

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 September 30, 2003

OR

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

For the transition period from _____ to _____.

Commission file number: 001-15957

CAPSTONE TURBINE CORPORATION

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

95-4180883
(I.R.S. Employer
Identification No.)

21211 Nordhoff Street, Chatsworth, California 91311
(Address of principal executive offices and zip code)

818-734-5300
(Registrant's telephone number, including area code)

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

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Securities Exchange Act of 1934). Yes No

The number of outstanding shares of the registrant's common stock as of September 30, 2003 was 83,080,102.

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PART I — FINANCIAL INFORMATION**Item 1. Consolidated Financial Statements****CAPSTONE TURBINE CORPORATION
CONSOLIDATED BALANCE SHEETS
(Unaudited)**

	September 30, 2003	December 31, 2002
Assets		
Current Assets:		
Cash and cash equivalents	\$ 119,949,000	\$ 140,310,000
Accounts receivable, net of allowance for doubtful accounts and sales returns of \$578,000 at September 30, 2003 and \$194,000 at December 31, 2002	2,749,000	4,893,000
Inventory	10,596,000	9,124,000
Prepaid expenses and other current assets	2,092,000	2,331,000
Total current assets	135,386,000	156,658,000
Equipment and Leasehold Improvements:		
Machinery, equipment, and furniture	22,996,000	22,996,000
Leasehold improvements	8,497,000	8,480,000
Molds and tooling	4,316,000	4,350,000
	35,809,000	35,826,000
Less accumulated depreciation and amortization	18,476,000	15,346,000
Total equipment and leasehold improvements, net	17,333,000	20,480,000
Non-Current Portion of Inventory	3,787,000	6,784,000
Intangible Asset, net	1,828,000	2,029,000
Other Assets	492,000	1,240,000
Total	\$ 158,826,000	\$ 187,191,000
Liabilities and Stockholders' Equity		
Current Liabilities:		
Accounts payable	\$ 1,726,000	\$ 4,321,000
Accrued salaries and wages	1,420,000	2,088,000
Other accrued liabilities	1,314,000	1,132,000
Accrued warranty reserve	6,196,000	6,913,000
Deferred revenue	1,817,000	734,000
Current portion of capital lease obligations	1,158,000	1,522,000
Total current liabilities	13,631,000	16,710,000
Long-Term Portion of Capital Lease Obligations	251,000	974,000
Other Long-Term Liabilities	1,232,000	1,325,000
Commitments and Contingencies	—	—
Stockholders' Equity:		
Common stock, \$.001 par value; 415,000,000 shares authorized; 83,631,310 shares issued and 83,080,102 shares outstanding at September 30, 2003; 81,635,035 shares issued and 81,437,822 shares outstanding at December 31, 2002	84,000	82,000
Additional paid-in capital	529,389,000	526,952,000
Accumulated deficit	(384,671,000)	(358,646,000)
Less: Deferred stock compensation	(577,000)	—
Less: Treasury stock, at cost; 551,208 shares at September 30, 2003; 197,213 shares at December 31, 2002	(513,000)	(206,000)
Total stockholders' equity	143,712,000	168,182,000
Total	\$ 158,826,000	\$ 187,191,000

See accompanying notes to consolidated financial statements.

CAPSTONE TURBINE CORPORATION
CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2003	2002	2003	2002
Revenues	\$ 2,347,000	\$ 3,887,000	\$ 9,261,000	\$ 15,886,000
Cost of Goods Sold	4,551,000	6,301,000	16,246,000	25,481,000
Gross Loss	(2,204,000)	(2,414,000)	(6,985,000)	(9,595,000)
Operating Expenses:				
Research and development	2,402,000	1,880,000	5,858,000	4,938,000
Selling, general and administrative	4,643,000	7,057,000	14,140,000	25,067,000
Impairment loss on marketing rights	—	—	—	15,999,000
Total operating expenses	7,045,000	8,937,000	19,998,000	46,004,000
Loss from Operations	(9,249,000)	(11,351,000)	(26,983,000)	(55,599,000)
Interest Income	309,000	687,000	1,148,000	2,266,000
Interest Expense	(52,000)	(97,000)	(189,000)	(316,000)
Other Income	—	3,000	1,000	28,000
Loss Before Income Taxes	(8,992,000)	(10,758,000)	(26,023,000)	(53,621,000)
Provision for Income Taxes	—	—	2,000	2,000
Net Loss	\$ (8,992,000)	\$ (10,758,000)	\$ (26,025,000)	\$ (53,623,000)
Weighted Average Common Shares Outstanding	81,788,427	77,526,602	81,477,606	77,455,926
Net Loss Per Share of Common Stock – Basic and Diluted	\$ (0.11)	\$ (0.14)	\$ (0.32)	\$ (0.69)

See accompanying notes to consolidated financial statements.

CAPSTONE TURBINE CORPORATION
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)

	Nine Months Ended September 30,	
	2003	2002
Cash Flows from Operating Activities:		
Net loss	\$ (26,025,000)	\$ (53,623,000)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	4,790,000	8,065,000
Impairment loss on marketing rights	—	15,999,000
Non-cash reversal of administrative expenses	(1,099,000)	—
Provision for doubtful accounts and sales returns	555,000	169,000
Inventory write-down	63,000	3,002,000
Provision for warranty expenses	2,011,000	2,364,000
Loss on disposal of equipment	217,000	86,000
Non-employee stock compensation	28,000	—
Employee and director stock compensation	537,000	780,000
Changes in operating assets and liabilities:		
Accounts receivable	1,589,000	2,028,000
Inventory	1,462,000	1,883,000
Prepaid expenses and other current assets	239,000	(1,220,000)
Other assets	—	(267,000)
Accounts payable	(1,496,000)	(110,000)
Accrued salaries and wages and deferred compensation	(704,000)	319,000
Other accrued liabilities	124,000	(55,000)
Accrued warranty reserve	(2,728,000)	(2,239,000)
Deferred revenue	1,083,000	(838,000)
Net cash used in operating activities	<u>(19,354,000)</u>	<u>(23,657,000)</u>
Cash Flows from Investing Activities:		
Acquisition of and deposits on fixed assets	(950,000)	(2,116,000)
Proceeds from disposal of fixed assets	26,000	—
Net cash used in investing activities	<u>(924,000)</u>	<u>(2,116,000)</u>
Cash Flows from Financing Activities:		
Repayment of capital lease obligations	(1,073,000)	(976,000)
Exercise of stock options and employee stock purchases	1,297,000	214,000
Acquisition of treasury stock	(307,000)	—
Net cash used in financing activities	<u>(83,000)</u>	<u>(762,000)</u>
Net Decrease in Cash and Cash Equivalents	(20,361,000)	(26,535,000)
Cash and Cash Equivalents, Beginning of Period	140,310,000	170,868,000
Cash and Cash Equivalents, End of Period	<u>\$119,949,000</u>	<u>\$144,333,000</u>
Supplemental Disclosures of Cash Flow Information:		
Cash paid during the period for:		
Interest	\$ 189,000	\$ 316,000
Income taxes	\$ 2,000	\$ 2,000

See accompanying notes to consolidated financial statements.

CAPSTONE TURBINE CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Business and Organization

Capstone Turbine Corporation (the “Company”) develops, manufactures and sells microturbine generator sets for use in combined heat and power generation, resource recovery, hybrid electric vehicles and other power, heat and cooling applications in the markets for distributed power generation around the world. The Company was organized in 1988 and has been commercially producing its microturbine generators since 1998.

The Company has incurred significant operating losses since its inception. Management anticipates incurring additional losses until the Company can produce sufficient revenues to cover costs and expenses. To date, the Company has funded its activities primarily through private and public equity offerings.

2. Basis of Presentation

The accompanying unaudited financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“generally accepted accounting principles”) for interim financial information and with the instructions to Form 10-Q and Regulation S-X promulgated under the Securities Exchange Act of 1934. They do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements. The balance sheet at December 31, 2002 was derived from audited financial statements included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2002. In the opinion of management, the interim financial statements include all adjustments (consisting of normal recurring adjustments) necessary for a fair presentation of the financial condition, results of operations and cash flows for such periods. Results of operations for any interim period are not necessarily indicative of results for any other interim period or for the full year. These financial statements should be read in conjunction with the financial statements and notes thereto included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2002.

Certain reclassifications have been made in some prior year balances to match the current year’s presentation.

