the election of directors by the shareholders shall be the affirmative vote of a "majority of votes cast" (as defined below), unless the election is contested, in which case directors shall be elected by a plurality of votes cast. An election shall be contested if, as of the record date (or such later date as may be determined by the Board of Directors based on events occurring after the record date, but in no event later than the date the Corporation files with the Securities and Exchange Commission its definitive proxy statement or any supplement or revision thereto regarding the election of directors), the number of nominees exceeds the number of directors to be elected. A "majority of votes cast" means that the number of shares properly voted "for" a director exceeds the number of votes "withheld" or cast "against" that director at a meeting of shareholders, whether in person or by proxy, and abstentions and broker non-votes shall not constitute votes cast or votes withheld, and (ii) all other corporate action shall be the affirmative vote of a majority of the votes properly cast at a meeting of shareholders, whether in person or by proxy. All voting for the election of directors shall be by ballot.

Section 14. Advance Contingent Resignation to Address Majority Voting. As a condition for nomination as a director, any nominee who is an incumbent director shall agree to submit a letter of resignation from the Board of Directors in the event the director fails to receive a majority of votes cast (as defined in Section 13 of this Article III) in an uncontested election. An incumbent nominee who does not receive a majority of the votes cast shall immediately tender his or her resignation, and the Board of Directors shall decide, through a process managed by the Nominating and Corporate Governance Committee (excluding from such process the nominee in question), whether to accept the resignation. Prior to making the decision whether to accept any such resignation, the Board of Directors will afford the nominee an opportunity to provide any information or statement that he or she deems relevant. If any tendered resignation is accepted, the Nominating and Corporate Governance Committee shall recommend to the Board of Directors whether to fill such vacancy or vacancies or to reduce the size of the Board of Directors. The Board of Directors in making its decision may consider any factors or information that it considers appropriate or relevant. The Board of Director's explanation of its decision shall be promptly disclosed in a Current Report on Form 8-K filed with the Securities and Exchange Commission. The decision of the Board of Directors and such disclosure shall be completed within ninety (90) days from the date of the certification of the election results. If a majority of the members of the Nominating and Corporate Governance Committee received a greater number of votes "withheld" from their election or cast "against" such members than votes "for" their election at the same election, then the remaining directors who are on the Board of Directors and who did not receive a greater number of votes "withheld" from their election or cast "against" such directors than votes "for" their election would consider the matter directly or may appoint a committee of the Board of Directors among themselves solely for the purpose of considering the tendered resignations that would make the recommendation to the Board of Directors whether to accept or reject them.

Section 15. Removal. Unless otherwise provided by statute, any or all directors may be removed for cause by vote of the shareholders or by action of the Board of Directors at a special meeting called for that purpose.

Section 16. Resignation. Any director may resign at any time by giving written notice to the Board of Directors, the Chairman, the Chief Executive Officer or the Secretary of the Corporation. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the Board of Directors or such officer, and acceptance of the resignation shall not be necessary to make it effective.

Section 17. Newly Created Directorships and Vacancies. Newly created directorships resulting from an increase in the number of directors and vacancies occurring in the Board of Directors for any reason shall be filled by a majority of directors then in office.

Section 18. Compensation. The Board of Directors, by resolution and irrespective of any personal interest of any of its members, shall have the authority to establish reasonable compensation and fix reimbursement for reasonable expenses of all directors for their services to the Corporation as directors, officers or otherwise.

ARTICLE IV – OFFICERS

Section 1. Officers. The officers of the Corporation shall include the Chairman, the Chief Executive Officer, the President, one or more Vice Presidents (one or more of whom may be designated as Executive Vice Presidents or as Senior Vice Presidents or by other designations), the Secretary, the Treasurer and such other officers as the Board of Directors may from time to time deem necessary, each of whom shall have such duties, powers and functions as provided in these By-laws and as may be determined from time to time by resolution of the Board of Directors. Two or more offices may be held by the same person; provided, however, that no officer shall execute, acknowledge or verify any instrument in more than one capacity. Each of the officers shall, when requested, consult with and advise the other officers of the corporation.

