

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, DC 20549
FORM 10-K

(Mark One)

Annual Report Pursuant to Section 13 or 15 (d) of the Securities Exchange Act of 1934
For the fiscal year ended December 31, 2022

Or

Transition Report Pursuant to Section 13 or 15 (d) of the Securities Exchange Act of 1934
For the transition period from _____ to _____

Commission file number 1-10948

The ODP Corporation

(Exact Name of Registrant as Specified in its Charter)



Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

6600 North Military Trail, Boca Raton, Florida
(Address of Principal Executive Offices)

(561) 438-4800
(Registrant's telephone number, including area code)
Securities registered pursuant to Section 12(b) of the Act:

85-1457062
(I.R.S. Employer
Identification No.)

33496
(Zip Code)

Title of Each class	Trading Symbol(s)	Name of Each Exchange on which Registered
Common Stock, par value \$0.01 per share	ODP	The NASDAQ Stock Market (NASDAQ Global Select Market)

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes No

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

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

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

Large accelerated filer Accelerated filer Non-accelerated filer
Smaller reporting company Emerging growth company

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

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

The aggregate market value of common stock held by non-affiliates of the registrant as of June 26, 2022 (based on the closing market price of the common stock on the Composite Tape on June 24, 2022) was approximately \$1,462,200,515 (determined by subtracting from the number of shares outstanding on that date the number of shares held by affiliates of the registrant).

The number of shares outstanding of the registrant's common stock, as of the latest practicable date: At February 22, 2023, there were 40,198,205 outstanding shares of The ODP Corporation Common Stock, \$0.01 par value.

Documents Incorporated by Reference:

Certain information required for Part III of this Annual Report on Form 10-K is incorporated by reference to The ODP Corporation's definitive Proxy Statement for its 2023 Annual Meeting of Shareholders, to be filed with the Securities and Exchange Commission within 120 days after close of the registrant's fiscal year covered by this Annual Report.

TABLE OF CONTENTS

The order and presentation of this Annual Report on Form 10-K differ from that of the traditional U.S. Securities and Exchange Commission (“SEC”) Form 10-K format. We believe that our format better presents the relevant sections of this document and enhances readability. See “Form 10-K Cross-Reference Index” within Financial Statements and Supplemental Details for a cross-reference index to the traditional SEC Form 10-K format.

Fundamentals of Our Business	Page
The Company	3
How We Organize Our Business	5
Our Capital	7
Our Strategy	7
Who Manages Our Business	10
Other Key Information	
Risk Factors	12
Properties	25
Legal Proceedings	26
Market for Our Common Stock, Related Stockholder Matters and Issuer Purchases of Equity Securities	27
Management’s Discussion and Analysis (MD&A)	
Overview	29
Operating Results by Division	33
Liquidity and Capital Resources	38
Critical Accounting Policies and Estimates	42
Significant Trends, Developments and Uncertainties	44
Market Sensitive Risks and Positions	44
Seasonality	46
New Accounting Standards	46
Quantitative and Qualitative Disclosures About Market Risk	46
Controls and Procedures	
Management’s Disclosures	46
Auditor’s Report on Internal Control over Financial Reporting	48
Reference to the Proxy Statement	
Directors, Executive Officers and Corporate Governance	49
Executive Compensation	49
Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	49
Certain Relationships and Related Transactions, and Director Independence	49
Principal Accountant Fees and Services	49
Financial Statements and Supplemental Details	
Exhibits and Financial Statement Schedules	50
Signatures	53
Auditor’s Report on the Financial Statements	55
Consolidated Statements of Operations	57
Consolidated Statements of Comprehensive Income (Loss)	58
Consolidated Balance Sheets	59
Consolidated Statements of Cash Flows	60
Consolidated Statements of Stockholders’ Equity	61
Notes to Consolidated Financial Statements	62
Form 10-K Cross-Reference Index	102

FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K for the fiscal year ended December 31, 2022 (“Annual Report”) contains forward-looking statements, within the meaning of the Private Securities Litigation Reform Act of 1995 (the “Reform Act”), that involve risks and uncertainties. These forward-looking statements include both historical information and other information that can be used to infer future performance. Examples of historical information include annual financial statements and the commentary on past performance contained in Management’s Discussion and Analysis of Financial Condition and Results of Operations (“MD&A”). While certain information has specifically been identified as being forward-looking in the context of its presentation, we caution you that, with the exception of information that is historical, all the information contained in this Annual Report should be considered to be “forward-looking statements” as referred to in the Reform Act. Without limiting the generality of the preceding sentence, any time we use the words “estimate,” “project,” “intend,” “expect,” “believe,” “anticipate,” “continue,” “may,” “will” and similar expressions, we intend to clearly express that the information deals with possible future events and is forward-looking in nature. Certain information in MD&A is clearly forward-looking in nature, and without limiting the generality of the preceding cautionary statements, we specifically advise you to consider all of MD&A in the light of the cautionary statements set forth herein.

Much of the information in this Annual Report that looks towards future performance of The ODP Corporation and its consolidated subsidiaries is based on various factors and important assumptions about future events that may or may not actually come true. As a result, our operations and financial results in the future could differ materially and substantially from those we have discussed in this Annual Report. Significant factors that could impact our future results are provided in “Risk Factors” within Other Key Information in this Annual Report. Other risk factors are incorporated into the text of MD&A, which should itself be considered a statement of future risks and uncertainties, as well as management’s view of our businesses. We assume no obligation (and specifically disclaim any such obligation) to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.

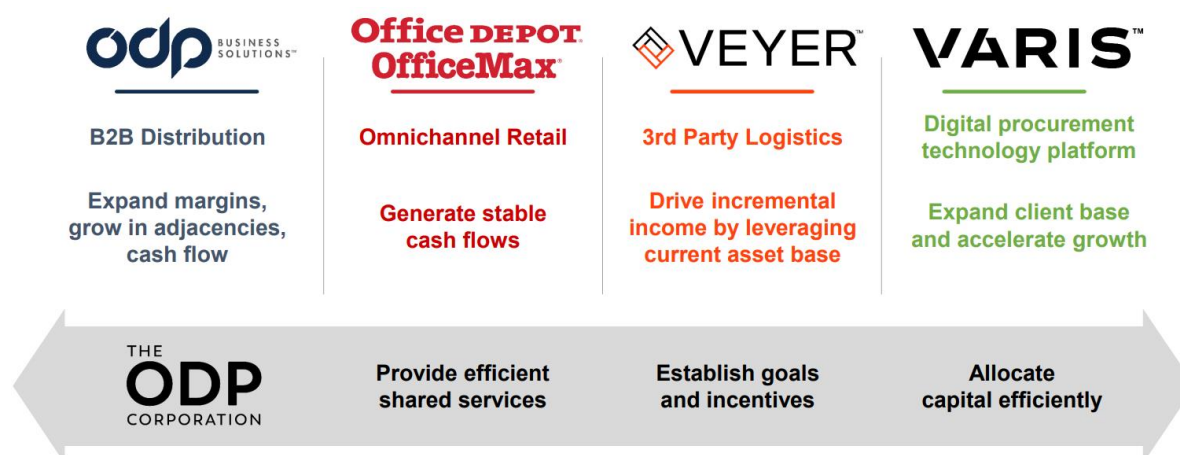
In this Annual Report, unless the context otherwise requires, the “Company,” “ODP,” “we,” “us,” and “our” refer to The ODP Corporation and its subsidiaries. On June 30, 2020, Office Depot, Inc., the predecessor of The ODP Corporation, implemented a holding company reorganization (the “Reorganization”), which resulted in The ODP Corporation becoming the parent company of, and the successor issuer to, Office Depot, Inc. For purposes of this Annual Report, references to “we,” or the “Company” or its management or business at any period prior to the holding company reorganization (June 30, 2020) refer to Office Depot, Inc. as the predecessor company and its consolidated subsidiaries and thereafter to those of The ODP Corporation and its consolidated subsidiaries, except as otherwise specified or to the extent the context otherwise indicates.

THE COMPANY

The ODP Corporation (including its consolidated subsidiaries, “ODP” or the “Company”) is a leading provider of products, services and technology solutions through an integrated business-to-business (“B2B”) distribution platform and omni-channel presence, which includes supply chain and distribution operations, dedicated sales professionals, a B2B digital procurement solution, online presence, and a network of Office Depot and OfficeMax retail stores. We were incorporated in the state of Delaware in 1986 with the name Office Depot, Inc. and opened our first retail store in Fort Lauderdale, Florida on October 9, 1986.

Our vision is to empower every business, professional and consumer with the products and services they need to achieve more every day. We achieve our vision by driving our low-cost business model and continuing to provide our customers with innovative products and services they need to sustainably grow their businesses. We remain focused on driving stable growth and deploying a disciplined capital management strategy, which has helped position us as a leading provider of business products, services and supplies, and digital workplace technology solutions to small, medium and enterprise-level businesses. Our foundation is our 5C culture, which is customer, commitment, creativity, change and caring. These 5Cs drive strong community support and focus on sustainability, diversity and environmental improvements.

We have re-aligned our structure and operate through four business units including Office Depot, LLC; ODP Business Solutions, LLC; Veyer, LLC; and Varis, LLC. These four synergistic and defined business units position us to deliver value as follows:



FISCAL YEAR

Our fiscal year results are based on a 52- or 53-week calendar ending on the last Saturday in December. Fiscal year 2022 had 53 weeks and ended on December 31, 2022. Fiscal year 2021 had 52 weeks and ended on December 25, 2021. Fiscal year 2020 had 52 weeks and ended on December 26, 2020. Certain subsidiaries operate on a calendar year basis; however, the reporting difference did not have a material impact on 2022 and the other periods presented.

STRATEGIC TRANSFORMATION

We have been undergoing a strategic business transformation to pivot our Company into an integrated B2B distribution platform, with the objective of expanding our product offerings to include value-added products and services for our customers and capture greater market share. In May 2021, our Board of Directors had unanimously approved a plan to pursue a separation of the Company into two independent, publicly traded companies, representing our B2B and consumer businesses, which was planned to be achieved through a spin-off of our consumer business. On January 14, 2022, we announced that our Board of Directors determined to delay the previously announced public company separation to evaluate a potential sale of our consumer business and that we had received a non-binding proposal from another third party, in addition to the offer previously received from USR Parent, Inc., to acquire our consumer business. On June 21, 2022, our Board of Directors, with the assistance of its financial and legal advisors, completed its review of both proposals received by the Company to acquire our consumer business and unanimously determined it to be in the best interests of the Company and its shareholders not to divest our consumer business at this time. Further, our Board of Directors also determined not to resume our previously planned separation of our consumer business at that time and instead to maintain all of our businesses under common ownership.

Upon the decision to maintain all our businesses under common ownership, using the flexibility afforded by our holding company restructuring that was previously completed in 2020, we re-aligned our operations under our holding company structure in 2022 into our consumer business named Office Depot, and three distinct B2B business and digital segments, which are ODP Business Solutions, Veyer and Varis. The decision to re-align was driven by how we are looking at our products and offerings and serving our customers. How our customers work and interact has changed, with businesses demanding a wider range of products and services, and a more modern digital environment in which to operate, and with consumers demanding an omni-channel retail experience. In addition, dependable supply chain operations have become increasingly important in meeting these demands. We performed a full strategic review of our operations in light of these factors and determined that completing the re-alignment of our operations in this manner enables us to better focus on our customers by being in a better position to meet a wider array of customer needs for product, service, and omni-channel choices. We also determined that the re-alignment provides for greater accountability internally for product and service outcomes, customer experiences, capital allocations, and pursuing strategic opportunities. We believe our B2B and consumer businesses operating collectively under our holding company structure will improve shareholder value, business transparency, and derive benefits from scaling.

AVAILABLE INFORMATION

We make available, free of charge, on the “Investor Relations” section of our website, investor.theodpcorp.com, our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), as soon as reasonably practicable after we electronically file or furnish such materials to the United States Securities and Exchange Commission (“SEC”). The SEC maintains an Internet site that contains reports, proxy and information statements and other information regarding issuers, such as the Company, that file electronically with the SEC. The address of that website is www.sec.gov.

Additionally, our corporate governance materials, including our bylaws, corporate governance guidelines, charters of the Audit, Compensation & Talent, and Corporate Governance & Nominating Committees, and our code of ethical behavior may be found under the “Investor Relations” section of our website, investor.theodpcorp.com.

HOW WE ORGANIZE OUR BUSINESS

At December 31, 2022, our operations are organized into four reportable segments (or “Divisions”): ODP Business Solutions Division, Office Depot Division, Veyer Division, and Varis Division. Prior to the third quarter of 2022, we had two reportable segments which were our Business Solutions Division and Retail Division. We sold our CompuCom Division in the first quarter of 2022. Additional information regarding our Divisions is presented in MD&A and in Note 3. “Segment Information” in Notes to Consolidated Financial Statements located in Financial Statements and Supplemental Details of this Annual Report.

ODP BUSINESS SOLUTIONS DIVISION

The ODP Business Solutions Division, or ODP BSD, is our leading B2B distribution solutions provider serving small, medium and enterprise level companies, including those in the public and education sectors. This segment includes the contract sales channel of our previous Business Solutions Division, and operates in the United States, Puerto Rico, the U.S. Virgin Islands, and Canada. The ODP Business Solutions Division sells nationally branded, as well as our private branded, office supply and adjacency products and services to customers, who are served through a dedicated sales force, catalogs, telesales, and electronically through our Internet websites. Adjacency products and services include cleaning, janitorial, and breakroom supplies, office furniture, technology products, and copy and print services. This segment also includes our Federation entities, which are over a dozen regional office supply distribution businesses acquired by us as part of our transformation to expand our reach and distribution network into geographic areas that were previously underserved, and which continue to operate under their own brand names. The acquisition of these businesses has allowed for an effective and accretive opportunity to expand our distribution reach, target new business customers and grow our offerings beyond traditional office supplies.

In 2022, we continued to build on several initiatives to expand our margins, grow in adjacency product and services categories, and increase cash flows of ODP BSD, including the following:

- maintain strength in traditional office supplies by providing a customized experience for our customers, and offering differentiated value;
- expand customer base through targeted business customer acquisitions and continued strong retention trends;
- drive sales in our adjacency categories by offering customers opportunities to save via consolidating vendors and leveraging our national distribution footprint;
- provide a highly customizable digital customer experience, including subscription services and reporting and analytic tools;
- partner with key vendors to add new products to our assortment of offerings; and
- continue our highly successful Federation strategy to acquire new small business customers while also expanding in underserved markets.

OFFICE DEPOT DIVISION

The Office Depot Division is our leading provider of retail consumer and small business products and services distributed through a fully integrated omni-channel platform of 980 Office Depot and OfficeMax retail locations in the United States, Puerto Rico and the U.S. Virgin Islands, and an eCommerce presence (www.officedepot.com). Our Office Depot Division sells office supplies, technology products and solutions, business machines and related supplies, cleaning, breakroom and facilities products, personal protective equipment, and office furniture, and offers business services including copying, printing, digital imaging, mailing, shipping and technology support services. In addition, the printing needs for retail and business customers are facilitated through our regional print production centers. Our Office Depot Division aims to serve small business, home office, educational customers, and consumers better than anyone else can by providing a unique combination of value, convenience and customer engagement.

We have a broad representation across the United States with the largest concentration of our retail stores in Texas, California, and Florida. Most of our retail stores are located in leased facilities that currently average over 20,000 square feet. To better serve our customers any way they choose to shop, we have a Buy Online-Pickup in Store (“BOPIS”) offering, and a 20 minute in-store or curbside pick-up guarantee for online orders placed two hours before our store closing time in all locations. We also offer same-day delivery in selected markets.

In 2022, we continued to build on several initiatives to drive cash flow generation from our Office Depot Division, including the following:

- expand our assortment of offerings to new adjacencies relevant to our core customer segments, including arts and crafts, home office organization and décor, and small business services;

- integrate our newly combined omni-channel assets, incorporating our eCommerce channel, OfficeDepot.com, within our consumer Office Depot segment;
- expand our industry-leading in-store pickup program while improving our online and mobile conversion rate and average order size;
- optimize store footprint and carefully manage expenses to remain highly profitable; and
- optimize growing our 5C culture, giving back to our local communities and supporting equal opportunities in education and entrepreneurship.

In 2020, we implemented the Maximize B2B Restructuring Plan, a restructuring plan to re-align our operational focus to support our “business-to-business” solutions and improve costs. The Maximize B2B Restructuring Plan is broader than restructuring programs we have implemented in the past and includes closing retail stores through the end of 2023. Since the implementation of the Maximize B2B Restructuring Plan, we have closed a total of 237 retail stores as a result of this plan. Refer to Note 2. “Merger, Restructuring and Other Activity” in Notes to Consolidated Financial Statements for additional information.

VEYER DIVISION

The Veyer Division is our supply chain, distribution, procurement and global sourcing operation. With over 35 years of experience and branded under a new name, the Veyer Division specializes in B2B and consumer business service delivery, with core competencies in distribution, fulfillment, transportation, global sourcing and purchasing. The Veyer Division’s customers include our Office Depot Division and ODP Business Solutions Division, as well as third-party customers. The Veyer Division also includes the Company’s global sourcing operations in Asia.

At the core of the Veyer Division’s asset base is our distribution network with more than 100 facilities, which include 64 distribution centers (“DCs”) and crossdock facilities as well as satellite locations, and over 9 million square feet of distribution space, which provides for coverage in all the key markets we serve. We have a workforce of approximately 4,000 team members, and a robust network of dedicated national and international carrier partnerships, supporting ocean, line haul, less than truckload and national small parcel capacity. We have a private fleet of approximately 600 vehicles in the Veyer Division’s delivery fleet and a nationwide last-mile delivery service. With our network coverage, we can reach 98.5% of the U.S. population for next day services across multiple distribution points, whether they are retail stores, consumer homes, or businesses. Our local and global sourcing offices in Asia select, source and purchase products each year in office product, technology, furniture, cleaning and breakroom categories, including private brands, all of which we distribute for our customers throughout our network. These assets are supported by quality technology that supports a high level of service for our customers and reduces Veyer Division’s operating costs.

In 2022, we continued to build on several initiatives to drive incremental income through our Veyer Division, including the following:

- deliver exceptional service and competitive pricing to Office Depot and ODP Business Solutions to ensure they achieve their business objectives and remain highly competitive in the markets they serve;
- utilize available existing capacity to grow with new clients, including in the third-party logistics segment where there is demand for the services we provide and capabilities we have;
- modernize key functionality to ensure we provide great value to our customers, for example, through automated technology and robotics in our DCs and crossdock facilities; and
- drive a low-cost business model to drive profitability.

VARIS DIVISION

The Varis Division is our tech-enabled B2B indirect procurement marketplace, which provides a better way for buyers and suppliers to transact through the platform’s consumer-like buying experience, advanced spend management tools, network of suppliers, and technology capabilities. In connection with our development efforts of this Division, we acquired BuyerQuest Holdings, Inc. (“BuyerQuest”) in 2021, a software as a service eProcurement platform company. BuyerQuest’s operating results are included in the operating results for our Varis Division. The Varis Division currently serves enterprise businesses and provides its services to middle- and small-sized businesses. It is focused on filling the growing demand for a B2B centric digital commerce platform that is modern, trusted, and provides the procurement controls and visibility businesses require to operate.

OUR CAPITAL

INTELLECTUAL PROPERTY

We currently operate under the brand names Office Depot®, OfficeMax® and Grand & Toy®, as well as others. We hold trademark registrations and pending applications domestically and worldwide for these operating brands as well as for a wide assortment of private branded products and services including “Office Depot,” “TUL®,” “Ativa®,” “Foray®,” “Realspace®,” “WorkPro®,” “Brenton Studio®,” “Highmark®,” “Executive Suite®,” “Juku®,” and others. We also hold issued patents and pending patent applications domestically and worldwide for certain private branded products, such as shredders, office chairs and writing instruments.

HUMAN CAPITAL MANAGEMENT

As of January 28, 2023, we had approximately 25,000 full-time and part-time employees from continuing operations as compared to 26,000 full-time and part-time employees as of January 22, 2022. The year-on-year change is mainly attributable to planned store closures and other cost reduction measures. We also utilize independent contractors and temporary personnel to supplement our workforce. Our key human capital management objectives are to attract, retain and develop talent to drive our strategy for long-term success.

Our Board of Directors provides oversight on certain human capital management matters, including through its Compensation & Talent Committee. The Compensation & Talent Committee is responsible for overseeing and providing perspective on our strategies and policies including with respect to diversity and inclusion, pay equity, recruiting, retention, training and development, and workplace environment and safety consistent with our culture, objectives and strategy. We believe in maintaining a supportive and inclusive culture that values everyone’s talents, life experiences and backgrounds. We are proud of the diversity within our Board of Directors, comprised of 33% female directors and 33% of directors who are People of Color. Our total workforce is 42% female.

Human capital development underpins our efforts to execute our strategy. We invest in our employees’ career growth and provide employees with a range of development opportunities. Since the onset of the COVID-19 pandemic in 2020, our training and educational programs switched exclusively to virtual settings, and we swiftly pivoted to offer online courses to associates across all banners. Online courses proved effective for reaching employees working remotely and effective for advancing employee learning.

We have a demonstrated history of investing in our workforce through comprehensive and competitive compensation and benefits, and a focus on employee health and wellbeing. A key component of our foundation is our 5C culture, which is built on five key cultural values –“customer”, “commitment”, “create”, “change” and “caring.” Our 5C culture drives exceptional performance in everything we do. We focus on the skills and behaviors that matter most, shaping our culture through actions. Our 5C focus helps drive strong community support and focuses on sustainability, diversity, and environmental improvements, driving a stronger and more effective organization.

Our corporate headquarters is open, but certain employees who are able to work productively from home, have had the flexibility to work remotely since the COVID-19 pandemic. We continue to have employees in our retail stores, customer support and DCs working on-site at our facilities, as well as technicians and field support on-site at customer locations. Employee business travel remains limited to only essential business needs.

OUR STRATEGY

SUPPLY CHAIN

Our supply chain is managed by our Veyer Division. Refer to the “How we organize our business” section above for further information on our supply chain capabilities and resources. We believe that inventory held in our DCs is at levels sufficient to meet current and anticipated customer needs. Certain purchases are sent directly from the manufacturer, industry wholesaler or other primary supplier to our customers or retail stores. Some supply chain facilities and some retail locations also house sales offices, showrooms, and administrative offices supporting our contract sales channel.

As of December 31, 2022, we operated a total of 64 DCs and crossdock facilities from continuing operations in the United States and Canada. Including our satellite locations, we had over 100 facilities in our distribution network. Refer to “Properties” within Other Key Information for more details.

MERCHANDISING AND SERVICES

Our merchandising and services strategy is to meet our customers' needs by offering a broad selection of nationally branded office supply and adjacency products, as well as our own private branded products and services. The selection of our private branded products has increased in breadth and level of sophistication over time. We currently offer products under such labels, including Office Depot®, OfficeMax®, Foray®, Ativa®, TUL®, Realspace®, WorkPro®, Brenton Studio®, Highmark®, and Grand & Toy®.

We generally classify our offerings into four categories: (1) supplies, (2) technology, (3) furniture and other, and (4) copy and print. The supplies category includes products such as paper, writing instruments, office supplies, cleaning and breakroom supplies, personal protective equipment, and product subscriptions. The technology category includes products such as toner and ink, printers, computers, tablets and accessories electronic storage, and sales of third-party software, as well as technology support services offerings provided in our retail stores. The furniture and other category includes products such as desks, seating, luggage, gift cards, and warranties. The copy and print category includes offerings such as printing of business cards, banners, documents and promotional products, copying and photo services, and managed print and fulfillment services.

Total Company sales by offering were as follows:

	2022	2021	2020
Major revenue categories			
Supplies	48.8%	45.1%	45.2%
Technology	29.0%	32.6%	34.0%
Furniture and other	14.8%	15.4%	14.4%
Copy and print	7.4%	6.9%	6.4%
Total	100.0%	100.0%	100.0%

We buy substantially all of our merchandise through our Veyer Division directly from manufacturers, industry wholesalers, and other primary suppliers, and source our private branded products from domestic and offshore sources. We enter into arrangements with vendors that can lower our unit product costs if certain volume thresholds or other criteria are met. For additional discussion regarding these arrangements, refer to "Critical Accounting Policies" in MD&A.

In recent years, we have increasingly used global offerings across the regions to further reduce our product cost while maintaining product quality.

As part of our Veyer Division, we operate a global sourcing office in Shenzhen, China, which allows us to better manage our product sourcing, logistics and quality assurance. This office consolidates our purchasing power with Asian factories and, in turn, helps us to increase the scope of our own branded offerings.

SALES AND MARKETING

We regularly assess consumer shopping behaviors in order to refine our strategy and curate the desired product assortment, shopping environment and purchasing methods. Identifying the most desirable and effective way to reach our customers and allowing them to shop through whichever channel they prefer will continue to be a priority. These efforts have impacted the extent, format and vehicles we use to advertise to and reach customers, our web page design, promotions and product offerings.

Our marketing programs are designed to create and capture demand, drive frequency of customer visits, increase customer spend across product lines, and build brand awareness. We have shifted a meaningful amount of our marketing efforts in recent periods to digital programs that increase demand generation, enhance audience targeting and include the use of social media platforms and digital videos. We also continue to advertise through traditional outbound marketing vehicles such as e-mail, direct mail and catalogues.

Our customer loyalty and other incentive programs provide our customers with rewards that can be applied towards future purchases or other incentives. These programs enable us to effectively market to our customers and may change as customer preferences shift.

We perform periodic competitive pricing analyses to monitor each market, and prices are adjusted as necessary to further our competitive positioning. We generally target our pricing to be competitive with other resellers of office products and providers of business services and technology solutions. Refer to "Industry and Competition" below for further information.

Our customer acquisition efforts regularly shift to vehicles and formats found to be most productive for reaching the targeted customer. We acquire customers through e-mail and social media campaigns, online affiliate connections, on-premises sales calls, outbound sales calls, and catalogs, among others. No single customer accounted for more than 10% of total consolidated sales or receivables in 2022, 2021 or 2020. Additionally, we believe that none of our business segments is dependent upon a single customer or a few customers, the loss of which would have a material adverse effect in our consolidated results of operations.

SEASONALITY

Our business experiences a certain level of seasonality, with sales generally trending lower in the second quarter, following the “back-to-business” sales cycle in the first quarter and preceding the “back-to-school” sales cycle in the third quarter and the holiday sales cycle in the fourth quarter for our ODP Business Solutions and Office Depot Divisions. Certain working capital components may build and recede during the year reflecting established selling cycles. Business cycles can and have impacted our operations and financial position when compared to other periods.

INDUSTRY AND COMPETITION

We operate in a highly competitive environment. Our ODP Business Solutions and Office Depot Divisions compete with office supply stores, warehouse clubs, discount stores, mass merchandisers, independent dealers, wholesalers, online retailers, off-price retailers, food and drug stores, computer and electronics superstores and direct marketing companies. These companies compete with us in substantially all of our current markets. Increased competition in the office products markets, together with increased advertising, and Internet-based search tools, has heightened price awareness among end-users. Such heightened price awareness has led to sales and margin pressure on our office products categories and has impacted our results. In addition to price, we also compete based on customer service, the quality and extent of product selection and convenience. Other office supply retail companies market similarly to us in terms of store format, pricing strategy, product selection and product availability in the markets where we operate. Although we also compete through our private label offerings, some of our competitors are larger than us and have greater financial resources, which provide them with greater purchasing power, increased financial flexibility and more capital resources for expansion and improvement, which may enable them to compete more effectively. We anticipate that in the future we will continue to face high levels of competition from these companies.

We believe our robust field sales forces, dedicated customer service associates and the efficiency and convenience for our customers position our ODP Business Solutions Division well to compete with other business-to-business office products distributors. We believe our Office Depot Division competes favorably against competitors based on convenience, location, the quality of our customer service, our store layouts, the range and depth of our merchandise offering and our pricing.

Our Veyer Division competes externally with supply chain operators, and our Varis Division competes with other digital platform operations and procurement technologies. As external sales of our Veyer Division and our Varis Division continue to grow, how they compete in their respective industries is expected to be further defined.

ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG)

We believe that ESG issues play an essential role in the success of our Company, our industry and our communities, now and for future generations. We are committed to conducting our business in a sustainable manner and maintain policies and procedures that establish the foundation of our environmental responsibility program. We are committed to empowering our employees and suppliers at all levels to promote safe and environmentally responsible practices. In this regard, we focus on initiatives such as the reduction of facility energy consumption, reduction in transmission emissions in our private fleet, increasing sales of high-quality, sustainable products with greener attributes, improved recycling programs, and minimize the use of harmful chemicals. We utilize a “triple bottom line” approach as the framework for our sustainability initiatives: Planet (environmental), People (social) and Prosperity (economic). While the environmental and social aspects help us lower emissions, capture community impacts, and quantify other metrics, they ultimately impact our success by creating greater business value. Our governance model also includes Board oversight of our Sustainability Program through the Corporate Governance and Nominating Committee.

ODP continues to implement environmental programs in line with our stated environmental policy to “buy greener, be greener and sell greener” — including environmental sensitivity in our packaging, operations and sales offerings. Additional information on our green product offerings can be found at www.officedepot.com/buygreen.

We are subject to a variety of environmental laws and regulations related to historical OfficeMax operations of paper and forest products businesses and timberland assets. We record environmental and asbestos liabilities, and accrue losses associated with these obligations, when probable and reasonably estimable. We record a separate insurance recovery receivable when considered probable. Refer to “Legal Proceedings” within Other Key Information for more details.

WHO MANAGES OUR BUSINESS

INFORMATION ABOUT OUR EXECUTIVE OFFICERS

The following information is provided regarding the executive officers of ODP.

Gerry P. Smith — Age: 59

Mr. Smith was appointed to serve as our Chief Executive Officer and a Director in February 2017. Prior to joining us and since 2006, Mr. Smith was at Lenovo Group Limited (“Lenovo”) and previously served as Lenovo’s Executive Vice President and Chief Operating Officer since 2016 where he was responsible for all operations across Lenovo’s global product portfolio. Prior to assuming this role, also in 2016, Mr. Smith was Executive Vice President and President, Data Center Group. From 2015 to 2016, he served as Chief Operating Officer of the Personal Computing Group and Enterprise Business Group, and from 2013 to 2015 he served as President of the Americas. In these roles, Mr. Smith oversaw Lenovo’s fast-growing enterprise business worldwide and Lenovo’s overall business in the America’s region. Prior to that, Mr. Smith was President, North America and Senior Vice President, Global Operations of Lenovo from 2012 to 2013, and Senior Vice President of Global Supply Chain of Lenovo from 2006 until 2012 where he was responsible for end-to-end supply chain management. Prior to Lenovo, Mr. Smith held a number of executive positions at Dell Inc. from 1994 until 2006, as the company became a global leader in personal computers. Since August 2020, he serves on the Board of Directors of Arrow Electronics, Inc. and is a member of its Corporate Governance and Compensation Committees. In January 2022, Mr. Smith became a founding member of the Advisory Board for Zero100 - a global coalition of CEOs, Chief Operations and Supply Chain Officers working to accelerate progress towards zero percent carbon, 100% digital supply chains.