3. New Accounting Pronouncements

In May 2003, Statement of Financial Accounting Standards (“SFAS”) No. 150, “Accounting for Certain Instruments with Characteristics of Both Liabilities and Equity”, was issued. The standard establishes how an issuer classifies and measures certain freestanding financial instruments with characteristics of liabilities and equity and requires that such instruments be classified as liabilities. The standard is effective for financial instruments entered into or modified after May 31, 2003 and is otherwise effective at the beginning of the first interim period beginning after June 15, 2003. The adoption of this standard did not have a material impact on the Company’s consolidated financial position, results of operations or cash flows.

In April 2003, SFAS No. 149, “Amendment of Statement 133 on Derivative Instruments and Hedging Activities”, was issued. The standard amends and clarifies financial reporting for derivative instruments and for hedging activities accounted for under SFAS No. 133 and is effective for contracts entered into or modified, and for hedges designated, after June 30, 2003. The adoption of this standard did not have a material impact on the Company’s consolidated financial position, results of operations or cash flows.

In January 2003, the Emerging Issues Task Force (“EITF”) released EITF 00-21: “Accounting for Revenue Arrangements with Multiple Deliverables.” EITF 00-21 clarifies the timing and recognition of revenue from certain transactions that include the delivery and performance of multiple products or services. EITF 00-21 is effective for revenue arrangements entered into in fiscal periods beginning after June 15, 2003. Alternatively, entities may elect to report the change in accounting as a cumulative-effect adjustment in accordance with Accounting Principles Board Opinion 20, “Accounting Changes.” If so elected, disclosure should be made in periods subsequent to the date of initial application of this consensus of the amount of the recognized revenue that was previously included in the cumulative-effect adjustments. The adoption of EITF 00-21 did not have a material impact on the Company’s consolidated financial position, results of operations or cash flows.

CAPSTONE TURBINE CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)
(Unaudited)

4. Inventory

Inventory is stated at the lower of standard cost (which approximates actual cost on the first-in, first-out method) or market and consists of the following:

	September 30, 2003	December 31, 2002
Raw materials	\$10,930,000	\$12,623,000
Work in process	1,991,000	1,831,000
Finished goods	1,462,000	1,454,000
	14,383,000	15,908,000
Less non-current portion	3,787,000	6,784,000
	\$10,596,000	\$ 9,124,000

The non-current portion of inventory represents that portion of the inventory in excess of amounts expected to be sold or used in the next twelve months.

5. Intangible Asset

The intangible asset represents the license granted to the Company to use a former supplier's intellectual property for the design and manufacture of licensed product for use in microturbines. Additional information is as follows:

	September 30, 2003	December 31, 2002
Gross carrying amount	\$3,663,000	\$3,663,000
Less accumulated amortization and impairment loss	1,835,000	1,634,000
	\$1,828,000	\$2,029,000

This intangible asset, which was acquired in 2000, is being amortized over its estimated useful life of ten years. Related amortization expense for the three-month and nine-month periods ended September 30, 2003 was \$67,000 and \$201,000, respectively, compared with \$94,000 and \$281,000 for the same periods last year. This intangible asset is scheduled to be fully amortized by 2010 with corresponding amortization estimated to be \$66,000, \$267,000, \$267,000, \$267,000, \$267,000 and \$694,000, for the remainder of 2003, calendar years 2004, 2005, 2006, 2007, and thereafter, respectively.

6. Stock-Based Compensation

The following table is presented in accordance with SFAS No. 148 and illustrates the effect on net loss and net loss per share if the Company had applied the fair value recognition provisions of SFAS No. 123:

In Thousands (except per share amounts)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2003	2002	2003	2002
Net loss, as reported	\$ (8,992)	\$(10,758)	\$(26,025)	\$(53,623)
Add: Stock-based employee and director compensation included in reported net loss	134	253	537	780
Deduct: Total stock-based employee and director compensation expense determined under fair value based method	(1,150)	(2,376)	(4,802)	(6,993)
	\$ (10,008)	\$(12,881)	\$(30,290)	\$(59,836)
Pro forma net loss				
Net loss per share – Basic and Diluted:				

As reported	\$ (0.11)	\$ (0.14)	\$ (0.32)	\$ (0.69)
Pro forma	\$ (0.12)	\$ (0.17)	\$ (0.37)	\$ (0.77)

CAPSTONE TURBINE CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)
(Unaudited)

During 1999 and 2000, the Company granted options at less than the fair value of its common stock. In addition, in 2003, the Company issued shares of restricted common stock at less than the fair value of its common stock. Accordingly, the Company recorded stock-based compensation expense based on the vesting of these issuances as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2003	2002	2003	2002
Cost of goods sold	\$ 14,000	\$ 11,000	\$ 39,000	\$ 33,000
Research and development	57,000	67,000	173,000	204,000
Selling, general and administrative	63,000	175,000	325,000	543,000
Total	<u>\$134,000</u>	<u>\$253,000</u>	<u>\$537,000</u>	<u>\$780,000</u>

As of September 30, 2003, the Company had \$164,000 in deferred employee and director stock-based compensation (excluding deferred stock compensation related to restricted stock), which will be amortized through 2004 based on the vesting period.

On August 1, 2003, the Company issued 2,000,000 non-qualified common stock options outside of the 2000 Equity Incentive Plan (“2000 Plan”) at an exercise price of \$1.18 per share, the fair market value of its common stock on that date. Accordingly, no stock-based compensation was recorded for this grant. In addition, on August 4, 2003, the Company sold 500,000 shares of restricted common stock at a price of \$0.001 per share. Deferred stock compensation of \$590,000 was recorded for this issuance. Both issuances were part of the compensation package for the Company’s new President and Chief Executive Officer. Both issuances are subject to the following vesting provisions: 1/4th vests one year after the issuance date and 1/48th vests on the first day of each full month thereafter, so that all shall be vested on the first day of the 48th month after the issuance date; provided, however, that if he is terminated by the Company other than for cause prior to the one-year anniversary of the date of the issuance, 1/48th vests on the one-month anniversary of the issuance date until the termination date. Amortization of the deferred stock compensation related to the restricted common stock for the quarter ended September 30, 2003 was \$13,000. As of September 30, 2003, the Company had \$577,000 in deferred stock compensation related to the restricted common stock, which will be amortized through 2007 based on the vesting period.

During the third quarter of 2003, the Company also issued a total of 1,950,000 non-qualified common stock options outside of the 2000 Plan at an exercise price equal to the fair market value of its common stock, as inducement grants to two new executive officers and two new employees of the Company. Accordingly, no stock-based compensation was recorded for these grants.

On July 31, 2003, the Company canceled 3,174,194 unvested non-qualified common stock options issued outside of the 2000 Plan to the Company’s former Interim Chief Executive Officer.

On June 25, 2003, the Company made a tender offer to eligible employees to exchange options with exercise prices greater than or equal to \$2.00 per share. 610,950 options were tendered by eligible employees in the exchange offer. The tendered options were cancelled on July 25, 2003, and new options will be granted at least six months and one day from cancellation date, with the new grant date expected to be on January 26, 2004. The terms and conditions of the new options will vary from the terms and conditions of the tendered options in several ways, including (a) the exercise price of the new options will be the closing price of the Company’s common stock on the date of the new option grant, (b) each new option will be a non-statutory stock option, even if the tendered option was an incentive stock option, and (c) the vesting schedule of each new option will be as follows: 12.5% of the shares subject to the new option will be vested on the new option grant date, and 1/48 of the shares subject to the new option will vest monthly thereafter, subject to the option holder’s continued employment through each relevant vesting date.

On March 20, 2003, the Board of Directors approved an amendment to the 2000 Plan to increase the number of shares of common stock available for grant by 2,500,000 shares. The Plan amendment requires approval of stockholders within twelve months after the action of the Board of Directors.

7. Accrued Warranty Reserve

The Company provides for the estimated costs of warranties at the time revenue is recognized. The specific terms and conditions of those warranties vary depending upon the product sold, geography of sale and the length of extended warranties sold. The Company’s product warranties generally start from the delivery date and continue for up to three years. Factors that affect the Company’s warranty obligation include product failure rates and costs of repair or replacement in correcting product failures. The Company also accrues in warranty those costs estimated to address reliability repairs on products no longer in warranty when, in the

CAPSTONE TURBINE CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)
(Unaudited)

Company's judgment, and in accordance with a specific plan developed by the Company, it is prudent to provide such repairs. The Company assesses the adequacy of recorded warranty liabilities quarterly and makes adjustments to the liability if necessary.