Section 2. Election or Appointment and Term of Office. Officers shall be elected or appointed by the Board of Directors to hold office until the next annual meeting of the Board of Directors and until his or her successor is elected or appointed and qualified, or until such earlier date as shall be prescribed by the Board of Directors at the time of his or her election or appointment or until an earlier resignation, removal or displacement from office. Any officer elected or appointed by the Board of Directors may be removed at any time, with or without cause, by vote of a majority of the Board of Directors. The Board of Directors may delegate to the Chairman and/or the Chief Executive Officer authority to appoint and remove one or more officers (excluding executive officers) and to prescribe the duties of such officers.

Section 3. Vacancies. In the event of the resignation, removal or other displacement from office of an officer elected or appointed by the Board of Directors, the Board of Directors, in its sole discretion, may elect or appoint a successor to fill the unexpired term.

Section 4. The Chairman. The Chairman shall, together with the Chief Executive Officer, have general direction over the day-to-day business of the Corporation, subject to the control and direction of the Board of Directors. The Chairman shall, when present, preside as chairman at all meetings of the shareholders and of the Board of Directors. The Chairman shall, in the absence or incapacity of the Chief Executive Officer, perform all duties and functions and exercise all the powers of the Chief Executive Officer. The Chairman shall also have such other powers and perform such other duties required by statute or by these By-laws or as the Board of Directors may from time to time determine. Any reference to the Chairman in these By-laws shall be deemed to mean, if there are Co-Chairmen, either Co-Chairman, each of whom may exercise the full powers and authorities of the office.

Section 5. The Chief Executive Officer. The Chief Executive Officer shall, together with the Chairman, have general and active supervision and direction over the business and affairs of the Corporation and over its several officers, agents and employees, subject to the control and direction of the Board of Directors. In the absence of the Chairman, the Chief Executive Officer shall preside at meetings of the shareholders and of the Board of Directors. The Chief Executive Officer shall, in the absence or incapacity of the Chairman, perform all duties and functions and exercise all the powers of the Chairman required by statute or by these By-laws or as the Board of Directors may from time to time determine.

Section 6. President and Vice Presidents. The President and each Vice President shall have such powers and perform such duties as from time to time may be assigned to him or her by the Board of Directors or be delegated to him or her by the Chairman or by the Chief Executive Officer.

Section 7. Treasurer. The Treasurer shall have the safekeeping and custody of the corporate funds and other valuable effects, including securities, shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation, and shall deposit all money and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation under the direction of the Chairman or the Chief Executive Officer taking proper vouchers for such disbursements, and render to the Chairman and the Chief Executive Officer at the annual and regular meetings of the Board of Directors, or whenever the Chairman or the Chief Executive Officer require it, an account of all transactions as Treasurer and of the financial condition of the Corporation. The Treasurer shall make a full financial report at the annual meeting of shareholders. The Treasurer shall also have such other powers and perform such other duties incident to the office of Treasurer required by statute or by these By-laws or as the Board of Directors may from time to time determine.

Section 8. Secretary. The Secretary shall keep or cause to be kept in one or more books provided for such purpose, the minutes of all meetings of the Board of Directors, shareholders and committees of the Board of Directors, see that all notices are duly given in accordance with the provisions of these By-laws and as required by law and see that the books, reports, statements, certificates and other documents and records required by law to be kept and filed are properly kept and filed. The Secretary shall also have such other powers and perform such other duties incident to the office of Secretary required by law or by these By-laws or as the Board of Directors may from time to time determine.

Section 9. Designated Officers. The Board of Directors may from time to time designate officers to serve as Chief Financial Officer, Chief Accounting Officer and other such designated positions and to fulfill the responsibilities of such designated positions in addition to the powers and duties applicable to his or her office as set forth in this Article IV. Such designated officers shall also have such other powers and duties incident to his or her designated position as the Board of Directors may from time to time determine.

Section 10. Compensation. The salaries and other compensation of all officers elected by the Board of Directors shall be fixed from time to time by or under the direction of the Board of Directors.

