

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

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the Quarterly Period Ended October 29, 2022

or

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

For the transition period from _____ to _____.

Commission File No. 001-39589



Academy Sports and Outdoors, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

85-1800912

(I.R.S. Employer
Identification No.)

1800 North Mason Road

Katy, Texas 77449

(Address of principal executive offices) (Zip Code)

(281) 646-5200

(Registrant's Telephone Number, including Area Code)

Not applicable

(Former name, former address and former fiscal year, if changed since last report)

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

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, par value \$0.01 per share	ASO	The Nasdaq Stock Market LLC

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

Yes No

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

Yes No

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

Large accelerated filer

Non-accelerated filer

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 13(a) of the Exchange Act.

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

As of November 30, 2022, Academy Sports and Outdoors, Inc. had 78,144,893 shares of common stock, par value \$0.01 per share, outstanding.

ACADEMY SPORTS AND OUTDOORS, INC.
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PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

ACADEMY SPORTS AND OUTDOORS, INC.
CONSOLIDATED BALANCE SHEETS
(Unaudited)
(Dollar amounts in thousands, except per share data)

	October 29, 2022	January 29, 2022	October 30, 2021
ASSETS			
CURRENT ASSETS:			
Cash and cash equivalents	\$ 318,167	\$ 485,998	\$ 401,297
Accounts receivable - less allowance for doubtful accounts of \$1,449, \$732 and \$1,139, respectively	15,998	19,718	12,368
Merchandise inventories, net	1,495,464	1,171,808	1,325,979
Prepaid expenses and other current assets	44,241	36,460	44,491
Assets held for sale	1,763	1,763	1,763
Total current assets	1,875,633	1,715,747	1,785,898
PROPERTY AND EQUIPMENT, NET	354,014	345,836	358,110
RIGHT-OF-USE ASSETS	1,100,522	1,079,546	1,087,407
TRADE NAME	577,571	577,215	577,144
GOODWILL	861,920	861,920	861,920
OTHER NONCURRENT ASSETS	12,804	4,676	5,516
Total assets	\$ 4,782,464	\$ 4,584,940	\$ 4,675,995
LIABILITIES AND STOCKHOLDERS' EQUITY			
CURRENT LIABILITIES:			
Accounts payable	\$ 840,585	\$ 737,826	\$ 919,196
Accrued expenses and other current liabilities	259,179	303,207	304,488
Current lease liabilities	88,447	83,077	86,701
Current maturities of long-term debt	3,000	3,000	3,000
Total current liabilities	1,191,211	1,127,110	1,313,385
LONG-TERM DEBT, NET	682,803	683,585	683,845
LONG-TERM LEASE LIABILITIES	1,093,909	1,077,667	1,088,142
DEFERRED TAX LIABILITIES, NET	242,843	217,212	188,243
OTHER LONG-TERM LIABILITIES	12,779	12,420	26,386
Total liabilities	3,223,545	3,117,994	3,300,001
COMMITMENTS AND CONTINGENCIES (NOTE 12)			
STOCKHOLDERS' EQUITY:			
Preferred stock, \$0.01 par value, authorized 50,000,000 shares; none issued and outstanding	—	—	—
Common stock, \$0.01 par value, authorized 300,000,000 shares; 77,959,530; 87,079,394 and 88,164,878 issued and outstanding as of October 29, 2022, January 29, 2022 and October 30, 2021, respectively.	779	870	882
Additional paid-in capital	203,734	198,016	188,329
Retained earnings	1,354,406	1,268,060	1,188,271
Accumulated other comprehensive loss	—	—	(1,488)
Stockholders' equity	1,558,919	1,466,946	1,375,994
Total liabilities and stockholders' equity	\$ 4,782,464	\$ 4,584,940	\$ 4,675,995

See Condensed Notes to Consolidated Financial Statements

ACADEMY SPORTS AND OUTDOORS, INC.
CONSOLIDATED STATEMENTS OF INCOME
(Unaudited)
(Amounts in thousands, except per share data)

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	October 29, 2022	October 30, 2021	October 29, 2022	October 30, 2021
NET SALES	\$ 1,493,925	\$ 1,592,795	\$ 4,648,570	\$ 4,964,658
COST OF GOODS SOLD	971,454	1,031,957	3,008,612	3,197,623
GROSS MARGIN	522,471	560,838	1,639,958	1,767,035
SELLING, GENERAL AND ADMINISTRATIVE EXPENSES	342,949	344,725	998,209	1,057,290
OPERATING INCOME	179,522	216,113	641,749	709,745
INTEREST EXPENSE, NET	12,163	11,424	34,240	38,130
LOSS ON EARLY RETIREMENT OF DEBT	—	—	—	2,239
OTHER (INCOME), NET	(2,538)	(614)	(4,676)	(1,746)
INCOME BEFORE INCOME TAXES	169,897	205,303	612,185	671,122
INCOME TAX EXPENSE	38,156	43,998	141,837	141,511
NET INCOME	\$ 131,741	\$ 161,305	\$ 470,348	\$ 529,611
EARNINGS PER COMMON SHARE:				
BASIC	\$ 1.67	\$ 1.77	\$ 5.67	\$ 5.76
DILUTED	\$ 1.62	\$ 1.72	\$ 5.54	\$ 5.55
WEIGHTED AVERAGE COMMON SHARES OUTSTANDING:				
BASIC	79,085	91,140	82,901	91,951
DILUTED	81,379	93,844	84,910	95,504

See Condensed Notes to Consolidated Financial Statements

ACADEMY SPORTS AND OUTDOORS, INC.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(Unaudited)
(Amounts in thousands)

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	October 29, 2022	October 30, 2021	October 29, 2022	October 30, 2021
COMPREHENSIVE INCOME:				
Net income	\$ 131,741	\$ 161,305	\$ 470,348	\$ 529,611
Recognized interest expense on interest rate swaps	—	489	—	2,384
Tax expense	—	(115)	—	(548)
Total comprehensive income	\$ 131,741	\$ 161,679	\$ 470,348	\$ 531,447

See Condensed Notes to Consolidated Financial Statements

ACADEMY SPORTS AND OUTDOORS, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(Unaudited)
(Amounts in thousands, except per share data)

	Common Stock		Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Total Stockholders' Equity
	Shares	Amount				
Balances as of January 29, 2022	87,079	\$ 870	\$ 198,016	\$ 1,268,060	\$ —	\$ 1,466,946
Net income	—	—	—	149,806	—	149,806
Equity compensation	—	—	3,499	—	—	3,499
Repurchase of common stock for retirement	(2,272)	(23)	(5,247)	(83,231)	—	(88,501)
Settlement of vested Restricted Stock Units	63	1	(1)	—	—	—
Stock option exercises	201	2	3,292	—	—	3,294
Cash dividends declared, \$0.075 per share	—	—	—	(6,536)	—	(6,536)
Balances as of April 30, 2022	85,071	\$ 850	\$ 199,559	\$ 1,328,099	\$ —	\$ 1,528,508
Net income	—	—	—	188,801	—	188,801
Equity compensation	—	—	6,158	—	—	6,158
Repurchase of common stock for retirement	(5,551)	(55)	(13,391)	(186,665)	—	(200,111)
Settlement of vested Restricted Stock Units	29	0	(0)	—	—	—
Issuance of common stock under employee stock purchase plan	93	1	2,796	—	—	2,797
Stock option exercises	83	1	1,388	—	—	1,389
Cash dividends declared, \$0.075 per share	—	—	—	(6,271)	—	(6,271)
Balances as of July 30, 2022	79,725	\$ 797	\$ 196,510	\$ 1,323,964	\$ —	\$ 1,521,271
Net income	—	—	—	131,741	—	131,741
Equity compensation	—	—	5,829	—	—	5,829
Repurchase of common stock for retirement	(2,176)	(22)	(5,477)	(95,325)	—	(100,824)
Settlement of vested Restricted Stock Units	3	0	(0)	—	—	—
Stock option exercises	408	4	6,872	—	—	6,876
Cash dividends declared, \$0.075 per share	—	—	—	(5,974)	—	(5,974)
Balances as of October 29, 2022	77,960	\$ 779	\$ 203,734	\$ 1,354,406	\$ —	\$ 1,558,919

See Condensed Notes to Consolidated Financial Statements

ACADEMY SPORTS AND OUTDOORS, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(Unaudited)
(Amounts in thousands, except per share data)

	Common Stock		Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Total Stockholders' Equity
	Shares	Amount				
Balances as of January 30, 2021	91,114	\$ 911	\$ 127,228	\$ 987,168	\$ (3,324)	\$ 1,111,983
Net income	—	—	—	177,796	—	177,796
Equity compensation	—	—	5,874	—	—	5,874
Settlement of vested Restricted Stock Units	87	1	(1)	—	—	—
Share-Based Award Payments adjustment for forfeitures	—	—	39	—	—	39
Stock option exercises	2,686	27	17,230	—	—	17,257
Recognized interest expense on interest rate swaps (net of tax impact of \$270)	—	—	—	—	926	926
Balances as of May 1, 2021	93,887	\$ 939	\$ 150,370	\$ 1,164,964	\$ (2,398)	\$ 1,313,875
Net income	—	—	—	190,510	—	190,510
Equity compensation	—	—	27,331	—	—	27,331
Repurchase of common stock for retirement	(3,230)	(32)	(5,299)	(94,669)	—	(100,000)
Settlement of vested Restricted Stock Units	836	8	(8)	—	—	—
Issuance of common stock under employee stock purchase plan	35	—	945	—	—	945
Stock option exercises	1,356	14	14,407	—	—	14,421
Recognized interest expense on interest rate swaps (net of tax impact of \$163)	—	—	—	—	536	536
Balances as of July 31, 2021	92,884	\$ 929	\$ 187,746	\$ 1,260,805	\$ (1,862)	\$ 1,447,618
Net income	—	—	—	161,305	—	161,305
Equity compensation	—	—	2,921	—	—	2,921
Repurchase of common stock for retirement	(5,723)	(57)	(11,941)	(233,839)	—	(245,837)
Stock option exercises	1,004	10	9,603	—	—	9,613
Recognized interest expense on interest rate swaps (net of tax impact of \$115)	—	—	—	—	374	374
Balances as of October 30, 2021	88,165	\$ 882	\$ 188,329	\$ 1,188,271	\$ (1,488)	\$ 1,375,994

See Condensed Notes to Consolidated Financial Statements

ACADEMY SPORTS AND OUTDOORS, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(Amounts in thousands)

	Thirty-Nine Weeks Ended	
	October 29, 2022	October 30, 2021
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income	\$ 470,348	\$ 529,611
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	78,852	77,767
Non-cash lease expense	635	708
Equity compensation	15,486	36,126
Amortization of terminated interest rate swaps, deferred loan and other costs	2,328	4,787
Deferred income taxes	25,631	48,991
Non-cash loss on early retirement of debt	—	2,239
Changes in assets and liabilities:		
Accounts receivable, net	3,720	4,938
Merchandise inventories, net	(323,656)	(335,945)
Prepaid expenses and other current assets	798	(16,177)
Other noncurrent assets	(8,987)	2,207
Accounts payable	95,183	128,743
Accrued expenses and other current liabilities	(39,196)	34,683
Income taxes payable	(12,332)	(1,830)
Other long-term liabilities	359	(1,785)
Net cash provided by operating activities	<u>309,169</u>	<u>515,063</u>
CASH FLOWS FROM INVESTING ACTIVITIES:		
Capital expenditures	(79,454)	(58,567)
Purchases of intangible assets	(357)	(144)
Net cash used in investing activities	<u>(79,811)</u>	<u>(58,711)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:		
Repayment of Term Loan	(2,250)	(101,500)
Debt issuance fees	—	(927)
Share-Based Award Payments	—	(11,214)
Proceeds from exercise of stock options	11,559	41,292
Proceeds from issuance of common stock under employee stock purchase program	2,797	945
Taxes paid related to net share settlement of equity awards	(1,078)	(15,418)
Repurchase of common stock for retirement	(389,436)	(345,837)
Dividends paid	(18,781)	—
Net cash used in financing activities	<u>(397,189)</u>	<u>(432,659)</u>
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	(167,831)	23,693
CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD	485,998	377,604
CASH AND CASH EQUIVALENTS AT END OF PERIOD	\$ 318,167	\$ 401,297
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:		
Cash paid for interest	\$ 25,362	\$ 28,481
Cash paid for income taxes	\$ 129,588	\$ 95,799
SUPPLEMENTAL DISCLOSURES OF NON-CASH ACTIVITIES:		
Non-cash issuance of common shares	\$ —	\$ 501
Change in capital expenditures in accounts payable and accrued liabilities	\$ 7,576	\$ 950
Right-of-use assets obtained in exchange for new operating leases	\$ 94,845	\$ 10,924

See Condensed Notes to Consolidated Financial Statements

ACADEMY SPORTS AND OUTDOORS, INC.
CONDENSED NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Nature of Operations

The Company

All references to "we," "us," "our" or the "Company" in the financial statements refer to Academy Sports and Outdoors, Inc., a Delaware corporation ("ASO, Inc.") and the current parent holding company of our operations, and its consolidated subsidiaries. We conduct our operations primarily through our parent holding company's indirect subsidiary, Academy, Ltd., a Texas limited partnership doing business as "Academy Sports + Outdoors", or Academy, Ltd. Our fiscal year represents the 52 or 53 weeks ending on the Saturday closest to January 31. On August 3, 2011, an investment entity owned by investment funds and other entities affiliated with Kohlberg Kravis Roberts & Co. L.P. (collectively, "KKR"), acquired a majority interest in the Company. On October 6, 2020, ASO, Inc. completed an initial public offering and as of September 17, 2021, KKR no longer held an ownership interest in the Company.

The Company is one of the leading full-line sporting goods and outdoor recreational products retailers in the United States in terms of net sales. As of October 29, 2022, we operated 265 "Academy Sports + Outdoors" retail locations in 17 states and three distribution centers located in Katy, Texas, Twiggs County, Georgia and Cookeville, Tennessee. We also sell merchandise to customers across most of the United States via our *academy.com* website.

Secondary Offering

On January 27, 2021, ASO, Inc. entered into an Underwriting Agreement (the "Underwriting Agreement"), by and among ASO, Inc., Allstar LLC, Allstar Co-Invest Blocker L.P., KKR 2006 Allstar Blocker L.P., MSI 2011 LLC, MG Family Limited Partnership and the former management selling stockholder named therein (collectively, the "Selling Stockholders"), and Credit Suisse Securities (USA) LLC and J.P. Morgan Securities LLC, as representatives of the several underwriters named therein (the "Underwriters"), relating to an underwritten offering of 12,000,000 shares of common stock (the "Secondary Offering"), pursuant to the Company's Registration Statement on Form S-1 (File No. 333-252390), filed on January 25, 2021. The Selling Stockholders granted the Underwriters the option to purchase, within 30 days from the date of the Underwriting Agreement, an additional 1,800,000 shares of common stock. On January 29, 2021, the Underwriters exercised in full their option to purchase the additional shares. The Secondary Offering was completed on February 1, 2021. Pursuant to the Underwriting Agreement, the Underwriters purchased the shares from the Selling Stockholders at a price of approximately \$20.69 per share. The Company did not receive any proceeds from the Secondary Offering.

May 2021 Secondary Offering and Stock Repurchase

On May 5, 2021, ASO, Inc. entered into an underwriting agreement (the "May 2021 Underwriting Agreement"), by and among ASO, Inc., Allstar LLC, Allstar Co-Invest Blocker L.P., KKR 2006 Allstar Blocker L.P., MSI 2011 LLC and MG Family Limited Partnership (collectively, the "May 2021 Selling Stockholders"), and Credit Suisse Securities (USA) LLC and J.P. Morgan Securities LLC, as representatives of the several underwriters named therein (the "May 2021 Underwriters"), relating to an underwritten offering of 14,000,000 shares of Common Stock at \$30.96 per share (the "May 2021 Secondary Offering"), pursuant to the Company's Registration Statement on Form S-1 (File No. 333-255720), filed on May 3, 2021. The May 2021 Selling Stockholders granted the May 2021 Underwriters the option to purchase, within 30 days from the date of the May 2021 Underwriting Agreement, an additional 2,100,000 shares of Common Stock. On May 6, 2021, the May 2021 Underwriters exercised in full their option to purchase the additional shares. The May 2021 Secondary Offering also included the Company's repurchase and simultaneous retirement of 3,229,974 shares out of the 14,000,000 shares at \$30.96 per share, the same price granted to the underwriters, which was at a discount to the prevailing market price at the time of repurchase (see "Share Repurchases" in Note 2). The May 2021 Secondary Offering was completed on May 10, 2021. The Company did not receive any proceeds from the May 2021 Secondary Offering.

The May 2021 Secondary Offering reduced the KKR ownership interest in the Company, resulting in a vesting event (the "2021 Vesting Event") for awards granted under the 2011 Unit Incentive Plan, whereby unvested time awards and performance-based awards which had previously met their performance targets vested and unvested performance-based awards which had not previously met their performance targets were forfeited. As a result, we incurred approximately \$24.9 million in non-cash expenses related to equity-based compensation and approximately \$15.4 million of cash expenses related to taxes on equity-based compensation. Additionally, approximately \$8.2 million of Share-Based Award Payments (see Note 9) for equity-based compensation distributions were accelerated during the 2021 second quarter.

September 2021 Secondary Offering and Stock Repurchase

On September 14, 2021, ASO, Inc. entered into an underwriting agreement (the "September 2021 Underwriting Agreement"), by and among ASO, Inc., Allstar LLC, Allstar Co-Invest Blocker L.P. and KKR 2006 Allstar Blocker L.P. (collectively, the "September 2021 Selling Stockholders"), and Credit Suisse Securities (USA) LLC, as representative of the several underwriters named therein (the "September 2021 Underwriters"), relating to an underwritten offering (the "September 2021 Secondary Offering") of 18,645,602 shares of common stock at approximately \$43.52 per share, pursuant to the Company's Registration Statement on Form S-1 (File No. 333-259477), filed on September 13, 2021. The September 2021 Secondary Offering also included the Company's repurchase and simultaneous retirement of 4,500,000 shares out of the 18,645,602 shares of common stock at approximately \$43.52, the same price granted to the September 2021 Underwriters, which was at a discount to the prevailing market price at the time of repurchase (see "Share Repurchases" in Note 2). The September 2021 Secondary Offering was completed on September 17, 2021. The Company did not receive any proceeds from the September 2021 Secondary Offering.

2. Summary of Significant Accounting Policies

The accompanying unaudited financial statements of the Company have been prepared as though they were required to be in accordance with Rule 10-01 of Regulation S-X for interim financial statements, however, they do not include all information and footnotes required by United States generally accepted accounting principles ("GAAP") for complete financial statements. Certain information and footnote disclosures normally included in our annual consolidated financial statements prepared in accordance with GAAP have been condensed or omitted. However, we believe that the disclosures included herein are adequate to make the information presented not misleading. These condensed consolidated financial statements should be read in conjunction with our audited consolidated financial statements and the notes thereto included in the Company's Annual Report on Form 10-K for the fiscal year ended January 29, 2022, as filed with the Securities and Exchange Commission on March 29, 2022 (the "Annual Report"). The information furnished herein reflects all normal recurring adjustments which are, in the opinion of management, necessary for a fair presentation of the results for the interim periods presented. The results of operations for the thirteen and thirty-nine weeks ended October 29, 2022 are not necessarily indicative of the results that will be realized for the fiscal year ending January 28, 2023 or any other period. The balance sheet as of January 29, 2022 has been derived from our audited financial statements as of that date. For further information, refer to our audited financial statements and notes thereto included in the Annual Report.