Changes in accrued warranty reserve during the nine months ended September 30, 2003 are as follows:

Balance, January 1, 2003	\$ 6,913,000
Reductions for payments made in cash or in kind	(2,662,000)
Changes for accruals related to warranties issued during the period	972,000
Changes for accruals related to preexisting warranties or reliability repairs programs	1,039,000
Changes in deferred revenue associated with extended warranties	(66,000)
	<hr/>
Balance, September 30, 2003	\$ 6,196,000

8. Commitments and Contingencies

As of September 30, 2003, the Company had firm commitments to purchase inventories of approximately \$5,500,000.

In December 2001, a purported shareholder class action lawsuit was filed against the Company, two of its officers, and the underwriters of the Company's initial public offering. The suit purports to be a class action filed on behalf of purchasers of the Company's common stock during the period from June 28, 2000 to December 6, 2000. An amended complaint was filed on April 19, 2002. No date has been set for the Company to respond to the complaint. Plaintiffs allege that the underwriter defendants agreed to allocate stock in the Company's June 28, 2000 initial public offering and November 16, 2000 secondary offering to certain investors in exchange for excessive and undisclosed commissions and agreements by those investors to make additional purchases of stock in the aftermarket at pre-determined prices. Plaintiffs allege that the prospectuses for these two public offerings were false and misleading in violation of the securities laws because they did not disclose these arrangements. A committee of the Company's Board of Directors conditionally approved a proposed partial settlement with the plaintiffs in this matter. The settlement would provide, among other things, a release of the Company and of the individual defendants for the conduct alleged in the action to be wrongful in the Amended Complaint. The Company would agree to undertake other responsibilities under the partial settlement, including agreeing to assign away, not assert, or release certain potential claims the Company may have against its underwriters. Any direct financial impact of the proposed settlement is expected to be borne by the Company's insurers. The committee agreed to approve the settlement subject to a number of conditions, including the participation of a substantial number of other defendants in the proposed settlement, the consent of the Company's insurers to the settlement, and the completion of acceptable final settlement documentation. Furthermore, the settlement is subject to a hearing on fairness and approval by the Court.

The Company is a defendant in a breach of contract lawsuit, brought by a party that conducts business with the Company, claiming damages in excess of \$10 million. The Company intends to vigorously defend against this lawsuit. As with any litigation, the ultimate outcome of this lawsuit is uncertain.

9. Related Party Transactions

Mr. Eliot Protsch is the Chairman of the Company's Board of Directors. Mr. Protsch is Interim Chief Financial Officer and Executive Vice-President, Energy Delivery at Alliant Energy Corporation. He is also President of Interstate Power and Light Company, a subsidiary of Alliant Energy Corporation. Alliant Energy Resources, Inc., a subsidiary of Alliant Energy Corporation, is a distributor for the Company. Sales to Alliant Energy Resources, Inc. for the three-month and nine-month periods ended September 30, 2003 were \$-0- and \$25,000, respectively. Sales to Alliant Energy Resources, Inc. for the three-month and nine-month periods ended September 30, 2002 were \$60,000 and \$1.5 million, respectively, with \$1.4 million of sales in that nine-month period made under a firm purchase contract.

10. Selling, General and Administrative Expenses

As a result of a settlement agreement with a professional services firm, liabilities for \$1,099,000 of administrative expenses recorded in prior years were reversed in the first quarter of 2003.

CAPSTONE TURBINE CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS – (Continued)
(Unaudited)

11. Net Loss Per Common Share

Basic loss per common share is computed using the weighted-average number of common shares outstanding for the period. For purposes of computing basic loss per share and diluted loss per share, shares of restricted common stock which are contingently returnable (i.e., subject to repurchase if the purchaser's status as an employee or consultant terminates) are not considered outstanding until they are vested. Diluted loss per share is also computed without consideration to potentially dilutive instruments because the Company incurred losses which would make them antidilutive. Outstanding stock options at September 30, 2003 and 2002 were 8.7 million and 7.7 million, respectively. As of September 30, 2003, 0.5 million shares of restricted common stock are contingently returnable.

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

The following discussion should be read in conjunction with the Consolidated Financial Statements and Notes included in this Quarterly Report and within the Company's Annual Report on Form 10-K for the year ended December 31, 2002. This document contains certain forward-looking statements (as such term is defined in Section 27A of the Securities Act of 1933, as amended and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) pertaining to, among other things, the Company's future results of operations, research and development ("R&D") activities, sales expectations, our ability to develop markets for our products, sources for parts, federal, state and local regulations, and general business, industry and economic conditions applicable to the Company. When used in the following discussion, the words "believes", "anticipates", "intends", "expects", "plans" and similar expressions are intended to identify forward-looking statements. These statements are based largely on the Company's current expectations, estimates and forecasts and are subject to a number of risks and uncertainties. Actual results could differ materially from these forward-looking statements. Factors that can cause actual results to differ materially include, but are not limited to, those listed in Item 5 — Other Information of this Form 10-Q. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. The following factors should be considered in addition to the other information contained herein in evaluating the Company and its business. We undertake no obligation to revise or update publicly any of the forward-looking statements after the filing of this Form 10-Q to conform such statements to actual results or to changes in our expectations except as required by law.

Critical Accounting Policies and Estimates

The preparation of the Company's financial statements requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses. Management believes the most complex and sensitive judgments, because of their significance to the consolidated financial statements, result primarily from the need to make estimates about the effects of matters that are inherently uncertain. Actual results could differ from management's estimates. We believe the critical accounting policies listed below affect our more significant accounting judgments and estimates used in the preparation of the consolidated financial statements. These policies are described in greater detail in our Annual Report on Form 10-K for the year ended December 31, 2002.

- Impairment of long-lived assets, including intangible assets;
- Inventory write-downs and classification of inventory;
- Estimates of warranty obligations;
- Sales returns and allowances;
- Allowance for doubtful accounts;
- Deferred tax assets; and
- Loss contingencies.

Results of Operations

Three Months Ended September 30, 2003 and 2002

Revenues. Revenues for the quarter ended September 30, 2003 decreased \$1.6 million to \$2.3 million from \$3.9 million for the same period last year. Revenues from product shipments for the quarter decreased \$1.0 million to \$1.6 million from \$2.6 million last year. Shipments during the quarter of 1.9 megawatts were about 60% of the volume shipped for the same period a year ago. Revenues from accessories, parts and service for the quarter decreased \$0.6 million to \$0.7 million from \$1.3 million for the same period last year. Revenues are reported net of sales returns and allowances.

We entered the third quarter of 2003 with 5.1 megawatts of outstanding orders, most of which we anticipated to ship in the quarter. In September, we identified quality issues with some components used in the manufacturing of our C60 products and low pressure natural gas C30 product, resulting in the delay of shipments of orders. As a result, we shipped less than anticipated. Production was resumed in late September for C60 products and in mid October for C30 products. During the quarter we received new orders of 1.1 megawatts, leaving outstanding orders of 4.3 megawatts at the end of the quarter.

One customer accounted for approximately 16% of revenues for the third quarter of 2003. No customer accounted for 10% or more of revenues for the same quarter a year ago.

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Gross Loss. We had a gross loss of \$2.2 million for the third quarter of 2003, compared with \$2.4 million for the same period last year primarily because of lower production overhead spending.

Our cost of goods sold has exceeded revenues each period. We expect this trend to continue until such time that we can sell a sufficient number of units to achieve a break-even margin.

Research and Development Expenses. R&D expenses for the quarter ended September 30, 2003 increased \$0.5 million to \$2.4 million from \$1.9 million for the same period last year. R&D expenses are reported net of benefits from cost sharing programs. These benefits were \$0.1 million for the third quarter this year, compared with \$1.5 million for the same period a year ago. The benefits from cost sharing programs vary from period-to-period depending on the phases of the programs.

Selling, General, and Administrative ("SG&A") Expenses. SG&A expenses for the quarter ended September 30, 2003 decreased \$2.5 million to \$4.6 million from \$7.1 million for the same period last year. Overall spending was lower in 2003 as a result of our actions to reduce our cost structure in areas such as headcount, legal, consulting and facilities costs.