ARTICLE V – INDEMNIFICATION

Section 1. Right to Indemnification. The Corporation, to the fullest extent permitted or required by applicable law, as the same exists or may hereafter be amended (but, in the case of any such amendment and unless applicable law otherwise requires, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), shall indemnify and hold harmless any person who is or was a director or officer of the Corporation and who is or was involved in any manner (including, without limitation, as a party or a witness) or is threatened to be made so involved in any threatened, pending or completed investigation, claim, action, suit or proceeding, whether civil, criminal, administrative, investigative or otherwise (including, without limitation, any action, suit or proceedings by or in the right of the Corporation to procure a judgment in its favor) (a "Proceeding") by reason of the fact that such person is or was a director or officer of the Corporation, or is or was at the request of the Corporation serving as an officer or director or in any other capacity with another corporation, partnership, joint venture, trust or other enterprise or entity (including, without limitation, any employee benefit plan) (a "Covered Entity"), against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such Proceeding; provided, however, that the foregoing shall not apply to a director or officer of the Corporation with respect to a Proceeding that was commenced by such director or officer unless the Proceeding was commenced after a Change in Control (as hereinafter defined in Section 4(E) of this Article V). Any director or officer of the Corporation entitled to indemnification as provided in this Section 1 is hereinafter called an "Indemnitee". Any right of an Indemnitee to indemnification shall be a contract right and shall include the right to receive, prior to the conclusion of any Proceeding, payment of any expenses incurred by the Indemnitee in connection with such Proceeding, consistent with the provisions of applicable law, as the same exists or may hereafter be amended (but, in the case of any such amendment and unless applicable law otherwise requires, only to the extent that such amendment permits the Corporation to provide broader rights to payment of expenses than such law permitted the Corporation to provide prior to such amendment), and the other provisions of this Article V.

Section 2. Insurance, Contracts and Funding. The Corporation may purchase and maintain insurance to protect itself and any Indemnitee against any expenses, judgments, fines and amounts paid in settlement as specified in Section 1 of this Article V or incurred by any Indemnitee in connection with any Proceeding referred to in Section 1 of this Article V, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under applicable law. The Corporation may enter into contracts with any Indemnitee in furtherance of the provisions of this Article V and may create a trust fund, grant a security interest or use other means (including, without limitation, a letter of credit) to ensure the payment of such amounts as may be necessary to effect indemnification as provided or authorized in this Article V.

Section 3. Indemnification Not Exclusive Right. The right of indemnification provided in this Article V shall not be exclusive of any other rights to which an Indemnitee may otherwise be entitled, and the provisions of this Article V shall continue as to a person who has ceased to be a director or officer of the Corporation and shall inure to the benefit of the heirs and legal representatives of any Indemnitee under this Article V and shall be applicable to Proceedings commenced or continuing after the adoption of this Article V, whether arising from acts or omissions occurring before or after such adoption. Any termination or amendment of this Article V (unless such amendment broadens the rights of an Indemnitee under this Article V) will only be prospective and will not affect the rights under Article V in effect at the time of the alleged occurrence of any action or omission giving rise to a claim by an Indemnitee under this Article V.

Section 4. Advancement of Expenses; Procedures; Presumptions and Effect of Certain Proceedings; Remedies. In furtherance, but not in limitation of the foregoing provisions, the following procedures, presumptions and remedies shall apply with respect to advancement of expenses and the right to indemnification under this Article V:

A. Advancement of Expenses. All reasonable expenses (including attorneys' fees) incurred by or on behalf of the Indemnitee in connection with any Proceeding shall be advanced to the Indemnitee by the Corporation within twenty (20) days after the receipt by the Corporation of a statement or statements from the Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the expenses incurred by the Indemnitee and, if required by law at the time of such advance, shall include or be accompanied by an undertaking by or on behalf of the Indemnitee to repay the amounts advanced if ultimately it should be determined that the Indemnitee is not entitled to be indemnified against such expenses pursuant to this Article V. The sole requirements for qualification by an Indemnitee for such advances shall be delivery of the statement and undertaking described above.

B. Procedure for Determination of Entitlement to Indemnification.

1. To obtain indemnification under this Article V, an Indemnitee shall submit to the Secretary of the Corporation a written request, including such documentation and information as is reasonably available to the Indemnitee and reasonably necessary to determine whether and to what extent the Indemnitee is entitled to indemnification (the "Supporting Documentation"). The determination of the Indemnitee's entitlement to indemnification shall be made not later than sixty (60) days after receipt by the Corporation of the written request for indemnification together with the Supporting Documentation. The Secretary shall, promptly upon receipt of such a request for indemnification, advise the Board of Directors in writing that the Indemnitee has requested indemnification.