David Centrella — Age: 52

Mr. Centrella was appointed to serve as our Executive Vice President and President of ODP Business Solutions in May 2022. Mr. Centrella joined the Company in 1998 and has over 30 years of experience in Finance, Merchandising, Sales and Sales Operations in various leadership roles during his tenure, including most recently as Sr. Vice President of FP&A. Mr. Centrella is responsible for core B2B sales and operations across all customer segments and vertical markets.

Sarah E. Hlavinka — Age: 58

Ms. Hlavinka was appointed to serve as our Executive Vice President, Chief Legal Officer and Corporate Secretary in July 2022, and previously served as General Counsel of Office Depot, LLC from April 2022 to July 2022. Prior to joining The ODP Corporation, Ms. Hlavinka served as Senior Vice President, General Counsel and Corporate Secretary for Itron, Inc. Prior to Itron, Inc., she served in a similar role at Xerox and served in various legal roles in companies across a broad range of disciplines. Ms. Hlavinka has served on the Board of Directors of Quanterix Corporation since 2019 and is a member of its Corporate Governance and Audit Committees.

John W. Gannfors — Age: 57

Mr. Gannfors was appointed to serve as our Executive Vice President and President of Veyer in September 2022. He previously served as Executive Vice President and Chief Merchandising and Supply Chain Officer from August 2018 to September 2022. Mr. Gannfors served as Executive Vice President, Transformation, Strategic Sourcing and Supply Chain from July 2017 to August 2018, and as our Executive Vice President, Transformation and Strategic Sourcing when he joined the Company in April 2017. Prior to joining us, Mr. Gannfors served as Chief Procurement Officer at Lenovo, where he spent nearly ten years. Prior to assuming this role, Mr. Gannfors served in various leadership roles at Dell Inc. Mr. Gannfors began his career in Product Management at Lockheed Martin’s Calcomp division and Definion Systems.

Zöe Maloney — Age: 50

Ms. Maloney was appointed to serve as our Executive Vice President, Chief Human Resources Officer in November 2021. Ms. Maloney joined us in February 2005 and has more than 25 years of experience in communications, organization and leadership development, and human resources and held several executive management roles including serving as our Senior Vice President, Human Resources from April 2017 to October 2021; Vice President, Human Resources from August 2011 to April 2017; and Senior Director, Communications & Engagement from 2010 to 2011. Prior to joining us, Ms. Maloney served in various management positions at Johnson & Johnson, 3-Dimensional Pharmaceuticals, and CDI International.

Kevin Moffitt — Age: 49

Mr. Moffitt was appointed to serve as our Executive Vice President and President of Office Depot in September 2022. He previously served as Executive Vice President, Chief Retail Officer from November 2018 to September 2022. Mr. Moffitt served as our Senior Vice President, Chief Retail Officer from January 2018 to November 2018; Senior Vice President, Chief Digital Officer in 2017; Senior Vice President, eCommerce & Direct Business Unit Leader from 2016 to 2017; and as our Vice President, eCommerce Product Management and Customer Experience from 2012 to 2016. Prior to joining us, he held several leadership roles at Dillard’s Department Stores, Circuit City Stores and Putnam Investments.

D. Anthony Scaglione — Age: 50

Mr. Scaglione was appointed to serve as our Executive Vice President, Chief Financial Officer in July 2020. Prior to joining the Company, Mr. Scaglione served as Executive Vice President and Chief Financial Officer at ABM Industries Incorporated (“ABM”), where he was responsible for all financial, M&A, IT, tax, enterprise services and procurement functions from 2015 to 2020. Mr. Scaglione joined ABM as Vice President & Treasurer in 2009, and was Senior Vice President, Treasurer, Mergers & Acquisitions from 2012 to 2015. Prior to joining ABM, Mr. Scaglione held executive finance positions at CA Technologies from 2005 to 2009. Prior to CA Technologies, Mr. Scaglione served as a manager with Ernst & Young from 2001 to 2005.

OTHER KEY INFORMATION

RISK FACTORS

In addition to risks and uncertainties in the ordinary course of business that are common to all businesses, important factors that are specific to us and our industry could materially impact our business, financial condition, results of operations, cash flows and future performance and results. You should carefully consider the risks described below in our subsequent periodic filings with the SEC. The following risk factors should be read in conjunction with MD&A and Notes to Consolidated Financial Statements of this Annual Report.

Risks Related to Our Industry and Macroeconomic Conditions

Macroeconomic conditions have had and may continue to adversely affect our business and financial performance.

Our operating results and performance depend significantly on economic conditions and their impact on business and consumer spending. In the past, the decline in business and consumer spending has caused our comparable retail store sales and ODP BSD sales to decline from prior periods. The global macroeconomic outlook continues to remain uncertain due to a variety of factors, including geopolitical instability, labor shortages, supply chain disruptions and inflation related to increased occupancy, fuel, raw materials and other costs, and the impacts of the COVID-19 pandemic may continue, all of which may continue to exacerbate many of the other risks described in this “Risk Factors” section, any of which could have a material effect on us. Our business and financial performance may continue to be adversely affected by current and future economic conditions, including, without limitation, the level of consumer debt, high levels of unemployment, higher interest rates and the ability of our customers to obtain credit, which may cause a continued or further decline in business and consumer spending. In addition, a weaker U.S. economy, higher unemployment and inflation on essential goods will materially impact consumer spending. Decreased foot traffic at our stores and declining financial performance of or product demand from our business customers has and will continue to adversely impact future sales.

Our business, results of operations and financial performance have been and will continue to be adversely affected by the ongoing COVID-19 pandemic, which could materially affect our future results.

The COVID-19 pandemic has had widespread, rapidly evolving and unpredictable impacts on global society, economies, financial markets and consumer and business spending. Given that businesses still continue remote and hybrid working arrangements and there is no certainty on return to office full time, this has impacted and will continue to impact our business and the demand for our products. Except for certain identified positions where in-person work is essential, our employees and our third-party vendors also continue to work remotely or pursuant to hybrid work arrangements and this change in work force conditions may continue to introduce risk, including, but not limited to, loss of productivity, cybersecurity, and operational risks. We are monitoring the continuing impact of the COVID-19 pandemic on all aspects of our business, including how it is and will continue to impact our customers, employees, suppliers, vendors, business partners and distribution channels.

COVID-19 has also impacted our supply chain which has resulted in higher supply chain costs to replenish inventory in our retail stores and distribution centers, and increased delivery costs. Furthermore, we have experienced restricted product availability in certain categories, and while we have significantly increased our purchases across many categories, including new product categories, we have faced and may continue to face delays or difficulty sourcing certain products.

In addition, we cannot predict the impact that COVID-19 will continue to have on our customers, employees, suppliers, vendors, other business partners, and each of their financial conditions including the impacts on our supply chain, impacts to our distribution and logistics providers’ ability to operate or increases in their operating costs, which have and may continue to have an adverse effect on our ability to meet customer demand and has resulted and could continue to result in an increase in our costs of production and distribution, including increased freight and logistics costs and other expenses; disruption to our third-party manufacturing partners and other vendors, including through effects of facility closures, reductions in operating hours and work force. Any material effect on these parties could adversely impact us. The impact of COVID-19 may also exacerbate other risks discussed in this section, any of which could have a material effect on us. The situation surrounding COVID-19 remains fluid and additional impacts may arise that we are not aware of currently.

Our business is highly competitive and failure to adequately differentiate ourselves or respond to shifting consumer demands could continue to adversely impact our financial performance.

The office products market is highly competitive and we compete locally, domestically and internationally with office supply resellers, including Staples, Internet-based companies such as Amazon.com, mass merchandisers such as Wal-Mart and Target, wholesale clubs such as Costco, Sam’s Club and BJ’s, computer and electronics superstores such as Best Buy, food and drug stores, discount stores, and direct marketing companies. Some competitors may offer a broader assortment of products or have more

extensive e-commerce channels, while others have substantially greater financial resources to devote to sourcing, marketing and selling their products. The ability of consumers to compare prices on a real-time basis using digital technology puts additional pressure on us to maintain competitive pricing. In addition, consumers are utilizing more technology and purchasing less paper, ink and toner, physical file storage and general office supplies. In order to achieve and maintain expected profitability levels, we must continue to grow by adding new customers and taking market share from competitors. If we are not able to compete effectively, it could negatively affect our business and results of operations.

The retail sector continues to focus on delivery services, with customers increasingly seeking faster, guaranteed delivery times and low-price or free shipping. Our ability to be competitive on delivery times and delivery costs depends on many factors, and our failure to successfully manage these factors and offer competitive delivery options could negatively impact the demand for our products and our profit margins. Because our business strategy is based on offering superior levels of customer service and a full range of services to complement the products we offer, our cost structure might be higher than some of our competitors, and this, in conjunction with price transparency, could put pressure on our margins.

Our quarterly operating results are subject to fluctuation due to the seasonality of our business.

Our business experiences a certain level of seasonality with sales generally trending lower in the second quarter, following the “back-to-business” sales cycle in the first quarter and preceding the “back-to-school” sales cycle in the third quarter and the holiday sales cycle in the fourth quarter. As a result, our operating results have fluctuated from quarter to quarter in the past, with sales and profitability being generally stronger in the second half of our fiscal year than the first half of our fiscal year. Factors that could also cause these quarterly fluctuations include: the pricing behavior of our competitors; the types and mix of products sold; the level of advertising and promotional expenses; severe weather; global pandemic; macroeconomic factors that affect consumer confidence and spending; and the other risk factors described in this section. Most of our operating expenses, such as occupancy costs and associate salaries, are not variable, and so short-term adjustments to reflect quarterly results are difficult. As a result, if sales in certain quarters are significantly below expectations, we may not be able to proportionately reduce operating expenses for that quarter, and therefore such a sales shortfall would have an adverse effect on our net income for the quarter.

Increases in fuel and other commodity prices could have an adverse impact on our earnings.

We operate a large network of retail stores, distribution centers, and delivery vehicles. As such, we purchase significant amounts of fuel needed to transport products to our retail stores and customers as well as shipping costs to import products from overseas. Additionally, the performance of certain of our divisions is dependent upon market conditions in the transportation and logistics industry, including fluctuations in fuel costs. While we may hedge our anticipated fuel purchases, the underlying commodity costs associated with this transport activity is beyond our control and may be volatile. Recently, the supply and availability of fuel in markets in which we operate have experienced increased volatility and have led to increased fuel prices. Disruptions in availability of fuel or future increases in the price of fuel could cause our operating costs to rise significantly to the extent not covered by our hedges and could have a negative impact on our ability to operate our transportation networks. Additionally, other commodity prices, such as paper, may increase and we may not be able to pass along such costs to our customers. Fluctuations in the availability or cost of our energy and other commodity prices could have a material adverse effect on our profitability.

Increased transportation costs and changes in the relationships with independent shipping companies may have an adverse effect on our business.

We rely upon third-party carriers for timely delivery of our product shipments. As a result, we are subject to carrier disruptions and increased costs due to factors that are beyond our control, including employee strikes, inclement weather and increased labor and fuel costs. Any failure to deliver products to our customers in a timely and accurate manner may damage our reputation and brand and may cause us to lose customers. If our relationship with any of these third-party carriers is terminated or impaired, or if any of these third parties are unable to ship products for us, we would be required to use alternative, and possibly more expensive, carriers for the shipment of products. We may be unable to engage alternative carriers on a timely basis or on terms favorable to us, if at all, which may have an adverse effect on our results of operations, financial condition and cash flows. Changes in shipping terms, or the inability of these third-party shippers to perform effectively (whether as a result of mechanical failure, casualty loss, labor stoppage, or any other reason), may have an adverse effect on our results of operations, financial condition and cash flows. Additionally, deterioration of the financial condition of these third-party carriers may have an adverse effect on our shipping costs. Any future increases in shipping rates may have an adverse effect on our results of operations, financial condition and cash flows, particularly if we are unable to pass on these higher costs to our customers.

Catastrophic events could adversely affect our operating results.

The risk or actual occurrence of one or more catastrophic events could have a material adverse effect on our financial performance. Such events may be caused by, for example:

- natural disasters or extreme weather events such as climate change, hurricanes, tornadoes, floods and earthquakes;
- diseases, epidemics or pandemics (such as the ongoing COVID-19 pandemic) that may affect our employees, customers or partners;
- floods, fire or other catastrophes affecting our properties;
- the Russia-Ukraine conflict, terrorism, civil unrest or other conflicts; or
- extended power outages.

As noted above, the COVID-19 pandemic has had, and may continue to have, a material adverse impact on our business and results of operations. Such catastrophic events could result in physical damage to, or complete loss of, one or more of our properties, the closure of one or more stores, the lack of an adequate work force in the market, changes in the purchasing patterns of consumers (including the frequency of visits by consumers to physical retail locations, whether as a result of limitations on large gatherings, travel and movement limitations or otherwise) and in consumers' disposable income, the temporary or long-term disruption in the supply of products from some suppliers, the disruption in the transport of goods from overseas, the disruption or delay in the delivery of goods to our distribution and fulfillment centers or stores within the country, the reduction in the availability of products in our stores and can disrupt or disable portions of our supply chain and distribution network. They can also affect our information systems, resulting in disruption to various aspects of our operations, including our ability to transact with customers and fulfill orders.

Furthermore, the long-term impacts of climate change, whether involving physical risks (such as extreme weather conditions) or transition risks (such as regulatory or technology changes) are expected to be widespread and unpredictable. These changes over time could affect, for example, the availability and cost of certain consumer products, commodities and energy (including utilities), which in turn may impact our ability to manufacture or procure certain goods required for the operation of our business at the quantities and levels we require. As a consequence of these or other catastrophic events, we may endure interruption to our operations or losses of property, equipment or inventory, which would adversely affect our revenue and profitability. For example, hurricanes can disrupt operations in the southeastern United States and the Gulf Coast region where a heavy concentration of our customers are located, and negatively impact sales in both our ODP Business Solutions and Office Depot Divisions. Moreover, current or future insurance arrangements may not provide protection for costs that may arise from such events, particularly if such events are catastrophic in nature or occur in combination.

Risks Related to our Business and Operations

The re-alignment of our operating and reporting structure into four business units may not result in the anticipated benefits.

The Company has recently undergone a re-alignment of its business to four operating divisions. We may not realize, in full or in part, the anticipated benefits and improvements in our operations from our strategic business transformation due to unforeseen difficulties, delays or unexpected costs. If we are not able to effectively execute on our strategic business transformation, we may not be able to offer attractive value-added services to our customers or capture greater market share. We may have limited experience in our newer market segments, and our customers may not adopt our product or service offerings. These offerings, which can present new and difficult technology challenges, may subject us to claims if customers of these offerings experience, or are otherwise impacted by, service disruptions, delays, setbacks, or failures or quality issues. In addition, profitability, if any, in our newer activities may not meet our expectations, and we may not be successful enough in these newer activities to recoup our investments in them, which investments are significant. Failure to realize the benefits of amounts we invest in new technologies, products, or services could result in the value of those investments being written down or written off. In addition, our strategic business transformation may be disruptive to our existing operations and, among other things, implementing our new business plan will require significant managerial attention, which may be diverted from our other operations. If we are unable to realize the expected operational efficiencies and scaling benefits from the re-alignment, our business, financial condition and operating results may be adversely affected.

Our focus on new business offerings exposes us to certain risks that could have a material adverse impact on our revenue and profitability as well as our reputation.

Our transformation into an integrated distribution platform of business services and products, including supply chain, distribution, procurement, global sourcing and our new digital procurement platform can differentiate us from many of our competitors and provide an opportunity to deliver superior customer service while generating additional revenue and profit. However, designing, marketing and executing these services successfully and consistently is subject to risks. These risks include, for example:

- increased labor expense to fulfill our customer promises, which may be higher than the related revenue;

- intense competition in the marketplace;
- lack of brand recognition; and
- need for continued investment of our technology and infrastructure;

Our ability to compete successfully depends on our ability to ensure a continuing and timely introduction of innovative new products, services and technologies to the marketplace. If we are unable to pivot into a more business services-driven platform and sell innovative new products, our ability to gain a competitive advantage could be adversely affected.

These expanded risks increase the complexity of our business and places significant responsibility on our management, employees, operations, systems, technical expertise, financial resources, and internal financial and regulatory control and reporting functions. In addition, new initiatives we test through trials and pilots may not scale or grow effectively or as we expected, which could limit our growth and negatively affect our operating results. They may also involve significant laws or regulations that are beyond our current expertise.

If we are unable to successfully refine and execute our business strategies, our operating performance could be significantly impacted.

Our ability to both refine our operating and strategic plans and execute the business activities associated with our refined plans, including cost savings initiatives, could impact our ability to meet our operating performance targets.

Our business strategy also includes making acquisitions and investments that complement our existing business as well as strategic divestitures to maximize value. These acquisitions and investments or divestitures could be unsuccessful or consume significant resources, which could adversely affect our operating results.

Our ability to achieve the benefits we anticipate from acquisitions we make will depend in large part upon whether we are able to leverage the capabilities of the acquired companies to grow revenue across our combined organization, manage the acquired company's business, execute our strategy in an efficient and effective manner and realize anticipated cost synergies. In addition, private companies recently acquired which were previously not subject to Section 404 of the Sarbanes-Oxley Act of 2002 ("SOX"), may lack certain internal controls, which could ultimately affect our ability to ensure compliance with the requirements of SOX.

Because our business and the business of acquired companies may differ operationally, we may not be able to effectively manage or oversee the operations of the acquired company's business smoothly or successfully and the process of achieving expected revenue growth and cost synergies may take longer than expected. If we are unable to successfully manage the operations of the acquired company's business, we may be unable to realize the revenue growth, cost synergies and other anticipated benefits we expect to achieve as a result of the acquisition.

While our business strategy may contemplate divestitures of certain business units, we may not be able to complete these divestitures on terms favorable to us, on a timely basis, or at all. Furthermore, desired or proposed divestitures of business units may not meet all of our strategic objectives or our growth or profitability targets. Our divestiture activities, or related activities such as reorganizations, restructuring programs and transformation initiatives, may require us to recognize impairment charges or to take action to reduce costs that remain after we complete a divestiture. Gains or losses on the sales of, or lost operating income from those businesses may also affect our profitability.

Failure to attract and retain qualified personnel could have an adverse impact on our business.

Our performance is highly dependent on attracting, retaining and engaging appropriately qualified employees in our retail stores, service centers, distribution centers, field and corporate offices. The market for qualified employees, with the right talent and competencies, is highly competitive. Factors that affect our ability to maintain sufficient numbers of qualified employees include employee morale, our reputation, unemployment rates, competition from other employers, availability of qualified personnel and our ability to offer appropriate compensation and benefits packages. We operate in a competitive labor market and there is a risk that market increases in compensation and benefits costs could have a material adverse effect on our profitability. Failure to recruit or retain qualified employees, and the inability to keep our supply of skills and resources in balance with customer demand, may impair our efficiency and effectiveness, our ability to pursue growth opportunities and adversely affect our results of operations. In addition, a significant amount of turnover of our executive team or other employees in key positions with specific knowledge relating to us, our operations and our industry, may negatively impact our operations.

We depend on our executive management team and other key personnel, and the inability to recruit and retain certain personnel could adversely affect our performance and result in the loss of management continuity and institutional knowledge.

Although certain members of our executive team have entered into agreements relating to their employment with us, most of our key personnel are not bound by employment agreements, and those with employment or retention agreements are bound only for a limited period of time and enforceability of the non-compete provisions of those employment agreements is declining. If we are unable to retain our key personnel or restrict the manner in which they may be employed by our competitors, we may be unable to successfully develop and implement our business plans, which may have an adverse effect on our business and results of operations.

If we are unable to successfully maintain a relevant experience for our customers, our results of operations could be adversely affected.

With the increasing use of digital technology to shop in our retail stores and online, we rely on our omni-channel capabilities to provide a seamless shopping experience to our customers and to keep pace with new developments by our competitors. If we are unable to attract and retain team members or contract third parties with the specialized skills needed to support our omni-channel platforms or are unable to implement improvements to our customer-facing technology in a timely manner, our ability to compete and our results of operations could be adversely affected. In addition, if our website and our other customer-facing technology systems do not function as designed, the customer experience could be negatively affected, resulting in a reduction of the amount of traffic in our stores, a loss of customer confidence and satisfaction, and lost sales, which could adversely affect our reputation and results of operations.

Moreover, changes in customer preferences have reduced, and may continue to reduce, demand for our products and services in certain markets. If we fail to manage changes in our relationships with our long-term customers, it may have an adverse effect on our financial results.

Many end markets are experiencing changes due to technological progress, an evolving workplace and changes in customer preferences. In order to grow and remain competitive, we will need to continue to adapt to future changes in technology, enhance our existing offerings and introduce new offerings to address the changing demands of customers. If we are unable to continue to utilize new and existing technologies to adapt to new distribution methods and address changing customer preferences, our business may be adversely affected.

Technological developments and changing demands of customers may require additional investment in new equipment and technologies. We must monitor changes in markets and develop new solutions to meet customers' needs, otherwise we may not be able to keep or grow our customer base. The development of such solutions may be costly and there is no assurance that these solutions will be accepted by our customers. If we are unable to adapt to technological changes on a timely basis or at an acceptable cost, customers' demand for our products and services may be adversely affected.

There can be no assurance that our customers will continue to purchase our products in the same mix or quantities or on the same terms as in the past. The loss of or disruptions related to customers may result in a reduction in sales or change in the mix of products we sell to our customers. This may adversely affect our results of operations, financial condition and cash flows. Additionally, disputes with significant suppliers, including those related to pricing or performance, may adversely affect our ability to supply products to our customers and also our results of operations, financial condition and cash flows.

We have retained responsibility for liabilities of acquired companies that may adversely affect our financial results.

OfficeMax sponsors defined benefit pension plans covering certain terminated employees, vested employees, retirees, and some active employees (the "Pension Plans"). The Pension Plans are frozen and do not allow new entrants; however, they are under-funded and we may be required to make contributions in subsequent years in order to maintain required funding levels. Required future contributions could have an adverse impact on our cash flows and our financial results. Additional future contributions to the Pension Plans, financial market performance and Internal Revenue Service ("IRS") funding requirements could materially change these expected payments.

As part of the sale of our business in Europe, we have retained responsibility for the defined benefit plan covering certain employees in the United Kingdom. While the plan was in a net asset position at the end of 2022 changes in assumptions and actual experience could result in that plan being considered underfunded in the future. Additionally, we have agreed to make contributions to the plan as required by the trustees. Financial performance of the plan and future valuation assumptions could materially change the expected payments. In addition, as part of the sale transaction, the purchaser shall indemnify and hold us harmless in connection with any guarantees in place as of September 23, 2016, and given by us in respect of the liabilities or obligations of the European business. Further, if the purchaser wishes to terminate any such guarantee or cease to comply with any underlying obligation which is subject to such a guarantee, the purchaser shall obtain an unconditional and irrevocable release of the guarantee. However, we are contingently liable in the event of a breach by the purchaser of any such obligation.

In connection with OfficeMax's sale of its paper, forest products and timberland assets in 2004, OfficeMax agreed to assume responsibility for certain liabilities of the businesses sold. These obligations include liabilities related to environmental, asbestos, health and safety, tax, litigation and employee benefit matters. Some of these retained liabilities could turn out to be significant, which could have an adverse effect on our results of operations. Our exposure to these liabilities could harm our ability to compete with other office products distributors who would not typically be subject to similar liabilities.

We have incurred significant impairment charges and we continue to incur impairment charges.

We regularly assess past performance and make estimates and projections of future performance at an individual store and reporting unit level. Reduced sales, our shift in strategy to be less price promotional, as well as competitive factors and changes in consumer spending habits resulted in a downward adjustment of anticipated future cash flows for the individual retail stores that resulted in the impairment. We continue to foresee challenges in the market and economy that could adversely impact our operations. To the extent that forward-looking sales and operating assumptions are not achieved and are subsequently reduced, or if we implement the more aggressive store downsizing strategy contemplated by our Maximize B2B Restructuring, including allocating capital to further modify store formats, additional impairment charges may result. We have also recognized impairment charges on retail store related assets, including operating lease right-of-use ("ROU") assets, that were deemed unrecoverable based on the Comprehensive Business Review and the Business Acceleration Program. Additional asset impairments may be recognized based on future decisions and conditions.

Changes in the numerous variables associated with the judgments, assumptions and estimates we make, in assessing the appropriate valuation of our goodwill and other intangible assets of our reporting units, including changes resulting from macroeconomic, or disposition of components within reporting units, could in the future require a reduction of goodwill and recognition of related non-cash impairment charges. If we were required to further impair our store assets, our goodwill or intangible assets of our reporting units, it could have a material adverse effect on our business and results of operations.

In addition, if we experience a decline in our market capitalization in the future, and if the decline becomes sustained or future declines in macroeconomic factors or business conditions occur, we could incur impairment charges in future periods.

Our failure to effectively manage our real estate portfolio may negatively impact our operating results.

Effective management of our real estate portfolio is critical to our omni-channel strategy. Most of our properties are subject to long-term leases. As such, it is essential that we effectively evaluate a range of factors that may influence the success of our long-term real estate strategy. Such factors include but are not limited to:

- changing patterns of customer consumption and behavior, particularly in light of an evolving omni-channel environment;
- the appropriate number of retail stores in our portfolio;
- the formats and sizes of our retail stores;
- the locations of our retail stores;
- the interior layouts of our retail stores;
- the trade area demographics and economic data of each of our retail stores;
- the local competitive positioning in and around our retail stores;
- the primary term lease commitment for each retail store;
- the long-term lease option coverage for each retail store;
- the occupancy cost of our retail stores relative to market rents;
- our supply chain network strategy; and
- our ongoing network of service locations.

The consequences for failure to effectively evaluate these factors or negotiate appropriate terms or anticipate changes could include:

- having to close retail stores and abandon the related assets, while retaining the financial commitments of the leases;
- incurring significant costs to remodel or transform our retail stores;

- having retail stores, supply chain or service locations that no longer meet the needs of our business; and
- bearing excessive lease expenses.

These consequences could have a materially adverse impact on our profitability, cash flows and liquidity.

For leased property, the financial impact of exiting a location varies greatly depending on, among other factors, the terms of the lease, the condition of the local real estate market, demand for the specific property, our relationship with the landlord and the availability of potential sub-lease tenants. It is difficult for us to influence some of these factors, and the costs of exiting a property can be significant. In addition to rent, we are still responsible for the maintenance, taxes, insurance and common area maintenance charges for vacant properties until the lease commitment expires or is terminated. Similarly, when we enter into a contract with a tenant to sub-lease property, we usually retain our obligations as the master lessor. This leaves us at risk for any remaining liability in the event of default by the sub-lease tenant.

We do a significant amount of business with government entities, various purchasing consortiums, and through sole- or limited- source distribution arrangements, and loss of this business could negatively impact our results.

One of our largest customer groups consists of various governmental entities, government agencies and non-profit organizations, such as purchasing consortiums. Contracting with U.S. state and local governments is highly competitive and complex, subject to federal and state procurement laws, requires more restrictive contract terms and compliance measures, and can be expensive and time-consuming. Violations of these laws and regulations and/or inadvertent non-compliance with complex contractual terms or disagreements regarding interpretations of those terms could result in liabilities, fines, criminal sanctions, the inability to participate in existing or future government contracting and other administrative sanctions. Any such penalties could result in damage to the Company's reputation, increased costs of compliance and/or remediation and could adversely affect the Company's financial condition and results of operations. Moreover, bidding on government contracts often requires that we incur significant upfront time and expense without any assurance that we will win a contract. Our ability to compete successfully for and retain business with federal, state and local governments is highly dependent on cost-effective performance. Our business with governmental entities and agencies is also sensitive to changes in national and international priorities and their respective budgets, which in the current economy continue to decrease.

We also service a substantial amount of business through agreements with purchasing consortiums and other sole- or limited-source distribution arrangements. If we are unsuccessful in retaining these customers, or if there is a significant reduction in sales under any of these arrangements, it could adversely impact our business and results of operations.

Failure to maintain our reputation and brand at a high level, may adversely impact our financial performance.

Effective marketing efforts play a crucial role in maintaining our reputation to attract new customers and retain existing customers. Failure to execute effective marketing efforts or misjudgment of consumer responses to our existing or future promotional activities, may adversely impact our financial performance.

Failure to detect, prevent, or mitigate issues that might give rise to reputational risk or failure to adequately address negative publicity or perceptions could adversely impact our reputation, business, results of operations, and financial condition. Issues that might pose a reputational risk include an inability to achieve our omni-channel goals, including providing an e-commerce and delivery experience that meets the expectations of consumers; failure of our cybersecurity measures to protect against data breaches; product liability and product recalls; our social media activity; failure to comply with applicable laws and regulations; and any of the other risks enumerated in these risk factors. In addition, information concerning us, whether or not true, may be instantly and easily posted on social media platforms at any time, which information may be adverse to our reputation or brand. The harm may be immediate without affording us an opportunity for redress or correction. If our reputation or brand is damaged, our customers may refuse to continue shopping with us, potential employees may be unwilling to work for us, business partners may be discouraged from seeking future business dealings with us and, as a result, our operations and financial results may suffer.

Our exclusive brand products are subject to several additional product, supply chain and legal risks that could affect our operating results.

We sell a substantial number of products under our own brands including Office Depot®, OfficeMax® and other proprietary brands where we are the importer of record. While we have focused on the quality of our proprietary branded products, we rely on third parties to manufacture these products. Such third-party manufacturers may prove to be unreliable, the quality of our globally sourced products may vary from our expectations and standards, such products may not meet applicable regulatory requirements which may require us to recall those products, or such products may infringe upon the intellectual property rights of third parties. The manufacturers and related factories of these products may fail to comply with global social responsibility regulations. As the importer

of record and private labeler there are increased regulatory reporting and compliance risks, including customs compliance, global social responsibilities, country of origin, chemical compliance, product liability, advertising and labeling. Though we seek indemnities from the manufacturers of these products, the uncertainty of realization of any such indemnity and the lack of understanding of U.S. laws in certain foreign jurisdictions make it more likely that we may have to respond to claims or complaints from our customers.

Our business may be adversely affected by the actions of and risks related to the activities of our third-party vendors.

We purchase products for resale under credit arrangements with our vendors and have been able to negotiate payment terms that are approximately equal in length to the time it takes to sell the vendor's products. When the global economy is experiencing weakness as it has in the past, vendors may seek credit insurance to protect against non-payment of amounts due to them. If we experience declining operating performance and severe liquidity challenges, vendors may demand that we accelerate our payment for their products or require cash on delivery, which could have an adverse impact on our operating cash flow and result in severe stress on our liquidity. Borrowings under our existing credit facility could reach maximum levels under such circumstances, causing us to seek alternative liquidity measures, but we may not be able to meet our obligations as they become due until we secure such alternative measures.