Interest Income. Interest income for the quarter ended September 30, 2003 decreased \$0.4 million to \$0.3 million from \$0.7 million for the same period last year. The decrease was primarily attributable to lower cash balances and lower interest rates. We expect decreasing cash balances from our use of funds will continue to diminish our interest income.

Nine Months Ended September 30, 2003 and 2002

Revenues. Revenues for the nine months ended September 30, 2003 decreased \$6.6 million to \$9.3 million from \$15.9 million for the same period last year. Revenues from product shipments for the nine months ended September 30, 2003 decreased \$5.5 million to \$6.5 million from \$12.0 million a year ago. Shipments during the nine months ended September 30, 2003 of 7.9 megawatts were about half of the volume shipped for the same period a year ago. Revenues from accessories, parts and service for the nine months ended September 30, 2003 decreased \$0.4 million to \$3.5 million from \$3.9 million for the same period last year. Revenues are reported net of sales returns and allowances.

Three customers accounted for approximately 34% of revenues for the nine months ended September 30, 2003. Two customers accounted for approximately 27% of revenues for the same period a year ago. Each of these customers individually accounted for 10% or more of revenues.

Gross Loss. We had a gross loss of \$7.0 million for the nine months ended September 30, 2003, compared with \$9.6 million for the same period last year. The change in gross loss was largely attributable to a \$2.9 million lower inventory write-down this year compared with last year.

R&D Expenses. R&D expenses for the nine months ended September 30, 2003 increased \$1.0 million to \$5.9 million from \$4.9 million for the same period last year. R&D expenses are reported net of benefits from cost sharing programs. These benefits were \$1.9 million for the nine months ended September 30, 2003, compared with \$4.1 million for the same period a year ago. The benefits from cost sharing programs vary from period-to-period depending on the phases of the programs.

SG&A Expenses. SG&A expenses for the nine months ended September 30, 2003 decreased \$11.0 million to \$14.1 million from \$25.1 million for the same period last year. Overall spending was lower in 2003 in part as a result of our actions to reduce our cost structure in areas such as headcount, legal, consulting and facilities costs. Other factors that reduced SG&A expenses between periods include:

- There was no amortization expense from marketing rights in the first nine months of 2003, compared with \$2.6 million for the same period last year.
- As a result of a settlement agreement with a professional services firm, liabilities for \$1.1 million of administrative expenses recorded in prior years were reversed in the first quarter of 2003.

Impairment Loss. In the second quarter of 2002, due to a change in our sales forecast, the Company evaluated the remaining book value of the marketing rights and determined that this asset was impaired based on the assessment of the expected cash flows that can be generated by this asset during its remaining term. Expected favorable margins in the latter years of the term of the marketing rights were not sufficient to offset losses in the early years. The recorded impairment loss was approximately \$16.0 million, representing the remaining carrying value of the asset.

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Interest Income. Interest income for the nine months ended September 30, 2003 decreased \$1.2 million to \$1.1 million from \$2.3 million for the same period last year. The decrease was primarily attributable to the lower cash balances and lower interest rates. We expect decreasing cash balances from our use of funds will continue to diminish our interest income.

Liquidity and Capital Resources

Our cash requirements depend on many factors, including our product development activities and our commercialization efforts. While we are working to continue to control spending levels and identify areas where we can reduce our cash spending, we expect to continue to devote substantial capital resources to running our business, including enhancing reliability of both new and existing products and completing the development of our C200 microturbine.

We have invested our cash in an institutional fund that invests in high quality short-term money market instruments to provide liquidity for operations and for capital preservation.

We used cash of \$20.4 million during nine months ended September 30, 2003, compared with \$26.5 million for the same period last year.

Our net cash used in operating activities was \$19.4 million for the nine months ended September 30, 2003, compared with \$23.7 million for the same period last year. The decrease reflects a decline of \$4.2 million in net loss, after adjusting for non-cash items.

Accounts receivable decreased \$2.2 million to \$2.7 million as of September 30, 2003 from \$4.9 million as of December 31, 2002, as a result of improved collections and lower billings on cost sharing programs in the third quarter of 2003 compared with the fourth quarter of 2002.

Total inventory decreased \$1.5 million to \$14.4 million as of September 30, 2003 from \$15.9 million as of December 31, 2002. At September 30, 2003, non-current inventory of \$3.8 million represents that portion of the inventory in excess of amounts expected to be sold or used in the next twelve months. As of September 30, 2003, the Company had firm commitments to purchase inventories of approximately \$5.5 million. We had previously fully written-down inventories of new recuperator cores and we now expect to use some of these in production. This will have a favorable impact on our margin and cash usage.

Net cash used in investing activities for acquisition of fixed assets was \$1.0 million for the nine months ended September 30, 2003, compared to \$2.1 million for the same period last year.

Our net cash used in financing activities was \$83,000 for the nine months ended September 30, 2003, compared to \$762,000 for the same period last year. The decrease in cash usage was primarily the result of higher proceeds from exercise of stock options and employee stock purchases of \$1.1 million, offset by purchases of treasury stock of \$0.3 million this year. In October 2002, our Board of Directors approved a stock repurchase program under which we may purchase up to \$10 million of our common stock. We may purchase shares from time to time through open market and privately negotiated transactions at prices deemed appropriate by management. The program has no termination date. Since the inception of the program, we have repurchased 551,208 shares for an aggregate price of \$0.5 million.

Except for scheduled payments made in 2003, there have been no material changes in the Company's remaining commitments under non-cancelable operating leases and capital leases as disclosed in the Company's Annual Report on Form 10-K for the year ended December 31, 2002.

In 2000, the United States Department of Energy ("DOE") awarded us \$10.0 million under a Cooperative Agreement to develop an Advanced Microturbine System. The \$10.0 million award was to be distributed over a five-year period. The program was estimated to cost \$23.0 million over five years, which would require us to provide approximately \$13.0 million of our own R&D expenditures. We have billed \$8.0 million to the DOE under this agreement through September 30, 2003, leaving a balance of \$2.0 million to be billed over the remainder of 2003 and through 2005.

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Impact of Recently Issued Accounting Standards

In May 2003, SFAS No. 150, "Accounting for Certain Instruments with Characteristics of Both Liabilities and Equity", was issued. The standard establishes how an issuer classifies and measures certain freestanding financial instruments with characteristics of liabilities and equity and requires that such instruments be classified as liabilities. The standard is effective for financial instruments entered into or modified after May 31, 2003 and is otherwise effective at the beginning of the first interim period beginning after June 15, 2003. The adoption of this standard did not have a material impact on the Company's consolidated financial position, results of operations or cash flows.

In April 2003, SFAS No. 149, "Amendment of Statement 133 on Derivative Instruments and Hedging Activities", was issued. The standard amends and clarifies financial reporting for derivative instruments and for hedging activities accounted for under SFAS No. 133 and is effective for contracts entered into or modified, and for hedges designated, after June 30, 2003. The adoption of this standard did not have a material impact on the Company's consolidated financial position, results of operations or cash flows.

In January 2003, the Emerging Issues Task Force released EITF 00-21: "Accounting for Revenue Arrangements with Multiple Deliverables." EITF 00-21 clarifies the timing and recognition of revenue from certain transactions that include the delivery and performance of multiple products or services. EITF 00-21 is effective for revenue arrangements entered into in fiscal periods beginning after June 15, 2003. Alternatively, entities may elect to report the change in accounting as a cumulative-effect adjustment in accordance with APB Opinion 20, "Accounting Changes." If so elected, disclosure should be made in periods subsequent to the date of initial application of this consensus of the amount of the recognized revenue that was previously included in the cumulative-effect adjustments. The adoption of EITF 00-21 did not have a material impact on the Company's consolidated financial position, results of operations or cash flows.

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

No material changes have occurred in the quantitative and qualitative market risk disclosure of the Company as presented in its Annual Report on Form 10-K for the year ended December 31, 2002.

Item 4. *Controls and Procedures*

Evaluation of Disclosure Controls and Procedures

An evaluation was performed under the supervision and with the participation of our management team, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our disclosure controls and procedures as of the end of the period covered by this Quarterly Report. Based on that evaluation, our management, including our Chief Executive Officer and Chief Financial Officer, have concluded that our disclosure controls and procedures were effective, as of September 30, 2003, to provide reasonable assurance that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms.