2. The Indemnitee's entitlement to indemnification under this Article V shall be determined in one of the following ways: (A) to the fullest extent permitted by applicable law, if a Change in Control has occurred and the Indemnitee so requests, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to the Indemnitee; (B) if and to the extent applicable law does not permit a determination to be made by Independent Counsel, and, in any event, if a Change in Control has not occurred (or if a Change in Control has occurred but the Indemnitee does not request that the determination be made by Independent Counsel), (x) by the Board acting by a quorum consisting of Disinterested Directors, or (y) if a quorum under clause (x) above is not obtainable or, even if obtainable, a quorum of Disinterested Directors so directs: (I) by the Board upon the opinion in writing of Independent Counsel (a copy of which shall be delivered to the Indemnitee), or (II) by the shareholders of the Corporation; or (C) as provided in Section 4(C) of this Article V.

3. In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 4(B)(2) of this Article V, a majority of the Disinterested Directors shall select the Independent Counsel, but only an Independent Counsel to which the Indemnitee does not reasonably object; provided, however, that if a Change in Control shall have occurred, the Indemnitee shall select such Independent Counsel, but only an Independent Counsel to which a majority of the Disinterested Directors does not reasonably object.

C . Presumptions and Effect of Certain Proceedings. Except as otherwise expressly provided in this Article V, if a Change in Control shall have occurred, the Indemnitee shall be presumed to be entitled to indemnification under this Article V (with respect to actions or omissions occurring prior to such Change in Control) upon submission of a request for indemnification together with the Supporting Documentation in accordance with Section 4(B)(1) of this Article V, and thereafter the Corporation shall have the burden of proof to overcome that presumption in reaching a contrary determination. In any event, if the person or persons empowered under Section 4(B) of this Article V to determine entitlement to indemnification shall not have been appointed or shall not have made a determination within sixty (60) days after receipt by the Corporation of the request therefor, together with the Supporting Documentation, the Indemnitee shall be deemed to be, and shall be, entitled to indemnification unless (A) the Indemnitee misrepresented or failed to disclose a material fact in making the request for indemnification or in the Supporting Documentation or (B) such indemnification is prohibited by law. The termination of any Proceeding described in Section 1 of this Article V, or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, adversely affect the right of the Indemnitee to indemnification or create a presumption that the Indemnitee did not act in good faith and in a manner which the Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation or, with respect to any criminal proceeding, that the Indemnitee had reasonable cause to believe that such conduct was unlawful.

D. Remedies of Indemnitee.

1. In the event that a determination is made pursuant to Section 4(B) of this Article V that the Indemnitee is not entitled to indemnification under this Article V, (A) the Indemnitee shall be entitled to seek an adjudication of entitlement to such indemnification either, at the Indemnitee's sole option, in (x) an appropriate court of the State of New York or any other court of competent jurisdiction or (y) an arbitration to be conducted by a single arbitrator pursuant to the rules of the American Arbitration Association; (B) any such judicial proceeding or arbitration shall be de novo and the Indemnitee shall not be prejudiced by reason of such adverse determination; and (C) if a Change in Control shall have occurred, in any such judicial proceeding or arbitration, the Corporation shall have the burden of proving that the Indemnitee is not entitled to indemnification under this Article V (with respect to actions or omissions occurring prior to such Change in Control).

2. If a determination shall have been made or deemed to have been made, pursuant to Section 4(B) or (C) of this Article V, that the Indemnitee is entitled to indemnification, the Corporation shall be obligated to pay the amounts constituting such indemnification within fifteen (15) days after such determination has been made or deemed to have been made and shall be conclusively bound by such determination unless (A) the Indemnitee misrepresented or failed to disclose a material fact in making the request for indemnification or in the Supporting Documentation or (B) such indemnification is prohibited by law. In the event that (x) advancement of expenses is not timely made pursuant to Section 4(A) of this Article V or (y) payment of indemnification is not made within fifteen (15) days after a determination of entitlement to indemnification has been made or deemed to have been made pursuant to Section 4(B) or (C) of this Article V, the Indemnitee shall be entitled to seek judicial enforcement of the Corporation's obligation to pay to the Indemnitee such advancement of expenses or indemnification. Notwithstanding the foregoing, the Corporation may bring an action, in an appropriate court in the State of New York or any other court of competent jurisdiction, contesting the right of the Indemnitee to receive indemnification hereunder due to the occurrence of an event described in sub-clause (A) or (B) of this clause (2) (a "Disqualifying Event"); provided, however, that in any such action the Corporation shall have the burden of proving the occurrence of such Disqualifying Event.