Basis of Presentation and Principles of Consolidation

These unaudited condensed consolidated financial statements include the accounts of ASO, Inc. and its subsidiaries, New Academy Holding Company, LLC ("NAHC"), Academy Managing Co., LLC, Associated Investors, LLC, Academy, Ltd., the Company's operating company, and Academy International Limited. NAHC, Academy Managing Co., LLC, and Associated Investors, LLC are intermediate holding companies. All intercompany balances and transactions have been eliminated in consolidation.

Use of Estimates in the Preparation of Financial Statements

The preparation of financial statements in conformity with GAAP requires our management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities as of the date of the financial statements, as well as the reported amounts of revenues and expenses during the reporting period. Our management bases its estimates on historical experience and other assumptions it believes to be reasonable under the circumstances. Actual results could differ significantly from those estimates. Our most significant estimates and assumptions that materially affect the financial statements involve difficult, subjective or complex judgments by management, including the valuation of merchandise inventories and performing goodwill, intangible and long-lived asset impairment analyses. Given the global economic climate and the possibility of additional unforeseen effects from the COVID-19 pandemic, these estimates remain challenging, and actual results could differ materially from our estimates.

Share Repurchases

On September 2, 2021, the Board of Directors of the Company authorized a share repurchase program (the "2021 Share Repurchase Program") under which the Company may purchase up to \$500 million of its outstanding shares during the three-year period ending September 2, 2024. On June 2, 2022, the Board of Directors of the Company authorized a new share repurchase program (the "2022 Share Repurchase Program") under which the Company may purchase up to \$600 million of its outstanding shares during the three-year period ending June 2, 2025. The 2022 Share Repurchase Program and the 2021 Share Repurchase program are collectively referred to as the "Share Repurchase Programs".

Under the Share Repurchase Programs, repurchases can be made using a variety of methods, which may include open market purchases, block trades, privately negotiated transactions, accelerated share repurchase programs and/or a non-discretionary trading plan, all in compliance with the rules of the SEC and other applicable legal requirements. The timing, manner, price and amount of any common share repurchases under the Share Repurchase Programs are determined by the Company in its discretion and depend on a variety of factors, including legal requirements, price and economic and market conditions. The Share Repurchase Programs do not obligate the Company to acquire any particular number of common shares, and the programs may be suspended, extended, modified or discontinued at any time.

During the thirteen and thirty-nine weeks ended October 29, 2022, we repurchased and concurrently retired 2,176,463 and 9,999,704 shares of ASO, Inc. common stock for an aggregate amount of \$100.8 million and \$389.4 million, respectively, pursuant to the Share Repurchase Programs. During the thirteen and thirty-nine weeks ended October 30, 2021, we repurchased and concurrently retired 5,722,892 and 8,952,866 shares of ASO, Inc. common stock for an aggregate amount of \$245.8 million and \$345.8 million, respectively, which includes purchases that were made pursuant to the Share Repurchase Programs and those that were made prior to the Share Repurchase Programs. As of October 29, 2022, we no longer had availability under the 2021 Share Repurchase Program and we had approximately \$399.4 million available for share repurchases pursuant to the 2022 Share Repurchase Program.

Recent Accounting Pronouncements

Reference Rate Reform

In March 2020, the FASB issued ASU 2020-04, "Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting." This pronouncement provides temporary optional expedients and exceptions to the current guidance on contract modifications and hedge accounting to ease the financial reporting burden related to the expected market transition from the London Interbank Offered Rate ("LIBOR") and other interbank offered rates to alternative reference rates. The adoption of this guidance is effective for all entities as of March 12, 2020 through December 31, 2022. The Company is currently evaluating the expedients and exceptions provided by this amendment as it relates to our transition from LIBOR to another reference rate to determine the impact.

Supplier Finance Programs

In September 2022, the FASB issued ASU 2022-04, "Liabilities - Supplier Finance Programs (Subtopic 405-50): Disclosure of Supplier Finance Program Obligations." This pronouncement requires that a buyer in a supplier finance program disclose sufficient information about the program to allow a user of the financial statements to understand the program's nature, activity during the period, changes from period to period and potential magnitude. The adoption of these amendments is effective for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years, except the amendment on roll-forward information, which is effective for fiscal years beginning after December 15, 2023. Early adoption is permitted. The Company is currently evaluating the impact that the adoption of this accounting standard will have on its financial disclosures.

3. Net Sales

Revenue from merchandise sales is recognized, net of sales tax, when the Company's performance obligation to the customer is met, which is when the Company transfers control of the merchandise to the customer. Store merchandise sales are recognized at the point of sale and e-commerce sales are recognized upon delivery to the customer.

The following table sets forth the approximate amount of sales by merchandise divisions for the periods presented (amounts in thousands):

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	October 29, 2022	October 30, 2021	October 29, 2022	October 30, 2021
Merchandise division sales				
Outdoors	\$ 473,014	\$ 578,987	\$ 1,423,641	\$ 1,604,045
Sports and recreation	274,262	285,614	1,028,641	1,098,621
Apparel	401,892	399,852	1,207,979	1,269,106
Footwear	336,296	320,119	961,940	967,839
Total merchandise sales ⁽¹⁾	1,485,464	1,584,572	4,622,201	4,939,611
Other sales ⁽²⁾	8,461	8,223	26,369	25,047
Net Sales	\$ 1,493,925	\$ 1,592,795	\$ 4,648,570	\$ 4,964,658

⁽¹⁾ E-commerce sales consisted of 9.5% and 9.7% of merchandise sales for the thirteen and thirty-nine weeks ended October 29, 2022, respectively, and 8.0% for the thirteen and thirty-nine weeks and October 30, 2021.

⁽²⁾ Other sales consisted primarily of the sales return allowance, gift card breakage income, credit card bounties and royalties, shipping income, net hunting and fishing license income and other items.

We sell gift cards in stores, online and in third-party retail locations. A liability for gift cards, which is recorded in accrued expenses and other liabilities on our consolidated balance sheets is established at the time of sale and revenues are recognized as the gift cards are redeemed in stores or on our website.

The following is a reconciliation of the gift card liability (amounts in thousands):

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	October 29, 2022	October 30, 2021	October 29, 2022	October 30, 2021
Gift card liability, beginning balance	\$ 69,959	\$ 60,526	\$ 86,568	\$ 74,253
Issued	18,288	17,407	63,164	61,333
Redeemed	(21,023)	(19,006)	(80,668)	(74,749)
Recognized as breakage income	(680)	(618)	(2,520)	(2,528)
Gift card liability, ending balance	\$ 66,544	\$ 58,309	\$ 66,544	\$ 58,309

4. Long-Term Debt

Our debt consisted of the following (amounts in thousands) as of:

	October 29, 2022	January 29, 2022	October 30, 2021
ABL Facility, due November 2025	\$ —	\$ —	\$ —
Term Loan, due November 2027	295,500	297,750	298,500
Notes, due November 2027	400,000	400,000	400,000
Total debt	695,500	697,750	698,500
Less current maturities	(3,000)	(3,000)	(3,000)
Less unamortized discount on Term Loan	(2,135)	(2,463)	(2,572)
Less deferred loan costs ⁽¹⁾	(7,562)	(8,702)	(9,083)
Long-term debt, net	\$ 682,803	\$ 683,585	\$ 683,845

⁽¹⁾ Deferred loan costs are related to the Term Loan and Notes.

As of October 29, 2022, January 29, 2022 and October 30, 2021, the balance in deferred loan costs related to the ABL Facility (as defined below) was approximately \$3.5 million, \$4.3 million and \$4.6 million, respectively, and was included in other noncurrent assets on our consolidated balance sheets. Total amortization of deferred loan costs was \$0.7 million and \$2.0 million for the thirteen and thirty-nine weeks ended October 29, 2022, respectively, and \$0.6 million and \$2.0 million for the thirteen and thirty-nine weeks ended October 30, 2021, respectively. Total expenses related to accretion of original issuance discount were \$0.1 million and \$0.3 million for the thirteen and thirty-nine weeks ended October 29, 2022, respectively, and \$0.1 million and \$0.4 million for the thirteen and thirty-nine weeks ended and October 30, 2021, respectively. The expenses related to amortization of deferred loan costs and accretion of original issuance discount are included in interest expense, net on the consolidated statements of income.

Term Loan

We refer to the 2020 Term Loan and the Amendment collectively as the "Term Loan".

On November 6, 2020, Academy, Ltd. entered into a seven-year \$400.0 million senior secured term loan (the "2020 Term Loan") with Credit Suisse AG, Cayman Island Branch ("Credit Suisse"), as the administrative agent and collateral agent and the several other lenders and parties. The 2020 Term Loan will mature on November 6, 2027. The 2020 Term Loan bore interest, at Academy, Ltd.'s election, at either (1) LIBOR rate with a floor of 0.75%, plus a margin of 5.00%, or (2) a base rate equal to the highest of (a) the federal funds rate plus 0.50%, (b) Credit Suisse's "prime rate", or (c) the one-month LIBOR rate plus 1.00%, plus a margin of 4.00%. Quarterly principal payments of approximately \$1.0 million were required through September 30, 2027, with the balance due in full on the maturity date of November 6, 2027.

On May 25, 2021, Academy, Ltd. entered into Amendment No. 4 (the "Amendment") to the Second Amended and Restated Credit Agreement, dated as of November 6, 2020, among Academy, Ltd., as Borrower, Credit Suisse AG, Cayman Islands Branch, as the administrative agent and collateral agent, the several lenders party thereto and the several other parties named therein (as previously amended, the "Existing Credit Agreement" and as amended by the Amendment, the "Amended Credit Agreement"). Pursuant to the terms of the Amendment, Academy, Ltd. (i) reduced the applicable margin on LIBOR borrowings under the Existing Credit Agreement from 5.00% to 3.75% and (ii) utilized cash on hand to repay \$99.0 million of outstanding borrowings under the Existing Credit Agreement, leaving an outstanding principal balance of \$300.0 million under the Amended Credit Agreement. Quarterly principal payments of \$750.0 thousand are required through September 30, 2027 and borrowings under the Amended Credit Agreement will continue to mature on November 6, 2027. All other material terms and provisions of the 2020 Term Loan remain substantially the same as the terms and provisions in place immediately prior to the effectiveness of the Amendment. As of October 29, 2022, the weighted average interest rate was 6.88%, with interest payable monthly. The terms and conditions of the Amendment also require that the outstanding balance under the Term Loan is prepaid under certain circumstances. As of October 29, 2022, no prepayment was due under the terms and conditions of the Term Loan.

In connection with the Amendment, the Company recognized a non-cash loss on early retirement of debt of \$2.2 million in the thirty-nine weeks ended October 30, 2021 from the write-off of deferred loan costs and expense related to the original issuance discount associated with our 2020 Term Loan.

Notes

On November 6, 2020, Academy, Ltd. issued \$400.0 million of 6.00% senior secured notes which are due November 15, 2027 (the "Notes"), pursuant to an indenture, dated as of November 6, 2020 (the "Indenture") with The Bank of New York Mellon Trust Company, N.A., as trustee and collateral agent. The Notes require cash interest payments semi-annually in arrears on May 15 and November 15 of each year at a rate of 6.00% per year.

ABL Facility

On November 6, 2020, Academy, Ltd., as borrower, and the guarantors, amended the previously existing secured asset-based revolving credit facility by entering into an amendment to the First Amended and Restated ABL Credit Agreement, dated as of July 2, 2015, with JPMorgan Chase Bank, N.A. as the administrative agent and collateral agent, letter of credit issuer and swingline lender and the several lenders party thereto, which ABL amendment, among other things, extended the maturity of Academy, Ltd.'s asset-based revolving credit facility thereunder to November 6, 2025 (the "ABL Facility").

The ABL Facility is used to provide financing for working capital and other general corporate purposes, as well as to support certain letters of credit requirements, and availability is subject to customary borrowing base and availability provisions. During the normal course of business, we periodically utilize letters of credit primarily for the purchase of import goods and in support of insurance contracts. As of October 29, 2022, we had outstanding letters of credit of approximately \$17.4 million, all of which were issued under the ABL Facility, and we had no borrowings outstanding under the ABL Facility, leaving the available borrowing capacity under the ABL Facility of \$982.6 million.

Borrowings under the ABL Facility bear interest, at our election, at either (1) LIBOR plus a margin of 1.25% to 1.75%, or (2) a base rate equal to the highest of (a) the federal funds rate plus 0.50%, (b) JPMorgan Chase Bank, N.A.'s "prime rate", or (c) the one-month LIBOR rate plus 1.00%, plus a margin of 0.25% to 0.75%. The ABL Facility also provides a fee applicable to the unused commitments of 0.25%. The terms and conditions of the ABL Facility also require that we prepay outstanding loans under the ABL Facility under certain circumstances. As of October 29, 2022, no future prepayments of outstanding loans have been triggered under the terms and conditions of the ABL Facility.

Covenants. The ABL Facility, Term Loan and Notes agreements contain covenants, including, among other things, covenants that restrict Academy, Ltd.'s ability to incur certain additional indebtedness, create or permit liens on assets, engage in mergers or consolidations, pay dividends, make other restricted payments, make loans or advances, engage in transactions with affiliates or amend material documents. Additionally, at certain times, the ABL Facility is subject to a minimum adjusted fixed charge coverage ratio. These covenants are subject to certain qualifications and limitations. We were in compliance with these covenants as of October 29, 2022.

5. Derivative Financial Instruments

We have historically used interest rate swap agreements to hedge market risk relating to possible adverse changes in interest rates. All interest rate swaps had been designated as cash flow hedges of variable rate interest payments on borrowings under the Term Loan. As of October 29, 2022, we do not have any derivative financial instruments outstanding.

For derivatives which were designated as hedging instruments, amounts included in Accumulated Other Comprehensive Income (Loss) ("AOCI") were reclassified to interest expense in the same period during which the hedged transaction affected earnings, which was as interest expense was recorded on the underlying Term Loan.

The impact of gains and losses related to interest rate swaps that were deferred into AOCI and subsequently reclassified into expense are as follows (amounts in thousands):

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	October 29, 2022	October 30, 2021	October 29, 2022	October 30, 2021
Accumulated Other Comprehensive Loss, beginning	\$ —	\$ (1,862)	\$ —	\$ (3,324)
Increase to interest expense (net of tax impact of \$115 and \$548 in the thirteen and thirty-nine weeks ended October 30, 2021, respectively)	—	374	—	1,836
Accumulated Other Comprehensive Loss, ending	\$ —	\$ (1,488)	\$ —	\$ (1,488)

6. Fair Value Measurements

Fair value is defined as an exit price that would be received from the sale of an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Authoritative guidance establishes a three-level hierarchy for disclosure that is based on the extent and level of judgment used to estimate the fair value of the assets and liabilities.

The fair value measurements are classified as either:

- Level 1 which represents valuations based on unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities;
- Level 2 which represents valuations based on quoted prices for similar assets and liabilities in active markets, quoted prices for identical or similar assets and liabilities in markets that are not active, or inputs that are observable, either directly or indirectly, for substantially the full term of the asset or liability; and
- Level 3 which represents valuations based on prices or valuation techniques that require inputs that are both significant to the fair value measurement and unobservable (i.e., supported by little or no market activity).

In instances where the determination of the fair value measurement is based on inputs from different levels of the fair value hierarchy, the level in the fair value hierarchy in which the fair value measurement is classified in its entirety, is based on the lowest level input that is significant to the fair value measurement. Our assessment of the significance of a particular input to the fair value measurement in its entirety requires judgment and considers factors specific to the asset or liability. There were no transfers made into or out of the Level 1, 2 or 3 categories during any period presented.

Periodically we make cash investments in money market funds comprised of U.S. Government treasury bills and securities, which are classified as cash and redeemable on demand. As of October 29, 2022, January 29, 2022 and October 30, 2021, we held \$264.7 million, \$401.0 million and \$294.0 million in money market funds, respectively.

The fair value of the Term Loan and Notes is estimated using a discounted cash flow analysis based on quoted market prices for the instrument in an inactive market and is therefore classified as Level 2 within the fair value hierarchy. As of October 29, 2022, January 29, 2022, and October 30, 2021 the estimated fair value of the Term Loan and Notes was \$0.7 billion. As borrowings on the ABL Facility are generally repaid in less than 12 months, we believe that fair value approximates the carrying value.

7. Property and Equipment

Property and equipment consists of the following (amounts in thousands) as of:

	October 29, 2022	January 29, 2022	October 30, 2021
Leasehold improvements	\$ 476,670	\$ 456,918	\$ 455,542
Equipment and software	624,915	602,289	593,479
Furniture and fixtures	352,501	336,679	332,368
Construction in progress	37,267	11,147	16,486
Land	3,698	3,698	3,698
Total property and equipment	1,495,051	1,410,731	1,401,573
Accumulated depreciation and amortization	(1,141,037)	(1,064,895)	(1,043,463)
Property and equipment, net	\$ 354,014	\$ 345,836	\$ 358,110

Depreciation expense was \$27.0 million and \$78.9 million in the thirteen and thirty-nine weeks ended October 29, 2022, respectively, and \$26.5 million and \$77.8 million in the thirteen and thirty-nine weeks ended October 30, 2021, respectively. These costs are included in selling, general and administrative expenses on the consolidated statements of income.

8. Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities consist of the following (amounts in thousands) as of:

	October 29, 2022	January 29, 2022	October 30, 2021
Accrued interest	\$ 13,340	\$ 6,583	\$ 12,676
Accrued personnel costs	57,979	115,073	91,433
Accrued professional fees	1,762	4,534	3,632
Accrued sales and use tax	15,025	13,054	23,111
Accrued self-insurance	15,677	15,824	13,784
Deferred revenue - gift cards and other	69,727	88,713	61,145
Income taxes payable	5,848	9,602	21,900
Property taxes	46,806	17,747	45,056
Sales return allowance	6,100	6,200	5,800
Other	26,915	25,877	25,951
Accrued expenses and other current liabilities	\$ 259,179	\$ 303,207	\$ 304,488

9. Share-Based Compensation

On September 29, 2020, the ASO, Inc. Board of Directors adopted the 2020 Omnibus Incentive Plan (the "2020 Omnibus Incentive Plan"), which became effective on October 1, 2020. The 2020 Omnibus Incentive plan provides for the grant of certain equity incentive awards (each, an "Award"), such as options to purchase ASO, Inc. common stock (each, a "Stock Option") and restricted units that may settle in ASO, Inc. common stock (each, a "Restricted Stock Unit") to our directors, executives and eligible employees of the Company. Awards granted under the 2020 Omnibus Incentive Plan consist of Stock Options that vest upon the satisfaction of time-based requirements (each, a "Service Option"), Restricted Stock Units that vest upon the satisfaction of time-based requirements (each, a "Service Restricted Stock Unit") and Restricted Stock Units that vest upon the satisfaction of time and performance and/or market based requirements (each, a "Performance Restricted Stock Unit"). The plan reserved a total of 5,150,000 shares of common stock for issuance. As of October 29, 2022, there were 2,410,059 shares that were authorized and available for future issuance under the 2020 Omnibus Incentive Plan.

On September 29, 2020, the ASO, Inc. Board of Directors adopted the 2020 Employee Stock Purchase Plan (the "ESPP"), which became effective on October 1, 2020. We have reserved a total of 2,000,000 shares under the ESPP and as of October 29, 2022, there were 1,792,945 shares authorized and available for future issuance under the ESPP.