Changes in Internal Controls

There were no changes in our internal control over financial reporting that occurred during the quarter ended September 30, 2003, that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II — OTHER INFORMATION

Item 1. *Legal Proceedings*

There have been no material developments since the quarter ended June 30, 2003.

Item 5. *Other Information*

Business Risks

Investors should carefully consider the risks described below before making an investment decision. These risks are not the only ones facing our Company. In addition, risks of which we are not aware or that we believe are immaterial may also impair our business operations. Our business could be harmed by any of these risks. These factors are described in greater detail in our Annual Report on Form 10-K for the year ended December 31, 2002 and our Quarterly Reports on Form 10-Q for the past two quarters.

- We have a limited operating history characterized by net losses, and we anticipate continued losses;
- Our success depends in significant part upon the services of management and key employees;
- In any period, our sales may be significantly dependent upon sales to a few customers;
- The economic downturn has made potential customers hesitant to make capital expenditures;
- If we do not effectively implement our sales and marketing plans, our sales will not grow and we will not achieve profitability;
- A sustainable market for microturbines may never develop or may take longer to develop than we anticipate, which would adversely impact our revenues and profitability;
- We have limited experience in international sales and may not succeed in growing our international sales;
- Product quality and reliability expectations may not be met adversely impacting market acceptance;
- We depend upon the development of new products and enhancements of existing products;
- We operate in a highly competitive market and may not be able to compete effectively as a result of factors affecting the market for our products;
- Our competitors, some of which have significantly greater resources than we have, may be able to adapt more quickly to new or emerging technologies or to devote greater resources to the promotion and sale of their products, and we may be unable to compete effectively;
- Changes in government regulations and the electric utility industry restructuring may affect demand for our microturbines;
- We operate in a highly regulated business environment and changes in regulation could impose costs on us or make our products less economical;
- Utility companies could place barriers to our entry into the marketplace, and we may not be able to sell our products effectively;
- We may not be able to retain or develop additional strategic partners and distributors in our targeted markets, in which case our sales would not increase as expected;
- We are subject to risks associated with our strategic alliance with United Technologies Corporation;
- Our ability to identify and develop Authorized Service Providers can significantly impact our success;
- Our suppliers and manufacturers may not supply us with a sufficient amount of components or components of adequate quality, and we may not be able to produce our product;
- We may not achieve production cost reductions necessary to price our product competitively, which would impair our sales;
- Our products involve a lengthy sales cycle and we may not anticipate sales levels appropriately, which could impair our profitability;
- We may not effectively expand our production capabilities, which would negatively impact our sales;
- We may not be able to control our warranty exposure and our warranty reserve may not be sufficient to meet our warranty expense, which could impair our financial condition;
- Termination of certain Supply and Distribution Agreements may require us to repurchase parts inventory;
- The market price of our common stock is highly volatile and may decline regardless of our operating performance;

- Our business is subject to the risk of earthquake;
- We may not be able to manage our growth effectively or improve our operational, financial and management information systems, which would impair our profitability;
- We depend on our intellectual property to make our products competitive, and if we are unable to protect our intellectual property, our business will suffer;
- Potential intellectual property, shareholder or other litigation may adversely impact our business;

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- We may be unable to fund our future operating requirements, which could force us to curtail our operations;
- We face fluctuations in operating results, which could impact our stock price; and
- Our announced stock repurchase program may not produce benefits for stockholders.

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

(a) *Index to Exhibits.*

The following exhibits are filed with, or incorporated by reference into, this Quarterly Report on Form 10-Q:

Exhibit Number	Description
3.1(2)	Second Amended and Restated Certificate of Incorporation of Capstone Turbine.
3.2(1)	Fifth Amended and Restated Bylaws of Capstone Turbine.
4.1(2)	Specimen stock certificate.
31.1 (1)	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2 (1)	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32 (1)	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

(1) Filed herewith.

(2) Incorporated by reference to Capstone Turbine's Registration Statement on Form S-1 (File No. 333-33024).

(b) *Reports on Form 8-K.*

On July 17, 2003, the Company filed a Report on Form 8-K, furnishing under Item 12 a July 17, 2003 press release announcing its second quarter 2003 financial results. Such press release is not incorporated by reference herein or deemed "filed" within the meaning of Section 18 of the Securities Act.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

CAPSTONE TURBINE CORPORATION

Date: November 14, 2003

By: _____ /s/ KAREN CLARK

Karen Clark
*Senior Vice President,
Chief Financial Officer
(Principal Financial and Accounting Officer)*

**FIFTH AMENDED AND RESTATED BYLAWS OF
CAPSTONE TURBINE CORPORATION**

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FIFTH AMENDED AND RESTATED BYLAWS

OF

CAPSTONE TURBINE CORPORATION

ARTICLE I

OFFICES

Section 1. *Registered Office.* The registered office of Capstone Turbine Corporation (hereinafter, called the “corporation”) shall be in the City of Dover, County of Kent, State of Delaware.

Section 2. *Other Offices.* The corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require.

ARTICLE II

STOCKHOLDERS

Section 1. *Place of Meetings.* Meetings of stockholders shall be held at any place within or outside the State of Delaware designated by the board of directors. In the absence of any such designation, stockholders’ meetings shall be held at the principal executive office of the corporation.

Section 2. *Annual Meetings of Stockholders.* The annual meeting of stockholders shall be held each year on a date and time designated by the board of directors. Any previously scheduled annual meeting of the stockholders may be postponed by resolution of the board of directors upon public notice given prior to the date previously scheduled for such annual meeting of the stockholders.

Section 3. *Special Meetings.* A special meeting of the stockholders may be called at any time by the chairman of the board of directors, or by a majority of the directors or by a committee of the board of directors which has been duly designated by the board of directors and whose powers and authority, as provided in a resolution of the board of directors, include the power to call such meetings, but such special meetings may not be called by any other person or persons. Any previously scheduled special meeting of the stockholders may be postponed by resolution of the board of directors upon public notice given prior to the date previously scheduled for such special meeting of the stockholders.

Section 4. *Notice of Stockholders’ Meetings.* All notices of meetings of stockholders shall be sent or otherwise given in accordance with Section 5 of this Article II not less than ten (10) nor more than sixty (60) days before the date of the meeting being noticed. The notice shall specify the place, date and hour of the meeting and in the case of a special meeting, the general nature of the business to be transacted.

Section 5. *Manner of Giving Notice; Affidavit of Notice.* Notice of any meeting of stockholders shall be deemed to have been given:

- (A) when deposited in the mail, postage prepaid, directed to the stockholder at his address appearing on the books of the corporation or given by the stockholder to the corporation for the purpose of notice; or
- (B) if electronically transmitted as provided in Article VIII, Section 1 of these bylaws.

An affidavit of the mailing, electronic transmission or other means of giving any notice of any stockholders' meeting shall be executed by the secretary, assistant secretary or any transfer agent of the corporation giving such notice, and shall be filed and maintained in the minute book of the corporation.

Section 6. *Quorum.* The presence in person or by proxy of the holders of a majority of the shares entitled to vote at any meeting of stockholders shall constitute a quorum for the transaction of business. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum.

Section 7. *Adjourned Meeting and Notice Thereof.* Any stockholders' meeting, annual or special, whether or not a quorum is present, may be adjourned from time to time by the chairman of the meeting, but in the absence of a quorum, no other business may be transacted at such meeting, except as provided in Section 6 of this Article II.

When any meeting of stockholders, either annual or special, is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at a meeting at which the adjournment is taken, unless a new record date for the adjourned meeting is fixed, or unless the adjournment is for more than thirty (30) days from the date set for the original meeting. Notice of any such adjourned meeting, if required, shall be given to each stockholder of record entitled to vote at the adjourned meeting in accordance with the provisions of Sections 4 and 5 of this Article II. At any adjourned meeting the corporation may transact any business which might have been transacted at the original meeting.

Section 8. *Voting.* The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 11 of this Article II. Such vote may be by voice vote or by ballot, at the discretion of the chairman of the meeting. Any stockholder entitled to vote on any matter (other than the election of directors) may vote part of the shares in favor of the proposal and refrain from voting the remaining shares or vote them against the proposal; but, if the stockholder fails to specify the number of shares such stockholder is voting affirmatively, it will be conclusively presumed that the stockholder's approving vote is with respect to all shares such stockholder is entitled to vote. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on any matter shall be the act of the stockholders, unless the vote of a greater number or voting by classes is

required by the Delaware General Corporation Law (the “DGCL”) or the certificate of incorporation or the certificate of determination of preferences as to any preferred stock.