3. The Corporation shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 4(D) that the procedures and presumptions of this Article V are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Corporation is bound by all the provisions of this Article V.

4. In the event that the Indemnitee, pursuant to this Section 4(D), seeks a judicial adjudication of or an award in arbitration to enforce rights under, or to recover damages for breach of, this Article V, the Indemnitee shall be entitled to recover from the Corporation, and shall be indemnified by the Corporation against, any expenses actually and reasonably incurred by the Indemnitee if the Indemnitee prevails in such judicial adjudication or arbitration. If it shall be determined in such judicial adjudication or arbitration that the Indemnitee is entitled to receive part but not all of the indemnification or advancement of expenses sought, the expenses incurred by the Indemnitee in connection with such judicial adjudication or arbitration shall be prorated accordingly.

E. Definitions. For purposes of this Article V:

1. “Change in Control” means the occurrence of any of the following: (w) any merger or consolidation of the Corporation with any other entity shall occur unless the voting securities of the Corporation outstanding immediately prior to such transaction continue to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the surviving entity outstanding immediately after such transaction that have the power to elect at least a majority of the board of directors or other governing body of such surviving entity, (x) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all, or substantially all, the assets of the Corporation, or the liquidation or dissolution of the Corporation, or (y) individuals who constitute a majority of the members of the Board of Directors shall be elected to the Board of Directors and the election or the nomination for election by the shareholders of such directors was not approved by a vote of at least two-thirds of the directors in office immediately prior to such election.

2. “Disinterested Director” means a director of the Corporation who is not or was not a party to the Proceeding in respect of which indemnification is sought by the Indemnitee.

3. “Independent Counsel” means a law firm or a member of a law firm that neither presently is, nor in the past five years has been, retained to represent: (x) the Corporation or the Indemnitee in any matter material to either such party or (y) any other party to the Proceeding giving rise to a claim for indemnification under this Article V. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing under the law of the State of New York, would have a conflict of interest in representing either the Corporation or the Indemnitee in an action to determine the Indemnitee’s rights under this Article V.

Section 5. Severability. If any provision or provisions of this Article V shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Article V (including, without limitation, all portions of any paragraph of this Article V containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Article V (including, without limitation, all portions of any paragraph of this Article V containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or enforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

Section 6. Indemnification of Employees Serving as Directors or Officers. The Corporation, to the fullest extent of the provisions of this Article V with respect to the indemnification of directors and officers of the Corporation, shall indemnify and hold harmless any person who is or was an employee of the Corporation and who is or was involved in any manner (including, without limitation, as a party or a witness) or is threatened to be made so involved in any threatened, pending or completed Proceeding by reason of the fact that such employee is or was serving (a) as a director or officer of a corporation or in a capacity equivalent to that of a director or officer for any partnership, joint venture, trust or other enterprise (including, without limitation, any employee benefit plan) in which the Corporation had at the time of such service, directly or indirectly, a 50% or greater equity interest (a “Subsidiary Director”) or (b) at the written request of the Corporation, as a director or officer of a corporation or in a capacity equivalent to that of a director or officer for any partnership, joint venture, trust or other enterprise (including, without limitation, any employee benefit plan) in which the Corporation had at the time of such service, directly or indirectly, a significant business interest but a less than 50% equity interest (or, in the case of an employee benefit plan, no equity interest at all) (a “Requested Employee”), against all expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Subsidiary Director or Requested Employee in connection with such Proceeding. The Corporation shall also advance expenses incurred by any such Subsidiary Director or Requested Employee in connection with any such Proceeding, consistent with the provisions of this Article V with respect to the advancement of expenses of directors and officers of the Corporation.