Equity compensation expense was \$5.8 million and \$15.5 million for the thirteen and thirty-nine weeks ended October 29, 2022, respectively. Equity compensation expense was \$2.9 million and \$36.1 million for the thirteen and thirty-nine weeks ended October 30, 2021, respectively, which includes approximately \$24.9 million in non-cash expenses related to the 2021 Vesting Event which occurred during the 2021 second quarter. These costs are included in selling, general and administrative expenses in the consolidated statements of income.

Distribution

On August 28, 2020, New Academy Holding Company, LLC, the parent holding company for our operations prior to our initial public offering, paid a \$257.0 million distribution to its members of record as of August 25, 2020. Cash payments ("Share-Based Award Payments") of \$32.2 million for unvested Awards were paid upon vesting of such Awards, which was completed and paid in-full as of July 31, 2021.

Service Option Fair Value Assumptions

The fair value for Service Options granted was estimated using a Black-Scholes option-pricing model. The expected lives of the Service Options granted were based on the "SEC simplified" method. Expected price volatility was determined based on the implied volatilities of comparable companies over a historical period that matches the expected life of the Award. The risk-free interest rate was based on the expected U.S. Treasury rate over the expected life. The dividend yield was calculated based on the most recent annualized quarterly dividend and the valuation date closing stock price. The assumptions used to calculate the fair value of Awards granted are evaluated and modified, as necessary, to reflect current market conditions and experience.

The following table presents the assumptions and grant date fair values for Service Options granted in the thirty-nine weeks ended October 29, 2022:

Expected life in years	6.2
Expected volatility	42.9% to 44.8%
Weighted-average volatility	43.0 %
Risk-free interest rate	2.4% to 4.1%
Dividend yield	0.8 %

The following table presents the Award grants during the thirty-nine weeks ended October 29, 2022:

	Service Options	Service Restricted Stock Units	Performance Restricted Stock Units
Number of shares	815,867	192,033	169,846
Weighted average grant date fair value per Award	\$ 16.34	\$ 38.94	\$ 39.19
Weighted average exercise price per Award	\$ 39.19	N/A	N/A

The following table presents the unrecognized compensation cost as of October 29, 2022:

	Service Options	Service Restricted Stock Units	Performance Restricted Stock Units
Remaining expense	\$ 16,238,904	\$ 12,651,300	\$ 5,172,155
Weighted average life remaining in years	2.6	2.5	2.4

10. Earnings per Common Share

Basic earnings per common share is calculated based on net income divided by the basic weighted average common shares outstanding during the period, and diluted earnings per common share is calculated based on net income divided by the diluted weighted average common shares outstanding. Diluted weighted average common shares outstanding is based on the basic weighted average common shares outstanding plus any potential dilutive effect of stock-based awards outstanding during the period using the treasury stock method, which assumes the potential proceeds received from the dilutive stock options are used to purchase treasury stock. Anti-dilutive stock-based awards do not include awards which have a performance or liquidity event target which has yet to be achieved.

Basic and diluted weighted average common shares outstanding and basic and diluted earnings per common share are calculated as follows (amounts in thousands except per share amounts):

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	October 29, 2022	October 30, 2021	October 29, 2022	October 30, 2021
Net income	\$ 131,741	\$ 161,305	\$ 470,348	\$ 529,611
Weighted average common shares outstanding - basic	79,085	91,140	82,901	91,951
Dilutive effect of Service Restricted Units and Service Restricted Stock Units	144	72	123	14
Dilutive effect of Performance Restricted Stock Units and Liquidity Event Restricted Units	105	109	96	401
Dilutive effect of Service Options	1,840	2,207	1,581	2,381
Dilutive effect of Performance Unit Options and Performance Stock Options	205	316	209	757
Dilutive effect of ESPP Shares	—	—	—	—
Weighted average common shares outstanding - diluted	81,379	93,844	84,910	95,504
Earnings per common share - basic	\$ 1.67	\$ 1.77	\$ 5.67	\$ 5.76
Earnings per common share - diluted	\$ 1.62	\$ 1.72	\$ 5.54	\$ 5.55
Anti-dilutive stock-based awards excluded from diluted calculation	7	4	59	60

11. Related Party Transactions

On January 27, 2021, May 5, 2021 and September 14, 2021, in connection with the Secondary Offering, May 2021 Secondary Offering and September 2021 Secondary Offering, respectively, the Company entered into three separate underwriting agreements with affiliates of KKR (as selling stockholders), the several other selling stockholders named therein, and the several underwriters named therein, including KCM (as underwriter). The Secondary Offering, May 2021 Secondary Offering and September 2021 Secondary Offering were completed on February 1, 2021, May 10, 2021, and September 17, 2021, respectively. The Company did not pay KCM any fees in connection with these secondary offerings.

In connection with the May 2021 Secondary Offering, we repurchased from the underwriters 3,229,974 shares of ASO, Inc. common stock at \$30.96 per share for approximately \$100.0 million. In connection with the September 2021 Secondary Offering, we repurchased from the underwriters 4,500,000 shares of ASO, Inc. common stock at \$43.52 for approximately \$195.8 million. The shares repurchased in both the May 2021 Secondary Offering and the September 2021 Secondary Offering were immediately retired by the Company (see Note 1 and Note 2).

12. Commitments and Contingencies

Freight, Technology Related and Other Commitments

As of October 29, 2022, we have obligations under freight, technology-related, construction and other contractual commitments in the amount of \$92.0 million. Of such commitments, approximately \$54.6 million is payable in the next 12 months.

Financial Guarantees

During the normal course of business, we enter into contracts that contain a variety of representations and warranties and provide general indemnifications. The maximum exposure under these arrangements is unknown as this would involve future claims that may be made against us that have not yet occurred. However, based on experience, we believe the risk of loss to be remote.

Legal Proceedings

We are a defendant or co-defendant in lawsuits, claims and demands brought by various parties relating to matters normally incident to our business. No individual case, or group of cases presenting substantially similar issues of law or fact, is expected to have a material effect on the manner in which we conduct our business or on our results of operations, financial position or liquidity. The majority of these cases are alleging product, premises, employment and/or commercial liability. Reserves have been established that we believe to be adequate based on our current evaluations and experience in these types of claim situations. However, the ultimate outcome of these cases cannot be determined at this time. We believe, taking into consideration our indemnities, insurance and reserves, the ultimate resolution of these matters will not have a material impact on our financial position, results of operations or cash flows.

Sponsorship Agreement and Intellectual Property Commitments

We periodically enter into sponsorship agreements generally with professional sports teams, associations, events, networks, or individual professional players and collegiate athletic programs in exchange for marketing and advertising promotions. We also enter into intellectual property agreements whereby the Company receives the right to use third-party owned trademarks typically in exchange for royalties on sales. These agreements typically contain a one to three-year term and contractual payment amounts required to be paid by the Company. As of October 29, 2022, we have \$14.9 million in related commitments through 2027, of which \$4.9 million is payable in the next 12 months.

13. Subsequent Events

Our management evaluated events or transactions that occurred after October 29, 2022 through December 7, 2022, the issuance date of the consolidated financial statements, and identified the following matter to report:

On December 6, 2022, the Company's Board of Directors declared a quarterly cash dividend with respect to the fiscal quarter ended October 29, 2022, of \$0.075 per share of the Company's common stock, payable on January 13, 2023, to stockholders of record as of the close of business on December 20, 2022.

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

Cautionary Statement Regarding Forward-looking Statements

This Quarterly Report on Form 10-Q (this "Quarterly Report") includes "forward-looking" statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), which are subject to the "safe harbor" created by those sections. Forward-looking statements include all statements that are not historical facts, including statements reflecting our current views with respect to, among other things, our operations and financial performance. These forward-looking statements are included throughout this Quarterly Report, including this "Management's Discussion and Analysis of Financial Condition and Results of Operations" and in the section entitled "Risk Factors," and relate to matters such as our industry, business strategy, goals and expectations concerning our market position, future operations, margins, profitability, capital expenditures, liquidity and capital resources and other financial and operating information. We have used the words "anticipate," "assume," "believe," "continue," "could," "estimate," "expect," "intend," "may," "plan," "potential," "predict," "project," "future," "will," "seek," "foreseeable," the negative version of these words or similar terms and phrases to identify forward-looking statements in this Quarterly Report.

The forward-looking statements contained in this Quarterly Report are based on management's current expectations and are not guarantees of future performance. The forward-looking statements are subject to various risks, uncertainties, assumptions or changes in circumstances that are difficult to predict or quantify. Our expectations, beliefs, and projections are expressed in good faith and we believe there is a reasonable basis for them. However, there can be no assurance that management's expectations, beliefs and projections will result or be achieved. Actual results may differ materially from these expectations due to changes in global, regional or local economic, business, competitive, market, regulatory and other factors, many of which are beyond our control. We believe that these factors include but are not limited to those described under "Risk Factors" in the Company's Annual Report on Form 10-K for the fiscal year ended January 29, 2022 (the "Annual Report"), as filed with the Securities and Exchange Commission (the "SEC") on March 29, 2022, as such risk factors have been updated from time to time in our periodic filings with the SEC, and are accessible on the SEC's website at www.sec.gov.

Any forward-looking statement made by us in this Quarterly Report speaks only as of the date of this Quarterly Report and are expressly qualified in their entirety by the cautionary statements included in this Quarterly Report. Factors or events that could cause our actual results to differ may emerge from time to time, and it is not possible for us to predict all of them. We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements and you should not place undue reliance on our forward-looking statements. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures, investments or other strategic transactions we may make. We undertake no obligation to publicly update or review any forward-looking statement, whether as a result of new information, future developments or otherwise, except as may be required by any applicable securities laws.

The following is a summary of the principal factors that make an investment in our securities speculative or risky (all of which are more fully described in the section entitled "Risk Factors" in the Annual Report):

Risks Related to Our Business and Industry

- overall decline in the health of the economy and consumer discretionary spending;
- our ability to predict or effectively react to changes in consumer tastes and preferences, to acquire and sell brand name merchandise at competitive prices and/or to manage our inventory balances;
- the impact of COVID-19 on our business and the communities we serve;
- intense competition in the sporting goods and outdoor recreation retail industries;
- our ability to safeguard sensitive or confidential data relating to us and our customers, team members and vendors;
- risks associated with our reliance on internationally manufactured merchandise;
- our ability to operate, update or implement our information technology systems;
- risks associated with disruptions in our supply chain and losses of merchandise purchasing incentives;
- harm to our reputation;
- any failure of our third-party vendors of outsourced business services and solutions;
- our ability to successfully continue our store growth plans or manage our growth effectively, or any failure of our new stores to generate sales and/or achieve profitability;

- risks associated with our e-commerce business;
- risks related to our owned brand merchandise;
- any disruption in the operation of our distribution centers;
- quarterly and seasonal fluctuations in our operating results;
- the occurrence of severe weather events, catastrophic health events, natural or man-made disasters, social and political conditions or civil unrest;
- our dependence on our ability to meet our labor needs;
- our ability to retain key personnel;
- the geographic concentration of our stores;
- fluctuations in merchandise (including raw material) costs and availability;
- payment-related risks;
- our ability to successfully pursue strategic acquisitions and integrate acquired businesses;
- the effectiveness of our marketing and advertising programs;

Legal and Regulatory Risks

- our ability to comply with laws and regulations affecting our business, including those relating to the sale, manufacture and import of consumer products;
- claims, demands and lawsuits to which we are, and may in the future, be subject and the risk that our insurance or indemnities coverage may not be sufficient;
- our ability to protect our intellectual property and avoid the infringement of third-party intellectual property rights;
- new and increased costs, risks, and additional regulations and requirements as a result of becoming a public company;
- our ability to have effective internal controls;

Risks Related to Our Indebtedness

- our level of indebtedness and related debt service payments and our ability to generate sufficient cash flow to satisfy all of our obligations under our indebtedness;
- our ability to incur substantially more debt;
- restrictions on our current and future operations imposed by the terms of our indebtedness;
- our variable rate indebtedness subjects us to interest rate risk;
- our ability to borrow under the ABL Facility (as defined below);
- our level of indebtedness may hinder our ability to negotiate favorable terms with our vendors;

Risks Related to the Ownership of Our Common Stock

- you may be diluted by any future issuances of shares by us;
- our stock price is volatile and may decline;
- our ability to raise capital in the future may be limited;
- lack of or negative coverage by securities analysts;
- our ability to pay dividends on our common stock;
- anti-takeover provisions in our organizational documents could delay or prevent a change of control;
- our board of directors is authorized to issue and designate shares of preferred stock without stockholder approval; and
- our exclusive forum provision.

These factors should not be construed as exhaustive and should be read in conjunction with the other cautionary statements that are included in this Quarterly Report. Should one or more of these risks or uncertainties materialize, or should any of our assumptions prove incorrect, our actual results may vary in material respects from those projected in these forward-looking statements.

The following discussion and analysis of our financial condition and results of operations should be read together with our unaudited financial statements and related notes included elsewhere in this Quarterly Report for the thirteen and thirty-nine weeks ended October 29, 2022 and our audited financial statements for the fiscal year ended January 29, 2022 and the section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations" included in the Annual Report.

All references to "Academy," "Academy Sports + Outdoors," "ASO, Inc.," "we," "us," "our" or the "Company" in this Quarterly Report refer to Academy Sports and Outdoors, Inc., a Delaware corporation and the current parent holding company of our operations, and its consolidated subsidiaries. We conduct our operations through our subsidiaries, including our indirect subsidiary, Academy, Ltd., an operating company which is doing business as "Academy Sports + Outdoors."

We operate on a retail fiscal calendar pursuant to which our fiscal year consists of 52 or 53 weeks, ending on the Saturday closest to January 31, (which such Saturday may occur on a date following January 31) each year. References to any year, quarter, or month mean our fiscal year, fiscal quarter, and fiscal month, respectively, unless the context requires otherwise. References to the "current quarter," "2022 third quarter," or similar reference refers to the thirteen week period ended October 29, 2022, and any reference to the "prior year quarter," "2021 third quarter" or similar reference refers to the thirteen week period ended October 30, 2021. Any reference in this Quarterly Report to "current year-to-date," "year-to-date 2022" or similar reference represents the thirty-nine week period ended October 29, 2022, and any reference in this Quarterly Report to the "prior year-to-date," "year-to-date 2021" or similar reference refers to the thirty-nine week period ended October 30, 2021. Unless otherwise specified, all comparisons regarding the current period of 2022 are made to the corresponding period of 2021.

All statements in this Quarterly Report concerning our current and planned operations are modified by reference to our discussion of recent developments related to the COVID-19 pandemic, and our ability to carry out our current and planned operations are dependent on further developments associated with the COVID-19 pandemic.

Overview

We are one of the leading full-line sporting goods and outdoor recreation retailers in the United States. Our mission is to provide “Fun for All”, and we fulfill this mission with a localized merchandising strategy and value proposition that deeply connect with a broad range of consumers. Our product assortment focuses on key categories of outdoors, apparel, sports & recreation and footwear (representing 31%, 26%, 22% and 21% of our year-to-date 2022 net sales, respectively) through both leading national brands and a portfolio of owned brands and private label brands, which go well beyond traditional sporting goods and apparel offerings.

We sell a range of sporting and outdoor recreation products, including sporting equipment, apparel, footwear, camping gear, patio furniture, outdoor cooking equipment, and hunting and fishing gear, among many others. Our strong merchandise assortment is anchored by our broad offering of year-round items, such as fitness equipment and apparel, work and casual wear, folding chairs, wagons and tents, training and running shoes, and coolers. We also carry a deep selection of seasonal items, such as sports equipment and apparel, seasonal wear and accessories, hunting and fishing equipment and apparel, patio furniture, trampolines, play sets, bicycles, and severe weather supplies. We provide locally relevant offerings, such as crawfish boilers in Louisiana, licensed apparel for area sports fans, baits and lures for area fishing spots, and beach towels in coastal markets.

As of October 29, 2022, we operated 265 stores that range in size from approximately 40,000 to 130,000 gross square feet, with an average size of approximately 70,000 gross square feet, throughout 17 contiguous states located primarily in the southern United States. Our stores are supported by approximately 22,000 team members, three distribution centers, and our e-commerce platform, which includes our website at www.academy.com and our mobile app. Additionally, we are deepening our customer relationships, further integrating our e-commerce platform with our stores and driving operating efficiencies by developing our omnichannel capabilities, such as our mobile app, optimizing the website experience and upgrading our fulfillment capabilities.

The following table summarizes store activity for the periods indicated:

	Thirty-Nine Weeks Ended	
	October 29, 2022	October 30, 2021
Beginning stores	259	259
Q1 new stores	1	—
Q2 new stores	1	—
Q3 new stores	4	—
Closed	—	—
Ending stores	<u>265</u>	<u>259</u>
Relocated stores	—	1

How We Assess the Performance of Our Business and Recent Trends

Our management considers a number of financial and operating metrics, including the following key metrics, to evaluate our business, measure our performance, identify trends affecting our business, determine the allocation of resources, make decisions regarding corporate strategies and evaluate projections. These metrics include operational measures and non-GAAP metrics supplemental to our GAAP results.

Comparable Sales. We define comparable sales as the percentage of period-over-period net sales increase or decrease, in the aggregate, for stores open after thirteen full fiscal months, as well as for all e-commerce sales. There may be variations in the way in which some of our competitors and other retailers calculate comparable sales. As a result, data in this Quarterly Report regarding our comparable sales may not be comparable to similar data made available by other retailers. Stores which have been significantly remodeled or relocated are removed from this calculation until the new store has been in operation for substantially all of the periods being compared. Stores which have been closed for an extended period of time due to circumstances beyond our control are also removed from the calculation. Any sales made through our website or mobile app are allocated to e-commerce sales for the purpose of measuring comparable sales, regardless of how those sales are fulfilled, whether shipped to home or picked up in-store or curbside through our buy-online-pickup-in-store program ("BOPIS"). For example, all BOPIS transactions, which are originated by our website, are allocated to e-commerce sales for the purpose of comparable sales, despite the fact that our customers pick-up these purchases from a specific store.

Increases or decreases in e-commerce between periods being compared directly impact the comparable sales results. Various factors affect comparable sales, including consumer preferences, buying trends and overall economic trends; our ability to identify and respond effectively to customer preferences and local and regional trends; our ability to provide an assortment of high quality/value oriented product offerings that generate new and repeat visits to our stores and our website; the customer experience and unique services we provide in our stores; our ability to execute our omnichannel strategy, including the growth of our e-commerce business; changes in product mix and pricing, including promotional activities; the number of items purchased per visit and average order value; a shift in the timing of a holiday between comparable periods; and the number of stores that have been in operation for more than 13 months.

We have seen a significant comparable store sales increase in recent full year results from (0.7)% in 2019 to 16.1% and 18.9% in 2020 and 2021, respectively. However, we experienced a decrease in comparable sales of (6.9)% for the year-to-date 2022 as compared to an increase in the year-to-date 2021 of 21.2%. The high year-to-date 2021 comparable sales were impacted by changing economic conditions including U.S. government stimulus packages, which had a positive impact on sales in the year-to-date 2021 and a negative impact to comparable sales for the year-to-date 2022. See the discussion on Net Sales below for some contributing factors to these changes.

Adjusted EBITDA, Adjusted EBIT, Adjusted Net Income, Adjusted Earnings per Share and Adjusted Free Cash Flow. Management uses Adjusted EBITDA, Adjusted EBIT, Adjusted Net Income, Adjusted Earnings per Share and Adjusted Free Cash Flow to supplement GAAP measures of performance in the evaluation of the effectiveness of our business strategies, to make budgeting decisions, and to compare our performance against that of other peer companies using similar measures. Management also uses Adjusted EBIT as a performance target to establish and award discretionary annual incentive compensation. See "Non-GAAP Measures" below.