At a stockholders’ meeting involving the election of directors, no stockholder shall be entitled to cumulate (*i.e.*, cast for any one or more candidates a number of votes greater than the number of the stockholders shares). The candidates receiving the highest number of votes, up to the number of directors to be elected, shall be elected.

Section 9. *Waiver of Notice or Consent by Absent Stockholders.* The transactions of any meeting of stockholders, either annual or special, however called and noticed, and wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy, and if, either before or after the meeting, each person entitled to vote, not present in person or by proxy, delivers a written waiver signed by such person (or a waiver by electronic transmission by such person) of notice or a consent (manually signed or submitted by electronic transmission) to the holding of the meeting, or an approval of the minutes thereof. The waiver of notice or consent need not specify either the business to be transacted or the purpose of any annual or special meeting of stockholders. All such waivers, consents or approvals shall be filed with the corporate records or made part of the minutes of the meeting.

Attendance of a person at a meeting shall also constitute a waiver of notice of such meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened, and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters not included in the notice of the meeting if such objection is expressly made at the meeting.

Section 10. *No Stockholder Action by Written Consent Without a Meeting.* Stockholders may take action only at a regular or special meeting of stockholders.

Section 11. *Record Date for Stockholder Notice and Voting.* For purposes of determining the holders entitled to notice of any meeting or to vote, the board of directors may fix, in advance, a record date, which shall not be more than sixty (60) days nor less than ten (10) days prior to the date of any such meeting, and in such case only stockholders of record on the date so fixed are entitled to notice and to vote, notwithstanding any transfer of any shares on the books of the corporation after the record date fixed as aforesaid, except as otherwise provided in the Delaware General Corporation Law.

If the board of directors does not so fix a record date, 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 business day next preceding the day on which notice is given or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held.

Section 12. *Proxies.* Every person entitled to vote for directors or on any other matter shall have the right to do so either in person or by one or more agents authorized (a) by a written proxy signed by the person and filed with the secretary of the corporation or (b) by an electronic transmission permitted by law filed in accordance with the procedure established for the meeting.

A validly executed proxy which does not state that it is irrevocable shall continue in full force and effect unless (i) revoked by the person executing it, prior to the vote pursuant thereto, by a writing delivered to the corporation (whether manually signed or electronically transmitted) stating that the proxy is revoked or by a subsequent proxy executed or electronically transmitted by, or attendance at the meeting and voting in person by, the person executing or electronically transmitting the proxy, or (ii) written notice of the death or incapacity of the maker of such proxy is received by the corporation before the vote pursuant thereto is counted; provided, however, that no such proxy shall be valid after the expiration of one (1) year from the date of such proxy, unless otherwise provided in the proxy.

Section 13. *Inspectors of Election; Opening and Closing the Polls.* The board of directors by resolution shall appoint one or more inspectors, which inspector or inspectors may include individuals who serve the corporation in other capacities, including, without limitation, as officers, employees, agents or representatives, to act at the meetings of stockholders and make a written report thereof. One or more persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate has been appointed to act or 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 discharging his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall have the duties prescribed by law.

The chairman of the meeting shall fix and announce at the meeting 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.

Section 14. *Nomination and Stockholder Business Bylaw.*

(A) *Annual Meetings of Stockholders.*

(1) Nominations of persons for election to the board of directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders (a) pursuant to the corporation's notice of meeting, (b) by or at the direction of the board of directors or (c) by any stockholder of the corporation who was a stockholder of record at the time of giving of notice provided for in this bylaw, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this bylaw.

(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 bylaw, the stockholder must have given timely notice thereof in writing to the secretary of the corporation and such other business must otherwise be a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the secretary at the principal executive offices of the corporation not less than the close of business on the 120th calendar day in advance of the first anniversary of the date the corporation's proxy statement was released to security holders in connection with the preceding year's annual meeting; provided, however, that if no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than thirty (30) calendar days from the date contemplated at the time of the previous year's proxy statement, a proposal shall be received by the corporation no later than the close of business on the tenth day

following the day on which notice of the date of the meeting was mailed or public announcement of the date of the meeting was made, whichever comes first. In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to applicable federal securities laws, including, without limitation, Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Rule 14a-11 thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (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 of such beneficial owner and (ii) the class and number of shares of the corporation which are owned beneficially and of record by such stockholder and such beneficial owner.

(3) Notwithstanding anything in the second sentence of paragraph (A)(2) of this bylaw to the contrary, in the event that the number of directors to be elected to the board of directors of the corporation is increased and there is no public announcement by the corporation naming all of the nominees for director or specifying the size of the increased board of directors at least 70 days prior to the first anniversary of the date of the preceding year's annual meeting, a stockholders notice required by this bylaw shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the secretary at the principal executive offices of the corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the corporation.

(B) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall be brought before the meeting pursuant to the corporation's notice of meeting. A stockholder's nomination of one or more persons for election to the board of directors shall only be permitted to be made at a special meeting of stockholders if: (i) the corporation's notice of such meeting specified that directors are to be elected at such special meeting; (ii) such stockholder was a stockholder of record entitled to vote at the meeting at the time of giving of notice provided for in this bylaw; and (iii) if such stockholder complies with the notice procedures set forth in this bylaw. In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the board of directors, any such stockholder may nominate a person or persons (as the case may be), for election to such position(s) as specified in the corporation's notice of meeting, if the stockholder's notice required by paragraph (A)(2) of this bylaw shall be delivered to the secretary at the principal executive offices of the corporation not earlier than the close of business on the 90th day prior to such special meeting and not later than the close of business on the later of the 60th day prior to such special meeting or the 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 of a special meeting commence a new time period for the giving of a stockholder's notice as described above.

(C) General.

(1) Only such persons who are nominated in accordance with the procedures set forth in this bylaw shall be eligible to serve as directors. Except as otherwise provided by law, the certificate of incorporation or these bylaws, the chairman of the meeting shall have the power and authority to determine the procedures of a meeting of stockholders, including, without limitation, the authority to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this bylaw and, if any proposed nomination or business is not in compliance with this bylaw, to declare that such defective proposal or nomination shall be disregarded.

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

(3) Notwithstanding the foregoing provisions of this bylaw, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this bylaw. Nothing in this bylaw shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (ii) of the holders of any series of preferred stock, if any, to elect directors under certain circumstances.

ARTICLE III

DIRECTORS

Section 1. *Powers.* Subject to the provisions of the Delaware General Corporation Law and any limitations in the certificate of incorporation and these bylaws relating to action required to be approved by the stockholders or by the outstanding shares, the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the board of directors.

Section 2. *Number and Qualification of Directors.* Until otherwise determined by resolution by the Board of Directors, the number of directors of the corporation shall be six (6).

Section 3. *Election and Term of Office of Directors.* Directors shall be elected at the annual meeting of the stockholders. Each director, including a director elected to fill a vacancy, shall serve for a term ending on the next annual meeting following the annual meeting at which such director was elected and until a successor has been elected and qualified or the earlier of his resignation or removal.

Section 4. *Vacancies.* Vacancies in the board of directors may be filled by a majority of the remaining directors, though less than a quorum, or by a sole remaining director. Each director

elected to fill a vacancy shall hold office for the remainder of the term of the person whom he succeeds, and until a successor has been elected and qualified.

A vacancy or vacancies in the board of directors shall be deemed to exist in the case of the death, retirement, resignation or removal of any director, or if the board of directors by resolution declares vacant the office of a director who has been declared of unsound mind by an order of court or convicted of a felony, or if the authorized number of directors be increased, or if the stockholders fail at any meeting of stockholders at which any director or directors are elected, to elect the full authorized number of directors to be voted for at that meeting.

Any director may resign or voluntarily retire upon giving notice in writing or by electronic transmission to the chairman of the board, the president, the secretary or the board of directors. Such retirement or resignation shall be effective upon the giving of the notice, unless the notice specifies a later time for its effectiveness. If such retirement or resignation is effective at a future time, the board of directors may elect a successor to take office when the retirement or resignation becomes effective.