ARTICLE VI – SHARES

Section 1. Certificates for Shares. The certificates for shares of the Corporation shall be in such form as shall be determined by the Board of Directors, and shall be numbered and entered in the books of the Corporation as they are issued. Each certificate shall exhibit the registered holder's name, the number and class of shares, and the designation of any series, if any, that it evidences, and shall set forth such other statements as may be required by statute. Each certificate shall be signed by the Chairman or the President and by the Secretary or the Treasurer, any or all of whose signatures may be facsimile if such certificate is countersigned by a transfer agent or registered by a registrar. Each certificate may be sealed with the seal of the Corporation or a facsimile thereof. In case any one or more of the officers who have signed or whose facsimile signatures appear on any such certificate shall cease to be such officer or officers of the Corporation, whether because of resignation, removal or other displacement from office, before such certificate is issued and delivered, it may nonetheless be issued and delivered with the same effect as if such officer or officers had continued in office.

Section 2. Lost, Mutilated, Stolen or Destroyed Certificates. The Board of Directors may direct a new certificate or new certificates be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, mutilated, stolen or destroyed. When authorizing such issue of a new certificate, the Board of Directors, in its discretion and as a condition precedent to the issuance thereof, may prescribe such terms and conditions as it deems expedient, and may require such indemnities as it deems adequate, to protect the Corporation from any claim that may be made against it with respect to any such certificate alleged to have been lost, mutilated, stolen or destroyed.

Section 3. Transfer Agent and Registrar; Regulations. The Board of Directors may appoint transfer agents or registrars, or both, and may require all share certificates to bear the signature of either or both. The Board of Directors may make such additional rules and regulations as it may deem expedient concerning the issue, transfer and registration of certificates for shares of the Corporation.

Section 4. Transfer of Shares. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, the Corporation shall issue or cause the transfer agent to issue a new certificate to the person entitled thereto, shall cancel the old certificate and shall record such transfer upon the books of the corporation.

Section 5. Cancellation of Certificates. Each certificate for shares to be canceled shall be marked "CANCELED" across the face thereof by the Secretary, with the date of cancellation, and the transaction shall be immediately recorded in the certificate book opposite the memorandum of issue. The canceled certificate should be inserted thereafter in the certificate book.

Section 6. Contingent Interest in Shares. No entry shall be made in the books of the Corporation or on any certificate for shares that any person is entitled to any future, limited or contingent interest in any share.

Section 7. Uncertificated Shares. The Board of Directors may in its discretion authorize the issuance of shares which are not represented by certificates and provide for the registration and transfer thereof on the books and records of the Corporation or any transfer agent or registrar so designated.

Section 8. Shareholder Records. The names and addresses of the persons to whom shares are issued, and the number of shares and the dates of issue and any transfer thereof, whether in certificated or uncertificated form, shall be entered on records kept for that purpose. The stock transfer records and the blank stock certificates shall be kept by the transfer agent, or by the treasurer, or such other officer as shall be designated by the Board of Directors for that purpose.

ARTICLE VII – GENERAL

Section 1. **Fiscal Year.** The fiscal year of the Corporation shall be fixed and may from time to time be changed by resolution of the Board of Directors.

Section 2. **Seal.** The seal of the Corporation, if any, shall be circular in form and bear the name of the Corporation, the year of its organization and the words “Corporate Seal New York.” The seal may be used by causing it or a facsimile thereof to be impressed, affixed or reproduced directly on the instrument or writing to be sealed.

Section 3. **Instruments and Documents.** All corporate instruments and documents shall be signed, countersigned, executed, verified or acknowledged by such officers or other person or persons as the Board of Directors may from time to time designate.

Section 4. **Amendments.** These By-laws may be amended or repealed or new By-laws may be adopted by the shareholders at any annual or special meeting if the notice thereof mentions that amendment or repeal or the adoption of new By-laws is one of the purposes of such meeting. These By-laws may also be amended or repealed or new By-laws may be adopted by the affirmative vote of a majority of the Board of Directors given at any meeting, if the notice thereof mentions that amendment or repeal or the adoption of new By-laws is one of the purposes of such meeting. If any By-laws relating to the election of directors or meetings of shareholders are amended, notice of such amendment shall be given to shareholders to the extent required by law.

BED BATH & BEYOND INC.
650 Liberty Avenue
Union, New Jersey 07083

As of November 1, 2017

Ms. Susan Lattmann
XXXXXXXXXX
XXXXXXXXXX

Dear Susan:

In consideration of your continued employment with Bed Bath & Beyond Inc. (the "Company") and the undertakings set forth herein, we write to amend certain provisions of our letter agreement, dated as of October 6, 2014 (the "Agreement"), between you and the Company with respect to your employment as an executive of the Company. Except as specifically set forth in this amendment, the Agreement shall remain unmodified and in full force and effect.