We use and resell many manufacturers' branded items and services. We rely on key vendors who may have a large market share of the categories of products and services that we resell in order to provide best in class solutions to our customers. As a result, we are dependent on the availability and pricing of key products and services, including but not limited to ink, toner, paper and technology products and key vendors could change their business strategies or models and no longer offer products or services of value to our customers. As a reseller, we cannot control the supply, design, function, cost or vendor-required conditions of sale of many of the products we offer for sale. Disruptions in the availability of these products or the products and services we provide to our customers coupled with our inability to quickly pivot and find new products and services to our portfolio of offerings may adversely affect our sales and result in customer dissatisfaction. Further, we cannot control the cost of manufacturers' products, and cost increases must either be passed along to our customers or will result in erosion of our earnings.

Failure to identify desirable products and make them available to our customers when desired and at attractive prices could have an adverse effect on our business and our results of operations. In addition, a material interruption in service by the carriers that ship goods within our supply chain may adversely affect our sales. Many of our vendors are small or medium-sized businesses which are impacted by current macroeconomic conditions, both in the U.S., Asia and other locations. We may have no warning before a vendor fails, which may have an adverse effect on our business and results of operations.

We also engage key third-party business partners to support various functions of our business, including but not limited to, information technology, web hosting and cloud-based services, human resource operations, customer loyalty programs, gift cards, customer warranty, delivery and installation, technical support, transportation and insurance programs. Any material disruption in our relationship with key third-party business partners or any disruption in the services or systems provided or managed by third parties, including as a result of denial-of-service, ransomware or other cyber attacks, could impact our revenues and cost structure and hinder our operations, particularly if a disruption occurs during peak revenue periods.

Product safety and quality concerns could have a material adverse impact on our revenue and profitability.

If the products we sell fail to meet applicable safety standards or our customers' expectations regarding safety and quality, we could be exposed to increased legal risk and our reputation may be damaged. Failure to take appropriate actions in relation to product recalls could lead to breaches in laws and regulations and leave us susceptible to government enforcement actions or private litigation. Recalls of products, particularly when combined with lack of available alternatives or our difficulty in sourcing sufficient volumes of replacement products, could also have a material adverse impact on our revenue and profitability.

Disruption of global sourcing activities, evolving foreign trade policy (including tariffs imposed on certain foreign made goods) could negatively impact the cost and availability of our products and services.

Economic and civil unrest in areas of the world where we source products and services, as well as shipping and dockage issues, could adversely impact the availability or cost of our products and services, or both. Most of our goods imported to the U.S. arrive from Asia through ports located on the U.S. west coast and we are therefore subject to potential disruption due to labor unrest, security issues or natural disasters affecting any or all of these ports. In addition, we purchase and source products from a wide variety of suppliers, including from suppliers overseas, particularly in China where we maintain a global sourcing office to facilitate product sourcing. Diplomatic tensions between China and the US and developments in Hong Kong and Taiwan, alongside other potential areas of tension, may affect us by creating regulatory, reputational and market risks. For example, the U.S. government has imposed various sanctions and trade restrictions on Chinese persons and companies, and the US continues to advance the development of its framework for strategic competition with China. In response to foreign sanctions and trade restrictions, China has announced a number of sanctions, trade restrictions and laws that could impact us. Such sanctions and trade restrictions target or provide authority to target

foreign individuals and companies, and have been primarily imposed against certain public officials associated with the implementation of foreign sanctions against China. The new laws provide a legal framework for further imposing such sanctions, prohibit implementing or complying with foreign sanctions against China and create private rights of action in Chinese courts for damages caused by third parties implementing foreign sanctions or other discriminatory measures. These and any future measures and countermeasures that may be taken by the US, China may increase our cost of goods sold or reduce the supply of the products available to us. There is no assurance that any such increased costs could be passed on to our customers, or that we could find alternative products from other sources at comparable prices. To the extent that we are subject to more challenging regulatory environments and enhanced legal and regulatory requirements, such exposure could have a material adverse effect on our business, including the added cost of increased compliance measures that we may determine to be necessary.

In light of the trade tensions between the U.S. and China, we have incurred incremental costs related to trade tariffs on inventory we purchase from China, but such costs have not had a material impact on our results of operations. We continue to monitor and evaluate the potential impact of the effective and proposed tariffs as well as other recent changes in foreign trade policy on our supply chain, costs, sales and profitability and have implemented strategies to mitigate such impact, including changes to our contracting model, alternative sourcing strategies and selective price increase pass-through efforts. If any of these events continue as described, they could disrupt the movement of products through our supply chain or increase their cost. In addition, we are in the process of diversifying our sourcing options outside Asia and executing this diversification plan introduces risk, including cybersecurity, global social responsibilities, product quality assurance and compliance, operations, and logistics. Further, a larger scale sourcing shift will be time consuming and difficult or impracticable for many products and may result in an increase in our manufacturing costs. Substantial regulatory uncertainty exists regarding foreign trade and trade policy, both in the United States and abroad. The adoption and expansion of trade restrictions, retaliatory tariffs, or other governmental action related to tariffs or international trade agreements or policies has the potential to adversely impact demand for our products, our costs, our customers, our suppliers, and/or the U.S. economy, which in turn could adversely impact our results of operations and business.

Risks Related to Our Indebtedness and Liquidity

Covenants in our credit facility could adversely impact our operations.

Our asset-based credit facility contains a fixed charge coverage ratio covenant that is operative only when borrowing availability is below 10% of the Borrowing Base (as defined in Note 11. "Debt" in Notes to Consolidated Financial Statements) or prior to a restricted transaction, such as incurring additional indebtedness, acquisitions, dispositions, dividends, or share repurchases if we do not have the required liquidity. The agreement governing our credit facility (the "Third Amended Credit Agreement" as defined in Note 11. "Debt" in Notes to Consolidated Financial Statements) also contains representations, warranties, affirmative and negative covenants, and default provisions. A breach of any of these covenants could result in a default under our Third Amended Credit Agreement. Upon the occurrence of an event of default under our Third Amended Credit Agreement, the lenders could elect to declare all amounts outstanding to be immediately due and payable and terminate all commitments to extend further credit. If the lenders were to accelerate the repayment of borrowings, we may not have sufficient assets to repay our asset-based credit facility and our other indebtedness. Also, should there be an event of default, or a need to obtain waivers following an event of default, we may be subject to higher borrowing costs and/or more restrictive covenants in future periods. Acceleration of our obligations under our credit facilities would permit the holders of our other material debt to accelerate their obligations. We were in compliance with all applicable covenants as of December 31, 2022.

Risks Related to Legal and Regulatory Compliance

We are subject to legal proceedings and legal compliance risks.

We are involved in various legal proceedings, which from time to time may involve class action lawsuits, state and federal governmental inquiries, audits and investigations, environmental matters, employment, tort, state false claims act, consumer litigation and intellectual property litigation. At times, such matters may involve directors and/or executive officers. Certain of these legal proceedings, including government investigations, may be a significant distraction to management and could expose our Company to significant liability, including settlement expenses, damages, fines, penalties, attorneys' fees and costs, and non-monetary sanctions, including suspensions and debarments from doing business with certain government agencies, any of which could have a material adverse effect on our business and results of operations. For a description of our legal proceedings, refer to Note 17. "Commitments and Contingencies" in Notes to Consolidated Financial Statements.

Legal, regulatory or market measures to address climate change, could adversely affect our business, financial condition or results of operations.

There has been increased focus by federal, international, state and local regulatory and legislative bodies to combat and/or limit the effects of climate change through a variety of means, including regulating greenhouse gas ("GHG") emissions (and the establishment

of enhanced internal processes or systems to track them), policies mandating or promoting the use of renewable or zero-carbon energy and sustainability initiatives, and additional taxes on fuel and energy. If legislation or regulations are enacted or promulgated in the United States or in any other jurisdiction in which we do business that impose more stringent restrictions and requirements than our current legal or regulatory obligations, we and companies in our supply chain may experience increased compliance burdens and costs to meet the regulatory obligations, which could cause disruption in the sourcing, manufacturing and distribution of our products and adversely affect our business, financial condition or results of operations.

Additionally, the impacts of climate change and chemical compliance initiatives by our corporate and public sector customers may further influence customer preferences and requirements, such as increased demand for products with lower environmental footprints, compliance with customers' restricted chemical lists and/or beyond restricted substances lists for products they are purchasing, and for companies to produce and demonstrate progress against GHG reduction plans and targets. Failure to provide climate-friendly products, demonstrate GHG reductions, and/or comply with B2B customers' chemical compliance standards could potentially result in loss of market share.

Changes in tax laws in any of the jurisdictions in which we operate can cause fluctuations in our overall tax rate impacting our reported earnings.

Our tax rate is derived from a combination of applicable tax rates in the various domestic and international jurisdictions in which we operate. While we have disposed of the majority of our international businesses, we remain subject to international taxes as part of our existing operations. Depending upon the sources of our income, any agreements we may have with taxing authorities in various jurisdictions, and the tax filing positions we take in these jurisdictions, our overall tax rate may fluctuate significantly from other companies or even our own past tax rates. In addition, changes in applicable U.S. or foreign tax laws and regulations, including the Tax Cuts and Jobs Act of 2017, or their interpretation and application, including the possibility of retroactive effect, could affect our tax expense and profitability. At any given point in time, we base our estimate of an annual effective tax rate upon a calculated mix of the tax rates applicable to us and to estimates of the amount of income likely to be generated in any given geography. The loss of or modification to one or more agreements with taxing jurisdictions, whether as a result of a third party challenge, negotiation, or otherwise, a change in the mix of our business from year to year and from country to country, changes in rules related to accounting for income taxes, changes in tax laws in any of the multiple jurisdictions in which we operate, changes in valuation allowances, or adverse outcomes from the tax audits that regularly are in process in any of the jurisdictions in which we operate could result in substantial volatility, including an unfavorable change in our overall tax rate and/or our effective tax rate.

On August 16, 2022, the Inflation Reduction Act of 2022 (the "IR Act") was signed into federal law. Starting on January 1, 2023, the 1% U.S. federal excise tax included in the Inflation Reduction Act of 2022 will apply to certain repurchases of stock by publicly traded U.S. domestic corporations and certain U.S. domestic subsidiaries of publicly traded foreign corporations. Under the new excise tax requirements, we may be subject to the 1% excise tax (rather than our shareholders) in connection with certain of our repurchases. The foregoing could cause a reduction in the cash available on hand.

Increases in wage and benefit costs, changes in laws and other labor regulations could impact our financial results and cash flow.

Our expenses relating to employee labor, including employee health benefits, are significant. Our ability to control our employee and related labor costs is generally subject to numerous external factors, including prevailing wage rates, legislative and private sector initiatives regarding healthcare reform, and adoption of new or revised employment and labor laws and regulations. Recently, various legislative movements have sought to increase the federal minimum wage in the United States and the minimum wage in a number of individual states, some of which have been successful at the state level. As federal or state minimum wage rates increase, we may need to increase not only the wage rates of our minimum wage employees, but also the wages paid to our other employees as well. Further, should we fail to increase our wages competitively in response to increasing wage rates, the quality of our workforce could decline, causing our customer service to suffer. Any increase in the cost of our labor could have an adverse effect on our operating costs, financial condition and results of operations. We have a large employee base and while our management believes that our employee relations are good, we cannot be assured that we will not experience organization efforts from labor unions. The potential for unionization could increase if federal legislation is passed that would facilitate labor organization. Significant union representation would require us to negotiate wages, salaries, benefits and other terms with many of our employees collectively and could adversely affect our results of operations by significantly increasing our labor costs or otherwise restricting our ability to maximize the efficiency of our operations.

We also have employees in Canada and Asia and are required to comply with laws and regulations in those countries that may differ substantially from country to country, requiring significant management attention and cost.

Changes in the regulatory environment and violations of the U.S. Foreign Corrupt Practices Act and similar worldwide anti-bribery laws may negatively impact our business.

We are subject to regulations relating to our corporate conduct and the conduct of our business, including securities laws, consumer protection laws, hazardous material regulations, trade regulations, advertising regulations, privacy and cybersecurity laws, regulations relating to climate change and chemical compliance and wage and hour regulations and anti-corruption legislation. Certain jurisdictions have taken a particularly aggressive stance with respect to such matters and have implemented new initiatives and reforms, including more stringent regulations, disclosure and compliance requirements.

The U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act and similar anti-bribery laws in other jurisdictions generally prohibit companies and their intermediaries from making improper payments for the purpose of obtaining or retaining business. Recent years have seen a substantial increase in anti-bribery law enforcement activity with more frequent and aggressive investigations and enforcement proceedings by both the Department of Justice and the SEC, increased enforcement activity by non-U.S. regulators and increases in criminal and civil proceedings brought against companies and individuals. Our policies mandate compliance with all anti-bribery laws. However, we operate in certain countries that are recognized as having governmental and commercial corruption. Our internal control policies and procedures may not always protect us from reckless or criminal acts committed by our employees or third-party intermediaries. Violations of these anti-bribery laws may result in criminal or civil sanctions, which could have a material adverse effect on our business and results of operations.

Risks Related to Information Technology and Information Security

Disruptions of our computer systems could adversely affect our operations.

We rely heavily on computer systems to process transactions, including delivery of technology services, manage our inventory and supply-chain and to summarize and analyze our global business. In addition, if our website and our other customer-facing technology systems do not function as designed, our business could be negatively affected, resulting in a loss of customer confidence and satisfaction, and lost sales, which could adversely affect our reputation and result of operations. Various components of our information technology and computer systems, including hardware, networks, and software, are licensed to us and hosted by third-party vendors.

Our systems are subject to damage or interruption from power outages, computer and telecommunications failures, computer viruses, cyber-attack or other security breaches, catastrophic events such as fires, floods, earthquakes, tornadoes, hurricanes, acts of war or terrorism, and usage errors by our employees. We carry insurance, including cyber insurance, which we believe to be commensurate with our size and the nature of our operations and expect that a portion of these costs may be covered by insurance.

If our computer systems are damaged or cease to function properly in the future, or, if we do not replace or upgrade certain systems, we may incur substantial costs to repair or replace them and may experience an interruption of our normal business activities or loss of critical data.

We maintain and periodically upgrade many of these systems that increase productivity and efficiency. If these systems are not properly maintained or enhanced, the attention of our workforce could be diverted and our ability to provide the level of service our customers demand could be constrained for some time. Failure to make such investments could limit our ability to compete against our peers that are investing in these areas. Further, new systems might not properly integrate with existing systems. Also, once implemented, the new systems and technology may not provide the intended efficiencies or anticipated benefits and could add costs and complications to our ongoing operations.

A breach of our information technology systems could adversely affect our reputation, business partner and customer relationships and operations and result in high costs.

Through our sales, marketing activities, and use of third-party information, we collect and store certain personally identifiable information that our customers provide to purchase products or services, enroll in promotional programs, register on our website, or otherwise communicate and interact with us. This may include, but is not limited to, names, addresses, phone numbers, driver license numbers, e-mail addresses, contact preferences, personally identifiable information stored on electronic devices, and payment account information, including credit and debit card information. We also gather and retain information about our employees in the normal course of business. We may share information about such persons with vendors that assist with certain aspects of our business. In addition, our online operations depend upon the secure transmission of confidential information over public networks, such as information permitting cashless payments.

We have instituted safeguards for the protection of such information and invested considerable resources, including insurance to cover cyber liabilities, in protecting our systems. These security measures may be compromised as a result of third-party security breaches,

burglaries, cyber-attack, errors by our employees or the employees of third-party vendors, faulty password management, misappropriation of data by employees, vendors or unaffiliated third parties, or other irregularity, and result in persons obtaining unauthorized access to our data or accounts.

Despite instituted safeguards for the protection of such information, we cannot be certain that all of our systems and those of our vendors and unaffiliated third parties are entirely free from vulnerability to attack or compromise given that the techniques used to obtain unauthorized access, disable or degrade service, or sabotage systems change frequently.

We have experienced and we expect to continue to experience attempts to breach our systems, none of which has been material to the Company as a whole to date, and we may be unable to protect sensitive data and the integrity of our systems or to prevent fraudulent purchases.

We are also subject to data privacy and security laws and regulations, the number and complexity of which are increasing globally, and despite reasonable efforts to comply with all applicable laws and regulations, there can be no assurance that we will not be the subject of enforcement or other legal actions in the event of an incident. Moreover, an alleged or actual security breach that affects our systems or results in the unauthorized release of personally identifiable information could:

- materially damage our reputation and brand, negatively affect customer satisfaction and loyalty, expose us to negative publicity, individual claims or consumer class actions, administrative, civil or criminal investigations or actions, and infringe on proprietary information; and
- cause us to incur substantial costs, including but not limited to costs associated with remediation for stolen assets or information, payments of customer incentives for the maintenance of business relationships after an attack, litigation costs, lost revenues resulting from unauthorized use of proprietary information or the failure to retain or attract customers following an attack, and increased cyber security protection costs. While we maintain insurance coverage that may, subject to policy terms and conditions, cover certain aspects of our cyber risks, such insurance coverage may be unavailable or insufficient to cover our losses or all types of claims that may arise in the continually evolving area of cyber risk.

Although all of our divisions are exposed to these types of security risks, a successful cyber-attack, security breach, disruption or other incident could have a larger impact on divisions launching new product offerings by damaging reputation or brand and negatively affecting customer satisfaction and loyalty at an early stage in the business. Additionally, for divisions with newer technological offerings or new technology integrated into their operations, exposure to security risks may have a greater impact on operations.

Risks Related to Ownership of Our Securities

There can be no assurance that we will resume paying cash dividends.

Decisions regarding dividends depend on a number of factors, including general business and economic conditions, our financial condition, operating results and restrictions imposed by our debt agreements, the emergence of alternative investment or acquisition opportunities, changes in business strategy and other factors. Decisions on dividends are within the discretion of the Board of Directors. In order to preserve liquidity during the COVID-19 pandemic and in light of the uncertainties as to its duration and economic impact, in May 2020, our Board of Directors suspended the Company's quarterly cash dividend beginning in the second quarter of 2020. Our quarterly cash dividend remains suspended and we do not anticipate declaring cash dividends in the foreseeable future. Changes in or the elimination of dividends could have an adverse effect on the price of our common stock.

Our common stock price has been and may continue to be subject to volatility, and shareholders could incur substantial losses of any investment in our common stock.

Our common stock price has experienced volatility over time and this volatility may continue, in part due to factors mentioned in this Item 1A or due to other market-driven events beyond our control. As a result of these and other factors, investors in our common stock may not be able to resell their shares at or above their original purchase price.

Our amended and restated bylaws designate the Court of Chancery of the State of Delaware (the "Chancery Court"), or, if the Chancery Court does not have jurisdiction, the federal district court for the district of Delaware or other state courts located in the State of Delaware, as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our shareholders, which could discourage lawsuits against us and our directors and officers.

Pursuant to our amended and restated bylaws, unless we consent in writing to the selection of an alternative forum, the Chancery Court (or, if the Chancery Court does not have jurisdiction, the federal district court for the District of Delaware or other state courts of the State of Delaware) is the sole and exclusive forum for any shareholder (including a beneficial owner) to bring: (1) any

derivative action or proceeding brought on our behalf, (2) any action asserting a claim of breach of a fiduciary duty owed by any of our current or former directors, officers or other employees to us or our shareholders, (3) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, our restated certificate of incorporation or amended and restated bylaws, or (4) any action asserting a claim governed by the internal affairs doctrine, except as to each of (1) through (4) above, for any claim as to which the Court of Chancery determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten days following such determination). This forum selection provision may limit the ability of our shareholders to bring a claim in a judicial forum that such shareholders find favorable for disputes with us or our directors or officers, which may discourage such lawsuits against us and our directors and officers.

Section 27 of the Exchange Act creates exclusive federal jurisdiction over all suits brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. As a result, the exclusive forum provision will not apply to suits brought to enforce any duty or liability created by the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. In addition, Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all suits brought to enforce any duty or liability created by the Securities Act or the rules and regulations thereunder. As a result, the exclusive forum provision will not apply to suits brought to enforce any duty or liability created by the Securities Act or any other claim for which the federal and state courts have concurrent jurisdiction.

PROPERTIES

As of December 31, 2022, we operated in the following locations:

STORES**Office Depot Division (United States)**

<u>State</u>	<u>#</u>	<u>State</u>	<u>#</u>
Alabama	21	Nebraska	9
Alaska	5	Nevada	18
Arizona	25	New Mexico	9
Arkansas	10	New York	10
California	81	North Carolina	36
Colorado	30	North Dakota	4
District of Columbia	1	Ohio	29
Florida	109	Oklahoma	13
Georgia	41	Oregon	17
Hawaii	8	Pennsylvania	8
Idaho	6	Puerto Rico	10
Illinois	35	South Carolina	15
Indiana	19	South Dakota	2
Iowa	6	Tennessee	27
Kansas	9	Texas	144
Kentucky	9	Utah	11
Louisiana	31	U.S. Virgin Islands	2
Maryland	8	Virginia	24
Michigan	22	Washington	27
Minnesota	20	West Virginia	4
Mississippi	13	Wisconsin	24
Missouri	24	Wyoming	2
Montana	2	TOTAL	980

The supply chain facilities which we operate in the continental United States and Puerto Rico support our ODP Business Solutions and Office Depot Divisions and the facilities in Canada support our ODP Business Solutions Division. The following table sets forth the locations of our principal supply chain facilities from continuing operations as of December 31, 2022.

DCs and Crossdock Facilities

State	#	State	#
Arizona	1	New Mexico	1
California	5	North Carolina	1
Colorado	1	North Dakota	2
Florida	5	Ohio	2
Georgia	2	Oklahoma	1
Hawaii	7	Pennsylvania	1
Idaho	1	Puerto Rico	1
Illinois	5	Tennessee	1
Kansas	1	Texas	3
Minnesota	3	Washington	3
Mississippi	1	Wisconsin	5
Missouri	4	Total United States	57
		Canada	7
		TOTAL	64

Our principal corporate headquarters in Boca Raton, FL consists of three interconnected buildings of approximately 625,000 square feet. This facility is considered to be in good condition, adequate for its purpose and suitably utilized according to the individual nature and requirements of the relevant operations. Although we currently own our corporate office in Boca Raton, FL, as well as a small number of our retail store locations, most of our facilities are leased or subleased. The Company has entered into an agreement in principle with a third-party buyer to sell our corporate office. Additional information regarding our operating leases and leasing arrangements is available in Note 1. "Summary of Significant Accounting Policies" and Note 9. "Leases" in Notes to Consolidated Financial Statements. Additional information regarding the sale of the corporate office is available in Note 6. "Property and Equipment" in Notes to Consolidated Financial Statements.

LEGAL PROCEEDINGS

For a description of our legal proceedings, refer to Note 14. "Commitments and Contingencies" in Notes to Consolidated Financial Statements.

MARKET FOR REGISTRANT’S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Our common stock is traded on the NASDAQ Global Select Market under the ticker symbol ODP.

Holders

As of the close of business on February 22, 2023, there were 3,276 holders of record of our common stock.

Cash Dividend

We did not declare any cash dividends in 2022 and do not anticipate declaring cash dividends in the foreseeable future. Our Third Amended Credit Agreement permits restricted payments, such as dividends, but may be limited if we do not meet the required minimum liquidity or fixed charge coverage ratio requirements.

Issuer Purchases of Equity Securities

In May 2021, our Board of Directors approved a stock repurchase program of up to \$300 million, available through June 30, 2022. Our Board of Directors reviewed the existing capital allocation programs in connection with the sale of CompuCom, and on December 31, 2021, authorized an additional \$200 million for share repurchases under the then existing stock repurchase program, for a total authorization of \$650 million. This stock repurchase program expired on June 30, 2022, and in July 2022, our Board of Directors approved a stock repurchase program of up to \$600 million, available through June 30, 2024. In October 2022, our Board of Directors approved a new stock repurchase program of up to \$1 billion, available through December 31, 2025, to replace the existing \$600 million stock repurchase program effective November 3, 2022.

On November 16, 2021, as part of the stock repurchase program that expired on June 30, 2022, we entered into an accelerated share repurchase agreement (“ASR”) to repurchase shares of our common stock in exchange for an up-front payment of \$150 million and increased the authorization to \$450 million. The ASR repurchase period ran through May 25, 2022, and we received 0.7 million shares of our common stock as the final settlement of the ASR in the second quarter of 2022. We repurchased 3.6 million shares of our common stock in total at an average price per share of \$41.46 under the ASR. In July 2022, as part of the \$600 million stock repurchase program, the Board of Directors approved a Dutch auction tender offer to repurchase up to \$300 million worth of shares of its common stock, based on demand. Through this tender offer, the Company’s shareholders had the opportunity to tender some or all of their shares at a price within the range of \$31.50 to \$36.00 per share subject to the conditions set forth in the tender offer documents. The tender offer commenced on July 18, 2022 and expired on August 12, 2022. We repurchased 14 thousand shares under the tender offer at a cost of \$1 million. We repurchased 6 million additional shares of our common stock, at a cost of \$266 million, in the third and fourth quarters of 2022. As a result, we repurchased 7 million shares in 2022, including the final settlement of the ASR at a weighted average price of \$41.21 per common share, for a total consideration of \$295 million. As of December 31, 2022, \$847 million remains available for stock repurchases under the current stock repurchase program, after considering purchases made under the \$1 billion authorization effective November 3, 2022.

The new authorization may be suspended or discontinued at any time. The stock repurchase authorization permits us to repurchase stock from time-to-time through a combination of open market repurchases, privately negotiated transactions, 10b5-1 trading plans, accelerated stock repurchase transactions and/or other derivative transactions. The exact number and timing of stock repurchases will depend on market conditions and other factors and will be funded through available cash balances. Our Third Amended Credit Agreement permits restricted payments, such as common stock repurchases, but may be limited if we do not meet the required minimum liquidity or fixed charge coverage ratio requirements. The authorized amount under the stock repurchase program excludes fees, commissions or other expenses.

The following table summarizes our common stock repurchases during the fourth quarter of 2022.

Period	Total Number of Shares Purchased (In thousands)	Average Price Paid per Share	Total Number of Shares Purchased as Part of a Publicly Announced Plan or Program (In thousands)	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Repurchase Programs (In millions) (1)
September 25 — October 22, 2022	827	\$ 36.28	827	\$ 500
October 23 — November 19, 2022	1,130	\$ 42.52	1,130	\$ 965
November 20 — December 31, 2022	2,570	\$ 46.24	2,570	\$ 847
Total	4,527	\$ 43.49	4,527	

The ODP Corporation Stock Comparative Performance Graph

The information contained in The ODP Corporation Comparative Performance Graph section shall not be deemed to be filed as part of this Annual Report and does not constitute soliciting material and should not be deemed filed or incorporated by reference into any other filing of the Company under the Securities Act of 1933, as amended, or the Exchange Act, except to the extent we specifically incorporate the graph by reference.

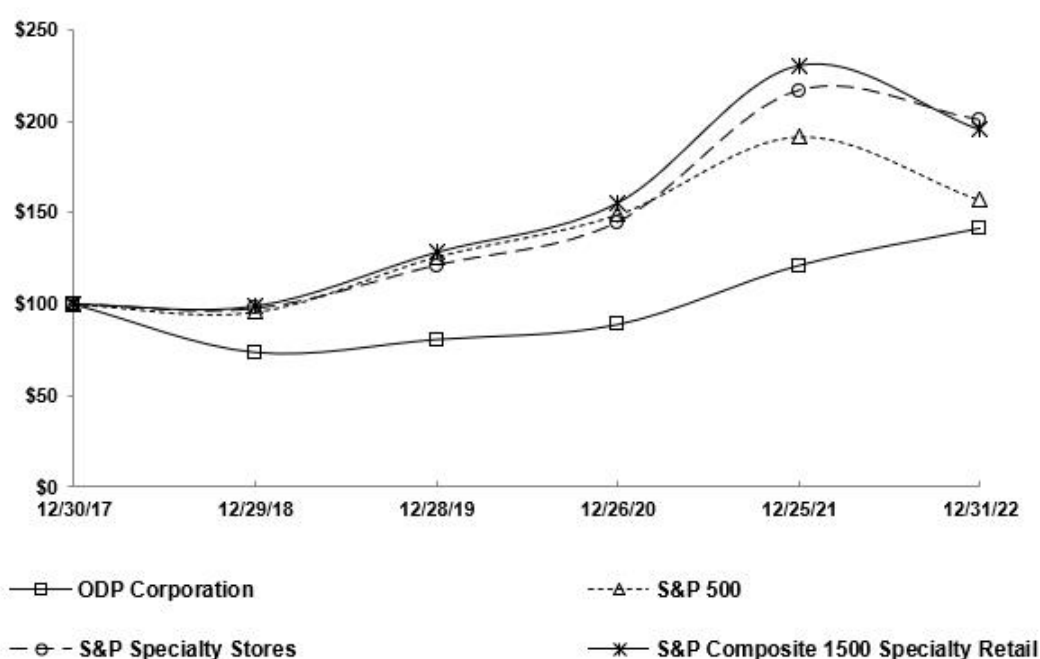
The following graph compares the five-year cumulative total shareholder return on our common stock with the cumulative total returns of the Standard & Poor's 500 Index ("S&P 500"), the Standard & Poor's 500 Specialty Stores Index ("S&P 500 Specialty Stores") and the Standard & Poor's Composite 1500 Specialty Retail Index ("S&P Composite 1500 Specialty Retail") of which we are a component of each Index.

To better align with comparable investment opportunities, we are transitioning from the S&P 500 Specialty Stores to the S&P Composite 1500 Specialty Retail for the year ended December 31, 2022. Both indices are presented, in accordance with SEC rules, which require that if a company selects a different index from that used in the immediately preceding fiscal year, the company's stock performance must be compared against both the newly selected index and previous index in the year of change.

The graph assumes an investment of \$100 at the close of trading on December 30, 2017, the last trading day of fiscal year 2017, in our common stock, the S&P 500, the S&P 500 Specialty Stores and the S&P Composite 1500 Specialty Retail.

COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN*

Among The ODP Corporation, the S&P 500 Index
the S&P Specialty Stores Index, and the S&P Composite 1500 Specialty Retail Index



*\$100 invested on 12/30/17 in stock or in index, including reinvestment of dividends. Indexes calculated on month-end basis.

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	12/30/17	12/29/18	12/28/19	12/26/20	12/25/2021	12/31/2022
The ODP Corporation	100.00	73.82	80.77	88.86	121.02	141.35
S&P 500	100.00	95.62	125.72	148.85	191.58	156.89
S&P Specialty Stores	100.00	97.59	121.14	144.66	216.56	200.53
S&P Composite 1500 Specialty Retail	100.00	98.81	128.21	155.12	230.40	195.40

The stock price performance included in this graph is not necessarily indicative of future stock price performance.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Management's Discussion and Analysis of Financial Condition and Results of Operations is intended to provide information to assist readers in better understanding and evaluating our financial condition and results of operations. We recommend reading this MD&A in conjunction with our Consolidated Financial Statements and Notes thereto included in this Annual Report.