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

Section 5. *Place of Meetings and Telephonic Meetings.* Regular meetings of the board of directors may be held at any place within or without the State of Delaware that has been designated from time to time by resolution of the board. In the absence of such designation, regular meetings shall be held at the principal executive office of the corporation. Special meetings of the board shall be held at any place within or without the State of Delaware that has been designated in the notice of the meeting or, if not stated in the notice or there is no notice, at the principal executive office of the corporation. Any meeting, regular or special, may be held by conference telephone or similar communication equipment, so long as all directors participating in such meeting can hear one another, and all such directors shall be deemed to be present in person at such meeting.

Section 6. *Annual Meetings.* Immediately following each annual meeting of stockholders, the board of directors shall hold a regular meeting for the purpose of organization, any desired election of officers and transaction of other business. Notice of this meeting shall not be required.

Section 7. *Other Regular Meetings.* Other regular meetings of the board of directors shall be held at such time as shall from time to time be determined by the board of directors. Such regular meetings may be held without notice provided that notice of any change in the determination of time of such meeting shall be sent to all of the directors. Notice of a change in the determination of the time shall be given to each director in the same manner as for special meetings of the board of directors.

Section 8. *Special Meetings.* Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairman of the board or the president or any vice president or the secretary or any two directors.

Notice of the time and place of special meetings shall be delivered personally or by telephone to each director, sent by facsimile, first-class mail or telegram, charges prepaid, addressed to each director at his or her address as it is shown upon the records of the corporation, or sent by electronic mail addressed to each director at his or her electronic mail address as it is shown upon the records of the corporation. In case such notice is mailed, it shall be deposited in the United States mail at least four (4) days prior to the time of the holding of the meeting. In case such notice is delivered personally, by telephone, facsimile, telegram or electronic mail, it shall be delivered personally, or by telephone, by facsimile, to the telegraph company or by electronic mail at least twenty-four (24) hours prior to the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated to either the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. The notice need not specify the purpose of the meeting nor the place if the meeting is to be held at the principal executive office of the corporation.

Section 9. *Quorum.* A majority of the authorized number of directors shall constitute a quorum for the transaction of business, except to adjourn as hereinafter provided. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the board of directors. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for such meeting.

Section 10. *Waiver of Notice.* The transactions of any meeting of the board of directors, however called and noticed or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice if a quorum be present and if, either before or after the meeting, each of the directors not present delivers a written waiver signed by such director (or a waiver by electronic transmission by such director) of notice or a consent (manually signed or submitted by electronic transmission) to the holding of the meeting, or an approval of the minutes thereof. The waiver of notice or consent need not specify the purpose of the meeting. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such director.

Section 11. *Adjournment.* A majority of the directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place.

Section 12. *Notice of Adjournment.* Notice of the time and place of an adjourned meeting need not be given, unless the meeting is adjourned for more than twenty-four (24) hours, in which case notice of such time and place shall be given prior to the time of the adjourned meeting, in the manner specified in Section 8 of this Article III, to the directors who were not present at the time of the adjournment.

Section 13. *Action Without Meeting.* Any action required or permitted to be taken by the board of directors may be taken without a meeting, if all members of the board shall individually or collectively consent in writing or by electronic transmission to such action. Such action by

written consent or electronic transmission shall have the same force and effect as a unanimous vote of the board of directors. Such written consent or consents or electronic transmission or transmissions shall be filed with the minutes of the proceedings of the board.

Section 14. *Fees and Compensation of Directors.* Directors and members of committees may receive such compensation, if any, for their services and such reimbursement of expenses, as may be fixed or determined by resolution of the board of directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise, and receiving compensation for such services.

ARTICLE IV

COMMITTEES

Section 1. *Committees of Directors.* The board of directors may, by resolution adopted by a majority of the authorized number of directors, designate one or more committees, including an executive committee, each consisting of two or more directors, to serve at the pleasure of the board. The board may designate one or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the board, shall have all the authority of the board, except with respect to:

- (a) the approval of any action which, under the General Corporation Law of Delaware, also requires the approval of the full board of directors, or the stockholders of the outstanding shares;
- (b) the filling of vacancies on the board of directors or in any committee;
- (c) the fixing of compensation of the directors for serving on the board or on any committee;
- (d) the amendment or repeal of bylaws or the adoption of new bylaws;
- (e) the amendment or repeal of any resolution of the board of directors which by its express terms is not so amendable or repealable;
- (f) a distribution to the stockholders of the corporation, except at a rate or in a periodic amount or within a price range determined by the board of directors; or
- (g) the appointment of any other committees of the board of directors or the members thereof.

Section 2. *Meetings and Action of Committees.* Meetings and action of committees shall be governed by, and held and taken in accordance with, the provisions of Article III of these bylaws, Sections 5 (place of meetings), 7 (regular meetings), 8 (special meetings and notice), 9 (quorum), 10 (waiver of notice), 11 (adjournment), 12 (notice of adjournment) and 13 (action without meetings), with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the board of directors and its members, except that the time of regular meetings of committees may be determined by resolution of the board of directors as well as the committee, special meetings of committees may also be called by

resolution of the board of directors, and notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The board of directors may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

ARTICLE V

OFFICERS

Section 1. *Officers.* The officers of the corporation shall be chosen by the board of directors and shall include a chairman of the board or president, or both, a vice president, a secretary and a chief financial officer. The corporation may also have, at the discretion of the board of directors, a president, one or more additional vice presidents, one or more assistant secretaries, one or more assistant treasurers, and such other officers as may be held by the same person.

Section 2. *Election of Officers.* The officers of the corporation, except such officers as may be appointed in accordance with the provisions of Section 3 or Section 5 of this Article V, shall be chosen annually by the board of directors, and each shall hold his office until he shall resign or be removed or otherwise disqualified to serve or his successor shall be appointed in accordance with the provisions of Section 3 of this Article V. Any number of officers may be elected and qualified.

Section 3. *Subordinate Officers, etc.* The board of directors may appoint, and may empower the chairman of the board to appoint, such other officers as the business of the corporation may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in the bylaws or as the board of directors may from time to time determine.

Section 4. *Removal and Resignation of Officers.* Any officer may be removed, either with or without cause, by the board of directors, at any regular or special meeting thereof, or, except in case of an officer chosen by the board of directors, by any officer upon whom such power of removal may be conferred by the board of directors.

Any officer may resign at any time by giving written notice to the corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5. *Vacancies in Office.* A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these bylaws for regular appointments to such office.

Section 6. *Chairman of the Board.* The chairman of the board shall preside at all meetings of the stockholders and of the board of directors. The chairman of the Board shall be responsible for the general management of the affairs of the corporation and shall perform all duties incidental to his office which may be required by law and all such other duties as are properly required of him by the board of directors. Except where by law the signature of the president is required, the chairman of the board shall possess the same power as the president to sign all

certificates, contracts, and other instruments of the corporation which may be authorized by the board of directors. He shall make reports to the board of directors and the stockholders, and shall perform all such other duties as are properly required of him by the board of directors. He shall see that all orders and resolutions of the board of directors and of any committee thereof are carried into effect.

Section 7. *President.* The president shall act in a general executive capacity and shall assist the chairman of the board in the administration and operation of the corporation's business and general supervision of its policies and affairs. The president shall, in the absence of or because of the inability to act of the chairman of the board, perform all duties of the chairman of the board and preside at all meetings of stockholders and of the board of directors. The president may sign, alone or with the secretary, or an assistant secretary, or any other proper officer of the corporation authorized by the board of directors, certificates, contracts, and other instruments of the corporation as authorized by the board of directors.

Section 8. *Vice Presidents.* In the absence or disability of the president, a vice president designated by the board of directors shall perform all the duties of the president, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the board of directors or the bylaws.

Section 9. *Secretary.* The secretary shall keep or cause to be kept, at the principal executive office or such other place as the board of directors may order, a book of minutes of all meetings and actions of directors, committees of directors and stockholders, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice thereof given, the names of those present at directors' and committee meetings, the number of shares present or represented at stockholders' meetings, and the proceedings thereof.

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

The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the board of directors required by the bylaws or by law to be given and shall have such other powers and perform such other duties as may be prescribed by the board of directors or by the bylaws.

Section 10. *Chief Financial Officer.* The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings and shares. The books of account shall be open at all reasonable times to inspection by any director.

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

Section 11. *Assistant Secretaries and Assistant Treasurers.* Any assistant secretary may perform any act within the power of the secretary, and any assistant treasurer may perform any act within the power of the chief financial officer, subject to any limitations which may be imposed in these bylaws or in board resolutions.