- 1. The last sentence of Paragraph 1 is deleted. Paragraph 3 of the Agreement is deleted, and the following Paragraph 3 is deemed inserted in lieu thereof:

3. Severance Compensation.

A. Your employment by the Company is not for any specific term but rather is on an ongoing at-will basis with the right by the Company and you to terminate your employment at any time. If the Company terminates your employment for any reason other than for "cause", causes your employment to terminate because of "constructive termination" (which means: (i) a requirement by the Company that you relocate your place of employment more than twenty five (25) air miles ("as the crow flies"); or (ii) the material breach by the Company of one or more of the terms of your Employment Agreement) or your employment terminates due to death or "disability" (as defined under Code Section 409A, as set forth under Paragraph 5(d)), then the Company shall pay you, as severance pay, provided that you have not breached the provisions of Paragraph 4 hereof, your salary at the rate in effect immediately prior to such termination, during the Severance Period (as such term is hereinafter defined), commencing on the first business day following the sixtieth (60th) day after any such termination payable in normal payroll installments in accordance with the Company's then payroll practices, subject to Paragraphs 3C, 4 and 5(d). Thus, if you have not violated the non-compete restrictions in Paragraph 4 hereof (as well as the other restrictions in that paragraph) during the Severance Period, the Company will pay you your salary during the Severance Period. The Company shall have "cause" to terminate your employment only if you have (i) acted in bad faith or with dishonesty, (ii) willfully failed to follow the directions of the Company's Chief Executive Officer or the Board of Directors (provided such directions would not be in violation of law or constitute fraud), (iii) performed your duties with gross negligence, or (iv) been convicted of a felony. For purposes of this Agreement, the "Severance Period" shall mean (I) the one (1) year period following the termination of your employment for any reason other than for "cause", (II) the one (1) year period following the termination of your employment as a result of your death or disability, or (III) the two (2) year period following the termination of your employment for any reason other than for "cause" in the event the Company, in its sole discretion, elects to extend the one (1) year period set forth in subsection (I) above to a period of two (2) years following the termination of your employment for any reason other than for "cause", notice of which election of extension shall be provided to you by the Company not later than one hundred eighty (180) days prior to the end of the one (1) year period set forth in subsection (I) above. In the event of your termination because of a "constructive termination," you shall give the Company written notice detailing the specific circumstances alleged to constitute "constructive termination" within sixty (60) days after the first occurrence of such circumstances and the Company shall have thirty (30) days following receipt of such notice to cure such circumstances in all material respects, provided that no termination because of a "constructive termination" shall occur after the one-hundred twentieth (120th) day following the first occurrence of any "constructive termination."



B. In addition, subject to Paragraphs 3C, 4 and 5(d), if the Company terminates your employment for any reason other than for “cause”, or causes your employment to terminate because of “constructive termination” (as defined in subsection A of Paragraph 3), and if at the date of such termination there are options or time vested or performance vested restricted shares (“TVRS”) granted to you by the Company under any stock equity plan which were then not exercisable (in the case of options) and/or which were not then vested (in the case of TVRS) by reason of the installment terms thereof, the Company shall take such steps as may be necessary or appropriate to (i) make such options immediately exercisable for a period of at least thirty (30) days following the termination of your employment, and/or (ii) provide (subject to the achievement of any applicable performance goals) for the immediate acceleration of any then-unvested TVRS. For purposes of this subsection B of this Paragraph 3, your death or disability shall constitute a termination of your employment by the Company for a reason other than for “cause”, except that, in such event, the Company shall take such steps as are necessary or appropriate to (y) make such options immediately exercisable for a period of at least twelve (12) months following the termination of your employment, and/or (z) provide (without regard to the achievement of any applicable performance goals) for the immediate acceleration of any then-unvested TVRS.