OVERVIEW

THE COMPANY

We are a leading provider of business services and supplies, products and digital workplace technology solutions to small, medium-sized and enterprise businesses. We operate through our direct and indirect subsidiaries and maintain a fully integrated business-to-business ("B2B") distribution platform of thousands of dedicated sales and technology service professionals, online presence and 980 retail stores.

In May 2021, our Board of Directors had unanimously approved a plan to pursue a separation of the Company into two independent, publicly traded companies, representing our B2B and consumer businesses, which was planned to be achieved through a spin-off of our consumer business. On January 14, 2022, we announced that our Board of Directors determined to delay the previously announced public company separation to evaluate a potential sale of our consumer business and that we had received a non-binding proposal from another third party, in addition to the offer previously received from USR Parent, Inc., to acquire our consumer business. On June 21, 2022, our Board of Directors, with the assistance of its financial and legal advisors, completed its review of both proposals received by the Company to acquire our consumer business and unanimously determined it to be in the best interests of the Company and its shareholders not to divest our consumer business at this time. Further, our Board of Directors also determined not to resume our previously planned separation of our consumer business at that time and instead to maintain all of our businesses under common ownership.

We have been undergoing a strategic business transformation to pivot our Company into an integrated B2B distribution platform, with the objective of expanding our product offerings to include value-added services for our customers and capture greater market share. Using the flexibility afforded by our holding company restructuring that was previously completed in 2020, we re-aligned our operations under our holding company structure in 2022 into our consumer business named Office Depot, and three distinct B2B business and digital segments which are ODP Business Solutions, Veyer and Varis. The decision to re-align was driven by how we are looking at our products and offerings and serving our customers. How our customers work and interact has changed, with businesses demanding a wider range of products and services, and a more modern digital environment in which to operate, and with consumers demanding an omni-channel retail experience. In addition, dependable supply chain operations have become increasingly important in meeting these demands. We performed a full strategic review of our operations in light of these factors, and determined that completing the re-alignment of our operations in this manner enables us to better focus on our customers by being in a better position to meet a wider array of customer needs for product, service, and omni-channel choices. We also determined that the re-alignment provides for greater accountability internally for product and service outcomes, customer experiences, capital allocations, and pursuing strategic opportunities. We also believe our B2B and consumer businesses operating collectively under our holding company structure will improve shareholder value and derive benefits from scaling. Upon completion of this re-alignment, we also re-evaluated our reportable segments based on how the business is managed, including decision-making about resources allocation and assessing performance of the segments.

As of December 31, 2022, our operations are organized into four reportable segments (or "Divisions"), as described below. Previously, we had two reportable segments which were the Business Solutions Division and Retail Division. We sold our CompuCom Division through a single disposal group on December 31, 2021. Accordingly, that business is presented as discontinued operations.

ODP Business Solutions Division – Our leading B2B distribution solutions provider serving small, medium and enterprise level companies, including those in the public and education sectors. This segment includes the contract sales channel of our previous Business Solutions Division, and operates in the United States, Puerto Rico, the U.S. Virgin Islands, and Canada. The ODP Business Solutions Division sells nationally branded, as well as our private branded, office supply and adjacency products and services to customers, who are served through a dedicated sales force, catalogs, telesales, and electronically through our Internet websites. Adjacency products and services include cleaning, janitorial, and breakroom supplies, office furniture, technology products, and copy and print services. This segment also includes our Federation entities, which are over a dozen regional office supply distribution businesses acquired by us as part of our transformation to expand our reach and distribution network into geographic areas that were previously underserved, and which continue to operate under their own brand names. The acquisition of these businesses has allowed for an effective and accretive means to expand our distribution reach, target new business customers and grow our offerings beyond traditional office supplies.

Office Depot Division – Our leading provider of retail consumer and small business products and services distributed through a fully integrated omnichannel platform of 980 Office Depot and OfficeMax retail locations in the United States, Puerto Rico and the U.S. Virgin Islands, and an eCommerce presence (www.officedepot.com). Our Office Depot Division sells office supplies, technology products and solutions, business machines and related supplies, cleaning, breakroom and facilities products, personal protective equipment, and office furniture as well as offering business services including copying, printing, digital imaging, mailing, shipping and technology support services. In addition, the print needs for retail and business customers are facilitated through our regional print production centers.

Veyer Division – Our supply chain, distribution, procurement and global sourcing operation, which has over 35 years of experience with proven leadership and has been branded under a new name. The Veyer Division specializes in B2B and consumer business service delivery, with core competencies in distribution, fulfillment, transportation, global sourcing and purchasing. The Veyer Division’s customers include our Office Depot Division and ODP Business Solutions Division, as well as third-party customers. The Veyer Division also includes the Company’s global sourcing operations in Asia.

Varis Division – Our tech-enabled B2B indirect procurement marketplace, which provides a better way for buyers and suppliers to transact through the platform’s consumer-like buying experience, advanced spend management tools, network of suppliers, and technology capabilities. In connection with our development efforts of this Division, we acquired BuyerQuest Holdings, Inc. (“BuyerQuest”) in 2021, a software as a service eProcurement platform company. BuyerQuest’s operating results are included in our Varis Division. The Varis Division currently serves enterprise businesses and provides its services to middle- and small-sized businesses. It is focused on filling the growing demand for a B2B centric digital commerce platform that is modern, trusted, and provides the procurement controls and visibility businesses require to operate.

DISPOSITIONS

The sale of CompuCom, which represented our former CompuCom Division, was completed on December 31, 2021. The transaction was structured and accounted for as an equity sale. The related Securities Purchase Agreement (“SPA”) provides for consideration consisting of a cash purchase price equal to \$125 million (subject to customary adjustments, including for cash, debt and working capital), an interest-bearing promissory note in the amount of \$55 million, and a holding fee (“earn-out”) provision providing for payments of up to \$125 million in certain circumstances. The promissory note accrues interest at six percent per annum, payable on a quarterly basis in cash or in-kind, and is due in full on June 30, 2027. Under the earn-out provision, if the purchaser receives dividends or sale proceeds from the CompuCom business equal to (i) three (3) times its initial capital investment in the CompuCom business plus (ii) 15% per annum on subsequent capital investments, the Company will be entitled to 50% of any subsequent dividends or sale proceeds up to and until the Company has received an aggregate of \$125 million. The Company also agreed to provide certain transitional services to the purchaser for a period of three to twelve months under a separate agreement after closing. The SPA contains customary warranties of the Company and the purchaser.

In February 2023, the Company and the purchaser reached a settlement on the cash, debt and working capital adjustments, and amended the promissory note which increased its principal balance to \$59 million. The sale of CompuCom represented a strategic shift that had a major impact on our operations and financial results. Accordingly, the operating results and cash flows are classified as discontinued operations for all periods presented. Refer to Note 15. “Discontinued Operations” in Notes to Consolidated Financial Statements for additional information.

COVID-19 UPDATE

As a result of the continuing impacts of the COVID-19 pandemic, we expect that weaker global economic conditions and increased unemployment, including continued business disruption relating to COVID-19 and continued remote and hybrid working arrangements could continue to negatively impact our business and results of operations in 2023, and could result in future impairments of our assets. For a discussion of the impacts to our business from COVID-19 in 2022, refer to Consolidated Results of Continuing Operations and Liquidity and Operating Results by Division sections below, and certain risk factors included in Item 1A Risk Factors in this Annual Report on Form 10-K.

RECENT GLOBAL EVENTS

We are closely monitoring the unfolding events due to the Russia-Ukraine conflict and its regional and global ramifications. We do not have operations in Ukraine or Russia, and our supply chain has not been impacted as of the date of this report. While we do have certain vendors that are based in Ukraine, we have not experienced an impact as a result of the conflict. Other impacts due to this rapidly evolving situation are currently unknown and the broader economic impacts could potentially subject our business to materially adverse consequences should the situation escalate beyond its current scope.

CONSOLIDATED RESULTS OF CONTINUING OPERATIONS AND LIQUIDITY

The following summarizes the more significant factors impacting our operating results for the 53-week period ended December 31, 2022 (also referred to as “2022”) and the 52-week period ended December 25, 2021 (also referred to as “2021”) as well as our liquidity in 2022 and 2021. We have omitted discussion of 2020 results where it would be redundant to the discussion previously included in MD&A of our 2021 Annual Report on Form 10-K. Prior year amounts have been recast to conform to the current presentation of our reportable segments. In addition, management of the Company also changed how it analyzes these businesses, which resulted in the inclusion of certain corporate costs, mainly payroll related, previously excluded from segment profitability measures. The changes to our reportable segments did not impact our Consolidated Financial Statements. These changes also have no impact on previously reported Consolidated Balance Sheets, Statements of Operations, Statements of Comprehensive Income, Statements of Stockholders’ Equity, or Statements of Cash Flows.

Our consolidated sales were \$26 million higher, or relatively flat, in 2022 compared to 2021. The 53rd week in 2022 increased total Company sales by \$128 million with related flow-through impact of additional operating income of \$20 million. Sales in our ODP Business Solutions Division increased \$403 million, or 11%, as compared to 2021. The increase in sales in our ODP Business Solutions Division were mainly due to higher demand in categories of paper, furniture, breakroom, school and office supplies, copy and print services, and personal protective equipment and cleaning supplies. The higher demand was driven by the continued recovery of our business-to-business customers, including those in the education sector, from the disruptions to their operations as a result of the impacts of the COVID-19 pandemic. The impact of the 53rd week in 2022 on ODP Business Solutions Division sales was an increase of \$58 million. Sales in our Office Depot Division decreased \$379 million, or 8%, as compared to the same period in the prior year, mainly as a result of planned store closures and lower demand. Our Office Depot Division had lower demand in certain product categories that had higher sales in the prior year comparable period driven by the needs of our customers to help address their challenges derived from the COVID-19 pandemic, such as facilitating the continued remote work and virtual learning environments, as well as lower sales in our eCommerce platform. The decrease was partially offset by sales in the 53rd week of \$70 million. The contribution of our Veyer Division and Varis Division to change in consolidated sales was not material.

<i>(In millions)</i>	2022	2021	Change
Sales (External)			
ODP Business Solutions Division	\$ 4,005	\$ 3,602	11 %
Office Depot Division	4,451	4,830	(8) %
Veyer Division	28	\$ 28	— %
Varis Division	7	\$ 5	40 %
Total	\$ 8,491	\$ 8,465	—

OTHER SIGNIFICANT FACTORS IMPACTING TOTAL COMPANY RESULTS AND LIQUIDITY

- Total gross profit decreased by \$15 million, or 1%, in 2022 when compared to 2021. Our ODP Business Solutions Division had \$91 million higher gross profit resulting from higher sales, which was more than offset by a \$107 million decrease in gross profit of our Office Depot Division. Our Veyer and Varis Divisions also contributed \$1 million to gross profit. The decrease in the Office Depot Division gross profit in 2022 when compared to 2021 is due to the flow through impact of lower sales, and higher supply chain and occupancy costs. In 2022, these unfavorable impacts were partially offset by improved product margin. Our supply chain and occupancy costs have been impacted by inflationary pressures. We have experienced increases in the cost of fuel, labor, facility and store rents, utilities, and common area maintenance, which have resulted in pressures on our gross profit.
- Total gross margin for 2022 was 22% which was consistent with the gross margin in 2021. While we incurred incremental costs related to trade tariffs on inventory we purchase from suppliers in China, certain actions by our Veyer Division, including changes to our contracting model, alternative sourcing strategies, and selective price increase pass-through efforts mitigated much of the impact of such trade tariffs to our results of operations.
- Total selling, general and administrative expenses decreased by \$6 million in 2022 when compared to 2021, mainly driven by a \$66 million decrease in our Office Depot Division, partially offset by increases related to payroll and incentives in our ODP Business Solutions Division, Varis Division, and corporate costs. The ODP Business Solutions Division also had increased expenses related to higher sales volume. The decreases in our Office Depot Division were driven by store closures and certain strategic initiatives, including the Maximize B2B Restructuring Plan, aimed to generate savings through optimizing our retail footprint and remove corresponding costs supporting our Office Depot Division as our retail footprint is reduced. Selling, general and administrative expenses as a percentage of total sales was flat in 2022 as compared to 2021.

- We recorded \$14 million of asset impairment charges in 2022 which included \$12 million related to impairment of operating lease right-of-use (“ROU”) assets associated with our retail store locations, with the remainder primarily relating to impairment of fixed assets at these retail store locations. We recorded \$20 million of asset impairment charges in 2021, which included \$16 million related to impairment of operating lease ROU assets associated with our retail store locations, with the remainder primarily relating to impairment of fixed assets at these retail store locations. Refer to Note 13. “Fair Value Measurements” in Notes to Consolidated Financial Statements for additional information.
- We recorded \$39 million of Merger, restructuring and other operating expenses, net in 2022 compared to \$51 million in 2021. Merger, restructuring and other operating expenses in 2022 relate to costs associated with the previously planned separation of our consumer business and the re-alignment of our operations, which are mainly third-party professional fees and were partially offset by \$8 million income related to restructuring activities, and \$7 million income related to earn-out adjustment for BuyerQuest. We did not record any transaction and integration costs in 2022. Merger, restructuring and other operating expenses in 2021 included \$37 million of third-party professional fees associated with the planned separation of our consumer business and USR Parent, Inc. Proposals. Also included in merger, restructuring and other operating expenses were \$14 million of costs associated with restructuring activities in 2021. We did not record any transaction and integration costs in 2021. Refer to Note 2. “Merger, Restructuring and Other Activity” in Notes to Consolidated Financial Statements for additional information.
- In 2022, the Company’s effective tax rate was primarily impacted by the recognition of a tax windfall associated with stock-based compensation. This factor, along with the impact of state taxes and the mix of income and losses across U.S. and non-U.S. jurisdictions, caused our effective tax rate of 26% for 2022 to differ from the statutory rate of 21%. Our effective tax rate for prior periods has varied considerably primarily due to the impact of goodwill impairment, state taxes, stock-based compensation awards, recognition of tax benefits due to an agreement reached with the IRS related to a prior tax position, certain nondeductible items and the mix of income and losses across U.S. and non-U.S. jurisdictions. Changes in pretax income projections and the mix of income across jurisdictions could impact the effective tax rates in future quarters. Refer to Note 4. “Income Taxes” in Notes to Consolidated Financial Statements for additional information.
- Diluted earnings per share from continuing operations was \$3.61 in 2022 compared to \$3.42 in 2021.
- Diluted loss per share from discontinued operations was \$(0.24) in 2022 compared to \$(7.21) in 2021.
- Net diluted earnings per share was \$3.37 in 2022 compared to net diluted loss per share of \$(3.79) in 2021.
- We repurchased 3.6 million shares of our common stock in total at an average price per share of \$41.46 under the accelerated share repurchase agreement (“ASR”) entered into on November 16, 2021 and we repurchased 6 million additional shares of our common stock in the third and fourth quarters of 2022. As a result, we repurchased 7 million shares in 2022, including 0.7 million shares of our common stock received as the final settlement of the ASR, for a total consideration of \$295 million. As of December 31, 2022, \$847 million remains available for stock repurchases under the current stock repurchase program, after considering purchases made under the \$1 billion authorization effective November 3, 2022. Subsequent to the end of 2022 and through February 22, 2023, we bought back 2 million shares of our common stock at a cost of \$100 million.
- At December 31, 2022, we had \$403 million in cash and cash equivalents and \$856 million of available credit under the Third Amended Credit Agreement (as defined in Note 8. “Debt” in Notes to Consolidated Financial Statements), for a total liquidity of approximately \$1.3 billion. Cash provided by operating activities of continuing operations was \$237 million in 2022 compared to cash provided by operating activities of \$344 million in 2021. Refer to the “Liquidity and Capital Resources” section for further information on cash flows.

OPERATING RESULTS BY DIVISION

Discussion of additional income and expense items, including material charges and credits and changes in interest and income taxes follows our review of segment results. Fiscal years 2022 includes 53 weeks, and fiscal years 2021 and 2020 include 52 weeks.

ODP BUSINESS SOLUTIONS DIVISION

<i>(In millions)</i>	2022	2021	2020
Sales (external)	\$ 4,005	\$ 3,602	\$ 3,549
Sales (internal)	\$ 19	\$ 24	\$ 29
% change of total sales	11%	1%	(16)%
Division operating income	\$ 140	\$ 72	\$ 51
% of total sales	3%	2%	1%

Sales in our ODP Business Solutions Division increased 11% in 2022 compared to 2021, of which 1% or \$58 million related to the 53rd week in 2022. In 2022, our ODP Business Solutions Division experienced higher demand across the majority of our product categories. The higher demand was driven by the continued recovery of our business-to-business customers, including those in the education sector, from the disruptions to their operations as a result of the impacts of the COVID-19 pandemic. The increase in demand resulted in \$417 million higher sales across a majority of our offerings, including paper, furniture, breakroom, school and office supplies, copy and print services, as well as personal protective equipment and cleaning supplies, which contributed \$80 million of this increase. In addition to higher demand, inflationary initiatives also resulted in favorable pricing, which also contributed to the increase in sales. These increases were partially offset by a decline of \$19 million in ink and toner sales, mainly as a result of supply challenges. Sales include internal sales of \$19 million in 2022, which relate to ODP Business Solutions Division customers' transactions held at Office Depot Division retail store locations.

Sales in our ODP Business Solutions Division increased 1% in 2021 compared to 2020. During 2021, our Business Solutions Division experienced higher demand in product categories such as furniture, technology, paper, breakroom, school and office supplies, as well as in our copy and print services. This was driven by the continued recovery of our business-to-business customers, including those in the education sector, from the disruptions to their operations as a result of the impacts of the COVID-19 pandemic. The higher demand from our business-to-business customers, which resulted in an increase of \$184 million in sales in 2021 as compared to 2020, was partially offset by decreases in sales in product categories such as ink, toner, and personal protective equipment and cleaning supplies, which contributed \$106 million to this decrease. The impact of acquisitions, while positive, was not material to 2021. Sales include internal sales of \$24 million in 2021, which relate to ODP Business Solutions Division customers' transactions held at Office Depot Division retail store locations.

Our ODP Business Solutions Division sales could be impacted in the near term related to numerous factors, among others, a weaker U.S. economy and higher unemployment and inflation that materially impact spending, the demand for our products and services and the availability of supply. Specifically, we experienced supply constraints in some of our larger product categories such as ink and technology products, and we may continue to face delays or difficulty sourcing these products.

The changes in work environments as a result of the COVID-19 outbreak in 2022 has been material to the results of the ODP Business Solutions Division in 2022. A prolonged or permanent shift to hybrid or continued remote work arrangements, as well as the substance and pace of macroeconomic recovery could continue to have a material impact to the future results of the ODP Business Solutions Division.

Our ODP Business Solutions Division operating income was \$140 million in 2022 compared to \$72 million in 2021, an increase of 94% year-over-year. The increase was mainly driven by the flow through impact of higher sales and higher gross profit, as well as the 53rd week in 2022, which contributed \$5 million to the increase in operating income. As a percentage of sales, operating income increased approximately 150 basis points. Although we experienced higher supply chain and import costs due to the impacts of COVID-19 and cost inflation of fuel and labor costs, this was more than offset by adjustments to selling price and lower selling, general and administrative expenses as a percentage of sales. The improvement in our selling, general and administrative expenses is attributable to cost saving initiatives of our Maximize B2B restructuring program, which reduced costs in payroll, advertising and other operating expenses.

Our ODP Business Solutions Division operating income was \$72 million in 2021 compared to \$51 million in 2020, an increase of 41% year-over-year. As a percentage of sales, operating income increased approximately 60 basis points. Although we experienced increases in third-party transportation costs due to the impacts of COVID-19, this was more than offset by lower selling, general and administrative expenses as a percentage of our sales. The improvement in our selling, general and administrative expenses is attributable to cost saving initiatives of our Maximize B2B restructuring program, which reduced costs in payroll, advertising and other operating expenses.

OFFICE DEPOT DIVISION

<i>(In millions)</i>	2022	2021	2020
Sales (external)	\$ 4,451	\$ 4,830	\$ 5,300
Sales (internal)	\$ 36	\$ 34	\$ 35
% change of total sales	(8)%	(9)%	(1)%
Division operating income	\$ 285	\$ 325	\$ 317
% of total sales	6%	7%	6%

Sales in our Office Depot Division decreased 8% in 2022 compared to 2021, including the positive impact of sales from the 53rd week in 2022, which were 2% or \$70 million. As vaccination rates have increased since early in 2021 and the effects of the COVID-19 pandemic have begun to recede, more of our customers are transitioning into on-site work and in-person learning. As a result of this recovery, we experienced \$70 million of increased sales mainly in copy and print services and paper, school and breakroom supplies in 2022. This was more than offset by fewer transactions in the majority of our product categories in 2022, as a result of both planned store closures and lower demand. Specifically, technology products, furniture, office supplies, cleaning supplies and personal protective equipment had lower sales in 2022, compared to 2021. These categories had experienced higher demand in the prior year, which was driven by the needs of our customers to help address their challenges derived from the COVID-19 pandemic and included facilitating the continued remote work and virtual learning environments.

Sales in our Office Depot Division decreased 9% in 2021 compared to 2020, which were driven by the same factors discussed above. We experienced \$64 million of increased sales mainly in copy and print services, software, and office and school supplies in 2021. This was more than offset by lower demand in product categories such as technology products, cleaning supplies and personal protective equipment.

Our sales could be impacted in the near term related to numerous factors, among others, a weaker U.S. economy and higher unemployment that materially impact consumer spending, the demand for our products and services and the availability of supply. Specifically, we experienced supply constraints in some of our larger product categories such as ink and technology products, and we may continue to face delays or difficulty sourcing these products.

Sales include internal sales of \$36 million, \$34 million and \$35 million in 2022, 2021 and 2020, respectively, which relate to print services provided to the ODP Business Solutions Division as well as internal service fee for providing buy online, pick up in store (“BOPIS”) transactions to ODP Business Solutions Division customers.

Sales generated through our eCommerce platform include online sales fulfilled through warehouses, BOPIS transactions, online orders shipped from store, and same day delivery orders fulfilled with retail store inventory. These sales represented 30% of Office Depot Division’s total sales in 2022, as compared to 29% of total sales in 2021, and 30% of total sales in 2020.

We are re-evaluating the definition of our comparable store metric in light of the re-alignment of our eCommerce platform along with our retail stores under this Division. We expect to resume providing our comparable store metric in fiscal 2023.

Our Office Depot Division operating income was \$285 million in 2022, which decreased 12% as compared to \$325 million in 2021, including the positive impact of the 53rd week in 2022, which contributed \$15 million to operating income. This decrease is mostly attributable to the flow-through impact of lower sales and higher supply chain and occupancy costs, which more than offset our improved product margin rate. Our supply chain, import and occupancy costs were impacted by cost increases due to COVID-19, cost inflation of fuel and labor costs, and higher rent costs from lease renewals. Selling, general and administrative costs as a percentage of sales was flat compared to the corresponding period in the prior year. Our Office Depot Division operating income in 2021 increased 3% as compared to \$317 million in 2020. As a percentage of sales, operating income increased approximately 80 basis points. The comparative increase in operating income in 2021 was mostly attributable to lower selling, general and administrative expenses resulting from continuous efforts to optimize costs, lower operating lease costs recognized as a result of store closures, and improved product margin. These improvements have more than offset the flow-through impact of lower sales in 2021.

As of December 31, 2022, our Office Depot Division operated 980 retail stores in the United States, Puerto Rico and the U.S. Virgin Islands compared to 1,038 stores at the end of 2021. Charges associated with store closures as part of a restructuring plan are reported as appropriate in Asset impairments and Merger, restructuring and other operating expenses, net in the Consolidated Statements of Operations. In addition, as part of our periodic recoverability assessment of owned retail stores and distribution center assets, and operating lease ROU assets, we recognize impairment charges in the Asset impairments line item of our Consolidated Statements of Operations. These charges are reflected in Corporate reporting and are not included in the determination of Division operating income. Refer to the “Corporate” section below for additional information of expenses incurred to date.

	Open at Beginning of Period	Closed	Opened	Open at End of Period
2020	1,307	153	—	1,154
2021	1,154	116	—	1,038
2022	1,038	58	—	980

VEYER DIVISION

<i>(In millions)</i>	2022	2021	2020
Sales (external)	\$ 28	\$ 28	\$ 23
Sales (internal)	\$ 5,855	\$ 5,963	\$ 6,321
% change of total sales	(2)%	(6)%	N/A
Division operating income	\$ 28	\$ 30	\$ 28
% of total sales	0%	1%	0%

Internal sales represent sales of product and supply chain services provided to our Office Depot Division and ODP Business Solutions Division, which are then sold to third-party customers through those divisions. Internal sales of product are made at a price that includes a service fee to the cost of product we source from third-party vendors, net of the impact of vendor income, and certain other adjustments. Internal sales of services represent supply chain and logistics support services, which include warehousing, shipping and handling, returns and others. These internal sales of services are also provided to the Office Depot Division and the ODP Business Solutions Division, at a service fee over cost. Internal sales are eliminated upon consolidation.

Our Veyer Division aims to be the lowest cost provider to the Office Depot Division and the ODP Business Solutions Division, with the purpose of achieving the most favorable outcome for our Company’s consolidated results. As a result, Veyer Division’s internal sales and profitability related to these internal sales could be impacted by activities that we may undertake to drive efficiencies in the Veyer Division, as well as decisions made by the Office Depot Division and ODP Business Solutions Division for alternative sourcing options to meet customer needs.

In 2022, 2021, and 2020, \$2.9 billion, \$3.3 billion and \$3.6 billion of internal sales are to the Office Depot Division, and \$2.9 billion, \$2.7 billion and \$2.7 billion are to the ODP Business Solutions Division, respectively. The decrease in internal sales to the Office Depot Division is related to the decline in customer demand at our retail stores and eCommerce platform, which is discussed further in the Office Depot Division section above. This was partially offset by the 53rd week in 2022. The increase in internal sales to the ODP Business Solutions Division is related to the increase in demand from our business customers as well as the 53rd week in 2022, which is discussed above in the ODP Business Solutions Division section.

External sales represent supply chain services provided to third parties, as well as product sales by our Asia sourcing operation to third parties. External sales were flat in 2022 as compared to 2021. The increase in external sales in 2021 as compared to 2020 was driven by the needs of our customers to help address their supply chain challenges as a result of the COVID-19 pandemic

Our Veyer Division operating income was \$28 million in 2022 compared to \$30 million in 2021. The year-over-year decrease of \$2 million was mainly due to the flow through impact of lower sales. Our Veyer Division operating income increased to \$30 million in 2021 as compared to \$28 million in 2020. The year-over-year increase was related to lower selling, general and administrative expenses resulting from continuous efforts to optimize costs, partially offset by the flow-through impact of lower sales in 2021. Future performance of our Veyer Division is dependent upon market conditions in the transportation and logistics industry, including fluctuations in labor and fuel costs, and its ability to pass any cost increases through to its customers.

VARIS DIVISION

<i>(In millions)</i>	2022	2021	2020
Sales (external)	\$ 7	\$ 5	\$ —
Sales (internal)	\$ —	\$ —	\$ —
% change of total sales	40%	N/A	N/A
Division operating loss	\$ (66)	\$ (34)	\$ —
% of total sales	(943)%	(680)%	N/A

Sales in our Varis Division increased \$2 million or 40% in 2022, compared to 2021. The increase in sales year-over-year was driven by the acquisition of BuyerQuest in the first quarter of 2021, the impact of purchase accounting adjustments on prior period sales, which had an impact of \$1 million, and the 53rd week in 2022. Our Varis Division also acquired new customers on the platform in 2021 and early 2022 that contributed to the increase in sales. Since our Varis Division was formed in 2021 there are no prior operating results.

Division operating loss was \$66 million in 2022 compared to operating loss of \$34 million in 2021, an increase of 94%, which was driven by investments in the resources required to expand and scale the technology platform and upgraded product offerings. The costs were mainly related to payroll, third-party professional fees, and amortization of internally developed software. We expect to continue to incur costs and invest in growing our Varis Division in the near future.

CORPORATE

The line items in our Consolidated Statements of Operations impacted by Corporate activities are presented in the table below, followed by a narrative discussion of the significant matters. These activities are managed at the Corporate level and, accordingly, are not included in the determination of Division income for management reporting or external disclosures.

<i>(In millions)</i>	2022	2021	2020
Asset impairments	\$ 14	\$ 20	\$ 182
Merger, restructuring and other operating expenses, net	39	51	102
Total charges and credits impact on Operating income	\$ 53	\$ 71	\$ 284

In addition to these charges and credits, certain selling, general and administrative expenses are not allocated to the Divisions and are managed at the Corporate level. Those expenses are addressed in the section “Unallocated Expenses” below.

Asset impairments

Asset impairment charges are comprised of the following:

<i>(In millions)</i>	2022	2021	2020
Retail stores	\$ 14	\$ 20	\$ 60
Goodwill and other intangible assets	—	—	115
Other	—	—	7
Total Asset impairments	\$ 14	\$ 20	\$ 182

In 2022, 2021 and 2020, we recognized asset impairment charges of \$14 million, \$20 million and \$182 million, respectively, related to our continuing operations. Of the asset impairment charges in 2022, \$12 million was related to the impairment of operating lease ROU assets associated with our retail store locations, and the remainder was related to impairment of fixed assets at these retail store locations. Of the asset impairment charges in 2021, \$16 million was related to impairment of operating lease ROU assets associated with our retail store locations, and the remainder was related to impairment of fixed assets at these retail store locations.

We regularly review retail store assets for impairment indicators at the individual store level, as this represents the lowest level of identifiable cash flows. When indicators of impairment are present, a recoverability analysis is performed which considers the estimated undiscounted cash flows over the retail store’s remaining life and uses inputs from retail operations and accounting and finance personnel. These inputs include our best estimates of retail store-level sales, gross margins, direct expenses, exercise of future lease renewal options when reasonably certain to be exercised, and resulting cash flows, which, by their nature, include judgments about how current initiatives will impact future performance. In 2022, the assumptions used within the recoverability analysis for the retail stores were updated to consider current quarter retail store operational results and formal plans for future retail store closures as part of our restructuring programs, including the probability of closure at the retail store level. While it is generally expected that closures will approximate the store’s lease termination date, it is possible that changes in store performance or other conditions could

result in future changes in assumptions utilized. In addition, the assumptions used reflected declining sales over the forecast period, and gross margin and operating cost assumptions that are consistent with recent actual results and consider plans for future initiatives. If the undiscounted cash flows of a retail store cannot support the carrying amount of its assets, the assets are impaired and written down to estimated fair value. Our retail store assets recoverability analyses in 2022 also included the impact of the COVID-19 pandemic on the operations of our retail stores as described in the “Office Depot Division” section. As discussed above, there is uncertainty regarding the impact of the COVID-19 pandemic on the results of our operations in 2023 and beyond, which could result in future impairments of store assets if deemed unrecoverable.