ARTICLE VI

INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND OTHER AGENTS

Section 1. *Indemnification.* The corporation shall indemnify, in the manner and to the full extent permitted by law, any person (or the estate of any person) who was or is a party to, or is threatened to be made a party to, any threatened, pending or completed action, suit or proceeding, whether or not by or in the right of the corporation, and whether civil, criminal, administrative, investigative or otherwise, by reason of the fact that such person is a director or officer of the corporation, and at the discretion of the board of directors may indemnify any person (or the estate of any person) who is such a party or threatened to be made such a party by reason of the fact that such person is or was an employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise. The corporation may, to the full extent permitted by law, purchase and maintain insurance on behalf of any such person against any liability which may be asserted against him and may enter into contracts providing for the indemnification of such person to the full extent permitted by law. To the full extent permitted by law, the indemnification provided herein shall include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, and, in the manner provided by law, any such expenses may be paid by the corporation in advance of the final disposition of such action, suit or proceeding. The indemnification provided herein shall not be deemed to limit the right of the corporation to indemnify any other person for any such expenses to the full extent permitted by law, nor shall it be deemed exclusive of any other rights to which any person seeking indemnification from the corporation may be entitled under any agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office.

For the purposes of this Article VI, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors or officers so that any person who is or was a director or officer of such constituent corporation, or is or was serving at the request of such constituent corporation as a director or officer of another corporation,

partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article VI with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

For purposes of this Article VI, references to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the corporation” shall include service as a director or officer of the corporation which imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the corporation” as referred to in this section.

ARTICLE VII

GENERAL CORPORATE MATTERS

Section 1. *Record Date for Purposes Other Than Notice and Voting.* For purposes of determining 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 other lawful action, the board of directors may fix, in advance, a record date, which date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which shall not be more than sixty (60) nor less than ten (10) days prior to any such action, and in such case only stockholders of record on the date so fixed are entitled to receive the dividend, distribution or allotment of rights or to exercise the rights, as the case may be, notwithstanding any transfer of any shares on the books of the corporation after the record date fixed as aforesaid, except as otherwise provided in the Delaware General Corporation Law.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting. In order that the corporation may determine the stockholders entitled to consent to corporate action in writing or by electronic transmission without a meeting, the board of directors may fix a record date which shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the board of directors.

Section 2. *Checks, Drafts, Evidences of Indebtedness.* All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the corporation shall be signed or endorsed by such person or persons and in such manner as, from time to time, shall be determined by resolution of the board of directors.

Section 3. *Corporate Contracts and Instruments, How Executed.* The board of directors, except as otherwise provided in these bylaws, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances; and, unless so authorized or ratified by the board of directors or within the agency power of an officer, no

officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or to any amount.

Section 4. *Stock Certificates.* A certificate or certificates for shares of the capital stock of the corporation shall be issued to each stockholder when any such shares are fully paid. All certificates shall be signed in the name of the corporation by the chairman of the board or the president or vice president and by the chief financial officer, the treasurer or an assistant treasurer or the secretary or any assistant secretary, certifying the number of shares and the class or series of shares owned by the stockholder. Any or all of the signatures on the certificate may be facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if such person were an officer, transfer agent or registrar at the date of issue.

Section 5. *Lost Certificates.* Except as hereinafter in this Section 5 provided, no new stock certificate shall be issued in lieu of an old certificate unless the latter is surrendered to the corporation and canceled at the same time. The board of directors may in case any stock certificate or certificate for any other security is lost, stolen or destroyed, authorize the issuance of a new certificate in lieu thereof, upon such terms and conditions as the board of directors may require, including provision for indemnification of the corporation secured by a bond or other adequate security sufficient to protect the corporation against any claim that may be made against it, including any expense or liability, on account of the alleged loss, theft or destruction of such certificate or the issuance of such new certificate.

Section 6. *Representation of Stock of Other Corporations.* The chairman of the board, the president, or any vice president, or any other person authorized by resolution of the board of directors by any of the foregoing designated officers, is authorized to vote on behalf of the corporation any and all stock of any other corporation or corporations, foreign or domestic, standing in the name of the corporation. The authority herein granted to said officers to vote or represent on behalf of the corporation any and all stock by the corporation in any other corporation or corporations may be exercised by any such officer in person or by any person authorized to do so by proxy duly executed by said officer.

Section 7. *Construction and Definitions.* Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the Delaware General Corporation Law shall govern the construction of the bylaws. Without limiting the generality of the foregoing, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a corporation and a natural person.

Section 8. *Fiscal Year.* The fiscal year of the corporation shall be fixed by resolution of the board of directors.

ARTICLE VIII

NOTICE BY ELECTRONIC TRANSMISSION

Section 1. *Notice by Electronic Transmission.* Without limiting the manner by which notice otherwise may be given effectively to stockholders pursuant to the DGCL, the certificate of incorporation or these bylaws, any notice to stockholders given by the Company under any provision of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the Company. Any such consent shall be deemed revoked if:

(A) the Company is unable to deliver by electronic transmission two consecutive notices given by the Company in accordance with such consent; and

(B) such inability becomes known to the secretary or an assistant secretary of the Company or to the transfer agent, or other person responsible for the giving of notice.

However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

Any notice given pursuant to the preceding paragraph shall be deemed given:

(A) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;

(B) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice;

(C) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (i) such posting and (ii) the giving of such separate notice; and

(D) if by any other form of electronic transmission, when directed to the stockholder.

An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the Company that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

Section 2. *Definition of Electronic Transmission.* An “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Section 3. *Inapplicability.* Notice by a form of electronic transmission shall not apply to Sections 164, 296, 311, 312 or 324 of the DGCL.

ARTICLE IX

AMENDMENTS

Section 1. *Amendment.* The bylaws, or any of them, may be rescinded, altered, amended or repealed, and new bylaws may be made (i) by the board of directors, by vote of a majority of the number of directors then in office as directors, acting at any meeting of the board of directors, or (ii) by the stockholders, by the vote of the holders of sixty-six and two-thirds percent (66-2/3%) of the outstanding voting stock of the corporation, at any annual or special meeting of stockholders, provided that notice of such proposed amendment, modification, repeal or adoption is given in the notice of the annual or special meeting; provided, however, that the bylaws can only be amended if such amendment would not conflict with the certificate of incorporation. Any bylaw made or altered by the requisite number of stockholders may be altered or repealed by the board of directors or may be altered or repealed by the requisite number of stockholders.

* * * *

CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify:

- (a) That I am the duly elected and acting Secretary of Capstone Turbine Corporation, a Delaware corporation (the "Corporation"); and
- (b) That the foregoing Fifth Amended and Restated Bylaws constitute the Fifth Amended and Restated Bylaws of the Corporation, as duly adopted by the Board of Directors of the Corporation at a meeting duly held on October 22, 2003.

IN WITNESS WHEREOF, I have hereunto subscribed my name as of this 22nd day of October 2003.

/s/ Karen Clark

Karen Clark,
Secretary

CERTIFICATION

I, John Tucker, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarter ended September 30, 2003 of Capstone Turbine Corporation (the “Company”);
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 Company as of, and for, the periods presented in this report;
4. The Company’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)) for the Company 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 Company, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this Quarterly Report is being prepared;
 - (b) Evaluated the effectiveness of the Company’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
 - (c) Disclosed in this report any change in the Company’s internal control over financial reporting that occurred during the Company’s most recent fiscal quarter (the Company’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Company’s internal control over financial reporting; and
5. The Company’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Company’s auditors and the audit committee of the Company’s board of directors:
 - (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 Company’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 Company’s internal control over financial reporting.

Date: November 14, 2003

By: _____ /s/ JOHN TUCKER

John Tucker
President and Chief Executive Officer

CERTIFICATIONS OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER
PURSUANT TO
RULE 13a-14(b) OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED,
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Capstone Turbine Corporation (the "Company") on Form 10-Q for the quarterly period ended September 30, 2003, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), John Tucker, Chief Executive Officer of the Company, and Karen Clark, Chief Financial Officer of the Company, certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code), that the Report complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /s/ JOHN TUCKER

John Tucker
President and Chief Executive Officer

By: /s/ KAREN CLARK

Karen Clark
Chief Financial Officer

Date: November 14, 2003