C. In consideration for your receipt of the benefits set forth in subsections A and B of this Paragraph 3, and as a condition to the Company’s obligation to make the severance payments during the Severance Period and to take the steps with respect to the options and/or TVRS described above, you shall deliver to the Company, within twenty-one (21) days (or, if applicable, forty-five (45) days) of the termination of your employment, a fully executed release agreement (the form of which release agreement shall be commercially reasonable) which shall fully and irrevocably release and discharge the Company, its officers, directors, employees and agents from any and all claims, charges, complaints, and liabilities of any kind, known or unknown which you have or may have against any of the foregoing parties (the “Release”). In addition, the provisions of Paragraph 4 below shall apply during the period of time set forth therein without payment of the severance payments or any other compensation to you (including with respect to the options and/or TVRS described above) until the Company receives the fully executed Release within the time period specified above and any applicable revocation period expires. For purposes of clarity, if you do not deliver to the Company a fully executed Release within the time specific above or if you revoke the Release within the time prescribed by applicable law, your obligations under Paragraph 4 shall remain in effect, but your right to severance under Paragraph’s 3A and 3B will be forfeited.

2. Paragraph 4 of the Agreement is modified by deleting the following words from Section 4(A),

“...and for a period of two years thereafter, you agree that you will not: (a)”

and by inserting the following words in lieu thereof:

“...and for a period of one year thereafter (which one year period is subject to extension pursuant to the provisions of subsection A of Paragraph 3), except if permitted by the Chairman or the CEO of the Company (in either of their sole discretion), you agree that you will not,”

3. Paragraph 5(d) of the Agreement is deleted and the following Paragraph 5(d) is deemed inserted in lieu thereof,

“(d) Although the Company does not guarantee the particular tax treatment of any payments or benefits paid or provided hereunder, it is the intent of the parties that such payments and benefits comply with, or be exempt from, Section 409A of the Internal Revenue Code of 1986, as amended, and the regulations and guidance promulgated thereunder (collectively “Code Section 409A”) and, accordingly, our agreement set forth herein shall be interpreted in a manner consistent with such intent. A termination of employment shall not be deemed to have occurred for purposes of any provision providing for payments or benefits that are considered “nonqualified deferred compensation” under Code Section 409A upon or following a termination of employment unless such termination is also a “separation from service” under Code Section 409A. To the extent applicable, if you are deemed on the date of termination to be a “specified employee” (as defined under Code Section 409A(a)(2)(B)), then, any payments that are considered “nonqualified deferred compensation” under Code Section 409A (“409A Payments”) shall be made as provided herein after the date which is the earlier of (i) the expiration of the six-month period measured from the date of your “separation from service,” and (ii) the date of your death (the “Delay Period”). Upon the expiration of the Delay Period, all 409A Payments delayed pursuant to this provision (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid to you in a lump sum on the first business day following the end of the Delay Period, and any remaining payments and benefits due hereunder shall be paid in accordance with the normal payment dates specified for them herein. Any right you have hereunder to receive installment payments shall be treated as a right to receive a series of separate and distinct payments.”

If the foregoing correctly sets forth your understanding of our agreement, please so indicate by signing and returning to us a copy of this letter.

BED BATH & BEYOND INC.

By:

Steven H. Temares
Chief Executive Officer

Susan Lattmann

CERTIFICATION

I, Steven H. Temares, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Bed Bath & Beyond 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.

Date: December 28, 2017

/s/ Steven H. Temares
Steven H. Temares
Chief Executive Officer

CERTIFICATION

I, Susan E. Lattmann, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Bed Bath & Beyond 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.

Date: December 28, 2017

/s/ Susan E. Lattmann

Susan E. Lattmann
Chief Financial Officer and Treasurer
(Principal Financial and Accounting Officer)

CERTIFICATION

The undersigned, the Principal Executive Officer and Principal Financial Officer of Bed Bath & Beyond Inc. (the "Company"), hereby certify, to the best of their knowledge and belief, that the Form 10-Q of the Company for the quarterly period ended November 25, 2017, (the "Periodic Report") accompanying this certification fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) and that the information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company. The foregoing certification is provided solely for purposes of complying with the provisions of Section 906 of the Sarbanes - Oxley Act of 2002 and is not intended to be used for any other purposes.

Date: December 28, 2017

/s/ Steven H. Temares

Steven H. Temares
Chief Executive Officer

/s/ Susan E. Lattmann

Susan E. Lattmann
Chief Financial Officer and Treasurer
(Principal Financial and Accounting Officer)