Components of Our Results of Operations. Our profitability is primarily influenced by fluctuations in net sales, gross margin and our ability to leverage selling, general and administrative expenses.

Net Sales. Net sales are derived from in-store and e-commerce merchandise sales, net of sales tax and an allowance for merchandise returns.

Net sales fluctuations can be driven by new store openings, comparable sales increases or decreases including e-commerce sales, our ability to adjust inventory based on sales fluctuations, our management of vendor relations and meeting customer demand, allowances and logistics, seasonality, unseasonal or extreme weather, changes in consumer shopping preferences, consumer discretionary spending, and market and sales promotions.

We must maintain sufficient inventory levels of merchandise that our customers desire to successfully operate our business. A shortage of popular merchandise could reduce our net sales. Conversely, we also must seek to avoid accumulating excess inventory to avoid markdowns and clearance which negatively impact sales and gross margin. We have deployed several new tools over recent years to improve inventory handling and vendor management, including third-party programs to analyze our inventory stock and execute a disciplined markdown strategy throughout the year at every location. This implementation, along with other factors, has allowed us to improve our inventory management in stores over the past few years. We have coupled these tools with the data we have been able to collect from our Academy Credit Card program and targeted customer surveys, so that we can better estimate future inventory requirements. It is imperative that we continue to find innovative ways to strengthen our inventory management if we are to remain competitive and expand our margins on a go-forward basis.

We anticipate that the increased popularity of isolated recreation, outdoor and leisure activity products brought on by customer demand during the COVID-19 pandemic will continue and will result in a long-term increase to our customer base. Additionally, we have benefited from recent shifting of customer spend towards in-home health and wellness and dedicating more time to memory-making experiences. Our broad assortment gives us an advantage over mass general merchants who typically do not carry the leading national brands sold at Academy. We have also continued to add owned brand products to our assortment of products, which we generally price lower than the national brand products of comparable quality that we also offer. A shift in our sales mix in which we sell more units of our owned brand products and fewer units of the national brand products would generally have a positive impact on our gross margin but an adverse impact on our total net sales. Furthermore, in recent years we have experienced higher sales related to the outdoors and sports and recreation merchandise divisions, as our customers turned to us for isolated recreation and outdoor and leisure activities during the pandemic. As our business begins to normalize, we are experiencing a shift in our sales mix from the outdoors and sports and recreation merchandise divisions to the footwear and apparel merchandise divisions, which would generally have a positive impact on our gross margin rate.

The expansion and enhancement of our omnichannel capabilities has resulted in increased sales in recent years and we expect that it will continue to be a driver of growth in our net sales and gross margin. We continue to invest in initiatives that will increase traffic to our e-commerce platform, which includes our website and mobile app, and drive increased online sales conversion. During the third quarter of 2022, we improved our omnichannel capabilities by implementing several innovative features to enhance the customer shopping experience ahead of the holiday season, including outfitting, express check-out and enabling biometric security measures. Our improved e-commerce platform supports our stores with digital marketing and our BOPIS and ship-to-store programs. Additionally, our e-commerce platform allows us to reach customers outside of our current store footprint and introduces new customers to the Academy brand. It also allows for us to connect further with our customers for marketing and product education. We believe it is important that we continue to grow our omnichannel capabilities, which, together with recent enhancements made to our website and omnichannel capabilities, contributed to the increase in e-commerce sales during 2021 and in the year-to-date 2022. During the year-to-date 2022, stores facilitated approximately 95% of our total sales, including ship-from-store, BOPIS and in-store retail sales. We expect to continue to invest in expanding and enhancing our omnichannel capabilities, including our mobile app, optimizing the web site experience and upgrading our fulfillment capabilities, which will continue to require significant investments by us.

We expect that new stores will be a key driver of growth in our net sales and gross margin in the future. Our results of operations have been and will continue to be materially affected by the timing and number of new store openings. We are continually assessing the number of locations available that could accommodate our preferred size of stores in markets we would consider, and subsequent to the end of the 2022 third quarter, we have completed three additional new store openings, which brings our total to nine new store openings in 2022. Additionally, we intend to open a significant number of new stores by the end of 2026. We expect most of our stores to achieve profitability within the first twelve months of opening. We believe our real estate strategy has positioned us well for further expansion.

Gross Margin. Gross margin is our net sales less cost of goods sold. Our cost of goods sold includes the direct cost of merchandise and costs related to procurement, warehousing and distribution. These costs consist primarily of payroll and benefits, distribution center occupancy costs and freight and are generally variable in nature relative to our sales volume.

Our gross margin depends on a number of factors, such as net sales increases or decreases, our promotional activities, product mix including owned brand merchandise sales, and our ability to control cost of goods sold, such as inventory and logistics cost management. Our gross margin is also impacted by variables including commodity costs, freight costs, shrinkage and inventory processing costs and e-commerce shipping costs. We track and measure gross margin as a percentage of net sales in order to evaluate our performance against profitability targets.

For the past several quarters, we have seen increased competition across the industry for resources throughout the supply chain, which has resulted in disruptions to the flow of products from our vendors, labor shortages, reduced shipping container availability, and longer delays at the port. As a result, we have begun to experience a period of decreased or delayed supply and high inflationary levels. These factors have negatively impacted transportation and inventory costs, as we continue to pay higher prices to maintain our inventory levels. Under the last in, first out method ("LIFO"), our cost of sales reflects the costs of the most recently purchased inventories. A prolonged continuation of high inflationary levels of inventory and related transportation costs could result in LIFO charges that have a negative impact on our gross margin. To help mitigate these constraints and potential disruptions to our supply chain, we continue to work with our partners by ordering merchandise earlier, securing transportation capacity, and utilizing different ports of entry.

Selling, General and Administrative Expenses. Selling, general and administrative ("SG&A") expenses include store and corporate administrative payroll and payroll benefits, store and corporate headquarters occupancy costs, advertising, credit card processing, information technology, pre-opening costs and other store and administrative expenses. These expenses are both variable and fixed in nature. As sales increase at a higher rate than our SG&A, this results in sales leverage and a higher sales flow through to net income, which we have experienced in recent years with SG&A expenses as a percentage of sales declining from 25.9% to 23.1% to 21.3% for the full years of 2019, 2020 and 2021, respectively. SG&A expenses as a percentage of sales increased from 21.3% in the prior year-to-date compared to 21.5% in the current year-to-date. We track and measure operating expenses as a percentage of net sales in order to evaluate our performance against profitability targets. Management of SG&A expenses depends on our ability to balance a control of operating costs, such as store, distribution center, and corporate headcount, information technology infrastructure and marketing and advertising expenses, with efficiently and effectively servicing our customers.

Interest Expense. Interest expense includes regular interest payable related to our Term Loan, Notes and ABL Facility (see Note 4 to the accompanying financial statements) and the amortization of our deferred loan costs and original issuance discounts associated with the acquisition of the debt. In November of 2020, we refinanced our debt resulting in an approximate \$630 million reduction in our overall debt outstanding. Subsequently, in May of 2021 we entered into an amendment to our Term Loan which reduced the applicable margin on our LIBOR rate by 1.25% and paid down \$99 million. These actions have resulted in interest expense reductions in the full year 2021 and in the thirty-nine weeks ended October 29, 2022. However, during 2022 the Federal Reserve increased the federal funds benchmark rate, which resulted in increased interest rates on our Term Loan and led to higher interest expense in the 2022 third quarter relative to the prior year quarter.

Income Tax Expense. ASO, Inc. is treated as a U.S. corporation for U.S. federal, state, and local income tax purposes and accordingly, a provision for income taxes has been recorded for the anticipated tax consequences of our reported results of operations for federal, state and local income taxes. Recent fluctuations in income tax expense have been primarily as a result of changes in income before income taxes.

Impact of COVID-19 on Our Business

The COVID-19 pandemic continues to affect our business and suppliers. While restrictions aimed at mitigating the spread of the virus have largely been lifted in the U.S., governmental authority safety recommendations and requirements such as stay at home orders and business closures continue to affect our international supply chain, resulting in decreased transportation, goods and labor availability. Supply chain disruptions due to the COVID-19 pandemic and other causes have also contributed to and increased inflationary levels and recessionary fears. Additionally, the U.S. government released stimulus packages throughout 2020 and 2021 as a result of the economic situation caused by the pandemic, which had a positive impact on sales during those periods.

The extent to which our operations and business trends will continue to be impacted by, and any additional unforeseen costs or other effects will result from, the pandemic will depend largely on future developments, including whether there are additional periods of increases or spikes in the number or severity of COVID-19 cases (including as a result of a new variant) within the markets in which we operate and from which we and our suppliers source products and materials and the related impact on consumer confidence and spending, labor supply or product supply, all of which are highly uncertain. We continue to monitor the evolving situation. See the section of the Annual Report entitled "Risk Factors—Risks Related to Our Business—The impact of COVID-19 may adversely affect our business and financial results."

Results of Operations

Thirteen Weeks Ended October 29, 2022 Compared to Thirteen Weeks Ended October 30, 2021

The following table sets forth amounts and information derived from our unaudited statements of income for the periods indicated as follows (dollar amounts in thousands):

	Thirteen Weeks Ended				Change	
	October 29, 2022		October 30, 2021		Dollars	Percent
Net sales	\$ 1,493,925	100.0 %	\$ 1,592,795	100.0 %	\$ (98,870)	(6.2)%
Cost of goods sold	971,454	65.0 %	1,031,957	64.8 %	(60,503)	(5.9)%
Gross margin	522,471	35.0 %	560,838	35.2 %	(38,367)	(6.8)%
Selling, general and administrative expenses	342,949	23.0 %	344,725	21.6 %	(1,776)	(0.5)%
Operating income	179,522	12.0 %	216,113	13.6 %	(36,591)	(16.9)%
Interest expense, net	12,163	0.8 %	11,424	0.7 %	739	6.5 %
Other (income), net	(2,538)	(0.2)%	(614)	(0.0)%	(1,924)	NM
Income before income taxes	169,897	11.4 %	205,303	12.9 %	(35,406)	(17.2)%
Income tax expense	38,156	2.6 %	43,998	2.8 %	(5,842)	(13.3)%
Net income	\$ 131,741	8.8 %	\$ 161,305	10.1 %	\$ (29,564)	(18.3)%

*Percentages in table may not sum properly due to rounding.

** NM - Not meaningful.

Net Sales. Net sales decreased \$98.9 million, or 6.2%, in the 2022 third quarter over the prior year third quarter as a result of decreased comparable sales of 7.2%, which were partially offset by additional net sales generated by new locations. As of the end of the 2022 third quarter, we operated six additional stores as compared to the end of the 2021 third quarter.

The decrease of 7.2% in comparable sales was driven by lower sales as a result of fewer transactions. The majority of the decrease in comparable sales was due to lower sales in the outdoors merchandise division caused by a decrease in the shooting sports category. To a lesser extent, within the outdoors merchandise division, fishing also contributed to the decrease in sales. The sports and recreation merchandise division sales also declined, which was generally offset by an increase in the footwear merchandise division. The sports and recreation merchandise division sales decrease was primarily driven by recreation and fitness as these divisions were particularly impacted by increased prior year isolated recreation demands brought on by the COVID-19 pandemic, especially in categories such as bikes, outdoor games and fitness equipment. These decreases in the current year were partially offset by increased sales in team sports, including football, baseball and golf. The footwear merchandise division increase was primarily due to increased sales in the casual and seasonal footwear and youth footwear categories. The apparel merchandise division was relatively flat compared to the prior year, experiencing only a slight decline.

E-commerce net sales increased \$13.4 million, or 10.5%, in the 2022 third quarter compared to the prior year third quarter and represented 9.5% of merchandise sales for the 2022 third quarter compared to 8.0% for the prior year third quarter.

Gross Margin. Gross margin decreased \$38.4 million, or 6.8%, to \$522.5 million in the 2022 third quarter from \$560.8 million in the 2021 third quarter. As a percentage of net sales, gross margin decreased 0.2% from 35.2% in the 2021 third quarter to 35.0% in the 2022 third quarter. The decrease of 20 basis points in gross margin is primarily attributable to:

- 36 basis points of unfavorability on increased inventory shrinkage;
- 28 basis points of unfavorability in e-commerce shipping costs due to increased e-commerce sales during the 2022 third quarter;
- 19 basis points of unfavorability in import freight and duties as a result of increased costs of ocean freight during the 2022 third quarter; partially offset by
- 60 basis points of favorability in merchandise margins driven by favorable merchandise mix and higher average unit retail.

Selling, General and Administrative Expenses. SG&A expenses decreased \$1.8 million to \$342.9 million in the 2022 third quarter as compared to \$344.7 million in the 2021 third quarter primarily as a result of higher prior year performance-based compensation expense. As a percentage of net sales, SG&A expenses increased 1.4% to 23.0% in the 2022 third quarter compared to 21.6% in the 2021 third quarter. The increase of 140 basis points in SG&A is primarily attributable to a deleverage of fixed costs from decreased sales.

Interest Expense. Interest expense increased \$0.7 million, or 6.5%, in the 2022 third quarter when compared with the 2021 third quarter, resulting from increased interest rates in recent months on our Term Loan.

Other (Income), net. Other (income), net, increased \$1.9 million in the 2022 third quarter when compared with the 2021 third quarter, primarily driven by favorable interest rate movement on money market investments in the current year.

Income Tax Expense. Income tax expense decreased \$5.8 million to \$38.2 million for the 2022 third quarter as compared to \$44.0 million in the 2021 third quarter, resulting primarily from a decrease in income before income taxes in the current year, partially offset by a higher effective tax rate.

Thirty-Nine Weeks Ended October 29, 2022 Compared to Thirty-Nine Weeks Ended October 30, 2021

The following table sets forth amounts and information derived from our unaudited statements of income for the periods indicated as follows (dollar amounts in thousands):

	Thirty-Nine Weeks Ended				Change	
	October 29, 2022		October 30, 2021		Dollars	Percent
Net sales	\$ 4,648,570	100.0 %	\$ 4,964,658	100.0 %	\$ (316,088)	(6.4)%
Cost of goods sold	3,008,612	64.7 %	3,197,623	64.4 %	(189,011)	(5.9)%
Gross margin	1,639,958	35.3 %	1,767,035	35.6 %	(127,077)	(7.2)%
Selling, general and administrative expenses	998,209	21.5 %	1,057,290	21.3 %	(59,081)	(5.6)%
Operating income	641,749	13.8 %	709,745	14.3 %	(67,996)	(9.6)%
Interest expense, net	34,240	0.7 %	38,130	0.8 %	(3,890)	(10.2)%
Loss on early retirement of debt	—	— %	2,239	0.0 %	(2,239)	(100.0)%
Other (income), net	(4,676)	(0.1)%	(1,746)	(0.0)%	(2,930)	167.8 %
Income before income taxes	612,185	13.2 %	671,122	13.5 %	(58,937)	(8.8)%
Income tax expense	141,837	3.1 %	141,511	2.9 %	326	0.2 %
Net income	\$ 470,348	10.1 %	\$ 529,611	10.7 %	\$ (59,263)	(11.2)%

*Percentages in table may not sum properly due to rounding.

Net Sales. Net sales decreased \$316.1 million, or 6.4%, for the year-to-date 2022 compared to the year-to-date 2021 as a result of decreased comparable sales of 6.9%, which were partially offset by increased sales from the addition of six new stores during the period.

The decrease of 6.9% in comparable sales was driven by lower sales across all merchandise divisions as a result of fewer transactions partially offset by an increase in average ticket. The higher comparable sales in the prior year were partially due to stimulus payments and child tax credits issued by the U.S. government during the year-to-date 2021. The outdoors merchandise division had declines in shooting sports and fishing, partially offset by an increase in the camping category. The sports and recreation division sales were lower, primarily driven by recreation and fitness as these divisions were particularly impacted by increased prior year isolated recreation demands brought on by the COVID-19 pandemic, especially in categories such as fitness equipment, bikes, outdoor games and outdoor cooking. These decreases in the current year were partially offset by increased sales in team sports, including football, basketball, golf and baseball. The apparel division experienced declining sales largely due to athletic apparel. The footwear division decreased due to lower sales in athletic footwear and work footwear, partially offset by increases in youth footwear.

E-commerce net sales increased \$53.5 million, or 13.6%, in the year-to-date 2022 compared to the year-to-date 2021 and represented 9.7% of merchandise sales in the current year-to-date compared to 8.0% in the prior year-to-date.

Gross Margin. Gross margin decreased \$127.1 million, or 7.2%, to \$1,640.0 million for the year-to-date 2022 from \$1,767.0 million for the year-to-date 2021. As a percentage of net sales, gross margin decreased 0.3% from 35.6% in the prior year-to-date to 35.3% in the current year-to-date. The decrease of 30 basis points in gross margin is primarily attributable to:

- 21 basis points of unfavorability in e-commerce shipping costs due to increased e-commerce sales during the 2022 year-to-date;
- 15 basis points of unfavorability on inventory valuation adjustments;
- 14 basis points of unfavorability in inventory overhead expenditures as a result of higher expense absorption rates from lower inventory turnover rates; partially offset by
- 40 basis points of favorability in merchandise margins driven by higher average unit retail.

Selling, General and Administrative Expenses. SG&A expenses decreased \$59.1 million, or 5.6%, to \$998.2 million for the year-to-date 2022 from \$1,057.3 million for the year-to-date 2021 primarily due to higher prior year compensation costs associated with the 2021 Vesting Event of \$24.9 million of equity compensation and \$15.5 million in related payroll tax expense. Additionally, higher performance-based compensation in 2021 contributed to the decrease. As a percentage of net sales, SG&A expenses increased 0.2% to 21.5% in the current year-to-date 2022 compared to 21.3% in the prior year-to-date primarily attributable to deleverage from decreased sales on decreased SG&A costs.

Interest Expense. Interest expense decreased \$3.9 million, or 10.2%, for the year-to-date 2022 when compared to the year-to-date 2021, resulting from a lower outstanding balance on our long-term debt as a result of the refinancing of our Term Loan which occurred in May 2021 which was partially offset by an increase in interest rates in recent months on our Term Loan.

Loss on Early Retirement of Debt. Loss on early retirement of debt decreased \$2.2 million for the year-to-date 2022 when compared to the year-to-date 2021. During the second quarter of 2021, we refinanced our Term Loan, which resulted in a loss on early retirement of debt of \$2.2 million.

Other (Income), net. Other income, net, increased \$2.9 million, or 167.8%, in the year-to-date 2022 when compared to the year-to-date 2021, primarily driven by favorable interest rate movement on money market investments in the current year.

Income Tax Expense. Income tax expense increased \$0.3 million to \$141.8 million for the year-to-date 2022 as compared to \$141.5 million for the year-to-date 2021, resulting primarily from an increased effective tax rate. ASO, Inc.'s effective tax rate for the year-to-date 2022 was 23.2% compared to 21.1% in the year-to-date 2021. The change in effective tax rate was primarily driven by a prior year benefit from tax deductions related to the vesting or exercise of several equity compensation awards.