We test our goodwill and indefinite-lived intangible assets for impairment annually as of the first day of fiscal December or more frequently when events or changes in circumstances indicate that impairment may have occurred. The re-alignment of our reportable segments described above also resulted in the change of our reporting units during the third quarter of 2022, where each reportable segment also represents a reporting unit. We allocated goodwill to our new reporting units using their relative fair values. We performed impairment assessments of our legacy and current reporting units immediately before and after this change. No impairment was recorded as result of this assessment. During the fourth quarter of 2022, we performed our annual impairment assessment, which was as of the first day of fiscal month December. We used a quantitative assessment for our Varis Division reporting unit, and qualitative assessments for all other reporting units. The quantitative assessment for the Varis Division reporting unit combined the income approach and the market approach valuation methodologies and concluded that the fair value of this reporting unit exceeded its carrying amount. The fair value of our Varis reporting unit exceeded its carrying amount by 21%. Our Varis reporting unit has been in operation since 2021, therefore we have less experience estimating the operating performance of this reporting unit. Changes to the critical assumptions used to estimate the fair value of this reporting unit, including changes in projected revenue growth rates, gross margin or expenses may result in a different calculation of fair value that could lead to the recognition of impairment charges in future periods.

Refer to Note 7. “Goodwill and Other Intangible Assets” in Notes to Consolidated Financial Statements for additional information. If the operating results of our reporting units deteriorate in the future, it may cause the fair value of one or more of the reporting units to fall below their carrying value, resulting in goodwill impairment charges. Further, while we are currently in a strong liquidity and capital position, a significant deterioration may have a material impact on our liquidity and capital in future periods.

Merger, restructuring and other operating expenses, net

We have taken actions to optimize our asset base and drive operational efficiencies. These actions include acquiring profitable businesses, closing underperforming retail stores and non-strategic distribution facilities, consolidating functional activities, eliminating redundant positions and disposing of non-strategic businesses and assets. We have also incurred costs related to our actions to separate our consumer business through a potential sale, prior to our Board of Directors’ decision on June 21, 2022 to maintain the consumer business under common ownership. In addition, we have incurred costs related to completing the re-alignment of operations into four Divisions, which also represent our new reportable segments. The expenses and any income recognized directly associated with these actions are included in Merger, restructuring and other operating expenses, net on a separate line in the Consolidated Statements of Operations in order to identify these activities apart from the expenses incurred to sell to and service customers. These expenses are not included in the determination of Division operating income. Merger, restructuring and other operating expenses, net were \$39 million, \$51 million and \$102 million in 2022, 2021 and 2020, respectively. Refer to Note 2. “Merger, Restructuring and Other Activity” in Notes to Consolidated Financial Statements for an additional analysis of these Corporate charges.

Unallocated Expenses

We allocate to our Divisions functional support expenses that are considered to be directly or closely related to segment activity. These allocated expenses are included in the measurement of Division operating income. Other companies may charge more or less for functional support expenses to their segments, and our results, therefore, may not be comparable to similarly titled measures used by other companies. The unallocated expenses primarily consist of the buildings used for our corporate headquarters and personnel not directly supporting the Divisions, including certain executive, finance, legal, audit and similar functions. Unallocated expenses were \$91 million, \$88 million, and \$106 million in 2022, 2021 and 2020, respectively. The increase in 2022 compared to 2021 was primarily due to higher Corporate payroll incentive expenses and professional fees.

Other Income and Expense

<i>(In millions)</i>	2022		2021		2020	
Interest income	\$	5	\$	1	\$	4
Interest expense		(16)		(28)		(42)
Loss on extinguishment and modification of debt		—		—		(12)
Other income, net		10		24		6

In April 2020, we entered into the Third Amended Credit Agreement which provided for an aggregate principal amount of up to \$1.3 billion asset-based revolving credit facility and asset-based FILO Term Loan Facility, maturing in April 2025. During the first quarter of 2022, we reduced our asset-based revolving credit facility by \$200 million to \$1.0 billion and retired \$43 million of outstanding FILO Term Loan Facility loans under the Third Amended Credit Agreement. We recorded \$4 million, \$5 million and \$6 million of interest expense in 2022, 2021 and 2020, respectively, related to the Third Amended Credit Agreement. We also recorded interest expense related to our finance lease obligations and revenue bonds in all periods presented. Interest expense in 2022 also includes \$3 million of income related to reversal of uncertain tax positions.

Other income, net includes the pension credit related to the frozen OfficeMax pension and other benefit plans, as well as the pension credit related to the pension plan in the United Kingdom that has been retained by us in connection with the sale of the European Business. We also recorded \$7 million of other income, net related to the release of certain liabilities of our former European Business in 2021.

Income Taxes

<i>(In millions)</i>	2022	2021	2020
Income tax expense	\$ 64	\$ 44	\$ 25
Effective income tax rate*	26%	19%	(66)%

* Income taxes as a percentage of income from continuing operations before income taxes.

During 2022 and 2021, the mix of income and losses across jurisdictions, although still applicable, has become less of a factor in influencing our effective tax rates due to limited international operations and improved operating results. Our effective tax rates were 26%, 19% and (66)% in 2022, 2021 and 2020, respectively.

In 2022, our effective tax rate was primarily impacted by the recognition of a tax windfall associated with stock-based compensation. This factor, along with the impact of state taxes and the mix of income and losses across U.S. and non-U.S. jurisdictions, caused our effective tax rate of 26% for 2022 to differ from the statutory rate of 21%. Our effective tax rate for prior periods has varied considerably primarily due to the impact of goodwill impairment, state taxes, stock-based compensation awards, recognition of tax benefits due to an agreement reached with the IRS related to a prior tax position, certain nondeductible items and the mix of income and losses across U.S. and non-U.S. jurisdictions. Changes in pretax income projections and the mix of income across jurisdictions could impact our effective tax rates in future quarters.

We continue to have a U.S. valuation allowance for certain U.S. Federal credits and state tax attributes, which relate to deferred tax assets that require either certain types of income or for income to be earned in certain jurisdictions in order to be realized. We will continue to assess the realizability of our deferred tax assets in the U.S. and remaining foreign jurisdictions in future periods. Changes in pretax income projections could impact this evaluation in future periods.

It is anticipated that \$2 million of the material tax positions will be resolved within the next 12 months. Additionally, we anticipate that it is reasonably possible that new issues will be raised or resolved by tax authorities that may require changes to the balance of unrecognized tax benefits; however, an estimate of such changes cannot reasonably be made.

We file a U.S. Federal income tax return and other income tax returns in various states and foreign jurisdictions. With few exceptions, we are no longer subject to U.S. Federal and state and local income tax examinations for years before 2020 and 2017, respectively. The acquired OfficeMax U.S. consolidated group is no longer subject to U.S. Federal income tax examination and with few exceptions, is no longer subject to U.S. state and local income tax examinations for years prior to 2017. Our U.S. Federal income tax returns for 2021 are currently under review. Generally, we are subject to routine examination for years 2017 and forward in our international tax jurisdictions.

Refer to Note 4. "Income Taxes" in Notes to Consolidated Financial Statements for additional tax discussion.

Discontinued Operations

Refer to Note 15. "Discontinued Operations" in Notes to Consolidated Financial Statements for information regarding the CompuCom Division which is accounted for as discontinued operations.

LIQUIDITY AND CAPITAL RESOURCES

LIQUIDITY

At December 31, 2022 and December 25, 2021, we had \$403 million and \$514 million in cash and cash equivalents, respectively, and \$856 million and \$877 million of available credit under the Third Amended Credit Agreement (as defined in Note 8. "Debt" in Notes to Consolidated Financial Statements), for a total liquidity of approximately \$1.3 billion at the end of fiscal 2022. Despite the weaker

global economic conditions and the uncertainties related to the current macroeconomic environment, we currently believe that as a result of our strong financial position, including our cash and cash equivalents on hand, availability of funds under the Third Amended Credit Agreement, and future year cash flows generated from operations, we will be able to fund our working capital, capital expenditures, debt repayments, common stock repurchases, dividends (if any), merger integration and restructuring expenses, costs associated with the previously planned separation of our consumer business, and future acquisitions consistent with our strategic growth initiatives for at least the next twelve months from the date of this Annual Report on Form 10-K. From time to time, we may prepay outstanding debt and/or restructure or refinance debt obligations. As the impact of the COVID-19 pandemic on the global and national economies and our operations evolve, we will continue to assess our liquidity needs.

Financing

As disclosed in Note 8. "Debt" in Notes to Consolidated Financial Statements, on April 17, 2020, we entered into the Third Amended and Restated Credit Agreement, which provided for a \$1.2 billion asset-based revolving credit facility and a \$100 million asset-based FILO Term Loan Facility, for an aggregate principal amount of up to \$1.3 billion (the "New Facilities"). The New Facilities mature in April 2025. The Third Amended and Restated Credit Agreement replaced our then existing amended and restated credit agreement that was due to mature in May 2021. During the first quarter of 2022, we reduced our asset-based revolving credit facility by \$200 million to \$1.0 billion and retired \$43 million of outstanding FILO Term Loan Facility loans under the Third Amended Credit Agreement.

There were no revolving loans outstanding. We had \$57 million of outstanding FILO Term Loan Facility loans and \$41 million of outstanding standby letters of credit under the Third Amended Credit Agreement at the end of fiscal 2022, and we were in compliance with all applicable covenants at December 31, 2022.

Strategic Transformation

In addition to the acquisitions disclosed herein, we have evaluated, and expect to continue to evaluate, possible acquisitions and dispositions of businesses and assets in connection with our strategic transformation. Such transactions may be material and may involve cash, our securities or the incurrence of additional indebtedness.

Capital Expenditures

In 2023, we expect to incur capital expenditures of up to approximately \$100 million, including investments to support our business priorities. These expenditures will be funded through available cash on hand and operating cash flows.

Capital Return Programs – Share Repurchases and Dividends

In May 2021, our Board of Directors approved a stock repurchase program of up to \$300 million, available through June 30, 2022. Our Board of Directors reviewed the existing capital allocation programs in connection with the sale of CompuCom, and on December 31, 2021, authorized an additional \$200 million for share repurchases under the then existing stock repurchase program, for a total authorization of \$650 million. This stock repurchase program expired on June 30, 2022, and in July 2022, our Board of Directors approved a stock repurchase program of up to \$600 million, available through June 30, 2024. In October 2022, our Board of Directors approved a new stock repurchase program of up to \$1 billion, available through December 31, 2025 to replace the existing \$600 million stock repurchase program effective November 3, 2022.

On November 16, 2021, as part of the stock repurchase program that expired on June 30, 2022, we entered into an ASR to repurchase shares of our common stock in exchange for an up-front payment \$150 million and increased the authorization to \$450 million. The ASR repurchase period ran through May 25, 2022, and we received 0.7 million shares of our common stock as the final settlement of the ASR in the second quarter of 2022. We repurchased 3.6 million shares of our common stock in total at an average price per share of \$41.46 under the ASR. In July 2022, as part of the \$600 million stock repurchase program, our Board of Directors approved a Dutch auction tender offer to repurchase up to \$300 million worth of shares of its common stock, based on demand. Through this tender offer, the Company's shareholders had the opportunity to tender some or all of their shares at a price within the range of \$31.50 to \$36.00 per share subject to the conditions set forth in the tender offer documents. The tender offer commenced on July 18, 2022 and expired on August 12, 2022. We repurchased 14 thousand shares under the tender offer at a cost of \$1 million. We repurchased 6 million additional shares of our common stock, at a cost of \$266 million, in the third and fourth quarters of 2022. As a result, we repurchased 7 million shares in 2022, including the final settlement of the ASR at a weighted average price of \$41.21 per common share, for total consideration of \$295 million. As of December 31, 2022, \$847 million remains available for stock repurchases under the current stock repurchase program, after considering purchases made under the \$1 billion authorization effective November 3, 2022. Subsequent to the end of fiscal 2022 and through February 22, 2023, we repurchased 2 million shares of our common stock at a cost of \$100 million.

The new authorization may be suspended or discontinued at any time. The stock repurchase authorization permits us to repurchase stock from time-to-time through a combination of open market repurchases, privately negotiated transactions, 10b5-1 trading plans, accelerated stock repurchase transactions and/or other derivative transactions. The exact number and timing of stock repurchases will depend on market conditions and other factors and will be funded through available cash balances. Our Third Amended Credit Agreement permits restricted payments, such as common stock repurchases, but may be limited if we do not meet the required minimum liquidity or fixed charge coverage ratio requirements. The authorized amount under the stock repurchase program excludes fees, commissions or other expenses.

We did not declare any cash dividends in 2022. We do not anticipate declaring cash dividends in the foreseeable future. Our Third Amended Credit Agreement permits restricted payments, such as dividends, but may be limited if we do not meet the required minimum liquidity or fixed charge coverage ratio requirements.

We will continue to evaluate our capital return programs as appropriate. Decisions regarding future share repurchases and dividends are within the discretion of our Board of Directors, and depend on a number of factors, including, general business and economic conditions, which includes the impact of COVID-19 on such conditions, and other factors which are discussed in this discussion and analysis and “Risk Factors” within Other Key Information in this Annual Report.

CASH FLOWS

Cash provided by (used in) operating, investing and financing activities of continuing operations is summarized as follows:

<i>(In millions)</i>	2022	2021	2020
Operating activities of continuing operations	\$ 237	\$ 344	\$ 425
Investing activities of continuing operations	(86)	(75)	746
Financing activities of continuing operations	(355)	(459)	(1,193)

Operating Activities from Continuing Operations

Cash provided by operating activities from continuing operations was \$237 million in 2022, compared to \$344 million in 2021. This decrease in cash flows from operating activities was primarily driven by \$123 million less cash inflows from working capital, and \$30 million less income from operations, after adjusting for non-cash charges, partially offset by \$46 million higher usage of deferred tax assets. Working capital is influenced by a number of factors, including period end sales, the flow of goods, credit terms, timing of customer promotions, vendor production planning, new product introductions and working capital management. In 2022, the primary drivers for higher working capital usage was due to \$124 million more cash outflows due to changes in our trade payables and other liabilities and \$22 million more cash outflows from inventory purchases, partially offset by \$19 million more cash inflows due to changes in our receivables. The higher outflows related to our trade payables and other liabilities was mainly due to timing of payments and the 53rd week in 2022. The change in inventories is mainly attributable to purchase volume. The change in our receivables is due to the impact the recovery in sales of our ODP Business Solutions Division in 2022.

Cash provided by operating activities of continuing operations decreased by \$81 million during 2021 when compared to 2020. This decrease was primarily driven by \$103 million less cash inflows from working capital, partially offset by \$39 million more income from operations, after adjusting for non-cash charges.

For our accounting policy on cash management, refer to Note 1. “Summary of Significant Accounting Policies” in Notes to Consolidated Financial Statements.

Investing Activities from Continuing Operations

Cash used by investing activities from continuing operations was \$86 million in 2022, which was primarily driven by \$99 million in capital expenditures associated with improvements in our service platform, distribution network, and eCommerce capabilities. These outflows were partially offset by the cash proceeds from our company-owned life insurance policies of \$5 million and proceeds from sale of assets of \$8 million.

Cash used by investing activities of continuing operations was \$75 million in 2021, primarily driven by \$29 million in business acquisitions, net of cash acquired, and \$73 million in capital expenditures associated with improvements in our service platform, distribution network, and eCommerce capabilities. These outflows were partially offset by the cash proceeds from our company-owned life insurance policies of \$22 million and proceeds from sale of assets of \$5 million.

Financing Activities from Continuing Operations

Cash used in financing activities of continuing operations was \$355 million in 2022. The cash outflow in 2022 primarily consisted of \$266 million in repurchases of common stock including commission, \$64 million of net payments on short- and long-term borrowings

activity related to our debt, including retirement, and \$20 million share purchases for taxes, net of proceeds, for employee share-based transactions.

Cash used in financing activities of continuing operation was \$459 million in 2021, primarily consisting of \$125 million of net payments on short- and long-term borrowings activity related to our debt, including retirement, \$277 million in repurchases of common stock including commission, \$30 million advance payment for accelerated share repurchase and \$26 million share purchases for taxes, net of proceeds, for employee share-based transactions.

Discontinued Operations

Cash provided by (used in) operating, investing and financing activities of discontinued operations is summarized as follows:

<i>(In millions)</i>	2022	2021	2020
Operating activities of discontinued operations	\$ —	\$ 2	\$ 60
Investing activities of discontinued operations	76	(4)	(10)
Financing activities of discontinued operations	—	—	—

There were no cash flows related to operating activities of discontinued operations year-to-date 2022. Cash used in operating activities from discontinued operations was \$2 million in 2021. The change in operating cash flows of discontinued operations in the comparative periods was primarily driven by the sale of our CompuCom Division on December 31, 2021.

Cash flows from investing activities from discontinued operations was \$76 million in 2022, compared to cash used in investing activities from discontinued operations of \$4 million in 2021. The change in investing cash flows of discontinued operations in the comparative periods reflects proceeds received from the sale of our CompuCom Division, net of cash sold and selling costs, on December 31, 2021. In addition, 2022 includes \$10 million of insurance proceeds received related to the malware incident in 2021.

Contractual Obligations

Contractual obligations for future payments at December 31, 2022 primarily relate to operating and finance lease commitments, obligations under our long-term debt, and purchase commitments.

Operating and financing leases represent minimum required lease payments during the noncancelable lease term. Most real estate leases also require payment of related operating expenses such as taxes, insurance, utilities, and maintenance, which are not included in our estimated lease obligation. Refer to Note 9. "Leases" in Notes to Consolidated Financial Statements for the maturities of our operating and finance lease obligations.

Long-term debt obligations consist primarily of expected payments of principal and interest on our \$57 million of outstanding FILO Term Loan Facility loans under the Third Amended Credit Agreement and \$90 million of revenue bonds and gold debentures at various interest rates. Refer to Note 8. "Debt" in Notes to Consolidated Financial Statements for the maturities of our long-term debt obligations.

Purchase obligations include all commitments to purchase goods or services of either a fixed or minimum quantity that are enforceable and legally binding on us that meet any of the following criteria: (1) they are non-cancelable, (2) we would incur a penalty if the agreement was cancelled, or (3) we must make specified minimum payments even if we do not take delivery of the contracted products or services. If the obligation is non-cancelable, the entire value of the contract is included as a purchase obligation. If the obligation is cancelable, but we would incur a penalty if cancelled, the dollar amount of the penalty is included as a purchase obligation. If we can unilaterally terminate an agreement simply by providing a certain number of days' notice or by paying a termination fee, the amount of the termination fee or the amount that would be paid over the "notice period" is included as a purchase obligation. As of December 31, 2022, purchase obligations include marketing services, outsourced accounting services, certain fixed assets and software licenses, service and maintenance contracts for information technology and communication.

Our Consolidated Balance Sheet as of December 31, 2022 includes \$122 million classified as Deferred income taxes and other long-term liabilities. Deferred income taxes and other long-term liabilities primarily consist of net long-term deferred income taxes, deferred lease credits, long-term restructuring accruals, certain liabilities under our deferred compensation plans, accruals for uncertain tax positions, and environmental accruals. Refer to Note 2. "Merger, Restructuring and Other Activity" in Notes to Consolidated Financial Statements for a discussion of our restructuring accruals and Note 4. "Income Taxes" in Notes to Consolidated Financial Statements for additional information regarding our deferred tax positions and accruals for uncertain tax positions.

Our Consolidated Balance Sheet as of December 31, 2022 also includes \$11 million of current and non-current pension and postretirement obligations. Our estimate is that payments in future years will total \$52 million. This estimate represents the minimum contributions required per Internal Revenue Service funding rules and our estimated future payments under pension and postretirement plans. Actuarially-determined liabilities related to pension and postretirement benefits are recorded based on estimates and

assumptions. Key factors used in developing estimates of these liabilities include assumptions related to discount rates, rates of return on investments, healthcare cost trends, benefit payment patterns and other factors. Changes in assumptions related to the measurement of funded status could have a material impact on the amount reported. Refer to Note 12. “Employee Benefit Plans” in Notes to Consolidated Financial Statements for additional information.

In addition to the above, we have outstanding standby letters of credit totaling \$41 million at December 31, 2022.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

Our Consolidated Financial Statements have been prepared in accordance with accounting principles generally accepted in the United States of America. Preparation of these statements requires management to make judgments and estimates. Some accounting policies and estimates have a significant impact on amounts reported in these financial statements. A summary of significant accounting policies can be found in Note 1. “Summary of Significant Accounting Policies” in Notes to Consolidated Financial Statements. We have also identified certain accounting policies and estimates that we consider critical to understanding our business and our results of operations and we have provided below additional information on those policies.

Inventory valuation — Inventories are stated at the lower of weighted average cost or net realizable value. We monitor active inventory for excessive quantities and slow-moving items and record adjustments as necessary to lower the value if the anticipated realizable amount is below cost. We also identify merchandise that we plan to discontinue or have begun to phase out and assess the estimated recoverability of the carrying value. This includes consideration of the quantity of the merchandise, the rate of sale, and our assessment of current and projected market conditions and anticipated vendor programs. If necessary, we record a charge to cost of sales to reduce the carrying value of this merchandise to our estimate of the lower of cost or realizable amount. Additional promotional activities may be initiated, and markdowns may be taken as considered appropriate until the product is sold or otherwise disposed. Estimates and judgments are required in determining what items to stock and at what level, and what items to discontinue and how to value them prior to sale.

We also recognize an expense in cost of sales for our estimate of physical inventory loss from theft, short shipments and other factors — referred to as inventory shrink. During the year, we adjust the estimate of our inventory shrink rate accrual following on-hand adjustments and our physical inventory count results. These changes in estimates may result in volatility within the year or impact comparisons to other periods.

Vendor arrangements — Inventory purchases from vendors are generally under arrangements that automatically renew until cancelled with periodic updates or annual negotiated agreements. Many of these arrangements require the vendors to make payments to us or provide credits to be used against purchases if and when certain conditions are met. We refer to these arrangements as “vendor programs.” Vendor programs fall into two broad categories, with some underlying sub-categories. The first category is volume-based rebates. Under those arrangements, our product costs per unit decline as higher volumes of purchases are reached. Current accounting rules provide that companies with a reasonable basis for estimating their full year purchases, and therefore the ultimate rebate level, can use that estimate to value inventory and cost of goods sold throughout the year. We believe our history of purchases with many vendors provides us with a basis for our estimates of purchase volume. If the anticipated volume of purchases is not reached, however, or if we form the belief at any point in the year that it is not likely to be reached, cost of goods sold and the remaining inventory balances are adjusted to reflect that change in our outlook. We review sales projections and related purchases against vendor program estimates at least quarterly and adjust these balances accordingly.

The second broad category of arrangements with our vendors is event-based programs. These arrangements can take many forms, including advertising support, special pricing offered by certain of our vendors for a limited time, payments for special placement or promotion of a product, reimbursement of costs incurred to launch a vendor’s product, and various other special programs. These payments are classified as a reduction of costs of goods sold or inventory, based on the nature of the program and the sell-through of the inventory. Some arrangements may meet the specific, incremental, identifiable cost criteria that allow for direct operating expense offset, but such arrangements are not significant.

Vendor programs are recognized throughout the year based on judgment and estimates and amounts due from vendors are generally settled throughout the year based on purchase volumes. The final amounts not already collected from vendors are generally known soon after year-end and are reflected in our results of operations. Substantially all vendor program receivables outstanding at the end of the year are settled within the three months following year-end. We believe that our historical collection rates of these receivables provide a sound basis for our estimates of anticipated vendor payments throughout the year.

Long-lived asset impairments — Long-lived assets with identifiable cash flows are reviewed for possible impairment whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. We assess recovery of the asset or asset groups using estimates of cash flows directly associated with the future use and eventual disposition of the asset or asset groups. If anticipated cash flows are insufficient to recover the asset on an undiscounted basis, impairment is measured as the

difference between the asset's estimated fair value (generally, the discounted cash flows or its salvage value) and its carrying value, and any costs of disposition. Factors that could trigger an impairment assessment include, among others, a significant change in the extent or manner in which an asset is used or the business climate that could affect the value of the asset. As restructuring activities continue, we may identify assets or asset groups for sale or abandonment and incur impairment charges.

Because of declining sales, store assets are reviewed periodically throughout the year for recoverability of their asset carrying amounts. The frequency of this test may change in future periods if performance warrants. The analysis uses input from retail store operations and our accounting and finance personnel that organizationally report to the Chief Financial Officer. These projections are based on our estimates of store-level sales, gross margins, direct expenses, and resulting cash flows and, by their nature, include judgments about how current initiatives will impact future performance.

Important assumptions used in these projections include an assessment of future overall economic conditions, our ability to control future costs, maintain aspects of positive performance, and successfully implement initiatives designed to enhance sales and gross margins. Our assumptions in 2022 also included the impact of the COVID-19 pandemic on store asset recoverability. Due to the nature of products sold, our retail stores were considered to be essential by most local jurisdictions and as a result, the substantial majority of our retail stores have remained open and operational with the appropriate safety measures in place since the beginning of the COVID-19 outbreak, including a curbside pickup option. Our recoverability assessment in 2022 included evaluating the impact of these developments. To the extent our estimates of future performance are not realized, future assessments could result in material impairment charges.

Goodwill and other intangible assets — Goodwill represents the excess of the purchase price of an acquired entity over the fair value of the net tangible and intangible assets acquired and liabilities assumed in a business combination. We review the carrying amount of goodwill at the reporting unit level on an annual basis as of the first day of fiscal month December, or more frequently, if events or changes in circumstances suggest that goodwill may not be recoverable. For those reporting units where events or change in circumstances indicate that potential impairment indicators exist, we perform a quantitative assessment to determine whether the carrying amount of goodwill can be recovered. A significant amount of judgment is involved in determining if an indicator of impairment has occurred.

When performing the annual goodwill impairment test, we may start with an optional qualitative assessment which involves the evaluation of all events and circumstances, including both positive and negative events, in their totality, to determine whether it is not more likely than not that the fair value of a reporting unit is less than its carrying amount. If we bypass the qualitative assessment, or if the qualitative assessment indicates that a quantitative analysis should be performed, we evaluate goodwill for impairment by comparing the fair value of a reporting unit to its carrying value, including the associated goodwill. We estimate the reporting unit's fair value using discounted cash flow analysis and market-based evaluations, when available. If the carrying amount of the reporting unit exceeds the estimated fair value, an impairment charge is recorded to reduce the carrying value to the estimated fair value. We typically use a combination of valuation approaches that are dependent on several significant estimates and assumptions related to forecasts of future revenues, cost of sales, expenses and the weighted-average cost of capital for each reporting unit. These estimates and assumptions included consideration related to the impact of COVID-19 on our reporting units. Any adverse change in these factors could have a significant impact on the recoverability of goodwill and could have a material impact on our financial statements.

The re-alignment of our reportable segments in the third quarter of 2022 resulted in the change of our reporting units, where each reportable segment also represents a reporting unit. We allocated goodwill to our new reporting units using their relative fair values. We performed impairment assessment of our legacy and current reporting units immediately before and after this change. No impairment was recorded as result of this assessment. Refer to Note 7. "Goodwill and Other Intangible Assets" in Notes to Consolidated Financial Statements for additional information.

Other intangible assets primarily include customer relationship values and, trade names and technology, which primarily related to the CompuCom acquisition and OfficeMax merger. The customer relationship and trade name related to CompuCom are classified within Assets Held for Sale in the Consolidated Financial Statements. The original valuation of our customer relationship values assumed continuation of attrition rates previously experienced with these businesses and synergy benefits from the transactions. If we experience an unanticipated decline in sales or profitability associated with these customers, the remaining useful life will be reassessed and could result in either acceleration of amortization or impairment.

Accounting for Business Combinations — We include the results of operations of acquired businesses in our consolidated results prospectively from the date of acquisition. Total purchase consideration of acquired businesses may include contingent consideration based on the future results of operations of the acquired businesses. Significant judgements are required to estimate the future results of operations of the acquired businesses and the contingent consideration. Differences between the actual results of operations of the acquired businesses and the original estimate may result in additional contingent consideration liabilities. Changes in fair value of the contingent consideration may result in additional transaction related expenses. We allocate the fair value of purchase consideration to the assets acquired, liabilities assumed, and non-controlling interests in the acquired entity generally based on their fair values at the

acquisition date. We use various valuation methodologies to estimate the fair value of assets acquired and liabilities assumed, including using a market participant perspective when applying cost, income and relief from royalty analyses, supplemented with market appraisals where appropriate. Significant judgments and estimates are required in preparing these fair value estimates. The excess of the fair value of purchase consideration over the fair value of the assets acquired, liabilities assumed and non-controlling interests in the acquired entity is recorded as goodwill. The primary items that generate goodwill include the value of the synergies between the acquired company and us and the value of the acquired assembled workforce, neither of which qualifies for recognition as an intangible asset. Acquisition-related expenses and post-acquisition restructuring costs are recognized separately from the business combination and are expensed as incurred.

SIGNIFICANT TRENDS, DEVELOPMENTS AND UNCERTAINTIES

Competitive Factors — We continue to see development and growth of competitors in all segments of our business. In particular, Internet-based companies, mass merchandisers and wholesale clubs, as well as food and drugstore chains, have increased their assortment of home office merchandise, attracting additional back-to-school customers and year-round casual shoppers. We have seen substantial growth in the number of competitors that offer office products over the Internet, as well as the breadth and depth of their product offerings. As a result of the changes in customer purchasing habits with the COVID-19 pandemic, we have seen a substantial increase in Internet-based purchasing by customers as they continue to make their purchases online and utilize curbside pickup or offered delivery services instead of going into stores. In addition to large numbers of smaller Internet providers featuring special price incentives and one-time deals (such as close-outs), we are experiencing strong competitive pressures from large Internet providers such as Amazon and Walmart that offer a full assortment of office products through direct sales and, in the case of Amazon, acting as a “storefront” for other specialty office product providers.

Wholesale clubs have expanded beyond their in-store assortment by adding catalogs and websites from which a much broader assortment of products may be ordered. We also face competition from other office supply stores that compete directly with us in numerous markets. This competition is likely to result in increased competitive pressures on pricing, product selection and services provided by our ODP Business Solutions and Office Depot Divisions. Many of these retail competitors, including discounters, wholesale clubs, and drug stores and grocery chains, carry basic office supply products. Some of them also feature technology products. Many of them may price certain of these offerings lower than we do. This trend towards a proliferation of retailers offering a limited assortment of office products is a potentially serious trend that could shift purchasing away from office supply specialty retailers and adversely impact our results. Another trend in our office products industry has been consolidation, as competitors in office supply stores and the copy/print channel have been acquired and consolidated into larger, well-capitalized corporations. This trend towards consolidation, coupled with acquisitions by financially strong organizations, is potentially a significant trend in our office products industry that could impact our results. Additionally, consumers are utilizing more technology and purchasing less paper, ink and toner, physical file storage and general office supplies. Lower demand for printing paper is causing a decline in manufacturing and ensuing industry supply of paper products. This, in turn, is leading to a meaningful increase in paper cost, which we are not always able to pass along to our customers commensurably.