Non-GAAP Measures

Adjusted EBITDA, Adjusted EBIT, Adjusted Net Income, Adjusted Earnings per Share and Adjusted Free Cash Flow, as shown below, have been presented in this Quarterly Report as supplemental measures of financial performance that are not required by, or presented in accordance with, accounting principles generally accepted in the United States of America ("GAAP"). We define Adjusted EBITDA as net income (loss) before interest expense, net, income tax expense and depreciation, amortization and impairment, further adjusted to exclude costs such as consulting fees, private equity sponsor monitoring fees, equity compensation expense, (gain) loss on early retirement of debt, net, severance and executive transition costs, costs related to the COVID-19 pandemic, pre-opening expenses, payroll taxes associated with the 2021 Vesting Event and other adjustments. We define Adjusted EBIT as net income (loss) before interest expense, net, and income tax expense, further adjusted to exclude costs such as consulting fees, private equity sponsor monitoring fees, equity compensation expense, (gain) loss on early retirement of debt, net, severance and executive transition costs, costs related to the COVID-19 pandemic, pre-opening expenses, payroll taxes associated with the 2021 Vesting Event and other adjustments. We describe these adjustments reconciling net income (loss) to Adjusted EBITDA and to Adjusted EBIT in the applicable table below. We define Adjusted Net Income as net income (loss), plus costs such as consulting fees, private equity sponsor monitoring fees, equity compensation expense, (gain) loss on early retirement of debt, net, severance and executive transition costs, costs related to the COVID-19 pandemic, pre-opening expenses, payroll taxes associated with the 2021 Vesting Event and other adjustments, less the tax effect of these adjustments. We define basic Adjusted Earnings per Share as Adjusted Net Income divided by the basic weighted average common shares outstanding during the period and diluted Adjusted Earnings per Share as Adjusted Net Income divided by the diluted weighted average common shares outstanding during the period. We describe these adjustments by reconciling net income (loss) to Adjusted Net Income and Adjusted Earnings per Share in the applicable table below. We describe Adjusted Free Cash Flow as net cash provided by (used in) operating activities less net cash used in investing activities. We describe this adjustment by reconciling net cash provided by operating activities to Adjusted Free Cash Flow in the applicable table below.

We believe Adjusted EBITDA, Adjusted EBIT, Adjusted Net Income, and Adjusted Earnings per Share assist investors and analysts in comparing our operating performance across reporting periods on a consistent basis by excluding items that we do not believe are indicative of our core operating performance. Management believes Adjusted EBITDA, Adjusted EBIT, Adjusted Net Income, and Adjusted Earnings per Share are useful to investors in highlighting trends in our operating performance, while other measures can differ significantly depending on long-term strategic decisions regarding capital structure, the tax jurisdictions in which we operate and capital investments. Management believes Adjusted Free Cash Flow is a useful measure of liquidity and an additional basis for assessing our ability to generate cash. Management uses Adjusted EBITDA, Adjusted EBIT, Adjusted Net Income, Adjusted Earnings per Share and Adjusted Free Cash Flow to supplement GAAP measures of performance in the evaluation of the effectiveness of our business strategies, to make budgeting decisions and to compare our performance against that of other peer companies using similar measures. Management also uses Adjusted EBIT as a performance target to establish and award discretionary annual incentive compensation.

Management supplements GAAP results with non-GAAP financial measures to provide a more complete understanding of the factors and trends affecting the business than GAAP results alone. Adjusted EBITDA, Adjusted EBIT, Adjusted Net Income, Adjusted Earnings per Share and Adjusted Free Cash Flow are not recognized terms under GAAP and should not be considered as an alternative to net income (loss) as a measure of financial performance or net cash provided by operating activities as a measure of liquidity, or any other performance measures derived in accordance with GAAP. Additionally, these measures are not intended to be a measure of free cash flow available for management's discretionary use as they do not consider certain cash requirements such as interest payments, tax payments and debt service requirements. Adjusted EBITDA, Adjusted EBIT, Adjusted Net Income, and Adjusted Earnings per Share should not be construed to imply that our future results will be unaffected by unusual or non-recurring items. In evaluating Adjusted EBITDA, Adjusted EBIT, Adjusted Net Income, Adjusted Earnings per Share and Adjusted Free Cash Flow, you should be aware that in the future we may incur expenses that are the same as or similar to some of the adjustments in this presentation. Our presentation of Adjusted EBITDA, Adjusted EBIT, Adjusted Net Income, Adjusted Earnings per Share and Adjusted Free Cash Flow should not be construed to imply that our future results will be unaffected by any such adjustments.

Our Adjusted EBITDA, Adjusted EBIT, Adjusted Net Income, Adjusted Earnings per Share and Adjusted Free Cash Flow measures have limitations as analytical tools, and you should not consider them in isolation, or as a substitute for analysis of our results as reported under GAAP. Some of these limitations are:

- Adjusted EBITDA, Adjusted EBIT, Adjusted Net Income, and Adjusted Earnings per Share do not reflect costs or cash outlays for capital expenditures or contractual commitments;
- Adjusted EBITDA, Adjusted EBIT, Adjusted Net Income, and Adjusted Earnings per Share do not reflect changes in, or cash requirements for, our working capital needs;
- Adjusted EBITDA and Adjusted EBIT do not reflect the interest expense, or the cash requirements necessary to service interest or principal payments, on our debt, and Adjusted Free Cash Flow does not reflect the cash requirements necessary to service principal payments on our debt;
- Adjusted EBITDA and Adjusted EBIT do not reflect period to period changes in taxes, income tax expense or the cash necessary to pay income taxes;
- Adjusted EBITDA, Adjusted EBIT, Adjusted Net Income, and Adjusted Earnings per Share do not reflect the impact of earnings or charges resulting from matters we consider not to be indicative of our ongoing operations;
- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will often have to be replaced in the future, and Adjusted EBITDA and Adjusted Free Cash Flow do not reflect cash requirements for such replacements; and
- other companies in our industry may calculate these measures differently than we do, limiting their usefulness as comparative measures.

Because of these limitations, Adjusted EBITDA, Adjusted EBIT, Adjusted Net Income, Adjusted Earnings per Share and Adjusted Free Cash Flow should not be considered as measures of discretionary cash available to invest in business growth or to reduce indebtedness. Management compensates for these limitations by primarily relying on our GAAP results in addition to using Adjusted EBITDA, Adjusted EBIT, Adjusted Net Income, Adjusted Earnings per Share and Adjusted Free Cash Flow supplementally.

Adjusted EBITDA and Adjusted EBIT

The following table provides reconciliations of net income to Adjusted EBITDA and to Adjusted EBIT for the periods presented (amounts in thousands):

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	October 29, 2022	October 30, 2021	October 29, 2022	October 30, 2021
Net income	\$ 131,741	\$ 161,305	\$ 470,348	\$ 529,611
Interest expense, net	12,163	11,424	34,240	38,130
Income tax expense	38,156	43,998	141,837	141,511
Depreciation and amortization	27,000	26,459	78,852	77,767
Equity compensation (a)	5,829	2,921	15,486	36,126
Loss on early retirement of debt	—	—	—	2,239
Pre-opening expenses (b)	2,115	—	4,941	—
Payroll taxes associated with the 2021 Vesting Event (c)	—	—	—	15,418
Other (d)	—	595	—	1,309
Adjusted EBITDA	\$ 217,004	\$ 246,702	\$ 745,704	\$ 842,111
Less: Depreciation and amortization	(27,000)	(26,459)	(78,852)	(77,767)
Adjusted EBIT	\$ 190,004	\$ 220,243	\$ 666,852	\$ 764,344

- (a) Represents non-cash charges related to equity-based compensation, which vary from period to period depending on certain factors such as the 2021 Vesting Event, timing and valuation of awards, achievement of performance targets and equity award forfeitures.
- (b) Represents pre-opening expenses, which are non-capital expenditures associated with opening new stores and incurred prior to the store opening and generating sales. These costs consist primarily of occupancy costs, marketing, payroll and recruiting costs. These costs are expensed as incurred.
- (c) Represents cash expenses related to taxes on equity-based compensation resulting from the 2021 Vesting Event.
- (d) Other adjustments include (representing deductions or additions to Adjusted EBITDA and Adjusted EBIT) amounts that management believes are not representative of our operating performance, such as costs associated with secondary offerings, installation costs for energy savings associated with our profitability initiatives and other costs associated with business optimization initiatives.

Adjusted Net Income and Adjusted Earnings per Share

The following table provides a reconciliation of net income to Adjusted Net Income and Adjusted Earnings per Share for the periods presented (amounts in thousands, except per share data):

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	October 29, 2022	October 30, 2021	October 29, 2022	October 30, 2021
Net income	\$ 131,741	\$ 161,305	\$ 470,348	\$ 529,611
Equity compensation (a)	5,829	2,921	15,486	36,126
Loss on early retirement of debt	—	—	—	2,239
Pre-opening expenses (b)	2,115	—	4,941	—
Payroll taxes associated with the 2021 Vesting Event (c)	—	—	—	15,418
Other (d)	—	595	—	1,309
Tax effects of these adjustments (e)	(1,808)	(686)	(4,735)	(13,487)
Adjusted Net Income	\$ 137,877	\$ 164,135	\$ 486,040	\$ 571,216
Adjusted Earnings per Share:				
Basic	\$ 1.74	\$ 1.80	\$ 5.86	\$ 6.21
Diluted	\$ 1.69	\$ 1.75	\$ 5.72	\$ 5.98
Weighted average common shares outstanding:				
Basic	79,085	91,140	82,901	91,951
Diluted	81,379	93,844	84,910	95,504

- (a) Represents non-cash charges related to equity-based compensation, which vary from period to period depending on certain factors such as the 2021 Vesting Event, timing and valuation of awards, achievement of performance targets and equity award forfeitures.
- (b) Represents pre-opening expenses, which are non-capital expenditures associated with opening new stores and incurred prior to the store opening and generating sales. These costs consist primarily of occupancy costs, marketing, payroll and recruiting costs. These costs are expensed as incurred.
- (c) Represents cash expenses related to taxes on equity-based compensation resulting from the 2021 Vesting Event.
- (d) Other adjustments include (representing deductions or additions to Adjusted Net Income) amounts that management believes are not representative of our operating performance, such as costs associated with secondary offerings, installation costs for energy savings associated with our profitability initiatives and other costs associated with business optimization initiatives.
- (e) For the thirteen and thirty-nine weeks ended October 29, 2022 and October 30, 2021, this represents the estimated tax effect (by using the projected full year tax rates for the respective years) of the total adjustments made to arrive at Adjusted Net Income.

Adjusted Free Cash Flow

The following table provides a reconciliation of net cash provided by operating activities to Adjusted Free Cash Flow for the periods presented (amounts in thousands):

	Thirteen Weeks Ended		Thirty-Nine Weeks Ended	
	October 29, 2022	October 30, 2021	October 29, 2022	October 30, 2021
Net cash provided by operating activities	\$ 50,763	\$ 109,389	\$ 309,169	\$ 515,063
Net cash used in investing activities	(31,677)	(24,944)	(79,811)	(58,711)
Adjusted Free Cash Flow	\$ 19,086	\$ 84,445	\$ 229,358	\$ 456,352

Liquidity and Capital Resources

Sources and Uses of Liquidity

Our principal liquidity requirements are for working capital, capital expenditures and cash used to pay our debt obligations and related interest expense. We also use cash to pay dividends and occasionally use cash to repurchase common stock. We fund these liquidity requirements through cash and cash equivalents, cash generated from operating activities, issuances of debt (such as the Notes) and borrowings under our ABL Facility. On October 29, 2022, our cash and cash equivalents totaled \$318.2 million. We believe our cash and cash equivalents, as well as our availability under the ABL Facility, will be sufficient to fund our cash requirements for at least the next 12 months.

Long-Term Debt

On May 25, 2021, the Company entered into an Amendment No. 4 (the "Amendment") to the Second Amended and Restated Credit Agreement (as previously amended, the "Existing Credit Agreement") which (i) reduced the applicable margin on LIBOR borrowings under the Term Loan from 5.00% to 3.75% and (ii) utilized cash on hand to repay \$99.0 million of outstanding borrowings under the Term Loan, leaving an outstanding principal balance of \$300.0 million under the Amended Credit Agreement. Borrowings under the Amended Credit Agreement will continue to mature on November 6, 2027, and all other material terms and provisions of the Existing Credit Agreement remain substantially the same as the terms and provisions in place immediately prior to the effectiveness of the Amendment (see Note 4 to the accompanying financial statements).

The following table summarizes our current debt obligations by fiscal year (amounts in thousands):

	2022	2023	2024	2025	2026	After 2026	Total
Term Loan and related interest ⁽¹⁾	\$ 6,729	\$ 28,966	\$ 26,298	\$ 24,732	\$ 23,876	\$ 299,931	\$ 410,532
Notes and related interest ⁽²⁾	12,000	24,000	24,000	24,000	24,000	424,000	532,000
ABL Facility and related interest ⁽³⁾	625	2,500	2,500	1,909	—	—	7,534

⁽¹⁾ Interest payments do not include amortization of discount and debt issuance costs and are approximated based on projected interest rates and assume no unscheduled principal payments.

⁽²⁾ Assumes Notes are paid in full at maturity date.

⁽³⁾ Assumes a minimum revolving credit commitment of \$1.0 billion and assumes no balances drawn on our ABL Facility.

Liquidity information related to the ABL Facility is as follows for the periods shown (dollar amounts in thousands):

	Thirty-Nine Weeks Ended	
	October 29, 2022	October 30, 2021
Average funds drawn	\$ —	\$ —
Number of days with outstanding balance	—	—
Maximum daily amount outstanding	\$ —	\$ —
Minimum available borrowing capacity	\$ 954,516	\$ 780,945

Liquidity information related to the ABL Facility (amounts in thousands) as of:

	October 29, 2022	January 29, 2022	October 30, 2021
Outstanding borrowings	\$ —	\$ —	\$ —
Issued letters of credit	\$ 17,378	\$ 17,828	\$ 17,828
Available borrowing capacity	\$ 982,622	\$ 874,831	\$ 982,172

Leases

We lease store locations, distribution centers, office space and certain equipment under operating leases expiring between fiscal years 2022 and 2043. Operating lease obligations include future minimum lease payments under all of our non-cancelable operating leases at October 29, 2022. The following table summarizes our remaining operating lease obligations by fiscal year:

	2022	2023	2024	2025	2026	After 2026	Total
Operating lease payments ⁽¹⁾ ⁽²⁾	\$ 51,702	\$ 205,789	\$ 197,797	\$ 191,262	\$ 183,330	\$ 1,003,824	\$ 1,833,704

⁽¹⁾ Minimum lease payments have not been reduced by sublease rentals of \$0.6 million due in the future under non-cancelable sub-leases.

⁽²⁾ These balances include stores where we have an executed contract but have not taken possession of the location as of October 29, 2022.

In the thirty-nine weeks ended October 29, 2022, we opened six new locations. Subsequent to the end of the 2022 third quarter, we have completed three additional new store openings, which brings our total to nine new store openings in 2022.

Share Repurchases

On September 2, 2021, the Board of Directors of the Company authorized a share repurchase program (the "2021 Share Repurchase Program") under which the Company may purchase up to \$500 million of its outstanding shares during the three-year period ending September 2, 2024. On June 2, 2022, the Board of Directors of the Company authorized a new share repurchase program (the "2022 Share Repurchase Program") under which the Company may purchase up to \$600 million of its outstanding shares during the three-year period ending June 2, 2025. The 2022 Share Repurchase Program and the 2021 Share Repurchase Program are collectively referred to as the "Share Repurchase Programs".

Under the Share Repurchase Programs, repurchases can be made using a variety of methods, which may include open market purchases, block trades, privately negotiated transactions, accelerated share repurchase programs and/or a non-discretionary trading plan, all in compliance with the rules of the SEC and other applicable legal requirements. The timing, manner, price and amount of any common share repurchases under the Share Repurchase Programs are determined by the Company in its discretion and depend on a variety of factors, including legal requirements, price and economic and market conditions. The Share Repurchase Programs do not obligate the Company to acquire any particular number of common shares, and the programs may be suspended, extended, modified or discontinued at any time. As of October 29, 2022, we no longer had availability under the 2021 Share Repurchase Program and we had approximately \$399.4 million available for share repurchases pursuant to the 2022 Share Repurchase Program.

The following table summarizes our share repurchases for the fiscal year ended January 29, 2022:

	Total Number of Shares Purchased	Average Price Paid per Share	Total Amount Repurchased
First Quarter (January 31, 2021 to May 1, 2021)	—	\$ —	\$ —
Second Quarter (May 2, 2021 to July 31, 2021) ⁽¹⁾	3,229,974	30.96	99,999,995
Third Quarter (August 1, 2021 to October 30, 2021)	5,722,892	42.96	245,837,186
Fourth Quarter (October 31, 2021 to January 29, 2022)	1,613,930	40.63	65,571,394
Total Shares Repurchased	10,566,796	\$ 38.93	\$ 411,408,575

⁽¹⁾ Shares repurchased during the 2021 second quarter were not subject to the Share Repurchase Programs.

The following table summarizes our share repurchases for the year-to-date 2022:

	Total Number of Shares Purchased	Average Price Paid per Share	Total Amount Repurchased
First Quarter (January 30, 2022 to April 30, 2022)	2,272,349	\$ 38.95	\$ 88,500,881
Second Quarter (May 1, 2022 to July 30, 2022)	5,550,892	36.05	200,110,996
Third Quarter (July 31, 2022 to October 29, 2022) ⁽¹⁾	2,176,463	46.33	100,824,712
Total Shares Repurchased	<u>9,999,704</u>	<u>\$ 38.94</u>	<u>\$ 389,436,589</u>

⁽¹⁾ See Part II, Item 2 - Unregistered Sales of Equity Securities and Use of Proceeds for further detail on the 2022 third quarter share repurchases.

Dividends

The following table summarizes our quarterly dividend payments for the year-to-date 2022 (amounts in thousands, except per share amounts):

	Dividend per Share	Total Dividends Paid	Stockholder Date of Record
First Quarter (January 30, 2022 to April 30, 2022)	\$ 0.075	\$ 6,536	March 17, 2022
Second Quarter (May 1, 2022 to July 30, 2022)	\$ 0.075	6,271	June 16, 2022
Third Quarter (July 31, 2022 to October 29, 2022)	\$ 0.075	\$ 5,974	September 15, 2022
Total Dividends Paid		<u>\$ 18,781</u>	

On December 6, 2022, the Company's Board of Directors declared a quarterly cash dividend with respect to the fiscal quarter ended October 29, 2022, of \$0.075 per share of the Company's common stock, payable on January 13, 2023, to stockholders of record as of the close of business on December 20, 2022 (see Note 13 to the accompanying financial statements).

Capital Expenditures

We expect capital expenditures for fiscal year 2022 to be approximately \$130.0 million. Approximately 40% of our planned cash outflow relate to investments in our corporate, e-commerce and information technology programs. Investments in new stores and relocations are expected to be 40% of our planned cash outflow and the remaining 20% of the planned cash outflow is expected to be utilized in updates for existing stores and distribution centers. We review forecasted capital expenditures throughout the year and will adjust or modify projects based on business conditions at that time.

Cash Flows for the Thirty-Nine Weeks Ended October 29, 2022 and October 30, 2021

Our unaudited statements of cash flows are summarized as follows (in thousands):

	Thirty-Nine Weeks Ended	
	October 29, 2022	October 30, 2021
Net cash provided by operating activities	\$ 309,169	\$ 515,063
Net cash used in investing activities	(79,811)	(58,711)
Net cash used in financing activities	(397,189)	(432,659)
Net increase (decrease) in cash and cash equivalents	<u>\$ (167,831)</u>	<u>\$ 23,693</u>

Operating Activities. Cash flows from operating activities are seasonal in our business. Typically, cash flows from operations are used to build inventory in advance of peak selling seasons, with the fourth quarter pre-holiday season inventory increase being the most significant.