We regularly consider these and other competitive factors when we establish both offensive and defensive aspects of our overall business strategy and operating plans.

Economic Factors — Our customers in the Office Depot Division and certain of our customers in the ODP Business Solutions Division are small and home office businesses. Accordingly, spending by these customers is affected by macroeconomic conditions, such as changes in the housing market and commodity costs, credit availability, inflation and other factors.

Liquidity Factors — We rely on our cash flow from operating activities, available cash and cash equivalents, and access to broad financial markets to provide the liquidity we need to operate our business and fund integration and restructuring activities. Together, these sources have been used to fund operating and working capital needs, as well as invest in business expansion through capital improvements and acquisitions. While we have in place a \$1.0 billion asset-based credit facility to provide liquidity, the economic factors affecting our business may limit our ability to access this credit facility in full or cause future refinancing terms to be less favorable than the terms of our current indebtedness.

MARKET SENSITIVE RISKS AND POSITIONS

We have adopted an enterprise risk management process patterned after the principles set out by the Committee of Sponsoring Organizations (COSO). We utilize a common view of exposure identification and risk management. A process is in place for periodic risk reviews and identification of appropriate mitigation strategies.

We have market risk exposure related to interest rates, foreign currency exchange rates, and commodities. Market risk is measured as the potential negative impact on earnings, cash flows or fair values resulting from a hypothetical change in interest rates or foreign currency exchange rates over the next year. Interest rate changes on obligations may result from external market factors. We manage

our exposure to market risks at the corporate level. The portfolio of interest-sensitive assets and liabilities is monitored to provide liquidity necessary to satisfy anticipated short-term needs. Our risk management policies allow the use of specified financial instruments for hedging purposes only; speculation on interest rates, foreign currency rates, or commodities is not permitted.

Interest Rate Risk

We are exposed to the impact of interest rate changes on cash, cash equivalents, debt obligations, and defined benefit pension and other postretirement plans.

The impact on cash and cash equivalents held at December 31, 2022, from a hypothetical 50-basis-point change in interest rates, would be an increase or decrease in interest income of approximately \$2 million. The impact on our New Facilities loans at December 31, 2022, from a hypothetical 50-basis-point change in interest rates, would be an increase or decrease in interest expense of less than \$1 million.

The following table provides information about our debt portfolio outstanding as of December 31, 2022, that is sensitive to changes in interest rates. The following table does not include our obligations for pension plans and other postretirement benefits, although market risk also arises within our defined benefit pension plans to the extent that the obligations of the pension plans are not fully matched by assets with determinable cash flows. Refer to Note 12. "Employee Benefit Plans" in Notes to Consolidated Financial Statements for additional information about our pension plans and other postretirement benefits obligations.

(In millions)	2022			2021		
	Carrying Amount	Fair Value	Risk Sensitivity	Carrying Amount	Fair Value	Risk Sensitivity
Financial liabilities:						
Recourse debt:						
New Facilities loans under the Third Amended Credit Agreement, due 2025	\$ 57	\$ 57	\$ —	\$ 100	\$ 100	\$ 1
Revenue bonds, due in varying amounts periodically through 2029	\$ 75	\$ 76	\$ 2	\$ 75	\$ 76	\$ 2
American & Foreign Power Company, Inc. 5% debentures, due 2030	\$ 15	\$ 14	\$ —	\$ 15	\$ 16	\$ 1

The risk sensitivity of fixed rate debt reflects the estimated increase in fair value from a 50-basis-point decrease in interest rates, calculated on a discounted cash flow basis. The sensitivity of variable rate debt reflects the possible increase in interest expense during the next period from a 50-basis-point change in interest rates prevailing at year-end.

Foreign Exchange Rate Risk

We conduct business through our entities in Canada and China, where their functional currency is not the U.S. dollar. We continue to assess our exposure to foreign currency fluctuations against the U.S. dollar. As of December 31, 2022, a 10% change in the applicable foreign exchange rates would have resulted in an increase or decrease in our pretax earnings from continuing operations of less than \$1 million.

Commodities Risk

We operate a large network of stores and distribution centers. As such, we purchase fuel needed to transport products to our retail stores and customers as well as pay shipping costs to import products from overseas. We are exposed to potential changes in the underlying commodity costs associated with this transport activity.

We may enter into economic hedge transactions for a portion of our anticipated fuel consumption. These arrangements are marked to market at each reporting period. Some of these arrangements may not be designated as hedges for accounting purposes and changes in value are recognized in current earnings through the Cost of goods sold and occupancy costs line in the Consolidated Statements of Operations. Those that are designated as hedges for accounting purposes are also marked to market at each reporting period, with the change in value deferred in accumulated other comprehensive income until the related fuel is consumed. Currently, these economic hedging transactions are not considered material. As of December 31, 2022, excluding the impact of any hedge transaction, a 10% change in domestic commodity costs would have resulted in an increase or decrease in our operating profit of approximately \$6 million.

SEASONALITY

Our business experiences a certain level of seasonality, with sales generally trending lower in the second quarter, following the “back-to-business” sales cycle in the first quarter and preceding the “back-to-school” sales cycle in the third quarter and the holiday sales cycle in the fourth quarter for our ODP Business Solutions and Office Depot Divisions. Certain working capital components may build and recede during the year reflecting established selling cycles. Business cycles can and have impacted our operations and financial position when compared to other periods.

NEW ACCOUNTING STANDARDS

For a description of new applicable accounting standards, refer to Note 1. “Summary of Significant Accounting Policies” in Notes to Consolidated Financial Statements.

QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Refer to information in the “Market Sensitive Risks and Positions” in MD&A of this Annual Report.

CONTROLS AND PROCEDURES

MANAGEMENT’S DISCLOSURES

Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in our reports is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure. Our management recognizes that any controls and procedures, no matter how well designed and operated, can only provide reasonable assurance of achieving the desired control objectives and management necessarily applies its judgment in evaluating the possible controls and procedures. Each reporting period, we carry out an evaluation, with the participation of our principal executive officer and principal financial officer, or persons performing similar functions, of the effectiveness of the design and operation of our disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act.

Based on management’s evaluation, our principal executive officer and principal financial officer have concluded that, as of December 31, 2022, our disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms and that such information is accumulated and communicated to management, including the principal executive officer and the principal financial officer, or persons performing similar functions, as appropriate, to allow timely decisions regarding required disclosures.

Changes in Internal Controls

There were no changes in our internal control over financial reporting during the fourth quarter of 2022, which were identified in connection with management’s evaluation required by paragraph (d) of Rules 13a-15 and 15d-15 under the Exchange Act, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

We have not experienced any material impact to our internal controls over financial reporting despite the fact that most of our employees are working remotely due to the COVID-19 pandemic. We continually monitor and assess the COVID-19 situation on our internal controls to minimize the impact on their design and operating effectiveness.

Management’s Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting for ODP as defined in under Exchange Act Rules 13a-15(f) and 15d-15(f). Internal control over financial reporting is a process designed to provide reasonable assurance to our management and Board of Directors regarding the reliability of financial reporting and the preparation and fair presentation of published financial statements.

Because of inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of effectiveness to future periods are subject to the risks that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Management assessed the effectiveness of our internal control over financial reporting as of December 31, 2022. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in *Internal Control — Integrated Framework (2013)*. Based on our assessment, management has concluded that the Company's internal control over financial reporting was effective as of December 31, 2022.

Our internal control over financial reporting as of December 31, 2022, has been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report provided below.

OTHER INFORMATION

AMENDED AND RESTATED BYLAWS

On February 24, 2023, our Board of Directors amended our bylaws, effective immediately, to enhance procedural mechanics and disclosure requirements in connection with shareholder nominations of directors, including by requiring (i) a shareholder delivering a nomination notice pursuant to Rule 14a-19 under the Exchange Act to certify that such shareholder has met the requirements of Rule 14a-19 and (ii) a shareholder directly or indirectly soliciting proxies from other shareholders to use a proxy card color other than white. The amendments to the bylaws also included certain other modifications that provide clarification and consistency.

The foregoing description of the amendments to the bylaws is qualified in its entirety by the text of the bylaws, as amended, a copy of which is attached as Exhibit 3.2 to this Annual Report on Form 10-K and is incorporated herein by reference.

APPOINTMENT OF CHIEF ACCOUNTING OFFICER & CONTROLLER

On February 27, 2023, we announced the appointment of Max W. Hood, 44, to serve as Senior Vice President, Chief Accounting Officer & Controller of the Company, effective February 26, 2023 (the "Effective Date"). Mr. Hood joined the Company in 2018 as Vice President, Financial Operations and was named Vice President, Accounting & Treasury in March 2021. Prior to joining the Company, Mr. Hood held roles at GE, including Global Operations Controller for its \$10 billion energy division. Mr. Hood has a dual Bachelor of Science degree in Accounting and Management Information Systems from Miami University in Oxford, Ohio and he is a Certified Public Accountant.

On the Effective Date, Mr. Hood's annual base salary will be \$335,000. In addition, Mr. Hood will (i) be eligible to participate in the Company's Corporate Incentive Plan with a target incentive payout set at 60% of his annual eligible earnings, (ii) continue to be eligible to receive awards under the Company's Long-Term Incentive Plan at the time grants are made to other senior executives of the Company, and (iii) be eligible for the Company's Executive Car Allowance Program.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of
The ODP Corporation
Boca Raton, Florida

Opinion on Internal Control over Financial Reporting

We have audited the internal control over financial reporting of The ODP Corporation and subsidiaries (the “Company”) as of December 31, 2022, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2022, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by COSO.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated financial statements as of and for the fiscal year ended December 31, 2022, of the Company and our report dated March 1, 2023 expressed an unqualified opinion on those financial statements.

Basis for Opinion

The Company’s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management’s Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company’s internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control over Financial Reporting

A company’s internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company’s internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company’s assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ DELOITTE & TOUCHE LLP

Boca Raton, Florida
March 1, 2023

REFERENCE TO THE PROXY STATEMENT

DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Information concerning our executive officers is set forth under the caption “Information About Our Executive Officers” within Who Manages Our Business of this Annual Report.

Information required by this item with respect to our directors and the nomination process will be contained under the headings “Election of Directors” and “Corporate Governance,” respectively, in the proxy statement for our 2023 Annual Meeting of Shareholders to be filed with the SEC (the “Proxy Statement”) within 120 days after the end of our fiscal year, which information is incorporated by reference in this Annual Report.

Information required by this item with respect to our audit committee and our audit committee financial experts will be contained in the Proxy Statement under the heading “Corporate Governance – Board and Committee Responsibilities” and is incorporated by reference in this Annual Report.

Our Code of Ethical Behavior is in compliance with applicable rules of the SEC that apply to our principal executive officer, our principal financial officer, and our principal accounting officer or controller, or persons performing similar functions. A copy of the Code of Ethical Behavior is available free of charge on the “Investor Relations” section of our website, investor.theodpcorp.com. We intend to satisfy any disclosure requirement under Item 5.05 of Form 8-K regarding an amendment to, or waiver from, a provision of this Code of Ethical Behavior by posting such information on our website at the address and location specified above.

EXECUTIVE COMPENSATION

Information required by this item with respect to executive compensation and director compensation will be contained in the Proxy Statement under the headings “Compensation Discussion & Analysis” and “Director Compensation,” respectively, and is incorporated by reference in this Annual Report.

The information required by this item with respect to compensation committee interlocks and insider participation will be contained in the Proxy Statement under the heading “Compensation & Talent Committee Interlocks and Insider Participation” and is incorporated by reference in this Annual Report.

The compensation committee report required by this item will be contained in the Proxy Statement under the heading “Compensation & Talent Committee Report” and is incorporated by reference in this Annual Report.

The information required by this item with respect to compensation policies and practices as they relate to the Company’s risk management will be contained in the Proxy Statement under the heading “Corporate Governance” under the subheadings “Board Oversight of Risk,” “Role of the Board Committees in Risk Oversight,” and “Compensation Programs Risk Assessment” and are incorporated by reference in this Annual Report.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

Information required by this item with respect to securities authorized for issuance under the Company’s equity compensation plans will be contained in the Proxy Statement under the heading “Equity Compensation Plan Information” and is incorporated herein by reference in this Annual Report.

Information required by this item with respect to security ownership of certain beneficial owners and management will be contained in the Proxy Statement under the heading “Security Ownership of Certain Beneficial Owners and Management” and is incorporated by reference in this Annual Report.

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Information required by this item with respect to such contractual relationships and director independence will be contained in the Proxy Statement under the heading “Corporate Governance” under subheading “Certain Relationships and Related Person Transactions Policy” and under the heading “Election of Directors” under subheading “Director Independence and Independence Determinations” and is incorporated by reference in this Annual Report.

PRINCIPAL ACCOUNTANT FEES AND SERVICES

Information with respect to principal accounting fees and services and pre-approval policies will be contained in the Proxy Statement under the heading “Ratification of Appointment of Independent Registered Public Accounting Firm” under subheadings “Audit and Non-Audit Fees” and “Audit Committee Pre-Approval Policies and Procedures,” respectively, and is incorporated by reference in this Annual Report.

FINANCIAL STATEMENTS AND SUPPLEMENTAL DETAILS

EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

The following documents are filed as a part of this Annual Report:

1. The financial statements listed in Index to Financial Statements.
2. All other financial statements are omitted because the required information is not applicable, or because the information is included in the Company's Consolidated Financial Statements or the Notes to Consolidated Financial Statements.

The report of the Company's independent registered public accounting firm (PCAOB ID: 34) with respect to the above-referenced financial statements and their report on internal control over financial reporting are included in Item 8 and Item 9A of this Form 10-K. Their consent appears as Exhibit 23.1 of this Form 10-K.

3. Exhibits.

INDEX TO EXHIBITS FOR THE ODP CORPORATION 10-K

Exhibit Number	Exhibit
2.1	Agreement and Plan of Merger, dated as of June 30, 2020, by and among Office Depot, Inc., The ODP Corporation, ODP Investment, LLC and Office Depot, LLC (Incorporated by reference from Exhibit 2.1 of The ODP Corporation's Form 8-K12B, filed with the SEC on July 1, 2020).
3.1	Amended and Restated Certificate of Incorporation of The ODP Corporation (Incorporated by reference from Exhibit 3.1 of The ODP Corporation's Form 8-K12B, filed with the SEC on July 1, 2020).
3.2	Amended and Restated Bylaws of The ODP Corporation.
3.3	Certificate of Designations of Series A Junior Participating Preferred Stock of The ODP Corporation (Incorporated by reference from Exhibit 3.3 of The ODP Corporation's Form 8-K12B, filed with the SEC on July 1, 2020).
4.1	Specimen Common Stock Certificate of The ODP Corporation (Incorporated by reference from Exhibit 4.2 of The ODP Corporation's Current Report on Form 8-K, filed with the SEC on July 1, 2020).
4.2	Description of The ODP Corporation's Securities.
10.1	Office Depot, Inc. 2019 Long-Term Incentive Plan (Incorporated by reference from Annex 1 to the Proxy Statement for Office Depot, Inc.'s 2019 Annual Meeting of Shareholders, filed with the SEC on March 20, 2019).*
10.2	Office Depot, Inc. 2017 Long-Term Incentive Plan (Incorporated by reference from Exhibit 99.1 of Office Depot, Inc.'s Registration Statement on Form S-8, filed with the SEC on July 20, 2017).*
10.3	Form of Third Amended and Restated Credit Agreement, dated as of April 17, 2020, among Office Depot, Inc., Grand & Toy Limited/Grand & Toy Limite�, CompuCom Canada Co., as Borrowers, JPMorgan Chase Bank, N.A., as Administrative Agent, and the other lenders referred to therein (Incorporated by reference from Exhibit 10.1 of Office Depot, Inc.'s Current Report on Form 8-K, filed with the SEC on April 20, 2020).
10.4	Form of Restricted Stock Unit Agreement (Executives) (Incorporated by reference from Exhibit 99.4 of Office Depot, Inc.'s Registration Statement on Form S-8, filed with the SEC on July 20, 2017).*
10.5	Form of AOI Performance Share Award Agreement (Executives) (Incorporated by reference from Exhibit 99.5 of Office Depot, Inc.'s Registration Statement on Form S-8, filed with the SEC on July 20, 2017).*
10.6	Form of TSR Performance Share Award Agreement (Executives) (Incorporated by reference from Exhibit 99.6 of Office Depot, Inc.'s Registration Statement on Form S-8, filed with the SEC on July 20, 2017).*
10.7	Employment Agreement between Office Depot, Inc. and Gerry P. Smith (Incorporated by reference from Exhibit 10.1 of Office Depot, Inc.'s Current Report on Form 8-K, filed with the SEC on January 30, 2017).*
10.8	2017 Non-Qualified Stock Option Award Agreement between Office Depot, Inc. and Gerry P. Smith (Incorporated by reference from Exhibit 10.2 of Office Depot, Inc.'s Current Report on Form 8-K, filed with the SEC on January 30, 2017).*
10.9	2017 Restricted Stock Unit Award Agreement between Office Depot, Inc. and Gerry P. Smith (Incorporated by reference from Exhibit 10.3 of Office Depot, Inc.'s Current Report on Form 8-K, filed with the SEC on January 30, 2017).*

Exhibit Number	Exhibit
10.10	Form of Restricted Stock Unit Award Agreement (Incorporated by reference from Exhibit 99.3 of Office Depot, Inc.'s Registration Statement on Form S-8, filed with the SEC on June 19, 2015).*
10.11	The Office Depot, Inc. Executive Change in Control Severance Plan effective August 1, 2014 (Incorporated by reference from Exhibit 10.1 of Office Depot, Inc.'s Current Report on Form 8-K, filed with the SEC on August 7, 2014).*
10.12	Amendment to Office Depot, Inc. Executive Change in Control Severance Plan effective as of August 10, 2020 (Incorporated by reference from Exhibit 10.12 of The ODP Corporation's Annual Report on Form 10-K, filed with the SEC on February 23, 2022).*
10.13	Form of Office Depot, Inc. Indemnification Agreement (Incorporated by reference from Exhibit 10.63 of Office Depot, Inc.'s Annual Report on Form 10-K, filed with the SEC on February 28, 2018).*
10.14	Form of Restricted Stock Unit Agreement (Executives) (Incorporated by reference from Exhibit 10.4 of Office Depot, Inc.'s Quarterly Report on Form 8-K, filed with the SEC on May 8, 2019).*
10.15	Form of FCF Performance Share Award Agreement (Executives) (Incorporated by reference from Exhibit 10.5 of Office Depot, Inc.'s Current Report on Form 8-K, filed with the SEC on May 8, 2019).*
10.16	Form of TSR Performance Share Award Agreement (Executives) (Incorporated by reference from Exhibit 10.6 of Office Depot, Inc.'s Current Report on Form 8-K, filed with the SEC on May 8, 2019).*
10.17	Letter Agreement, dated May 14, 2020, between Office Depot, Inc. and D. Anthony Scaglione (Incorporated by reference from Exhibit 10.1 of Office Depot, Inc.'s Current Report on Form 8-K, filed with the SEC on June 18, 2020).*
10.18	Amendment to Employment Agreement, dated July 1, 2020, by and between The ODP Corporation, Office Depot, LLC and Gerry P. Smith (Incorporated by reference from Exhibit 10.2 of The ODP Corporation's Quarterly Report on Form 10-Q, filed with the SEC on November 5, 2020).*
10.19	Assignment and Assumption Agreement, as of June 30, 2020, by and between The ODP Corporation and Office Depot, LLC (Incorporated by reference from Exhibit 10.1 of The ODP Corporation's Form 8-K12B, filed with the SEC on July 1, 2020).
10.20	Cooperation Agreement, by and among HG Vora Capital Management, LLC and The ODP Corporation, dated January 25, 2021 (Incorporated by reference from Exhibit 10.1 of The ODP Corporation's Form 8-K, filed with the SEC on January 26, 2021).
10.21	Second Amendment to the Cooperation Agreement, by and among HG Vora Capital Management, LLC and The ODP Corporation, dated December 27, 2022 (Incorporated by reference from Exhibit 10.1 of The ODP Corporation's Form 8-K, filed with the SEC on December 28, 2022).
10.22	First Amendment to the Cooperation Agreement, by and among HG Vora Capital Management, LLC and The ODP Corporation, dated December 30, 2021 (Incorporated by reference from Exhibit 10.1 of The ODP Corporation's Form 8-K, filed with the SEC on January 3, 2022).
10.23	The ODP Corporation 2021 Long-Term Incentive Plan (Incorporated by reference from Annex 1 of The ODP Corporation's Definitive Proxy Statement on Schedule 14A, filed with the SEC on March 12, 2021).*
10.24	Form of 2021 Restricted Stock Unit Award Agreement (Incorporated by reference from Exhibit 10.2 of The ODP Corporation's Form 8-K, filed with the SEC on April 21, 2021).*
10.25	Form of 2021 Lump Sum Restricted Stock Unit Award Agreement (Non-Employee Directors) (Incorporated by reference from Exhibit 10.3 of The ODP Corporation's Form 8-K, filed with the SEC on April 21, 2021).*
10.26	Form of 2021 Installment Payment Restricted Stock Unit Award Agreement (Non-Employee Directors) (Incorporated by reference from Exhibit 10.4 of The ODP Corporation's Form 8-K, filed with the SEC on April 21, 2021).*
10.27	Form of 2021 FCF Performance Share Award Agreement (Incorporated by reference from Exhibit 10.5 of The ODP Corporation's Form 8-K, filed with the SEC on April 21, 2021).*
10.28	Form of 2021 TSR Performance Share Award Agreement (Incorporated by reference from Exhibit 10.6 of The ODP Corporation's Form 8-K, filed with the SEC on April 21, 2021).*
10.29	Executive Transition Agreement, dated as of September 28, 2021, by and between The ODP Corporation and N. David Bleisch (Incorporated by reference from Exhibit 10.1 of The ODP Corporation's Quarterly Report on Form 10-Q, filed with the SEC on November 3, 2021).*

[Table of Contents](#)

Exhibit Number	Exhibit
10.30	Securities Purchase Agreement with Lincoln Merger Sub Two LLC, CompuCom Super Holdings LLC, and Project Heritage Acquisition, LLC, dated December 31, 2021 (Incorporated by reference from Exhibit 10.30 of The ODP Corporation's Annual Report on Form 10-K, filed with the SEC on February 23, 2022).*
21	List of The ODP Corporation's Subsidiaries
23.1	Consent of Independent Registered Public Accounting Firm
31.1	Certification of Principal Executive Officer required by Securities and Exchange Commission Rule 13a-14(a) or 15d-14(a)
31.2	Certification of Principal Financial Officer required by Securities and Exchange Commission Rule 13a-14(a) or 15d-14(a)
32.1	Certification of Principal Executive Officer and Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	Inline XBRL Instance Document – The instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

* Management contract or compensatory plan or arrangement.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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 on this 1st day of March 2023.

THE ODP CORPORATION

By: /s/ GERRY P. SMITH
Gerry P. Smith
Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant in the capacities indicated on March 1, 2023.

Signature	Capacity
/s/ GERRY P. SMITH Gerry P. Smith	Chief Executive Officer (Principal Executive Officer), Director
/s/ D. ANTHONY SCAGLIONE D. Anthony Scaglione	Executive Vice President and Chief Financial Officer (Principal Financial Officer)
/s/ MAX W. HOOD Max W. Hood	Senior Vice President and Chief Accounting Officer (Principal Accounting Officer)
/s/ JOSEPH S. VASSALLUZZO Joseph S. Vassalluzzo	Chairman, Board of Directors
/s/ QUINCY L. ALLEN Quincy L. Allen	Director
/s/ KRISTIN A. CAMPBELL Kristin A. Campbell	Director
/s/ MARCUS B. DUNLOP Marcus B. Dunlop	Director
/s/ CYNTHIA T. JAMISON Cynthia T. Jamison	Director
/s/ SHASHANK SAMANT Shashank Samant	Director
/s/ WENDY L. SCHOPPERT Wendy L. Schoppert	Director
/s/ DAVID M. SZYMANSKI David M. Szymanski	Director

INDEX TO FINANCIAL STATEMENTS

	<u>Page</u>
Report of Independent Registered Public Accounting Firm	55
Consolidated Statements of Operations	57
Consolidated Statements of Comprehensive Income (Loss)	58
Consolidated Balance Sheets	59
Consolidated Statements of Cash Flows	60
Consolidated Statements of Stockholders' Equity	61
Notes to Consolidated Financial Statements	62
Note 1. Summary of Significant Accounting Policies	62
Note 2. Merger, Restructuring and Other Activity	70
Note 3. Segment Information	72
Note 4. Income Taxes	76
Note 5. Earnings (Loss) Per Share	79
Note 6. Property and Equipment	79
Note 7. Goodwill and Other Intangible Assets	80
Note 8. Debt	82
Note 9. Leases	84
Note 10. Stockholders' Equity	85
Note 11. Stock-Based Compensation	86
Note 12. Employee Benefit Plans	88
Note 13. Fair Value Measurements	96
Note 14. Commitments and Contingencies	98
Note 15. Discontinued Operations	98
Note 16. Quarterly Financial Data (Unaudited)	100
Note 17. Subsequent Events	101

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of
The ODP Corporation
Boca Raton, Florida

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of The ODP Corporation and subsidiaries (the "Company") as of December 31, 2022 and December 25, 2021, the related consolidated statements of operations, comprehensive income (loss), stockholders' equity, and cash flows, for each of the three fiscal years in the period ended December 31, 2022, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and December 25, 2021, and the results of its operations and its cash flows for each of the three fiscal years in the period ended December 31, 2022, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2022, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 1, 2023 expressed an unqualified opinion on the Company's internal control over financial reporting.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matters

The critical audit matters communicated below are matters arising from the current-period audit of the financial statements that were communicated or required to be communicated to the audit committee and that (1) relate to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matters below, providing separate opinions on the critical audit matters or on the accounts or disclosures to which they relate.

Goodwill — Refer to Notes 1 and 7 to the financial statements

Critical Audit Matter Description

The Company's consolidated goodwill balance was \$464 million at December 31, 2022. Goodwill is tested for impairment by management at least annually at the reporting unit level, or more often if an indicator of impairment is present, by comparing allocated carrying value of goodwill to the estimated fair value of the respective reporting unit or through a qualitative assessment to determine whether it is not more likely than not that the fair value of the reporting units are less than their respective carrying amounts. The determination of fair value of the reporting units, or events and conditions affecting fair value in the case of a qualitative analysis, require management to make significant estimates and assumptions related to forecasts of future revenues, cost of sales, expenses and the weighted-average cost of capital for each reporting unit. An adverse change in these factors could have a significant impact on the recoverability of goodwill and could have a material impact on the financial statements.

Of the \$464 million consolidated goodwill balance, the Varis reporting unit represented \$68 million of the balance at December 31, 2022. As of November 20, 2022, the Company performed its annual impairment assessment. The annual impairment assessment was

performed using a quantitative assessment for the Varis reporting unit. Based upon these tests, it was concluded that the fair value of the Varis reporting unit exceeded its carrying amount.

Given the significant judgments made by management to estimate the fair value of the Varis reporting unit, performing audit procedures to evaluate the reasonableness of management's estimates and assumptions related to forecasts of future revenues, cost of sales, expenses and the weighted-average cost of capital, required a high degree of auditor judgment and an increased extent of effort, including the need to involve our fair value specialists.

How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures related to management's judgments related to forecasts of future revenues, cost of sales, expenses, and weighted-average cost of capital for the Varis reporting unit included the following, among others:

- We tested the effectiveness of controls relating to management's goodwill impairment test, including those over the forecasts and the weighted-average cost of capital.
- We evaluated the reasonableness of management's revenue, cost of sales and expenses forecast by comparing the forecast to (1) the actual historical results of the Varis reporting unit, (2) internal communications amongst management and the Board of Directors, (3) external communications made by management to analysts and investors, (4) evidence obtained throughout the audit, and (5) industry reports discussing the operating forecasts for the technology services industry.
- We developed a range of independent estimates based on the key inputs into the discounted cash flow model and compared those to the assumptions used by management.
- With the assistance of our fair value specialists, we evaluated the valuation methodology and assumptions used to determine the fair value of the Varis reporting unit, such as the weighted average cost of capital, by
 - Testing the underlying source information and mathematical accuracy of the calculations;
 - For the weighted-average cost of capital, comparing the amount used by management to the amounts associated with other technology services companies with a similar risk profile; and
 - Evaluating the interaction between the weighted-average cost of capital and the forecasts to understand and sensitize management's assumptions regarding risk inherent in the forecast.

/s/ DELOITTE & TOUCHE LLP

Boca Raton, Florida

March 1, 2023

We have served as the Company's auditor since 1990.

THE ODP CORPORATION
CONSOLIDATED STATEMENTS OF OPERATIONS
(In millions, except per share amounts)

	2022	2021	2020
Sales	\$ 8,491	\$ 8,465	\$ 8,872
Cost of goods sold and occupancy costs	6,643	6,602	6,921
Gross profit	1,848	1,863	1,951
Selling, general and administrative expenses	1,552	1,558	1,661
Asset impairments	14	20	182
Merger, restructuring and other operating expenses, net	39	51	102
Operating income	243	234	6
Other income (expense):			
Interest income	5	1	4
Interest expense	(16)	(28)	(42)
Loss on extinguishment and modification of debt	—	—	(12)
Other income, net	10	24	6
Income (loss) from continuing operations before income taxes	242	231	(38)
Income tax expense	64	44	25
Net income (loss) from continuing operations	178	187	(63)
Discontinued operations, net of tax	(12)	(395)	(256)
Net income (loss)	\$ 166	\$ (208)	\$ (319)
Basic earnings (loss) per share			
Continuing operations	\$ 3.73	\$ 3.54	\$ (1.20)
Discontinued operations	(0.25)	(7.47)	(4.85)
Net basic earnings (loss) per share	\$ 3.48	\$ (3.93)	\$ (6.05)
Diluted earnings (loss) per share			
Continuing operations	\$ 3.61	\$ 3.42	\$ (1.20)
Discontinued operations	(0.24)	(7.21)	(4.85)
Net diluted earnings (loss) per share	\$ 3.37	\$ (3.79)	\$ (6.05)

The accompanying notes to Consolidated Financial Statements are an integral part of these statements.