Cash provided by operating activities in the year-to-date 2022 decreased \$205.9 million, compared to year-to-date 2021. This decrease in cash was attributable to:

- \$98.9 million net decrease in cash flows provided by operating assets and liabilities;
- \$59.3 million decrease in net income; and
- \$47.7 million net decrease in non-cash charges.

The decrease in cash flows from operating assets and liabilities was primarily attributable to:

- \$73.9 million decrease in cash flows from accrued expenses and other current liabilities which was largely driven by performance compensation payments made and lower related accrual rates in the year-to-date 2022.

The decrease from non-cash charges was primarily caused by:

- \$23.4 million decrease in deferred income taxes; and
- \$20.6 million decrease in equity compensation expense as a result of the 2021 Vesting Event.

Investing Activities. Cash used in investing activities increased \$21.1 million in the year-to-date 2022 compared to the year-to-date 2021. The increase in cash used in investing activities is primarily due to:

- \$20.9 million higher capital expenditures driven by investments in new stores and store updates in the year-to-date 2022.

Financing Activities. Cash used in financing activities decreased \$35.5 million in the year-to-date 2022, compared to the year-to-date 2021. The primary drivers of the decrease were:

- \$99.3 million decrease in cash outflows related to a prior year-to-date principal repurchase in connection with the refinancing of our Term Loan which occurred in the second quarter of 2021; partially offset by
- \$43.6 million increase in cash outflows related to Company's repurchase and simultaneous retirement of common stock in the current year; and
- \$29.7 million decrease in net proceeds from the exercise of stock options relative to the year-to-date 2021.

Critical Accounting Policies and Estimates

This management's discussion and analysis of our financial condition and results of operations is based upon our unaudited financial statements, which have been prepared in accordance with GAAP. The preparation of financial statements in conformity with GAAP requires our management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities as of the date of the financial statements, as well as the reported amounts of revenues and expenses during the reporting period. Our management bases its estimates on historical experience and other assumptions it believes to be reasonable under the circumstances. Actual results could differ significantly from those estimates.

Management evaluated the development and selection of our critical accounting policies and estimates used in the preparation of the Company's unaudited financial statements and related notes and believes these policies to be reasonable and appropriate. Certain of these policies involve a higher degree of judgment or complexity and are most significant to reporting our results of operations and financial position, and are, therefore, discussed as critical. Our most significant estimates and assumptions that materially affect the financial statements involve difficult, subjective or complex judgments by management, including the valuation of merchandise inventories and performing goodwill, intangible and long-lived asset impairment analyses. Given the global economic climate and the possibility of additional unforeseen effects from the COVID-19 pandemic, these estimates remain challenging, and actual results could differ materially from our estimates. More information on all of our significant accounting policies can be found in the "Critical Accounting Policies and Estimates" section of the Annual Report entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations." There have been no material changes to our critical accounting policies as compared to the critical accounting policies described in the Annual Report.

Recent Accounting Pronouncements

The information set forth in Note 2 to our unaudited consolidated financial statements under Part I, Item 1 of this Quarterly Report is incorporated herein by reference.

Related Party Transactions

The information set forth in Note 11 to our unaudited consolidated financial statements under Part I, Item 1 under the heading of this Quarterly Report entitled "Related Party Transactions" is incorporated herein by reference.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

There have been no material changes in our primary risk exposures or management of market risks from those disclosed in the Annual Report under "Management's Discussion and Analysis of Financial Condition and Results of Operations – Quantitative and Qualitative Disclosures About Market Risk."

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures (as that term is defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) that are designed to ensure that information required to be disclosed in our reports under the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer ("CEO") and our Chief Financial Officer ("CFO"), as appropriate, to allow timely decisions regarding required disclosures. Any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives.

Our management, with the participation of our CEO and our CFO, evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this Quarterly Report. Based on such evaluation, our CEO and CFO have concluded that, as of the end of the period covered by this Quarterly Report, the design and operation of the Company's disclosure controls and procedures were effective to accomplish their objectives at the reasonable assurance level.

Changes in Internal Control over Financial Reporting

No changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) occurred during the period covered by this Quarterly Report that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

We are a defendant or co-defendant in lawsuits, claims and demands brought by various parties relating to matters normally incident to our business. No individual case, or group of cases against us, presenting substantially similar issues of law or fact, is expected to have a material effect on the manner in which we conduct our business or on our consolidated results of operations, financial position or liquidity. The majority of these cases are alleging product, premises, employment and/or commercial liability. Reserves have been established that we believe to be adequate based on our current evaluations and experience in these types of claim situations; however, the ultimate outcome of these cases cannot be determined at this time. We believe, taking into consideration our indemnities, defenses, insurance and reserves, the ultimate resolution of these matters will not have a material impact on our financial position, results of operations or cash flows.

There have been no material developments during the fiscal quarter ended October 29, 2022, with respect to any of the matters discussed under the heading "Legal Proceedings" in the Annual Report. We are not currently party to any other legal proceedings that we believe would have a material adverse effect on our financial position, results of operations or cash flows.

ITEM 1A. RISK FACTORS

You should carefully consider the risk factors discussed in the section of the Annual Report entitled "Risk Factors", which could materially affect our business, financial condition or future results. The risks described in the Annual Report are not the only risks facing the Company. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition or future results. There have been no material changes to the risk factors discussed in the section of the Annual Report entitled "Risk Factors".

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

The following table summarizes the repurchases and cancellations of our common stock during the third quarter of 2022:

Period	Total Number of Shares Purchased (a)	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs (b)	Dollar Value of Shares that May Yet be Purchased Under the Plans or Programs (b)
July 31, 2022 to August 27, 2022	—	\$ —	—	\$ 500,192,744
August 28, 2022 to October 1, 2022	1,672,091	\$ 46.92	1,672,091	\$ 421,768,212
October 2, 2022 to October 29, 2022	504,372	\$ 44.35	504,372	\$ 399,411,562
Total	2,176,463	\$ 46.33	2,176,463	\$ 399,411,562

(a) The total number of shares purchased excludes shares which were net-settled, and therefore not issued, to cover employee tax withholding related to the vesting of certain restricted stock awards.

(b) On June 2, 2022, the Board of Directors of the Company authorized a share repurchase program (the "2022 Share Repurchase Program") under which the Company may purchase up to \$600 million of its outstanding shares during the three-year period ending June 2, 2025. As of October 29, 2022, approximately \$399.4 million remained available for share repurchases pursuant to our 2022 Share Repurchase Program (see Note 2 to the accompanying financial statements).

The 2022 Share Repurchase Program does not obligate the Company to acquire any particular number of common shares, and the programs may be suspended, extended, modified or discontinued at any time.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not Applicable.

ITEM 5. OTHER INFORMATION

On December 6, 2022, the Board of Directors of the Company approved and adopted amended and restated bylaws of the Company to reflect the amendments summarized below (as so amended and restated, the “Amended and Restated Bylaws”), effective immediately, a copy of which is filed as Exhibit 3.2 to this Form 10-Q.

Among other things, the amendments affected by the Amended and Restated Bylaws: (i) update certain procedural requirements related to director nominations by stockholders in light of the recently adopted Rule 14a-19 under the Exchange Act (the “Universal Proxy Rules”) and (ii) reflect certain other changes to Section 2.03 in light of the Universal Proxy Rules, including requiring (1) additional background information and disclosures regarding stockholders proposing director nominations and other business, director nominees proposed by stockholders, and other persons related to a stockholder’s solicitation of proxies; (2) any stockholder submitting a nomination notice to make a representation as to whether such stockholder intends to solicit proxies in support of director nominees other than the Company’s nominees in accordance with Rule 14a-19 under the Exchange Act and the Amended and Restated Bylaws and to provide evidence that the stockholder has complied with such requirements; and (3) any nominee proposed by a stockholder to deliver a written questionnaire with respect to the nominee’s background and qualifications as well as provide any other questionnaires or information that may be necessary to assess the nominee’s qualifications and eligibility for board service.

The Amended and Restated Bylaws also: (i) provide that a white proxy card is reserved solely for use by the Company’s Board of Directors (Section 2.03), (ii) update and conform various provisions to reflect the latest amendments to the Delaware General Corporation Law (the “DGCL”), including: (1) clarifying the adjournment procedures for virtual meetings of stockholders (Section 2.10); and (2) eliminating the requirement that the list of stockholders be open to examination at meetings of stockholders (Section 5.05), and (iii) remove certain historical references to KKR and the Stockholders Agreement (as each term is defined in the Company’s amended and restated certificate of incorporation). The Amended and Restated Bylaws also incorporate other non-substantive, ministerial, clarifying and conforming changes.

The foregoing description of the Amended and Restated Bylaws is qualified in its entirety by reference to the Amended and Restated Bylaws which are filed as Exhibit 3.2 to this Quarterly Report and incorporated herein by reference.

ITEM 6. EXHIBITS

Exhibit Number	Description of Exhibit
3.1	Amended and Restated Certificate of Incorporation of the Registrant (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K filed on October 6, 2020).
3.2*	Amended and Restated Bylaws of the Registrant effective as of December 6, 2022.
31.1*	Certification of Periodic Report by Chief Executive Officer under Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of Periodic Report by Chief Financial Officer under Section 302 of the Sarbanes-Oxley Act of 2002.
32.1**	Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350 as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2**	Certification of Chief 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 - The instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Calculation Linkbase Document
101.DEF	XBRL Taxonomy Definition Linkbase Document
101.LAB	XBRL Taxonomy Label Linkbase Document
101.PRE	XBRL Taxonomy Presentation Linkbase Document
*	Filed herewith
**	Furnished herewith
†	Compensatory agreements for director(s) and/or executive officer(s).

The agreements and other documents filed as exhibits to this report are not intended to provide factual information or other disclosure other than with respect to the terms of the agreements or other documents themselves, and you should not rely on them for that purpose. In particular, any representations and warranties made by us in these agreements or other documents were made solely within the specific context of the relevant agreement or document and may not describe the actual state of affairs as of the date they were made or at any other time.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this Quarterly Report on Form 10-Q to be signed on December 7, 2022 on its behalf by the undersigned, thereto duly authorized.

ACADEMY SPORTS AND OUTDOORS, INC.

By: /s/ KEN C. HICKS
Ken C. Hicks
Chairman, President and Chief Executive Officer
(principal executive officer)

By: /s/ MICHAEL P. MULLICAN
Michael P. Mullican
Executive Vice President and Chief Financial Officer
(principal financial officer)

AMENDED AND RESTATED
BYLAWS
OF
ACADEMY SPORTS AND OUTDOORS, INC.

ARTICLE I

Offices

SECTION 1.01 Registered Office. The registered office and registered agent of Academy Sports and Outdoors, Inc. (the "Corporation") in the State of Delaware shall be as set forth in the Amended and Restated Certificate of Incorporation (as defined below). The Corporation may also have offices in such other places in the United States or elsewhere (and may change the Corporation's registered agent) as the Board of Directors of the Corporation (the "Board of Directors") may, from time to time, determine or as the business of the Corporation may require.

ARTICLE II

Meetings of Stockholders

SECTION 2.01 Annual Meetings. Annual meetings of stockholders may be held at such place, if any, either within or without the State of Delaware, and at such time and date as the Board of Directors shall determine and state in the notice of meeting. The Board of Directors may, in its sole discretion, determine that annual meetings of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as described in Section 2.11 of these Amended and Restated Bylaws in accordance with Section 211(a)(2) of the General Corporation Law of the State of Delaware (the "DGCL"). The Board of Directors may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board of Directors.

SECTION 2.02 Special Meetings. Special meetings of the stockholders may only be called in the manner provided in the Corporation's amended and restated certificate of incorporation as then in effect (as the same may be amended and/or restated from time to time, the "Amended and Restated Certificate of Incorporation") and may be held at such place, if any, either within or without the State of Delaware, and at such time and date as the Board of Directors or the Chairman of the Board of Directors shall determine and state in the notice of meeting. The Board of Directors may, in its sole discretion, determine that special meetings of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as described in Section 2.11 of these Amended and Restated Bylaws in accordance with Section 211(a)(2) of the DGCL. The Board of Directors may postpone, reschedule or cancel any special meeting of stockholders previously scheduled by the Board of Directors or the Chairman of the Board of Directors.

SECTION 2.03 Notice of Stockholder Business and Nominations.

(A) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board of Directors and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders only (a) pursuant to the Corporation's notice of meeting (or any

supplement thereto) delivered pursuant to Section 2.04 of Article II of these Amended and Restated Bylaws, (b) by or at the direction of the Board of Directors or any authorized committee thereof or (c) by any stockholder of the Corporation who is entitled to vote at the meeting, who complied with the notice procedures set forth in paragraphs (A)(2) and (A)(3) of this Section 2.03 and who was a stockholder of record at the time such notice is delivered to the Secretary of the Corporation.

(2) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (c) of paragraph (A)(1) of this Section 2.03, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation, and, in the case of business other than nominations of persons for election to the Board of Directors, such other business must constitute a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not later than the close of business (as defined below) on the ninetieth (90th) day and not earlier than the close of business on the one hundred and twentieth (120th) day prior to the date of the first anniversary of the preceding year's annual meeting; *provided, however*, that in the event that the date of the annual meeting is advanced by more than thirty (30) days or delayed by more than seventy (70) days from the anniversary date of the previous year's meeting, or, if no annual meeting was held in the preceding year, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the one hundred and twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement (as defined below) of the date of such meeting is first made by the Corporation. Public announcement of an adjournment or postponement of an annual meeting shall not commence a new time period (or extend any time period) for the giving of a stockholder's notice. Notwithstanding anything in this Section 2.03(A)(2) to the contrary, if the number of directors to be elected to the Board of Directors at an annual meeting 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) calendar days prior to the first anniversary of the prior year's annual meeting of stockholders, then a stockholder's notice required by this Section 2.03 shall be considered timely, but only with respect to nominees for any new positions created by such increase, if it is received by the Secretary of the Corporation not later than the close of business on the tenth (10th) calendar day following the day on which such public announcement is first made by the Corporation.

(3) A stockholder's notice delivered pursuant to this Section 2.03 shall set forth and include (a) as to each person whom the stockholder proposes to nominate for election or re-election as a director: (i) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Section 14(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations promulgated thereunder, (ii) all fully completed and signed questionnaires prepared by the Corporation (which will be promptly provided following a request therefor), including those questionnaires required of the Corporation's directors and any other questionnaire the Corporation determines is necessary or advisable to assess whether a nominee will satisfy any qualifications or requirements imposed by the Amended and Restated Certificate of Incorporation or these Amended and Restated Bylaws, any law, rule, regulation or listing standard that may be applicable to the Corporation, and the Corporation's corporate governance policies and guidelines, and (iii) a written representation and agreement, which shall be signed by such person and pursuant to which such person shall represent and agree that such person: (A) consents to serving as a director if elected and to being named in a proxy statement and form of proxy as a nominee, and currently intends to serve as a director for the full term for which such person is standing for election; (B) is not and will not become a party to any agreement, arrangement or understanding with, and has not given any

commitment or assurance to, any person or entity: (1) as to how the person, if elected as a director, will act or vote on any issue or question that has not been disclosed to the Corporation; or (2) that could limit or interfere with the person's ability to comply, if elected as a director, with such person's fiduciary duties under applicable law; (C) 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 or nominee that has not been disclosed to the Corporation; and (D) if elected as a director, will comply with all of the Corporation's corporate governance, conflict of interest, confidentiality, and stock ownership and trading policies and guidelines, and any other Corporation policies and guidelines applicable to directors (which will be promptly provided following a request therefor), and (iv) a written statement, not to exceed 500 words, in support of such person; (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend these Amended and Restated Bylaws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder, the beneficial owner, if any, on whose behalf the proposal is made and any proponent persons (as defined below); (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made: (i) the name and address of such stockholder, as they appear on the Corporation's books and records, and of such beneficial owner, (ii) the class or series and number of shares of capital stock of the Corporation that are owned, directly or indirectly, of record by such stockholder and such beneficial owner, (iii) a representation that the stockholder is a holder of record of the stock of the Corporation at the time of the giving of the notice, will be entitled to vote at such meeting and will appear (or have a qualified representative (as defined below) appear) in person or by proxy at the meeting to propose such business or nomination; and (d) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made, and if such stockholder or beneficial owner is an entity, as to each director, executive, managing member or control person of such entity, any of their respective affiliates or associates and/or any others acting in concert with any of the foregoing (collectively, "proponent persons"): (i) the class or series and number of shares of stock of the Corporation which are beneficially owned by such stockholder or beneficial owner and by any proponent person as of the date of the notice, (ii) a representation whether the stockholder or the beneficial owner, if any, or any other participant (as defined in Item 4 of Schedule 14A under the Exchange Act) will be or is part of a group that will engage in a solicitation with respect to such nomination or proposal and, if so, whether or not such solicitation will be conducted as an exempt solicitation under Rule 14a-2(b) of the Exchange Act, the name of each participant in such solicitation and the amount of the cost of solicitation that has been and will be borne, directly or indirectly, by each participant in such solicitation and (A) in the case of a proposal of business other than nominations, whether such person or group intends to deliver, through means satisfying each of the conditions that would be applicable to the Corporation under either Rule 14a-16(a) or Rule 14a-16(n) under the Exchange Act, a proxy statement and form of proxy to holders (including any beneficial owners pursuant to Rule 14b-1 and Rule 14b-2 under the Exchange Act) of at least the percentage of the voting power of the Corporation's outstanding capital stock required under applicable law to approve or adopt the proposal or (B) in the case of any solicitation that is subject to Rule 14a-19 under the Exchange Act, confirming that such person or group will deliver, through means satisfying each of the conditions that would be applicable to the Corporation under either Rule 14a-16(a) or Rule 14a-16(n) under the Exchange Act, a proxy statement and form of proxy to holders (including any beneficial owners pursuant to Rule 14b-1 and Rule 14b-2 of the Exchange Act) of at least 67% of the voting power of the Corporation's outstanding capital stock entitled to vote generally in the election of directors, (iii) a representation that immediately after soliciting the percentage of stockholders referred to in the representation required under clause (ii)(B) above, such stockholder or beneficial owner will provide the Corporation with documents, which may take

the form of a certified statement and documentation from a proxy solicitor, demonstrating that the necessary steps have been taken to deliver a proxy statement and form of proxy to holders of such percentage of the voting power of the Corporation's outstanding capital stock entitled to vote generally in the election of directors, (iv) a certification regarding whether such stockholder and beneficial owner, if any, have complied with all applicable federal, state and other legal requirements in connection with (A) the stockholder's and/or beneficial owner's acquisition of shares of capital stock or other securities of the Corporation and/or (B) the stockholder's and/or the beneficial owner's acts or omissions as a stockholder of the Corporation, (v) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder, (vi) a description of any agreement, arrangement or understanding with respect to the nomination or proposal and/or the voting of shares of any class or series of stock of the Corporation between or among the stockholder giving the notice, the beneficial owner, if any, on whose behalf the nomination or proposal is made, and if such stockholder or beneficial owner is an entity, as to each proponent person, including, without limitation any agreements that would be required to be disclosed pursuant to Item 5 or Item 6 of Exchange Act Schedule 13D (regardless of whether the requirement to file a Schedule 13D is applicable), and (vii) a description of any agreement, arrangement or understanding (including without limitation any short positions, performance-related fees, contract to purchase or sell, acquisition or grant of any option, right or warrant to purchase or sell, swap, hedging or pledging transactions, voting rights, dividend rights, borrowed or loaned shares or other instrument) to which any proponent person is a party, the intent or effect of which may be (A) to transfer to or from any proponent person, in whole or in part, any of the economic consequences of ownership of any security of the Corporation, (B) to maintain, increase or decrease the voting power of any proponent person with respect to shares of any class or series of stock of the Corporation and/or (C) to provide any proponent person, directly or indirectly, with the opportunity to profit or share in any profit derived from, or to otherwise benefit economically from, any increase or decrease in the value of any security of the Corporation. A stockholder providing notice of a proposed nomination for election to the Board of Directors or other business proposed to be brought before a meeting (whether given pursuant to this paragraph (A)(3) or paragraph (B) of this Section 2.03) shall update and supplement such notice from time to time to the extent necessary so that the information provided or required to be provided in such notice shall be true and correct (x) as of the record date for determining the stockholders entitled to notice of the meeting and (y) as of the date that is fifteen (15) days prior to the meeting or any adjournment or postponement thereof, *provided* that if the record date for determining the stockholders entitled to vote at the meeting is less than fifteen (15) days prior to the meeting or any adjournment or postponement thereof, the information shall be supplemented and updated as of such later date. Any such update and supplement shall be delivered in writing to the Secretary of the Corporation at the principal executive offices of the Corporation not later than five (5) days after the record date for determining the stockholders entitled to notice of the meeting (in the case of any update and supplement required to be made as of the record date for determining the stockholders entitled to notice of the meeting), not later than ten (10) days prior to the date for the meeting or any adjournment or postponement thereof (in the case of any update or supplement required to be made as of fifteen (15) days prior to the meeting or adjournment or postponement thereof) and not later than five (5) days after the record date for determining the stockholders entitled to vote at the meeting, but no later than the date prior to the meeting or any adjournment or postponement thereof (in the case of any update and supplement required to be made as of a date less than fifteen (15) days prior to the date of the meeting or any adjournment or postponement thereof). The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation and to determine the independence of such director under the Exchange Act and rules and regulations thereunder and applicable stock exchange rules.