THE ODP CORPORATION
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(In millions)

	2022	2021	2020
Net income (loss)	\$ 166	\$ (208)	\$ (319)
Other comprehensive income, net of tax, where applicable:			
Foreign currency translation adjustments	(12)	—	2
Change in deferred pension, net of \$(3) million, \$6 million and \$7 million of deferred income taxes in 2022, 2021 and 2020, respectively	(59)	26	32
Total other comprehensive income, net of tax, where applicable	(71)	26	34
Comprehensive income (loss)	\$ 95	\$ (182)	\$ (285)

The accompanying notes to Consolidated Financial Statements are an integral part of these statements.

THE ODP CORPORATION
CONSOLIDATED BALANCE SHEETS
(In millions, except shares and par value)

	December 31, 2022	December 25, 2021
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 403	\$ 514
Receivables, net	536	495
Inventories	828	859
Prepaid expenses and other current assets	36	52
Current assets held for sale	107	469
Total current assets	1,910	2,389
Property and equipment, net	352	477
Operating lease right-of-use assets	874	936
Goodwill	464	464
Other intangible assets, net	46	54
Deferred income taxes	182	219
Other assets	321	326
Noncurrent assets held for sale	—	—
Total assets	\$ 4,149	\$ 4,865
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Trade accounts payable	\$ 821	\$ 950
Accrued expenses and other current liabilities	1,005	994
Income taxes payable	17	11
Short-term borrowings and current maturities of long-term debt	16	20
Current liabilities held for sale	—	290
Total current liabilities	1,859	2,265
Deferred income taxes and other long-term liabilities	122	159
Pension and postretirement obligations, net	16	22
Long-term debt, net of current maturities	172	228
Operating lease liabilities	693	753
Noncurrent liabilities held for sale	—	—
Total liabilities	2,862	3,427
Commitments and contingencies		
Stockholders' equity:		
Common stock — authorized 80,000,000 shares of \$0.01 par value; issued shares — 65,636,015 at December 31, 2022 and 64,704,979 at December 25, 2021; outstanding shares — 42,213,046 at December 31, 2022 and 48,455,951 at December 25, 2021	1	1
Additional paid-in capital	2,742	2,692
Accumulated other comprehensive loss	(77)	(6)
Accumulated deficit	(451)	(617)
Treasury stock, at cost — 23,422,969 shares at December 31, 2022 and 16,249,028 shares at December 25, 2021	(928)	(632)
Total stockholders' equity	1,287	1,438
Total liabilities and stockholders' equity	\$ 4,149	\$ 4,865

The accompanying notes to Consolidated Financial Statements are an integral part of these statements.

THE ODP CORPORATION
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In millions)

	2022	2021	2020
Cash flows from operating activities:			
Net income (loss)	\$ 166	\$ (208)	\$ (319)
Loss from discontinued operations, net of tax	(12)	(395)	(256)
Net income (loss) from continuing operations	178	187	(63)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Depreciation and amortization	131	146	157
Amortization of debt discount and issuance costs	2	2	3
Charges for losses on receivables and inventories	19	22	33
Asset impairments	14	20	182
(Gain) loss on disposition of assets, net	(4)	(5)	4
Loss on extinguishment and modification of debt	—	—	12
Compensation expense for share-based payments	40	38	41
Deferred income taxes and deferred tax asset valuation allowances	40	(6)	11
Changes in assets and liabilities:			
Decrease (increase) in receivables	(42)	(61)	185
Decrease in inventories	13	35	76
Net decrease in prepaid expenses, operating lease right-of-use assets, and other assets	282	281	304
Net increase in trade accounts payable, accrued expenses, operating lease liabilities, and other current and other long-term liabilities	(436)	(312)	(519)
Other operating activities	—	(3)	(1)
Total adjustments	59	157	488
Net cash provided by operating activities of continuing operations	237	344	425
Net cash provided by operating activities of discontinued operations	—	2	60
Net cash provided by operating activities	237	346	485
Cash flows from investing activities:			
Capital expenditures	(99)	(73)	(58)
Businesses acquired, net of cash acquired	—	(29)	(30)
Proceeds from collection of notes receivable	—	—	818
Proceeds from disposition of assets	8	5	3
Settlement of company-owned life insurance policies	5	22	13
Net cash provided by (used in) investing activities of continuing operations	(86)	(75)	746
Net cash provided by (used in) investing activities of discontinued operations	76	(4)	(10)
Net cash provided by (used in) investing activities	(10)	(79)	736
Cash flows from financing activities:			
Net payments on long and short-term borrowings	(21)	(25)	(341)
Debt retirement	(43)	(100)	(1,196)
Debt issuance	—	—	400
Cash dividends on common stock	—	—	(13)
Share purchases for taxes, net of proceeds from employee share-based transactions	(20)	(26)	(5)
Repurchase of common stock for treasury and advance payment for accelerated share repurchase	(266)	(307)	(30)
Other financing activities	(5)	(1)	(8)
Net cash used in financing activities of continuing operations	(355)	(459)	(1,193)
Net cash used in financing activities of discontinued operations	—	—	—
Net cash used in financing activities	(355)	(459)	(1,193)
Effect of exchange rate changes on cash and cash equivalents	(5)	—	1
Net increase (decrease) in cash, cash equivalents and restricted cash	(133)	(192)	29
Cash, cash equivalents and restricted cash at beginning of period	537	729	700
Cash, cash equivalents and restricted cash at end of period	404	537	729
Less: cash and cash equivalents of discontinued operations	—	(23)	—
Cash, cash equivalents and restricted cash at end of period — continuing operations	\$ 404	\$ 514	\$ 729
Supplemental information on operating, investing, and financing activities			
Right-of-use assets obtained in exchange for new finance lease liabilities	\$ 4	\$ 3	\$ 29
Right-of-use assets obtained in exchange for new operating lease liabilities	228	127	117
Cash taxes paid (refunded), net	17	43	(14)
Cash interest paid, net of amounts capitalized and Timber notes/Non-recourse debt	16	25	40
Other current and noncurrent receivables obtained from disposition of discontinued operations	9	—	—
Promissory note receivable obtained from disposition of discontinued operations	55	—	—
Earn-out receivable obtained from disposition of discontinued operations	9	—	—
Transfer from additional paid-in capital to treasury stock for final settlement of the accelerated share repurchase agreement	29	—	—
Business acquired in exchange for common stock issuance	—	35	—

The accompanying notes to Consolidated Financial Statements are an integral part of these statements.

THE ODP CORPORATION
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In millions, except share and per share amounts)

	Common Stock Shares	Common Stock Amount	Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Treasury Stock	Total Equity
Balance at December 28, 2019	62,042,477	\$ 1	\$ 2,652	\$ (66)	\$ (89)	\$ (325)	\$ 2,173
Net loss	—	—	—	—	(319)	—	(319)
Other comprehensive income	—	—	—	34	—	—	34
Exercise and release of incentive stock (including income tax benefits and withholding)	508,778	—	(5)	—	—	—	(5)
Amortization of long-term incentive stock grants	—	—	41	—	—	—	41
Dividends paid on common stock (\$0.25 per share)	—	—	(13)	—	—	—	(13)
Repurchase of common stock	—	—	—	—	—	(30)	(30)
Adjustment for adoption of accounting standard	—	—	—	—	(1)	—	(1)
Balance at December 26, 2020	62,551,255	1	2,675	(32)	(409)	(355)	1,880
Net loss	—	—	—	—	(208)	—	(208)
Other comprehensive income	—	—	—	26	—	—	26
Exercise and release of incentive stock (including income tax benefits and withholding)	1,326,226	—	(26)	—	—	—	(26)
Amortization of long-term incentive stock grants	—	—	38	—	—	—	38
Repurchase of common stock and advance payment for accelerated share repurchase	—	—	(30)	—	—	(277)	(307)
Common stock issuance related to the BuyerQuest acquisition	827,498	—	35	—	—	—	35
Balance at December 25, 2021	64,704,979	\$ 1	\$ 2,692	\$ (6)	\$ (617)	\$ (632)	\$ 1,438
Net income	—	—	—	—	166	—	166
Other comprehensive loss	—	—	—	(71)	—	—	(71)
Exercise and release of incentive stock (including income tax benefits and withholding)	931,036	—	(20)	—	—	—	(20)
Amortization of long-term incentive stock grants	—	—	40	—	—	—	40
Final settlement of the accelerated share repurchase agreement	—	—	29	—	—	(29)	—
Repurchase of common stock	—	—	—	—	—	(266)	(266)
Other	—	—	1	—	—	(1)	—
Balance at December 31, 2022	65,636,015	\$ 1	\$ 2,742	\$ (77)	\$ (451)	\$ (928)	\$ 1,287

The accompanying notes to Consolidated Financial Statements are an integral part of these statements.

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Nature of Business: The ODP Corporation (including its consolidated subsidiaries, “ODP” or the “Company”) is a leading provider of products, services and technology solutions through an integrated business-to-business (“B2B”) distribution platform and omni-channel presence, which includes supply chain and distribution operations, dedicated sales professionals, a B2B digital procurement solution, online presence, and a network of Office Depot and OfficeMax retail stores. Through its operating companies Office Depot, LLC; ODP Business Solutions, LLC; Veyer, LLC; and Varis, LLC, The ODP Corporation empowers every business, professional, and consumer to achieve more every day.

Basis of Presentation: The Consolidated Financial Statements of ODP include the accounts of all wholly owned and financially controlled subsidiaries prior to disposition. The Company owns 88% of a subsidiary that formerly owned assets in Cuba, which were confiscated by the Cuban government in the 1960’s. Due to various asset restrictions, the fair value of this investment is not determinable, and no amounts are included in the Consolidated Financial Statements. Intercompany transactions have been eliminated in consolidation.

Prior to the third quarter of 2022, the Company had two reportable segments (or “Divisions”), which were its Business Solutions Division and Retail Division. During the third quarter of 2022, the Company re-aligned its operations into its consumer business named Office Depot, and three distinct B2B business and digital segments which are ODP Business Solutions, Veyer and Varis. As a result, the Company re-evaluated its reportable segments, and determined that at September 24, 2022, the Company had four Divisions: ODP Business Solutions Division, Office Depot Division, Veyer Division, and Varis Division. Refer to Note 3 for additional information.

The Company’s CompuCom Division was sold through a single disposal group on December 31, 2021. The Company has reclassified the financial results of the CompuCom Division to Discontinued operations, net of tax in the Consolidated Statements of Operations for all periods presented. The Company also reclassified the related assets and liabilities as assets and liabilities held for sale on the accompanying Consolidated Balance Sheet as of December 25, 2021, and presented cash flows from the Company’s discontinued operations in the Consolidated Statements of Cash Flows for all periods. Refer to Note 15 for additional information.

As a result of the CompuCom Division’s presentation as discontinued operations, the Company’s level of service revenue is below 10% of the Company’s total revenue for all periods presented and accordingly, revenues and cost of sales from services and products are not separately disclosed in the Company’s Consolidated Statements of Operations. Prior period amounts have been reclassified to conform to the current period presentation.

MAINTAINING ALL OPERATING BUSINESSES UNDER COMMON OWNERSHIP

In May 2021, the Company’s Board of Directors unanimously approved a plan to pursue a separation of the Company into two independent, publicly traded companies representing its B2B and consumer businesses, which was planned to be achieved through a spin-off of its consumer business. On January 14, 2022, the Company announced that its Board of Directors determined to delay the previously announced public company separation to evaluate a potential sale of the Company’s consumer business and that it had received a non-binding proposal from another third party, in addition to the previously received proposal from USR Parent, Inc., to acquire the Company’s consumer business.

On June 21, 2022, the Company’s Board of Directors, with the assistance of its financial and legal advisors, completed its review of both proposals received by the Company to acquire its consumer business and unanimously determined it to be in the best interests of the Company and its shareholders not to divest the consumer business at that time. Further, due to current market conditions, the Company’s Board of Directors also determined not to resume the Company’s previously planned spin-off of its consumer business at that time and instead maintain all of its businesses under common ownership.

As discussed above, in connection with the Company’s announcement to maintain all of its businesses under common ownership, during the third quarter of 2022, the Company re-aligned its operations into its consumer business named Office Depot, and three distinct B2B business and digital segments which are ODP Business Solutions, Veyer and Varis.

Fiscal Year: Fiscal years are based on a 52- or 53-week period ending on the last Saturday in December. Fiscal year 2022 had 53 weeks and ended on December 31, 2022. Fiscal year 2021 had 52 weeks and ended on December 25, 2021. Fiscal year 2020 had 52 weeks and ended on December 26, 2020. Certain subsidiaries operate on a calendar year basis; however, the reporting difference did not have a material impact in any period presented.

Estimates and Assumptions: The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

liabilities and disclosure of contingent assets and liabilities at the date of the Consolidated Financial Statements and the reported amounts of revenues and expenses during the reporting period. Estimates and assumptions are based upon historical factors, current circumstances and the experience and judgment of the Company's management. The impact of the COVID-19 pandemic has been considered when making these estimates and assumptions, however, given the uncertainty related to the future effects of COVID-19, actual results could differ from these estimates.

Business Combinations: The Company applies the acquisition method of accounting for acquisitions where the Company is considered the accounting acquirer in accordance with ASC Topic 805, "Business Combinations" ("ASC 805"). The results of operations of acquired businesses are included in the Company's consolidated results prospectively from the date of acquisition. The Company allocates the fair value of purchase consideration to the tangible and intangible assets acquired, liabilities assumed, and non-controlling interests in the acquired entity generally based on their fair values at the acquisition date. Various valuation methodologies are used to estimate the fair value of assets acquired and liabilities assumed, including using a market participant perspective when applying cost, income and relief from royalty analyses, supplemented with market appraisals where appropriate. Significant judgments and estimates are required in preparing these fair value estimates. The excess of the fair value of purchase consideration over the fair value of the assets acquired, liabilities assumed and non-controlling interests in the acquired entity is recorded as goodwill. The primary items that generate goodwill include the value of the synergies between the acquired company and the Company and the value of the acquired assembled workforce, neither of which qualifies for recognition as an intangible asset. The Company did not have any acquisitions in 2022. Based on new information received, the preliminary purchase price allocations of the companies acquired in 2021 have been adjusted during the respective measurement periods. These adjustments were insignificant individually and in the aggregate to the Company's Consolidated Financial Statements. The measurement periods for acquisitions completed in 2021 closed within 2022. Under the guidance on accounting for business combinations, merger and integration costs are not included as components of consideration transferred, instead, they are accounted for as expenses in the period in which the costs are incurred. Transaction-related expenses are included in the Merger, restructuring and other operating expenses, net line in the Consolidated Statements of Operations.

Foreign Currency: International operations in Canada and China use local currencies as their functional currency. Assets and liabilities are translated into U.S. dollars using the exchange rate at the balance sheet date. Revenues, expenses and cash flows are translated at average monthly exchange rates, or rates on the date of the transaction for certain significant items. Translation adjustments resulting from this process are recorded in Stockholders' equity as a component of Accumulated other comprehensive loss. Foreign currency transaction gains or losses are recorded in the Consolidated Statements of Operations in Other income (expense), net or Cost of goods sold and occupancy costs, depending on the nature of the transaction.

Cash and Cash Equivalents: All short-term highly liquid investments with original maturities of three months or less from the date of acquisition are classified as cash equivalents. Amounts in transit from banks for customer credit card and debit card transactions are classified as cash. The banks process the majority of these amounts within two business days.

Amounts not yet presented for payment to zero balance disbursement accounts of \$16 million at December 31, 2022 are presented in Trade accounts payable and Accrued expenses and other current liabilities. At December 25, 2021, there were no amounts not yet presented for payment to zero balance disbursement accounts in Trade accounts payable and Accrued expenses and other current liabilities, and \$1 million was presented in Current liabilities held for sale.

At December 31, 2022 and December 25, 2021, cash and cash equivalents held outside the United States amounted to \$113 million and \$108 million, respectively. At December 25, 2021, there was \$17 million cash and cash equivalents held outside the United States included in Current assets held for sale.

Restricted cash consists primarily of cash in bank committed to fund UK pension obligations based on the agreements that govern the UK pension plan. Restricted cash is valued at cost, which approximates fair value. Restricted cash was \$1 million at December 31, 2022. There was no restricted cash at December 25, 2021.

Receivables: Trade receivables totaled \$412 million and \$353 million at December 31, 2022 and December 25, 2021, respectively, net of an allowance for doubtful accounts of \$8 million and \$9 million, respectively, to reduce receivables to an amount expected to be collectible from customers.

Exposure to credit risk associated with trade receivables is limited by having a large customer base that extends across many different industries and geographic regions. However, receivables may be adversely affected by an economic slowdown in the United States or

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

internationally, as well as the impact of the COVID-19 pandemic on the expected credit and collectability trends. No single customer accounted for more than 10% of total sales or receivables in 2022, 2021 or 2020. Other receivables were \$123 million and \$143 million at December 31, 2022 and December 25, 2021, respectively, of which \$82 million and \$104 million, respectively, are amounts due from vendors under purchase rebate, cooperative advertising and various other marketing programs.

Inventories: Inventories are stated at the lower of cost or net realizable value and are reduced for inventory losses based on estimated obsolescence, the impact of the COVID-19 pandemic on forecasted sales and expected selling prices, and the results of physical counts. The weighted average method is used throughout the Company to determine the cost of inventory. In-bound freight is included as a cost of inventories; cash discounts and certain vendor allowances that are related to inventory purchases are recorded as a product cost reduction.

Income Taxes: Income taxes are accounted for under the asset and liability method. This approach requires the recognition of deferred tax assets and liabilities attributable to differences between the carrying amounts and the tax bases of assets and liabilities and operating loss and tax credit carryforwards. Valuation allowances are recorded to reduce deferred tax assets to the amount believed to be more likely than not to be realized. The Company recognizes tax benefits from uncertain tax positions when it is more likely than not that the position will be sustained upon examination. Interest related to income tax exposures is included in interest expense in the Consolidated Statements of Operations. Refer to Note 4 for additional information on income taxes.

Property and Equipment: Property and equipment additions are recorded at cost. Depreciation and amortization is recognized over the estimated useful lives using the straight-line method. The useful lives of depreciable assets are estimated to be 15-30 years for buildings and 3-10 years for furniture, fixtures and equipment. Computer software is amortized over three years for common office applications, five years for larger business applications and seven years for certain enterprise-wide systems. Leasehold improvements are amortized over the shorter of the estimated economic lives of the improvements or the terms of the underlying leases, including renewal options considered reasonably assured. The Company capitalizes certain costs related to internal use software that is expected to benefit future periods. These costs are amortized using the straight-line method over the 3 to 7 year expected life of the software. Major repairs that extend the useful lives of assets are capitalized and amortized over the estimated use period. Routine maintenance costs are expensed as incurred. Refer to Note 6 for additional information on property and equipment.

Goodwill and Other Intangible Assets: Goodwill represents the excess of the purchase price of an acquired entity over the fair value of the net tangible and identifiable intangible assets acquired and liabilities assumed in a business combination. The Company reviews the carrying amount of goodwill at the reporting unit level on an annual basis as of the first day of fiscal month December, or more frequently, if events or changes in circumstances suggest that goodwill may not be recoverable. For those reporting units where events or change in circumstances indicate that potential impairment indicators exist, the Company performs a quantitative assessment to determine whether the carrying amount of goodwill can be recovered. A significant amount of judgment is involved in determining if an indicator of impairment has occurred. The changes in reportable segments described above also resulted in the change of the Company's reporting units during the third quarter of 2022, where each reportable segment also represents a reporting unit. Goodwill was allocated to the new reporting units using their relative fair values.

When performing the annual goodwill impairment test, the Company may start with an optional qualitative assessment. As part of the qualitative assessment, the Company evaluates all events and circumstances, including both positive and negative events, in their totality, to determine whether it is not more likely than not that the fair value of a reporting unit is less than its carrying amount. If the Company bypasses the qualitative assessment, or if the qualitative assessment indicates that a quantitative analysis should be performed, the Company evaluates goodwill for impairment by comparing the fair value of a reporting unit to its carrying value, including the associated goodwill. The Company estimates the reporting unit's fair value using discounted cash flow analysis and market-based evaluations, when available. If the carrying amount of the reporting unit exceeds the estimated fair value, an impairment charge is recorded to reduce the carrying value to the estimated fair value. The Company typically uses a combination of different Level 3 valuation approaches that are dependent on several significant estimates and assumptions related to forecasts of future revenues, cost of sales, expenses and the weighted-average cost of capital for each reporting unit. Any adverse change in these factors could have a significant impact on the recoverability of goodwill and could have a material impact on the Company's Consolidated Financial Statements.

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

An intangible asset with an indefinite useful life is not amortized but assessed for impairment annually. The Company evaluates its indefinite-lived intangible assets for impairment annually, or sooner if indications of possible impairment are identified. When performing the annual impairment test, the Company may first start with an optional qualitative assessment to determine whether it is not more likely than not that its indefinite-lived intangible assets are impaired. As part of a qualitative assessment, the Company evaluates relevant events and circumstances that could affect the significant inputs used to determine the fair value of the indefinite-lived intangible asset. If the Company bypasses the qualitative assessment, or if the qualitative assessment indicates that a quantitative analysis should be performed, the Company evaluates its indefinite-lived intangible assets for impairment by comparing the fair value of the asset to its carrying amount.

Intangible assets determined to have finite lives are amortized on a straight-line basis over their estimated useful lives, where the useful life is the period over which the asset is expected to contribute directly, or indirectly, to the Company's future cash flows. The Company periodically reviews its amortizable intangible assets to determine whether events and circumstances warrant a revision to the remaining period of amortization or asset impairment.

Refer to Note 7 for additional information on goodwill and other intangible assets.

Impairment of Long-Lived Assets: Long-lived assets with identifiable cash flows are reviewed for possible impairment whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. Retail store long-lived assets are regularly reviewed for impairment indicators. Impairment is assessed at the individual store level which is the lowest level of identifiable cash flows and considers the estimated undiscounted cash flows over the asset's remaining life. If estimated undiscounted cash flows are insufficient to recover the investment, an impairment loss is recognized equal to the difference between the estimated fair value of the asset and its carrying value, net of salvage, and any costs of disposition, and allocated to the asset groups at the store level based on their relative fair values. The fair value estimate is generally the discounted amount of estimated store-specific cash flows.

Facility Closure and Severance Costs: Retail store performance is regularly reviewed against expectations and retail stores not meeting performance requirements may be closed. Retail stores are also closed as part of restructuring activities which aim to optimize the Company's retail footprint. Refer to Note 2 for additional information on the restructuring programs and associated store closures. Costs associated with facility closures, principally accrued lease costs, are recognized when the facility is no longer used in an operating capacity or when a liability has been incurred. Retail store assets, including operating lease right-of-use ("ROU") assets, are also reviewed for possible impairment, or reduction of estimated useful lives.

The Company recognizes charges or credits to adjust remaining closed facility accruals to reflect current expectations. Adjustments to facility closure costs are presented in the Consolidated Statements of Operations in Selling, general and administrative expenses if the related facility was closed as part of ongoing operations or in Merger, restructuring and other operating expenses, net, if the related facility was closed as part of a merger integration plan or restructuring plan. Refer to Note 2 for additional information on accrued expenses relating to closed facilities. The short-term and long-term components of this liability are included in Accrued expenses and other current liabilities and Deferred income taxes and other long-term liabilities, respectively, in the Consolidated Balance Sheets. Employee termination costs covered under written and substantive plans are accrued when probable and estimable and consider continuing service requirements, if any. Additionally, incremental one-time employee benefit costs are recognized when the key terms of the arrangements have been communicated to affected employees. Amounts are recognized when communicated or over the remaining service period, based on the terms of the arrangements.

Accrued Expenses and Other Current Liabilities: The major components of Accrued expenses and other current liabilities in the Consolidated Balance Sheets are tax liabilities, payroll and benefit accruals, customer rebates accruals, inventory receipts accruals and current portion of operating lease liabilities. Accrued payroll and benefits were \$158 million and \$148 million at December 31, 2022 and December 25, 2021, respectively.

Fair Value of Financial Instruments: The Company measures fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. In developing its fair value estimates, the Company uses the following hierarchy:

Level 1 Quoted prices in active markets for identical assets or liabilities.

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Level 2	Observable market-based inputs or unobservable inputs that are corroborated by market data.
Level 3	Significant unobservable inputs that are not corroborated by market data. Generally, these fair value measures are model-based valuation techniques such as discounted cash flows or option pricing models using own estimates and assumptions or those expected to be used by market participants.

The fair values of cash and cash equivalents, receivables, trade accounts payable and accrued expenses and other current liabilities approximate their carrying values because of their short-term nature. Refer to Note 13 for further fair value information.

Revenue Recognition: Revenue includes the sale of:

- Supplies such as paper, writing instruments, office supplies, cleaning and breakroom items, personal protective equipment, and product subscriptions;
- Technology related products such as toner and ink, printers, computers, tablets and accessories, electronic storage, and sales of third-party software, as well as technology support services offerings provided in the Company's retail stores, such as installation and repair;
- Furniture and other products such as desks, seating, luggage, gift cards and warranties, as well as supply chain services and e-procurement platform offerings; and
- Copy and print services, including managed print and fulfillment services.

The Company sells its supplies, furniture and other products through its ODP Business Solutions and Office Depot Divisions. Supply chain services are provided through its Veyer Division, and e-procurement platform fees are generated through its Varis Division. Customers can purchase products through the Company's call centers, electronically through its Internet websites, or through its retail stores. Revenues from supplies, technology, and furniture and other product sales are recognized when the customer obtains control of the Company's product, which occurs at a point in time, typically upon delivery to the customer.

Furniture also includes arrangements where customers can make special furniture interior design and installation orders that are customized to their needs. The performance obligations related to these arrangements are satisfied over time.

Substantially all of the Company's copy and print and technology support services offerings are satisfied at a point in time and revenue is recognized as such. The majority of copy and print offerings, which includes printing, copying, and digital imaging, are fulfilled through retail stores and the related performance obligations are satisfied within a short period of time (generally within the same day).

Significant Judgments

Revenue is recognized upon transfer of control of promised products or services to customers for an amount that reflects the consideration the Company is entitled to receive in exchange for those products or services. For product sales, transfer of control occurs at a point in time, typically upon delivery to the customer. For service offerings, the transfer of control and satisfaction of the performance obligation is either over time or at a point in time. When performance obligations are satisfied over time, the Company evaluates the pattern of delivery and progress each reporting period and, if necessary, adjusts the measure of performance and related revenue recognition. Revenue is recognized net of allowance for returns and net of any taxes collected from customers, which are subsequently remitted to governmental authorities. Shipping and handling costs are considered fulfillment activities and are recognized within the Company's cost of goods sold.

Contracts with customers could include promises to transfer multiple products and services to a customer. Determining whether products and services are considered distinct performance obligations that should be accounted for separately versus together may require significant judgment. Determining the standalone selling price also requires judgment. The Company did not have significant revenues generated from such contracts in 2022, 2021 and 2020.

Products are generally sold with a right of return and the Company may provide other incentives, such as rebates and coupons, which are accounted for as variable consideration when estimating the amount of revenue to recognize. The Company estimates returns and incentives at contract inception and includes the amount in the transaction price for which significant reversal is not probable. These estimates are updated at the end of each reporting period as additional information becomes available.

The Company offers a customer loyalty program that provides customers with rewards that can be applied to future purchases or other incentives. Loyalty rewards are accounted for as a separate performance obligation and deferred revenue is recorded in the amount of

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

the transaction price allocated to the rewards, inclusive of the impact of estimated breakage. The estimated breakage of loyalty rewards is based on historical redemption rates experienced under the loyalty program. Revenue is recognized when the loyalty rewards are redeemed or expire. As December 31, 2022 and December 25, 2021, the Company had \$15 million and \$12 million, respectively, of deferred revenue related to the loyalty program, which is included in Accrued expenses and other current liabilities in the Consolidated Balance Sheets.

The Company recognizes revenue in certain circumstances before product delivery occurs (commonly referred to as bill-and-hold transactions). Revenue from bill-and-hold transactions is recognized when all specific requirements for transfer of control under a bill-and-hold arrangement have been met which include, among other things, a request from the customer that the product be held for future scheduled delivery. For these bill-and-hold arrangements, the associated product inventory is identified separately as belonging to the customer and is ready for physical transfer.

Contract Balances

The timing of revenue recognition may differ from the timing of invoicing to customers. A receivable is recognized in the period the Company delivers goods or provides services, and is recorded at the invoiced amount. A receivable is also recognized for unbilled services where the Company's right to consideration is unconditional, and is recorded based on an estimate of time and materials. Payment terms and conditions vary by contract type, although terms generally include a requirement of payment within 20 to 60 days. In instances where the timing of revenue recognition differs from the timing of invoicing, the Company has determined that the contracts do not include a significant financing component. The primary purpose of the Company's invoicing terms is to provide customers with simplified and predictable ways of purchasing its products and services.

The Company receives payments from customers based upon contractual billing schedules. Contract assets include amounts related to deferred contract acquisition costs (refer to the section "Costs to Obtain a Contract" below) and if applicable, the Company's conditional right to consideration for completed performance under a contract. The short- and long-term components of contract assets in the table below are included in Prepaid expenses and other current assets, and Other assets, respectively, in the Consolidated Balance Sheets. Contract liabilities include payments received in advance of performance under the contract, which are recognized as revenue when the performance obligation is completed under the contract, as well as accrued contract acquisition costs, liabilities related to the Company's loyalty program and gift cards. The short- and long-term components of contract liabilities in the table below are included in Accrued expenses and other current liabilities, and Deferred income taxes and other long-term liabilities, respectively, in the Consolidated Balance Sheets.

The following table provides information about receivables, contract assets and contract liabilities from contracts with customers:

<i>(In millions)</i>	December 31, 2022	December 25, 2021
Trade receivables, net	\$ 412	\$ 353
Short-term contract assets	8	16
Long-term contract assets	2	8
Short-term contract liabilities	41	52
Long-term contract liabilities	—	2

In 2022 and 2021, the Company did not have any contract assets related to conditional rights. The Company recognized revenues of \$27 million and \$24 million in 2022 and 2021, respectively, which were included in the short-term contract liability balance at the beginning of the period. There were no contract assets and liabilities that were recognized in 2022 as a result of business combinations. The Company recognized no contract assets and \$2 million of contract liabilities in 2021 as a result of business combinations. There were no significant adjustments to revenue from performance obligations satisfied in previous periods and there were no contract assets recognized at the beginning of the period that transferred to receivables in 2022 and 2021. Included in the table above are short- and long-term contract assets of \$1 million as of December 25, 2021, related to CompuCom, which are presented as part of assets held for sale in the Consolidated Balance Sheets. Also included in the table above are short- and long-term contract liabilities of \$10 million and \$2 million, respectively, as of December 25, 2021 related to CompuCom, which are presented as part of liabilities held for sale in the Consolidated Balance Sheets.