(B) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (1) by or at the direction of the Board of Directors or any committee thereof or (2) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is entitled to vote at the meeting, who (subject to paragraph (C)(4) of this Section 2.03) complies with the notice procedures set forth in this Section 2.03 and who is a stockholder of record at the time such notice is delivered to the Secretary of the Corporation. In the event a special meeting of stockholders is called for the purpose of electing one or more directors to the Board of Directors, any such stockholder 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 stockholder's notice as required by paragraph (A)(2) of this Section 2.03 shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(C) General. Except as provided in paragraph (C)(4) of this Section 2.03, only such persons who are nominated in accordance with the procedures set forth in this Section 2.03 shall be eligible to serve as directors and only such business shall be conducted at an annual or special meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 2.03, including providing the information required under this Section 2.03 to the Corporation within the time frames specified herein and complying with the requirements of the Exchange Act. Except as otherwise provided by the DGCL, the Amended and Restated Certificate of Incorporation or these Amended and Restated Bylaws, the chairman of the meeting shall, in addition to making any other determination that may be appropriate for the conduct of the meeting, 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 these Amended and Restated Bylaws and, if any proposed nomination or business is not in compliance with these Amended and Restated Bylaws, shall declare that such defective proposal or nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

(1) The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the chairman of the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of the meeting shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall

determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. Notwithstanding the foregoing provisions of this Section 2.03, unless otherwise required by the DGCL, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders 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. For purposes of this Section 2.03, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

(2) Whenever used in these Amended and Restated Bylaws, the “close of business” shall mean 6:00 p.m. eastern time at the principal executive offices of the Corporation on any calendar day, whether or not the day is a business day and “public announcement” shall mean disclosure (a) in a press release released by the Corporation, *provided* such press release is released by the Corporation following its customary procedures, is reported by the Dow Jones News Service, Associated Press or comparable national news service, or is generally available on internet news sites, or (b) in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(3) Notwithstanding the foregoing provisions of this Section 2.03, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to the matters set forth in this Section 2.03; *provided, however*, that, to the fullest extent permitted by law, any references in these Amended and Restated Bylaws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to these Amended and Restated Bylaws (including paragraphs (A)(1)(c) and (B) of this Section 2.03), and compliance with paragraphs (A)(1)(c) and (B) of this Section 2.03 shall be the exclusive means for a stockholder to make nominations or submit other business (other than a proposal included in the Corporation’s proxy statement pursuant to and in compliance with Rule 14a-8 under the Exchange Act). Nothing in these Amended and Restated Bylaws shall be deemed to affect any rights of the holders of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation to elect directors under specified circumstances.

(4) Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for the exclusive use for solicitation by the Board of Directors.

SECTION 2.04 Notice of Meetings. Whenever stockholders are required or permitted to take any action at a meeting, a timely notice in writing or by electronic transmission, in the manner provided in Section 232 of the DGCL, of the meeting, which shall state the place, if any, date and time of the meeting, the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purposes for which the meeting is called, shall be mailed or transmitted electronically by the Secretary of the Corporation to each stockholder of

record entitled to vote thereat as of the record date for determining the stockholders entitled to notice of the meeting. Unless otherwise provided by law, the Amended and Restated Certificate of Incorporation or these Amended and Restated Bylaws, the notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting.

SECTION 2.05 Quorum. Unless otherwise required by law, the Amended and Restated Certificate of Incorporation or the rules of any stock exchange upon which the Corporation's securities are listed, the holders of record of a majority of the voting power of the issued and outstanding shares of capital stock of the Corporation entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of stockholders. Notwithstanding the foregoing, where a separate vote by a class or series or classes or series is required, a majority in voting power of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to the vote on that matter. Once a quorum is present to organize a meeting, it shall not be broken by the subsequent withdrawal of any stockholders.

SECTION 2.06 Voting. Except as otherwise provided by or pursuant to the provisions of the Amended and Restated Certificate of Incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by such stockholder that has voting power upon the matter in question. Each stockholder entitled to vote at a meeting of stockholders or to express consent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy in any manner provided under Section 212(c) of the DGCL or as otherwise provided by applicable law, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the Corporation a revocation of the proxy or a new proxy bearing a later date. Unless required by the Amended and Restated Certificate of Incorporation or applicable law, or determined by the chairman of the meeting to be advisable, the vote on any question need not be by ballot. On a vote by ballot, each ballot shall be signed by the stockholder voting, or by such stockholder's proxy, if there be such proxy. When a quorum is present or represented at any meeting, the vote of the holders of a majority of the voting power of the shares of stock present in person or represented by proxy and entitled to vote on the subject matter shall decide any question brought before such meeting, unless the question is one upon which, by express provision of applicable law, of the rules or regulations of any stock exchange applicable to the Corporation, of any regulation applicable to the Corporation or its securities, of the Amended and Restated Certificate of Incorporation or of these Amended and Restated Bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such question. Notwithstanding the foregoing sentence and subject to the Amended and Restated Certificate of Incorporation, all elections of directors shall be determined by a plurality of the votes cast in respect of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors.

SECTION 2.07 Chairman of Meetings. The Chairman of the Board of Directors, if one is elected, or, in his or her absence or disability, the Chief Executive Officer of the Corporation, or in the absence of the Chairman of the Board of Directors and the Chief Executive Officer, a person designated by the Board of Directors shall be the chairman of the meeting and, as such, preside at all meetings of the stockholders.

SECTION 2.08 Secretary of Meetings. The Secretary of the Corporation shall act as secretary at all meetings of the stockholders. In the absence or disability of the Secretary, the Chairman of the Board of Directors, the Chief Executive Officer or the chairman of the meeting shall appoint a person to act as secretary at such meetings.

SECTION 2.09 Consent of Stockholders in Lieu of Meeting. Any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote only to the extent permitted by and in the manner provided in the Amended and Restated Certificate of Incorporation and in accordance with applicable law.

SECTION 2.10 Adjournment. At any meeting of stockholders of the Corporation, if less than a quorum be present, the chairman of the meeting or stockholders holding a majority in voting power of the outstanding shares of stock of the Corporation, present in person or by proxy and entitled to vote thereat, shall have the power to adjourn the meeting from time to time without notice. When a meeting is adjourned to another time or place (including an adjournment taken to address a technical failure to convene or continue a meeting using remote communication), notice need not be given of the adjourned meeting if the place, if any, date and time thereof, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are: (i) announced at the meeting at which the adjournment is taken; (ii) displayed, during the time scheduled for the meeting, on the same electronic network used to enable stockholders and proxyholders to participate in the meeting by means of remote communication; or (iii) set forth in the notice of meeting given in accordance with Section 2.04. Any business may be transacted at the adjourned meeting that might have been transacted at the meeting originally noticed. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date so fixed for notice of such adjourned meeting.

SECTION 2.11 Remote Communication. If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxy holders not physically present at a meeting of stockholders may, by means of remote communication:

(A) participate in a meeting of stockholders; and

(B) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, *provided*, that

(1) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder;

(2) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and

(3) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

SECTION 2.12 Inspectors of Election. The Corporation may, and shall if required by law, in advance of any meeting of stockholders, appoint one or more inspectors of election, who may be employees of the Corporation, to act at the meeting or any adjournment thereof and to make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. In the event that no inspector so appointed or designated is able to act at a meeting of stockholders, the chairman of the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector or inspectors so appointed or designated shall (a) ascertain the number of shares of capital stock of the Corporation outstanding and the voting power of each such share, (b) determine the shares of capital stock of the Corporation represented at the meeting and the validity of proxies and ballots, (c) count all votes and ballots, (d) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (e) certify their determination of the number of shares of capital stock of the Corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the Corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

SECTION 2.13 Delivery to the Corporation. Whenever this Article II requires one or more persons (including a record or beneficial owner of stock) to deliver a document or information to the Corporation or any officer, employee or agent thereof (including any notice, request, questionnaire, revocation, representation or other document or agreement), such document or information shall be in writing exclusively (and not in an electronic transmission) and shall be delivered exclusively by hand (including, without limitation, overnight courier service) or by certified or registered mail, return receipt requested, and the Corporation shall not be required to accept delivery of any document not in such written form or so delivered. For the avoidance of doubt, the Corporation expressly opts out of Section 116 of the DGCL with respect to the delivery of information and documents to the Corporation required by this Article II.

ARTICLE III

Board of Directors

SECTION 3.01 Powers. Except as otherwise provided in the Amended and Restated Certificate of Incorporation or the DGCL, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The Board of Directors may exercise all such authority and powers of the Corporation and do all such lawful acts and things as are not by the DGCL or the Amended and Restated Certificate of Incorporation directed or required to be exercised or done by the stockholders.

SECTION 3.02 Number and Term; Chairman. Subject to the Amended and Restated Certificate of Incorporation, the number of directors shall be fixed exclusively by resolution of the Board of Directors. Directors shall be elected by the stockholders at their annual meeting, and the term of each director so elected shall be as set forth in the Amended and Restated Certificate of Incorporation. Directors need not be stockholders. The Board of Directors shall elect a Chairman of the Board of Directors, who shall have the powers and

perform such duties as provided in these Amended and Restated Bylaws and as the Board of Directors may from time to time prescribe. The Chairman of the Board of Directors shall preside at all meetings of the Board of Directors at which he or she is present. If the Chairman of the Board of Directors is not present at a meeting of the Board of Directors, the Chief Executive Officer (if the Chief Executive Officer is a director and is not also the Chairman of the Board of Directors) shall preside at such meeting, and, if the Chief Executive Officer is not present at such meeting or is not a director, a majority of the directors present at such meeting shall elect one of their members to preside over such meeting.

SECTION 3.03 Resignations. Any director may resign at any time upon notice given in writing or by electronic transmission to the Board of Directors, the Chairman of the Board of Directors, the Chief Executive Officer or the Secretary of the Corporation. The resignation shall take effect at the time or upon the happening of any event specified therein, and if no specification is so made, at the time of its receipt. The acceptance of a resignation shall not be necessary to make it effective unless otherwise expressly provided in the resignation.

SECTION 3.04 Removal. Directors of the Corporation may be removed in the manner provided in the Amended and Restated Certificate of Incorporation and applicable law.

SECTION 3.05 Vacancies and Newly Created Directorships. Except as otherwise provided by applicable law, vacancies occurring in any directorship (whether by death, resignation, retirement, disqualification, removal or other cause) and newly created directorships resulting from any increase in the number of directors shall be filled in accordance with the Amended and Restated Certificate of Incorporation. Any director elected to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall be elected and qualified, or until his or her earlier death, resignation, retirement, disqualification or removal.

SECTION 3.06 Meetings. Regular meetings of the Board of Directors may be held at such places and times as shall be determined from time to time by the Board of Directors. Special meetings of the Board of Directors may be called by the Chief Executive Officer of the Corporation or the Chairman of the Board of Directors or as provided by the Amended and Restated Certificate of Incorporation, and shall be called by the Chief Executive Officer or the Secretary of the Corporation if directed by a majority of directors then in office and shall be at such places and times as they or he or she shall fix. Notice need not be given of regular meetings of the Board of Directors. At least twenty-four (24) hours before each special meeting of the Board of Directors, either written notice, notice by electronic transmission or oral notice (either in person or by telephone) notice of the time, date and place of the meeting shall be given to each director. Unless otherwise indicated in the notice thereof, any and all business may be transacted at a special meeting.

SECTION 3.07 Quorum, Voting and Adjournment. Except as otherwise provided by the DGCL, the Amended and Restated Certificate of Incorporation or these Amended and Restated Bylaws, a majority of the total number of directors shall constitute a quorum for the transaction of business. Except as otherwise provided by law, the Amended and Restated Certificate of Incorporation or these Amended and Restated Bylaws, the act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. In the absence of a quorum, a majority of the directors present thereat may adjourn such meeting to another time and place. Notice of such adjourned meeting need not be given if the time and place of such adjourned meeting are announced at the meeting so adjourned.

SECTION 3.08 Committees; Committee Rules. The Board of Directors may designate one or more committees, including but not limited to an Audit Committee, a Compensation Committee and a Nominating and Governance Committee, each such committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee to replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the Board of Directors establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority in reference to the following matters: (a) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval or (b) adopting, amending or repealing any Bylaw of the Corporation. All committees of the Board of Directors shall keep minutes of their meetings and shall report their proceedings to the Board of Directors when requested or required by the Board of Directors. Each committee of the Board of Directors may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may otherwise be provided by a resolution of the Board of Directors designating such committee. Unless otherwise provided in such a resolution, the presence of at least a majority of the members of the committee shall be necessary to constitute a quorum unless the committee shall consist of one or two members, in which event one member shall constitute a quorum; and all matters shall be determined by a majority vote of the members present at a meeting of the committee at which a quorum is present. Unless otherwise provided in such a resolution, in the event that a member and that member's alternate, if alternates are designated by the Board of Directors, of such committee is or are absent or disqualified, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member.

SECTION 3.09 Action Without a Meeting. Unless otherwise restricted by the Amended and Restated Certificate of Incorporation, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all members of the Board of Directors or any committee thereof, as the case may be, consent thereto in writing or by electronic transmission. After an action is taken, the consent or consents relating thereto shall be filed in the minutes of the proceedings of the Board of Directors. Such filing shall be in paper form if the minutes are maintained in paper form or shall be in electronic form if the minutes are maintained in electronic form.

SECTION 3.10 Remote Meeting. Unless otherwise restricted by the Amended and Restated Certificate of Incorporation, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting by means of conference telephone or other communications equipment in which all persons participating in the meeting can hear each other. Participation in a meeting by means of conference telephone or other communications equipment shall constitute presence in person at such meeting.

SECTION 3.11 Compensation. The Board of Directors shall have the authority to fix the compensation, including fees and reimbursement of expenses, of directors for services to the Corporation in any capacity.

SECTION 3.12 Reliance on Books and Records. A member of the Board of Directors, or a member of any committee designated by the Board of Directors shall, in the performance of such person's duties, be fully protected in relying in good faith upon records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees of the Board of

Directors, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

ARTICLE IV

Officers

SECTION 4.01 Number. The officers of the Corporation shall include any officers required by the DGCL, each of whom shall be elected by the Board of Directors and who shall hold office for such terms as shall be determined by the Board of Directors and until their successors are elected and qualify or until their earlier resignation or removal. In addition, the Board of Directors may elect a Chief Executive Officer, a President, one or more Vice Presidents, including one or more Executive Vice Presidents, Senior Vice Presidents, a Treasurer, a Secretary, one or more Assistant Treasurers and one or more Assistant Secretaries, who shall hold their office for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors. Any number of offices may be held by the same person.

SECTION 4.02 Other Officers and Agents. The Board of Directors may appoint such other officers and agents as it deems advisable, who shall hold their office for such terms and shall exercise and perform such powers and duties as shall be determined from time to time by the Board of Directors. The Board of Directors may appoint one or more officers called a Vice Chairman of the Board of Directors, each of whom must be a member of the Board of Directors.

SECTION 4.03 Chief Executive Officer/President. The Chief Executive Officer, who may also be the President, subject to the determination of the Board of Directors, shall have general executive charge, management, and control of the properties and operations of the Corporation in the ordinary course of its business, with all such powers with respect to such properties and operations as may be reasonably incident to such responsibilities. If the Board of Directors has not elected a Chairman of the Board of Directors or in the absence or inability to act as the Chairman of the Board of Directors, the Chief Executive Officer shall exercise all of the powers and discharge all of the duties of the Chairman of the Board of Directors, but only if the Chief Executive Officer is a director of the Corporation.

SECTION 4.04 Vice Presidents. Each Vice President, if any are appointed, of whom one or more may be designated an Executive Vice President or Senior Vice President, shall have such powers and shall perform such duties as shall be assigned to him or her by the Chief Executive Officer or the Board of Directors.

SECTION 4.05 Treasurer. The Treasurer, if any is appointed, shall have custody of the corporate funds, securities, evidences of indebtedness and other valuables of the Corporation and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation. The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors or its designees selected for such purposes. The Treasurer shall disburse the funds of the Corporation, taking proper vouchers therefor. The Treasurer shall render to the Chief Executive Officer and the Board of Directors, upon their request, a report of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Corporation a bond for the faithful discharge of his or her duties in such amount and with such surety as the Board of Directors shall prescribe.

In addition, the Treasurer shall have such further powers and perform such other duties incident to the office of Treasurer as from time to time are assigned to him or her by the Chief Executive Officer or the Board of Directors.

SECTION 4.06 Secretary. The Secretary shall: (a) cause minutes of all meetings of the stockholders and directors to be recorded and kept properly; (b) cause all notices required by these Amended and Restated Bylaws or otherwise to be given properly; (c) see that the minute books, stock books, and other nonfinancial books, records and papers of the Corporation are kept properly; and (d) cause all reports, statements, returns, certificates and other documents to be prepared and filed when and as required. The Secretary shall have such further powers and perform such other duties as prescribed from time to time by the Chief Executive Officer or the Board of Directors.

SECTION 4.07 Assistant Treasurers and Assistant Secretaries. Each Assistant Treasurer and each Assistant Secretary, if any are appointed, shall be vested with all the powers and shall perform all the duties of the Treasurer and Secretary, respectively, in the absence or disability of such officer, unless or until the Chief Executive Officer or the Board of Directors shall otherwise determine. In addition, Assistant Treasurers and Assistant Secretaries shall have such powers and shall perform such duties as shall be assigned to them by the Chief Executive Officer or the Board of Directors.

SECTION 4.08 Corporate Funds and Checks. The funds of the Corporation shall be kept in such depositories as shall from time to time be prescribed by the Board of Directors or its designees selected for such purposes. All checks or other orders for the payment of money shall be signed by the Chief Executive Officer, a Vice President, the Treasurer or the Secretary or such other person or agent as may from time to time be authorized and with such countersignature, if any, as may be required by the Board of Directors.

SECTION 4.09 Contracts and Other Documents. The Chief Executive Officer and the Secretary, or such other officer or officers as may from time to time be authorized by the Board of Directors, any committee given specific authority in the premises by the Board of Directors, or the Chief Executive Officer during the intervals between the meetings of the Board of Directors, shall have power to sign and execute on behalf of the Corporation deeds, conveyances and contracts, and any and all other documents requiring execution by the Corporation.

SECTION 4.10 Ownership of Stock of Another Corporation. Unless otherwise directed by the Board of Directors, the Chief Executive Officer, a Vice President, the Treasurer or the Secretary, or such other officer or agent as shall be authorized by the Board of Directors, shall have the power and authority, on behalf of the Corporation, to attend and to vote at any meeting of securityholders of any entity in which the Corporation holds securities or equity interests and may exercise, on behalf of the Corporation, any and all of the rights and powers incident to the ownership of such securities or equity interests at any such meeting, including the authority to execute and deliver proxies and consents on behalf of the Corporation.

SECTION 4.11 Delegation of Duties. In the absence, disability or refusal of any officer to exercise and perform his or her duties, the Board of Directors may delegate to another officer such powers or duties.

SECTION 4.12 Resignation and Removal. Any officer of the Corporation may be removed from office for or without cause at any time by the Board of Directors. Any officer may resign at any time in the same manner prescribed under Section 3.03 of these Amended and Restated Bylaws.

SECTION 4.13 Vacancies. The Board of Directors shall have the power to fill vacancies occurring in any office.

ARTICLE V

Stock

SECTION 5.01 Shares With Certificates. The shares of stock of the Corporation shall be represented by certificates, *provided* that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the Corporation's stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock in the Corporation represented by certificates shall be entitled to have a certificate signed by, or in the name of the Corporation by any two authorized officers of the Corporation (it being understood that each of the Chairman of the Board of Directors, the Vice Chairman of the Board of Directors, the Chief Executive Officer, a President, the Chief Financial Officer, a Vice President, the Treasurer, an Assistant Treasurer, the Secretary and an Assistant Secretary of the Corporation shall be an authorized officer for such purpose). Any or all of the signatures on the certificate may be a facsimile or other electronic signature. The Board of Directors shall have the power to appoint one or more transfer agents and/or registrars for the transfer or registration of certificates of stock of any class, and may require stock certificates to be countersigned or registered by one or more of such transfer agents and/or registrars.

SECTION 5.02 Shares Without Certificates. If the Board of Directors chooses to issue shares of stock without certificates, the Corporation, if required by the DGCL, shall, within a reasonable time after the issue or transfer of shares without certificates, give a notice to the registered owner thereof containing the information required to be set forth or stated on stock certificates by the applicable provisions of the DGCL. The Corporation may adopt a system of issuance, recordation and transfer of its shares of stock by electronic or other means not involving the issuance of certificates, *provided* the use of such system by the Corporation is permitted in accordance with applicable law.

SECTION 5.03 Transfer of Shares. Shares of stock of the Corporation shall be transferable upon its books by the holders thereof, in person or by their duly authorized attorneys or legal representatives, in the manner prescribed by law, the Amended and Restated Certificate of Incorporation and in these Amended and Restated Bylaws, upon surrender to the Corporation by delivery thereof (to the extent evidenced by a physical stock certificate) to the person in charge of the stock and transfer books and ledgers. Certificates representing such shares, if any, shall be cancelled and new certificates, if the shares are to be certificated, shall thereupon be issued. Shares of capital stock of the Corporation that are not represented by a certificate shall be transferred in accordance with any procedures adopted by the Corporation or its agents and applicable law. A record shall be made of each transfer. Whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer if, when the certificates are presented to the Corporation for transfer or uncertificated shares requested to be transferred, both the transferor and transferee request the Corporation to do so. The Board of Directors shall have power and authority to make such rules and regulations as it may deem necessary or proper concerning the issue, transfer and registration of certificates representing shares of stock of the Corporation and uncertificated shares.

SECTION 5.04 Lost, Stolen, Destroyed or Mutilated Certificates. A new certificate of stock or uncertificated shares may be issued in the place of any certificate previously issued by the Corporation alleged to have been lost, stolen or destroyed, and the Corporation may, in its discretion, require the owner of such lost, stolen or destroyed certificate,

or his or her legal representative, to give the Corporation a bond, in such sum as the Corporation may direct, in order to indemnify the Corporation against any claims that may be made against it in connection therewith. A new certificate or uncertificated shares of stock may be issued in the place of any certificate previously issued by the Corporation that has become mutilated upon the surrender by such owner of such mutilated certificate and, if required by the Corporation, the posting of a bond by such owner in an amount sufficient to indemnify the Corporation against any claim that may be made against it in connection therewith.

SECTION 5.05 List of Stockholders Entitled To Vote. The Corporation shall prepare, no later than the tenth (10th) day before each meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (*provided, however,* that if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth (10th) day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for ten (10) days ending on the day before the meeting date (a) on a reasonably accessible electronic network, *provided* that the information required to gain access to such list is provided with the notice of meeting, or (b) during ordinary business hours at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 5.05 or to vote in person or by proxy at any meeting of stockholders.

SECTION 5.06 Fixing Date for Determination of Stockholders of Record.

(A) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however,* that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(B) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall not be more than sixty (60) days prior to such action. If no such record date is

fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

(C) Unless otherwise restricted by the Amended and Restated Certificate of Incorporation, in order that the Corporation may determine the stockholders entitled to express consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date for determining stockholders entitled to express consent to corporate action in writing without a meeting is fixed by the Board of Directors, (a) when no prior action of the Board of Directors is required by law, the record date for such purpose shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law, and (b) if prior action by the Board of Directors is required by law, the record date for such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

SECTION 5.07 Registered Stockholders. Prior to the surrender to the Corporation of the certificate or certificates for a share or shares of stock or notification to the Corporation of the transfer of uncertificated shares with a request to record the transfer of such share or shares, the Corporation may treat the registered owner of such share or shares as the person entitled to receive dividends, to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner of such share or shares. To the fullest extent permitted by law, the Corporation shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof.

ARTICLE VI

Notice and Waiver of Notice

SECTION 6.01 Notice.

(A) Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Amended and Restated Certificate of Incorporation or these Amended and Restated Bylaws may be given in writing directed to the stockholder's mailing address (or by electronic transmission directed to the stockholder's electronic mail address, as applicable) as it appears on the records of the Corporation. Notice shall be given (i) if mailed, when deposited in the United States mail, (ii) if delivered by courier service, the earlier of when the notice is received or left at the stockholder's address, or (iii) if given by electronic mail, when directed to such stockholder's electronic mail address (unless the stockholder has notified the Corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail or such notice is prohibited by the DGCL to be given by electronic transmission). A notice by electronic mail must include a prominent legend that the communication is an important notice regarding the Corporation. A notice by electronic mail will include any files attached thereto and any information hyperlinked to a website if such electronic mail includes the contact information of an officer or agent of the Corporation who is available to assist with accessing such files or information. Any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these Bylaws provided by means of electronic transmission (other than any such notice given by electronic mail) may only be given in a form consented to by such stockholder, and any such notice by such means of electronic transmission shall be deemed to be given as provided by the DGCL.

(B) Except as otherwise provided herein or permitted by applicable law, notices to any director may be in writing and delivered personally or mailed to such director at such director's address appearing on the books of the Corporation, or may be given by telephone or by any means of electronic transmission (including, without limitation, electronic mail) directed to an address for receipt by such director of electronic transmissions appearing on the books of the Corporation.

(C) Without limiting the manner by which notice otherwise may be given effectively to stockholders, and except as prohibited by applicable law, any notice to stockholders given by the Corporation under any provision of applicable law, the Amended and Restated Certificate of Incorporation, or these Amended and Restated Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any stockholder who fails to object in writing to the corporation, within sixty (60) days of having been given written notice by the Corporation of its intention to send the single notice permitted under this Section 6.01(C), shall be deemed to have consented to receiving such single written notice.

SECTION 6.02 Waiver of Notice. A written waiver of any notice, signed by a stockholder or director, or waiver by electronic transmission by such person, whether given before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in such a waiver. Attendance at any meeting (in person or by remote communication) shall constitute waiver of notice except attendance for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

ARTICLE VII

Indemnification

SECTION 7.01 Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director or an officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee, agent or trustee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee, agent or trustee or in any other capacity while serving as a director, officer, employee, agent or trustee, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Delaware law, as the same exists or may hereafter be amended (but, in the case of any such amendment, if permitted, 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), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith; *provided, however*, that, except as provided in Section 7.03 of these Amended and Restated Bylaws with respect to proceedings to enforce rights to indemnification or advancement of expenses or with respect to any compulsory counterclaim brought by such indemnitee, the Corporation shall indemnify any such indemnitee in connection with a

proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board of Directors.

Any reference to an officer of the Corporation in this Article VII shall be deemed to refer exclusively to the Chief Executive Officer, President, Chief Financial Officer, General Counsel, Treasurer and Secretary of the Corporation appointed pursuant to Article IV of these Bylaws, and to any Vice President, Assistant Secretary, Assistant Treasurer or other officer of the Corporation appointed by the Board of Directors pursuant to Article IV of these Bylaws, and any reference to an officer of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be deemed to refer exclusively to an officer appointed by the board of directors or equivalent governing body of such other entity pursuant to the certificate of incorporation and bylaws or equivalent organizational documents of such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. The fact that any person who is or was an employee of the Corporation or an employee of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, but not an officer thereof as described in the preceding sentence, has been given or has used the title of "Vice President" or any other title that could be construed to suggest or imply that such person is or may be such an officer of the Corporation or of such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall not result in such person being constituted as, or being deemed to be, such an officer of the Corporation or of such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise for purposes of this Article VII.

SECTION 7.02 Right to Advancement of Expenses. In addition to the right to indemnification conferred in Section 7.01, an indemnitee shall also have the right to be paid by the Corporation the expenses (including attorney's fees) incurred in appearing at, participating in or defending any such proceeding in advance of its final disposition or in connection with a proceeding brought to establish or enforce a right to indemnification or advancement of expenses under this Article VII (which shall be governed by Section 7.03 (hereinafter an "advancement of expenses"); *provided, however,* that, if the DGCL requires or in the case of an advance made in a proceeding brought to establish or enforce a right to indemnification or advancement, an advancement of expenses incurred by an indemnitee in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made solely upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified or entitled to advancement of expenses under Sections 7.01 and 7.02 or otherwise.

SECTION 7.03 Right of Indemnitee to Bring Suit. If a claim under Section 7.01 or 7.02 of these Amended and Restated Bylaws is not paid in full by the Corporation within (a) sixty (60) days after a written claim for indemnification has been received by the Corporation or (b) twenty (20) days after a claim for an advancement of expenses has been received by the Corporation, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim or to obtain advancement of expenses, as applicable. To the fullest extent permitted by law, if the indemnitee is successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that the indemnitee has not met any applicable standard for indemnification set forth in the DGCL, and in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an

undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that the indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including by its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including by its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VII or otherwise shall be on the Corporation.

SECTION 7.04 Indemnification Not Exclusive.

(A) The provision of indemnification to or the advancement of expenses and costs to any indemnitee under this Article VII, or the entitlement of any indemnitee to indemnification or advancement of expenses and costs under this Article VII, shall not limit or restrict in any way the power of the Corporation to indemnify or advance expenses and costs to such indemnitee in any other way permitted by law or be deemed exclusive of, or invalidate, any right to which any indemnitee seeking indemnification or advancement of expenses and costs may be entitled under any law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such indemnitee's capacity as an officer, director, employee or agent of the Corporation and as to action in any other capacity.

(B) Given that certain jointly indemnifiable claims (as defined below) may arise due to the service of the indemnitee as a director and/or officer of the Corporation at the request of the indemnitee-related entities (as defined below), the Corporation shall be fully and primarily responsible for the payment to the indemnitee in respect of indemnification or advancement of all expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of the Amended and Restated Certificate of Incorporation or these Amended and Restated Bylaws of the Corporation (or any other agreement between the Corporation and such persons) in connection with any such jointly indemnifiable claims, pursuant to and in accordance with the terms of this Article VII, irrespective of any right of recovery the indemnitee may have from the indemnitee-related entities. Any obligation on the part of any indemnitee-related entities to indemnify or advance expenses to any indemnitee shall be secondary to the Corporation's obligation and shall be reduced by any amount that the indemnitee may collect as indemnification or advancement from the Corporation. The Corporation irrevocably waives, relinquishes and releases the indemnitee-related entities from any and all claims it may have against the indemnitee-related entities for contribution, subrogation or any other recovery of any kind in respect thereof. Under no circumstance shall the Corporation be entitled to any right of subrogation or contribution by the indemnitee-related entities and no right of advancement or recovery the indemnitee may have from the indemnitee-related entities shall reduce or otherwise alter the rights of the indemnitee or the obligations of the Corporation hereunder. In the event that any of the indemnitee-related entities shall make any payment to the indemnitee in respect of indemnification or advancement of expenses with respect to any jointly indemnifiable claim, the indemnitee-related entity making such payment shall be subrogated to the extent of such payment to all of the rights of recovery of the indemnitee against the Corporation, and the indemnitee shall execute all papers reasonably required and shall do all things that may be reasonably necessary to secure such rights, including

the execution of such documents as may be necessary to enable the indemnitee-related entities effectively to bring suit to enforce such rights. Each of the indemnitee-related entities shall be third-party beneficiaries with respect to this Section 7.04(B) of Article VII, entitled to enforce this Section 7.04(B) of Article VII.

For purposes of this Section 7.04(B) of Article VII, the following terms shall have the following meanings:

(1) The term “indemnitee-related entities” means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise (other than the Corporation or any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise for which the indemnitee has agreed, on behalf of the Corporation or at the Corporation’s request, to serve as a director, officer, employee or agent and which service is covered by the indemnity described herein) from whom an indemnitee may be entitled to indemnification or advancement of expenses with respect to which, in whole or in part, the Corporation may also have an indemnification or advancement obligation (other than as a result of obligations under an insurance policy).

(2) The term “jointly indemnifiable claims” shall be broadly construed and shall include, without limitation, any action, suit or proceeding for which the indemnitee shall be entitled to indemnification or advancement of expenses from both the indemnitee-related entities and the Corporation pursuant to Delaware law or other comparable governing law, or any agreement or certificate of incorporation, bylaws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or other comparable organizational documents of the Corporation or the indemnitee-related entities, as applicable.

SECTION 7.05 Corporate Obligations; Reliance. The rights granted pursuant to the provisions of this Article VII shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director or officer and shall inure to the benefit of the indemnitee’s heirs, executors and administrators. Any amendment, alteration or repeal of this Article VII that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit, eliminate, or impair any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal.

SECTION 7.06 Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

SECTION 7.07 Indemnification of Employees and Agents of the Corporation. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article VII with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

ARTICLE VIII

Miscellaneous

SECTION 8.01 Electronic Transmission, etc. For purposes of these Amended and Restated Bylaws, “electronic transmission,” “electronic mail,” and “electronic mail address” shall have the meanings ascribed thereto in the DGCL.

SECTION 8.02 Corporate Seal. The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary. If and when so directed by the Board of Directors or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or Assistant Treasurer.

SECTION 8.03 Fiscal Year. The fiscal year of the Corporation shall end on the Saturday closest to January 31 of each year (which Saturday may occur on a date following January 31), or such other day as the Board of Directors may designate.

SECTION 8.04 Section Headings; Section References. Section headings in these Amended and Restated Bylaws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein. Except as otherwise indicated, section references herein refer to sections of these Amended and Restated Bylaws.

SECTION 8.05 Inconsistent Provisions. In the event that any provision of these Amended and Restated Bylaws is or becomes inconsistent with any provision of the Amended and Restated Certificate of Incorporation, the DGCL or any other applicable law, such provision of these Amended and Restated Bylaws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

ARTICLE IX

Amendments

SECTION 9.01 Amendments. The Board of Directors is authorized to make, repeal, alter, amend and rescind, in whole or in part, these Amended and Restated Bylaws without the assent or vote of the stockholders in any manner not inconsistent with the laws of the State of Delaware or the Amended and Restated Certificate of Incorporation. For so long as KKR beneficially owns, in the aggregate, at least 40% in voting power of the stock of the Corporation entitled to vote generally in the election of directors, in addition to any vote of the holders of any class or series of capital stock of the Corporation required by the Amended and Restated Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock (as defined in the Amended and Restated Certificate of Incorporation)), by these Amended and Restated Bylaws or applicable law, the affirmative vote of the holders of a majority in voting power of all the then-outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class, shall be required in order for the stockholders of the Corporation to alter, amend, repeal or rescind, in whole or in part, any provision of these Amended and Restated Bylaws or to adopt any provision inconsistent therewith. Notwithstanding any other provisions of these Amended and Restated Bylaws or any provision of law that might otherwise permit a lesser vote of the stockholders, at any time when KKR beneficially owns, in the aggregate, less than 40% in voting power of the stock of the Corporation entitled to vote generally in the election of directors, in addition to any vote of the holders of any class or series of capital stock of the Corporation required by the Amended and Restated Certificate of Incorporation (including any certificate of designation relating to any

series of Preferred Stock (as defined in the Amended and Restated Certificate of Incorporation)), these Amended and Restated Bylaws or applicable law, the affirmative vote of the holders of at least 66²/₃% in voting power of all the then-outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class, shall be required in order for the stockholders of the Corporation to alter, amend, repeal or rescind, in whole or in part, any provision of these Amended and Restated Bylaws (including, without limitation, this Section 9.01) or to adopt any provision inconsistent herewith.

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CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, Ken C. Hicks, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarterly period ended October 29, 2022 (this "Report") of Academy Sports and Outdoors, Inc. (the "Registrant");
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 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.

/s/ KEN C. HICKS

Ken C. Hicks
Chairman, President and Chief Executive Officer
(principal executive officer)

Date: December 7, 2022

CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, Michael P. Mullican, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarterly period ended October 29, 2022 (this "Report") of Academy Sports and Outdoors, Inc. (the "Registrant");
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 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.

/s/ MICHAEL P. MULLICAN

Michael P. Mullican
Executive Vice President and Chief Financial Officer
(principal financial officer)

Date: December 7, 2022

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

In connection with the Quarterly Report on Form 10-Q of Academy Sports and Outdoors, Inc.. (the "Company") for the quarterly period ended October 29, 2022, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Ken C. Hicks, Chairman, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

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

/s/ KEN C. HICKS

Date: December 7, 2022

Ken C. Hicks

Chairman, President and Chief Executive Officer
(principal executive officer)

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

In connection with the Quarterly Report on Form 10-Q of Academy Sports and Outdoors, Inc. (the "Company") for the quarterly period ended October 29, 2022, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Michael P. Mullican, Executive Vice President and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

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

/s/ MICHAEL P. MULLICAN

Date: December 7, 2022

Michael P. Mullican

Executive Vice President and Chief Financial Officer

(principal financial officer)