A majority of the purchase orders and statements of work related to contracts with customers require delivery of the product or service within one year or less. For certain service contracts that exceed one year, the Company recognizes revenue at the amount to which it has the right to invoice for services performed. Accordingly, the Company has applied the optional exemption provided by the new

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

revenue recognition standard relating to unsatisfied performance obligations and does not disclose the value of unsatisfied performance obligations for its contracts.

Costs to Obtain a Contract

The Company recognizes an asset for the incremental costs of obtaining a contract with a customer if it expects the benefit of those costs to be longer than one year. The Company has determined that certain rebate incentive programs meet the requirements to be capitalized. These costs are periodically reviewed for impairment and are amortized on a straight-line basis over the expected period of benefit. As of December 31, 2022 and December 25, 2021, short-term contract assets and long-term contract assets in the table above represent capitalized acquisition costs. In 2022, 2021 and 2020, amortization expense was \$20 million, \$24 million and \$29 million, respectively. The Company had no asset impairment charges related to contract assets in the periods presented herein. There is uncertainty regarding the impacts of COVID-19 on the global and national economies, which could negatively affect the Company's customers and result in future impairments of contract assets.

Cost of Goods Sold and Occupancy Costs: Cost of goods sold and occupancy costs include:

- inventory costs (as discussed above);
- outbound freight;
- employee and non-employee receiving, distribution, and occupancy costs (rent), including depreciation, real estate taxes and common area costs, of inventory-holding and selling locations; and
- identifiable employee-related costs associated with services provided to customers.

Selling, General and Administrative Expenses: Selling, general and administrative expenses include amounts incurred related to expenses of operating and support functions, including:

- employee payroll and benefits, including variable pay arrangements;
- advertising;
- store and field support;
- executive management and various staff functions, such as information technology, human resources functions, finance, legal, internal audit, and certain merchandising and product development functions;
- other operating costs incurred relating to selling activities; and
- closed defined benefit pension and postretirement plans.

Selling, general and administrative expenses are included in the determination of Division operating income to the extent those costs are considered to be directly or closely related to segment activity and through allocation of support costs.

Merger, restructuring and other operating expenses, net: Merger, restructuring and other operating expenses, net in the Consolidated Statements of Operations includes charges and, where applicable, credits for costs such as acquisition related expenses, employee termination and retention, transaction and integration-related professional fees, facility closure costs, gains and losses on asset dispositions, and other incremental costs directly related to these activities.

This presentation is used to separately identify these significant costs apart from expenses incurred to sell to and service the Company's customers or that are more directly related to ongoing operations. Changes in estimates and accruals related to these activities are also reflected on this line. Merger, restructuring and other operating expenses, net are not included in the measure of Division operating income. Refer to Note 2 for additional information.

Advertising: Advertising expenses are charged to Selling, general and administrative expenses when incurred. Advertising expenses recognized were \$130 million in 2022, \$139 million in 2021 and \$177 million in 2020. Prepaid advertising expenses were \$3 million as of December 31, 2022 and \$4 million as of December 25, 2021.

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Share-Based Compensation: Compensation expense for all share-based awards expected to vest is measured at fair value on the date of grant and recognized on a straight-line basis over the related service period. The fair value of restricted stock and restricted stock units, including performance-based awards, is determined based on the Company's stock price on the date of grant. Share-based awards with market conditions, such as total shareholder return, are valued using a Monte Carlo simulation as measured on the grant date. Share-based awards that are settled in cash are classified as liabilities and are measured to fair value at each reporting date.

Self-insurance: ODP is primarily self-insured for workers' compensation, auto and general liability and employee medical insurance programs. The Company has stop-loss coverage to limit the exposure arising from these claims. Self-insurance liabilities are based on claims filed and estimates of claims incurred but not reported. These liabilities are not discounted.

Vendor Arrangements: The Company enters into arrangements with substantially all significant vendors that provide for some form of consideration to be received from the vendors. Arrangements vary, but some specify volume rebate thresholds, advertising support levels, as well as terms for payment and other administrative matters. The volume-based rebates, supported by a vendor agreement, are estimated throughout the year and reduce the cost of inventory and cost of goods sold during the year. This estimate is regularly monitored and adjusted for current or anticipated changes in purchase levels and for sales activity. Other promotional consideration received is event-based or represents general support and is recognized as a reduction of Cost of goods sold and occupancy costs or Inventories, as appropriate, based on the type of promotion and the agreement with the vendor. Certain arrangements meet the specific, incremental, identifiable criteria that allow for direct operating expense offset, but such arrangements are not significant.

Pension and Other Postretirement Benefits: The Company sponsors certain closed U.S. and U.K. defined benefit pension plans, certain closed U.S. retiree medical benefit and life insurance plans, as well as a Canadian retiree medical benefit plan open to certain employees.

The Company recognizes the funded status of its defined benefit pension, retiree medical benefit and life insurance plans in the Consolidated Balance Sheets, with changes in the funded status recognized primarily through accumulated other comprehensive income (loss), net of tax, in the year in which the changes occur. Actuarially-determined liabilities related to pension and postretirement benefits are recorded based on estimates and assumptions. Factors used in developing estimates of these liabilities include assumptions related to discount rates, rates of return on investments, healthcare cost trends, benefit payment patterns and other factors. The Company also updates periodically its assumptions about employee retirement factors, mortality, and turnover. Refer to Note 12 for additional details.

Environmental and Asbestos Matters: Environmental and asbestos liabilities relate to acquired legacy paper and forest products businesses and timberland assets. The Company accrues for losses associated with these obligations when probable and reasonably estimable. These liabilities are not discounted. A receivable for insurance recoveries is recorded when probable.

Leasing Arrangements: The Company conducts a substantial portion of its business in leased properties. The Company first determines whether an arrangement is a lease at inception. Once that determination is made, leasing arrangements are presented in the Consolidated Balance Sheet as follows:

- *Finance leases:*
 - Property and equipment, net – leases which were referred to as capital leases under the old accounting standard;
 - Short-term borrowings and current maturities of long-term debt – short-term obligations to make lease payments arising from the finance lease; and
 - Long-term debt, net of current maturities – long-term obligations to make lease payments arising from the finance lease.
- *Operating leases:*
 - ROU assets – the Company's right to use the underlying asset for the lease term;
 - Accrued expenses and other current liabilities – short-term obligations to make lease payments arising from the operating lease; and
 - Operating lease liabilities – long-term obligations to make lease payments arising from the operating lease.

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Operating lease ROU assets and liabilities are recognized at commencement date based on the present value of the future minimum lease payments over the lease term. As the rate implicit in the lease is not readily determinable for any of the leases, the Company has utilized its incremental borrowing rate based on the information available at commencement date in determining the present value of future payments. The determination of the appropriate incremental borrowing rate requires management to use significant estimates and assumptions as to its credit rating, base rates and credit spread, and other management assumptions for the impact of collateral. The operating lease ROU asset also includes any lease payments made prior to commencement and excludes lease incentives and initial direct costs incurred. Certain leases include one or more options to renew, with renewal terms that can extend the lease from five to 25 years or more, which is generally at the Company's discretion. Any option or renewal periods management believed were reasonably certain of being exercised are included in the lease term and are used in calculating the operating lease ROU assets and lease liabilities. In addition, some of the Company's leases contain escalation clauses. The Company recognizes rental expense for operating leases that contain predetermined fixed escalation clauses on a straight-line basis over the expected term of the lease.

The Company has lease agreements with lease and non-lease components, for which it has made an accounting policy election to account for these as a single lease component.

NEW ACCOUNTING STANDARDS

As of December 31, 2022, there were no recently issued accounting standards that may have a material impact on the Company's financial position, results of operations, or cash flows upon their adoption.

NOTE 2. MERGER, RESTRUCTURING AND OTHER ACTIVITY

The Company has taken actions to optimize its asset base and drive operational efficiencies. These actions include acquiring profitable businesses, closing underperforming retail stores and non-strategic distribution facilities, consolidating functional activities, eliminating redundant positions and disposing of non-strategic businesses and assets. The expenses and any income recognized directly associated with these actions are included in Merger, restructuring and other operating expenses, net on a separate line in the Consolidated Statements of Operations in order to identify these activities apart from the expenses incurred to sell to and service customers. These expenses are not included in the determination of Division operating income. The table below summarizes the major components of Merger, restructuring and other operating expenses, net.

<i>(In millions)</i>	2022	2021	2020
Merger and transaction related expenses			
Transaction and integration	(7)	—	4
Facility closure, contract termination and other expenses, net	—	—	1
Total Merger and transaction related expenses	(7)	—	5
Restructuring expenses			
Severance	(13)	(2)	41
Professional fees	—	1	21
Facility closure, contract termination, and other expenses, net	5	15	35
Total Restructuring expenses, net	(8)	14	97
Other operating expenses			
Professional fees	54	37	—
Total Other operating expenses	54	37	—
Total Merger, restructuring and other operating expenses, net	<u>\$ 39</u>	<u>\$ 51</u>	<u>\$ 102</u>

MERGER AND TRANSACTION RELATED EXPENSES

In 2022, the Company recognized \$7 million income related to earn-out adjustment on the acquisition of BuyerQuest Holdings, Inc. The Company did not incur any additional transaction and integration expenses in 2022. The Company also did not incur any merger and transaction related expenses in 2021. In 2020, the Company incurred \$5 million of merger and transaction related expenses. Transaction and integration include legal, accounting, and other third-party expenses, and earn-out adjustments, incurred in connection with acquisitions and business integration activities. Facility closure, contract termination, and other expenses, net relate to facility closure accruals, contract termination costs, gains and losses on asset dispositions, and accelerated depreciation.

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

RESTRUCTURING EXPENSES*Maximize B2B Restructuring Plan*

In May 2020, the Company's Board of Directors approved a restructuring plan to re-align the Company's operational focus to support its "business-to-business" solutions and IT services business units and improve costs ("Maximize B2B Restructuring Plan"). Implementation of the Maximize B2B Restructuring Plan was expected to be substantially completed by the end of 2023. The Maximize B2B Restructuring Plan aims to generate savings through optimizing the Company's retail footprint, removing costs that directly support the Retail business and additional measures to implement a company-wide low-cost business model, which will then be invested in accelerating the growth of the Company's business-to-business platform.

In December 2022, the Company's Board of Directors approved to extend the program through 2024, as a result of the delays in executing the program in 2021 and 2022 associated with the previously planned separation of the consumer business. With the decision to maintain all businesses under common ownership, described above in Note 1, the Company will continue with the execution of the Maximize B2B Restructuring Plan as previously planned and therefore has extended the program through 2024. The Company closed 56 retail stores under the Maximize B2B Restructuring Plan in 2022. The Company had closed 181 retail stores and two distribution facilities in 2021 and 2020 under the Maximize B2B Restructuring Plan. It is anticipated that additional retail stores will be closed in 2023 and 2024, however, it is generally understood that closures will approximate the store's lease termination date.

In 2022, the Company had \$8 million of income associated with the Maximize B2B Restructuring Plan which consisted of \$5 million in facility closures, contract termination and other costs, more than offset by \$13 million in reversals of employee severance accruals due to changes in estimates. The facility closure costs were mainly related to retail store closure accruals and accelerated depreciation. In 2022, the Company made cash payments of \$8 million associated with expenditures for the Maximize B2B Restructuring Plan. Since its inception in 2020, the Company incurred \$81 million in restructuring expenses to implement the Maximize B2B Restructuring Plan through 2022 for its continuing operations, of which \$61 million were cash expenditures. Total estimated restructuring costs related to the Maximize B2B Restructuring Plan are expected to be up to \$95 million.

Other

Included in restructuring expenses in 2020 are \$19 million in costs incurred in connection with the Business Acceleration Program. These costs included third-party professional fees, retail and facility closure costs and other costs. The Business Acceleration Program was announced in 2019 and largely concluded at the end of 2020.

Restructuring expenses in 2020 also included \$3 million in third-party professional fees incurred in connection with the Reorganization.

Asset impairments related to the restructuring initiatives are not included in the table above. Refer to Note 13 for further information.

OTHER OPERATING EXPENSES

Other operating expenses represent costs incurred that are incremental to those related to running the Company's core operations, which are presented within Selling, general and administrative expenses on the Consolidated Statements of Operations.

As described in Note 1 above, the Company had been evaluating the separation of its consumer business, first through a spin-off and subsequently through a potential sale. On June 21, 2022, the Company's Board of Directors, with the assistance of its financial and legal advisors, completed its review of both proposals received by the Company to acquire its consumer business and unanimously determined it to be in the best interests of the Company and its shareholders not to divest the consumer business at this time. Further, due to current market conditions, the Company's Board of Directors also determined not to resume the Company's previously planned separation of its consumer business at this time and instead to maintain all of its businesses under common ownership. The Company incurred \$33 million in third-party professional fees in year-to-date 2022 related to separation activities, which was all incurred in the first half of 2022. The Company had incurred \$32 million in third-party professional fees associated with separation activities in 2021.

Also as described in Note 1 above, during the third quarter of 2022, the Company re-aligned its operations into four Divisions, which also represent its new reportable segments. The Company incurred \$21 million in third-party professional fees in connection with the re-alignment in 2022, which was all incurred in the second half of 2022. At December 31, 2022, the Company is substantially complete with activities related to the re-alignment. The costs incurred in the second half of 2022 represent trailing costs to complete activities that were previously started as part of the separation process discussed above and leveraged to achieve the re-alignment. The Company does not expect to have a re-alignment of its businesses in the future. Accordingly, the Company has presented the costs

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

associated with the re-alignment as Other operating expenses, as they represent incremental operating expenses that are not part of its core costs to support its operations.

Other operating expenses in 2021 also included \$5 million of third-party professional fees incurred related to the evaluation of USR Parent, Inc.'s proposals received during the first half of 2021.

MERGER AND RESTRUCTURING ACCRUALS

The activity in the merger and restructuring accruals in 2022 and 2021 is presented in the table below. Certain merger and restructuring charges are excluded from the table because they are paid as incurred or non-cash, such as accelerated depreciation and gains and losses on asset dispositions.

<i>(In millions)</i>	Beginning Balance	Charges Incurred	Cash Payments	Ending Balance
2022				
Termination benefits:				
Maximize B2B Restructuring Plan	19	(13)	(1)	5
Lease and contract obligations, accruals for facilities closures and other costs:				
Maximize B2B Restructuring Plan	6	5	(7)	4
Comprehensive Business Review	1	—	—	1
Previously planned separation of consumer business and re-alignment	2	52	(52)	2
Total	\$ 28	\$ 44	\$ (60)	\$ 12
2021				
Termination benefits:				
Maximize B2B Restructuring Plan	27	(2)	(6)	19
Business Acceleration Program	2	—	(2)	—
Lease and contract obligations, accruals for facilities closures and other costs:				
Maximize B2B Restructuring Plan	10	9	(13)	6
Business Acceleration Program	1	—	(1)	—
Comprehensive Business Review	2	—	(1)	1
USR Parent, Inc. proposals	—	5	(5)	—
Planned separation of consumer business	—	32	(30)	2
Total	\$ 42	\$ 44	\$ (58)	\$ 28

The short-term and long-term components of these liabilities are included in Accrued expenses and other current liabilities and Deferred income taxes and other long-term liabilities, respectively, in the Consolidated Balance Sheets.

NOTE 3. SEGMENT INFORMATION

During the third quarter of 2022, the Company re-aligned its operations into its consumer business named Office Depot, and three distinct B2B business and digital segments which are ODP Business Solutions, Veyer and Varis. The decision to re-align was driven by how the Company is looking at its products and offerings and serving its customers. How the Company's customers work and interact has changed, where businesses demand a wider range of products and services, and a more modern digital environment in which to operate, and consumers demand an omni-channel retail experience. In addition, dependable supply chain operations have become increasingly important in meeting these demands. The Company performed a full strategic review of its operations in light of these factors and determined that completing the re-alignment of its operations in this manner enables the Company to better focus on its customers by being in a better position to meet a wider array of customer needs for product, service, and omni-channel choices. The Company also determined that the re-alignment provides for greater accountability internally for product and service outcomes, customer experiences, capital allocations, and pursuing strategic opportunities.

The re-alignment resulted in a change in the Company's reportable segments. In addition, management of the Company also changed how it analyzes these businesses, which resulted in the inclusion of certain corporate costs, mainly payroll related, previously

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

excluded from segment profitability measures. The Company accounts for intersegment sales and transfers as if the sales or transfers were to third parties. The changes to its reportable segments did not impact the Company's current Consolidated Financial Statements. Prior period amounts, including interim periods, have been recast to conform to the current presentation. These changes have no impact on previously reported Consolidated Balance Sheets, Statements of Operations, Statements of Comprehensive Income, Statements of Stockholders' Equity, or Statements of Cash Flows.

At December 31, 2022, the Company had four reportable segments:

ODP Business Solutions Division – The Company's leading B2B distribution solutions provider serving small, medium and enterprise level companies, including those in the public and education sectors. This segment includes the contract sales channel of the Company's previous Business Solutions Division, and operates in the United States, Puerto Rico, the U.S. Virgin Islands, and Canada. The ODP Business Solutions Division sells nationally branded, as well as the Company's private branded, office supply and adjacency products and services to customers, who are served through a dedicated sales force, catalogs, telesales, and electronically through the Company's Internet websites. Adjacency products and services include cleaning, janitorial, and breakroom supplies, office furniture, technology products, and copy and print services. This segment also includes our Federation entities, which are over a dozen regional office supply distribution businesses acquired by the Company as part of its transformation to expand its reach and distribution network into geographic areas that were previously underserved, and which continue to operate under their own brand names. The acquisition of these businesses has allowed for an effective and accretive means to expand our distribution reach, target new business customers and grow our offerings beyond traditional office supplies.

Office Depot Division – The Company's leading provider of retail consumer and small business products and services distributed through a fully integrated omni-channel platform of 980 Office Depot and OfficeMax retail locations in the United States, Puerto Rico and the U.S. Virgin Islands, and an eCommerce presence (www.officedepot.com). The Office Depot Division sells office supplies, technology products and solutions, business machines and related supplies, cleaning, breakroom and facilities products, personal protective equipment, and office furniture as well as offering business services including copying, printing, digital imaging, mailing, shipping and technology support services. In addition, the print needs for retail and business customers are facilitated through the Company's regional print production centers.

Veyer Division – The Company's supply chain, distribution, procurement and global sourcing operation, which has over 35 years of experience with proven leadership and has been branded under a new name. The Veyer Division specializes in B2B and consumer business service delivery, with core competencies in distribution, fulfillment, transportation, global sourcing and purchasing. The Veyer Division's customers include our Office Depot Division and ODP Business Solutions Division, as well as third-party customers. The Veyer Division also includes the Company's global sourcing operations in Asia.

Varis Division – The Company's tech-enabled B2B indirect procurement marketplace, which provides a better way for buyers and suppliers to transact through the platform's consumer-like buying experience, advanced spend management tools, network of suppliers, and technology capabilities. In connection with the Company's development efforts of this Division, it acquired BuyerQuest Holdings, Inc. ("BuyerQuest") in 2021, a software as a service eProcurement platform company. BuyerQuest's operating results are included in the operating results for Varis Division. Varis Division currently serves enterprise businesses and provides its services to middle- and small-sized businesses. It is focused on filling the growing demand for a B2B centric digital commerce platform that is modern, trusted, and provides the procurement controls and visibility businesses require to operate.

The Company sold its CompuCom Division through a single disposal group on December 31, 2021, which is presented as discontinued operations for all periods presented. Refer to Note 15 for additional information.

Division operating income is determined based on the measure of performance reported internally to manage the business and for resource allocation. This measure charges to the respective Divisions those expenses considered directly or closely related to their operations and allocates support costs. Certain operating expenses and credits are not allocated to the Divisions, including asset impairments and merger, restructuring and other operating expenses, as well as expenses and credits retained at the Corporate level, including certain management costs and legacy pension and environmental matters. Other companies may charge more or less of these items to their segments and results may not be comparable to similarly titled measures used by other entities.

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The following is a summary of sales and operating income (loss) by each of the Divisions, reconciled to consolidated totals:

<i>(In millions)</i>	ODP Business Solutions Division	Office Depot Division	Veyer Division	Varis Division	Eliminations	Total
2022						
Sales (external)	\$ 4,005	\$ 4,451	\$ 28	\$ 7	\$ -	\$ 8,491
Sales (internal)	19	36	5,855	-	(5,910)	—
Total sales	\$ 4,024	\$ 4,487	\$ 5,883	\$ 7	\$ (5,910)	\$ 8,491
Division operating income (loss)	\$ 140	\$ 285	\$ 28	\$ (66)	\$ -	\$ 387
2021						
Sales (external)	\$ 3,602	\$ 4,830	\$ 28	\$ 5	\$ -	\$ 8,465
Sales (internal)	24	34	5,963	-	(6,021)	-
Total sales	\$ 3,626	\$ 4,864	\$ 5,991	\$ 5	\$ (6,021)	\$ 8,465
Division operating income (loss)	\$ 72	\$ 325	\$ 30	\$ (34)	\$ -	\$ 393
2020						
Sales (external)	\$ 3,549	\$ 5,300	\$ 23	\$ -	\$ -	\$ 8,872
Sales (internal)	29	35	6,321	-	(6,385)	-
Total sales	\$ 3,578	\$ 5,335	\$ 6,344	\$ -	\$ (6,385)	\$ 8,872
Division operating income (loss)	\$ 51	\$ 317	\$ 28	\$ -	\$ -	\$ 396

A reconciliation of the measure of Division operating income to Consolidated income (loss) from continuing operations before income taxes is as follows:

<i>(In millions)</i>	2022	2021	2020
Division operating income	\$ 387	\$ 393	\$ 396
Add/(subtract):			
Asset impairments	(14)	(20)	(182)
Merger, restructuring and other operating expenses, net	(39)	(51)	(102)
Unallocated expenses	(91)	(88)	(106)
Interest income	5	1	4
Interest expense	(16)	(28)	(42)
Loss on extinguishment and modification of debt	—	—	(12)
Other income, net	10	24	6
Income (loss) from continuing operations before income taxes	<u>\$ 242</u>	<u>\$ 231</u>	<u>\$ (38)</u>

The following table provides information about disaggregated sales by major categories:

<i>(In millions)</i>	2022	2021	2020
Major sales categories			
Supplies	\$ 4,144	\$ 3,815	\$ 4,006
Technology	2,461	2,758	3,014
Furniture and other	1,255	1,302	1,281
Copy and print	631	590	571
Total	<u>\$ 8,491</u>	<u>\$ 8,465</u>	<u>\$ 8,872</u>

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The following table provides information about other significant balances by each of the Divisions, reconciled to consolidated totals:

<i>(In millions)</i>	ODP Business Solutions Division	Office Depot Division	Veyer Division	Varis Division	Corporate and Discontinued Operations*	Consolidated Total
2022						
Capital expenditures	\$ 5	\$ 14	\$ 20	\$ 44	\$ 16	\$ 99
Depreciation and amortization	21	56	37	13	4	131
Assets	749	1,553	993	130	724	4,149
2021						
Capital expenditures	5	15	22	14	17	73
Depreciation and amortization	24	67	40	4	11	146
Assets	654	1,728	1,038	83	1,362	4,865
2020						
Capital expenditures	8	25	19	—	6	58
Depreciation and amortization	21	75	49	—	12	157

* Amounts included in "Corporate and Discontinued Operations" consist of (i) assets (including all cash and cash equivalents) and depreciation related to corporate activities and shared services of continuing operations, and (ii) assets of discontinued operations amounting to \$469 million at December 25, 2021.

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

NOTE 4. INCOME TAXES

The components of income (loss) from continuing operations before income taxes consisted of the following:

<i>(In millions)</i>	2022	2021	2020
United States	\$ 226	\$ 173	\$ (30)
Foreign	16	58	(8)
Total income (loss) from continuing operations before income taxes	<u>\$ 242</u>	<u>\$ 231</u>	<u>\$ (38)</u>

The income tax expense (benefit) related to income (loss) from continuing operations consisted of the following:

<i>(In millions)</i>	2022	2021	2020
Current:			
Federal	\$ 26	\$ 14	\$ (7)
State	(4)	8	17
Foreign	7	5	4
Deferred:			
Federal	27	13	19
State	10	2	(5)
Foreign	(2)	2	(3)
Total income tax expense	<u>\$ 64</u>	<u>\$ 44</u>	<u>\$ 25</u>

The following is a reconciliation of income taxes at the U.S. Federal statutory rate to the provision for income taxes:

<i>(In millions)</i>	2022	2021	2020
Federal tax computed at the statutory rate	\$ 51	\$ 48	\$ (8)
State taxes, net of Federal benefit	11	10	4
Foreign income taxed at rates other than Federal	2	(5)	4
Increase (decrease) in valuation allowance	—	(3)	(3)
Non-deductible Goodwill impairments	—	—	24
Other non-deductible expenses and settlements	4	5	4
FIN 48 adjustments	(2)	—	—
Non-taxable income and additional deductible expenses	(1)	(3)	(3)
Impact of stock compensation (windfall)/shortfall	(3)	(6)	2
State NOL expirations	2	—	—
Other items, net	—	(2)	1
Income tax expense	<u>\$ 64</u>	<u>\$ 44</u>	<u>\$ 25</u>

During 2022 and 2021, the mix of income and losses across jurisdictions, although still applicable, has become less of a factor in influencing the Company's effective tax rates due to limited international operations and improved operating results. The Company's effective tax rates were 26%, 19% and (66)% in 2022, 2021 and 2020, respectively. In 2022, the Company's effective tax rate was primarily impacted by the recognition of a tax windfall associated with stock-based compensation. This factor, along with the impact of state taxes and the mix of income and losses across U.S. and non-U.S. jurisdictions, caused the Company's effective tax rate of 26% for 2022 to differ from the statutory rate of 21%. The Company's effective tax rate for prior periods has varied considerably primarily due to the impact of goodwill impairment, state taxes, stock-based compensation awards, recognition of tax benefits due to an agreement reached with the IRS related to a prior tax position, certain nondeductible items and the mix of income and losses across U.S. and non-U.S. jurisdictions. Changes in pretax income projections and the mix of income across jurisdictions could impact the effective tax rates in future quarters.

The Company continues to have a U.S. valuation allowance for certain U.S. Federal credits and state tax attributes, which relate to deferred tax assets that require either certain types of income or for income to be earned in certain jurisdictions in order to be realized. The Company will continue to assess the realizability of its deferred tax assets in the U.S. and remaining foreign jurisdictions in future periods. Changes in pretax income projections could impact this evaluation in future periods.

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The Company operates in several foreign jurisdictions with income tax rates that differ from the U.S. Federal statutory rate, which resulted in an expense for 2022 presented in the effective tax rate reconciliation. Significant foreign tax jurisdictions for which the Company realized such expense are Canada and Puerto Rico.

The components of deferred income tax assets and liabilities consisted of the following:

<i>(In millions)</i>	December 31, 2022	December 25, 2021
U.S. and foreign loss carryforwards	\$ 277	\$ 61
Operating lease right-of-use assets	262	273
Pension and other accrued compensation	35	47
Basis difference in subsidiary held for sale	—	23
Accruals for facility closings	2	2
Inventory	10	7
Self-insurance accruals	13	14
Deferred revenue	9	10
U.S. and foreign income tax credit carryforwards	38	70
Allowance for bad debts	4	5
Accrued expenses	14	18
Basis difference in fixed assets	43	36
Internally developed software	1	—
Gross deferred tax assets	708	566
Valuation allowance	(266)	(93)
Deferred tax assets	442	473
Internal software	—	2
Operating lease liabilities	244	251
Intangibles	12	5
Undistributed foreign earnings	5	—
Deferred tax liabilities	261	258
Net deferred tax assets	\$ 181	\$ 215

As of December 31, 2022, and December 25, 2021, deferred income tax liabilities amounting to \$2 million and \$4 million, respectively, are included in deferred income taxes and other long-term liabilities.

As of December 31, 2022, the Company has utilized all of its U.S. Federal net operating loss (“NOL”) carryforwards. The Company has \$238 million of foreign and \$636 million of state NOL carryforwards. Of the state NOL carryforwards, \$20 million will expire in 2023 and the remaining balance will expire between 2024 and 2041. The Company recognized a capital loss on the sale of CompuCom of \$841 million, \$94 million of which will be carried back to 2020 and 2021 resulting in an expected refund of \$23 million. The remaining capital loss carryforward of \$747 million will be offset by a valuation allowance until such time as the Company is able to utilize the losses.

Additionally, the Company has \$27 million of U.S. Federal tax credit carryforwards, which expire in 2023 and 2024, and \$11 million of state and foreign tax credit carryforwards, \$2 million of which can be carried forward indefinitely, and the remainder of which will expire between 2023 and 2028.

As of December 31, 2022, the Company has not triggered an “ownership change” as defined in Internal Revenue Code Section 382 or other similar provisions that would limit the use of NOL and tax credit carryforwards. However, if the Company were to experience an ownership change in future periods, its deferred tax assets and income tax expense may be negatively impacted. Deferred income taxes have been provided on all undistributed earnings of foreign subsidiaries.

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The following summarizes the activity related to valuation allowances for deferred tax assets:

<i>(In millions)</i>	2022		2021		2020	
Beginning balance	\$	93	\$	99	\$	100
Additions, charged to expense		184		—		2
Reductions		(11)		(6)		(3)
Ending balance	\$	266	\$	93	\$	99

The Company's valuation allowance increased in 2022 due to the valuation allowance related to the capital loss on the sale of CompuCom and decreased during 2022, 2021 and 2020 due to the expiration of certain credits for which a valuation allowance had been established. As of December 31, 2022, the Company continues to have a U.S. valuation allowance for certain U.S. Federal credits and certain state tax attributes, which relate to deferred tax assets that require either certain types of income or for income to be earned in certain jurisdictions in order to be realized. The Company will continue to assess the realizability of its deferred tax assets in the U.S. and remaining foreign jurisdictions in future periods. Changes in pretax income projections could impact this evaluation in future periods.

The following table summarizes the activity related to unrecognized tax benefits:

<i>(In millions)</i>	2022		2021		2020	
Beginning balance	\$	13	\$	13	\$	13
Decrease related to prior year tax positions		(3)		—		—
Ending balance	\$	10	\$	13	\$	13

Included in the balance of \$10 million at December 31, 2022, is \$6 million of unrecognized tax benefits that, if recognized, would impact the effective tax rate. The other \$4 million primarily results from tax positions that, if sustained, would be offset by changes in deferred tax assets. During 2022, the Company increased the unrecognized tax benefits by \$1 million related to a foreign tax filing and reduced the unrecognized tax benefits by \$4 million related to the expiration of certain jurisdictional statutes of limitations. It is anticipated that \$2 million of the material tax positions will be resolved within the next 12 months. Additionally, the Company anticipates that it is reasonably possible that new issues will be raised or resolved by tax authorities that may require changes to the balance of unrecognized tax benefits; however, an estimate of such changes cannot be reasonably made.

The Company recognizes interest related to unrecognized tax benefits in interest expense and penalties in the provision for income taxes. The Company recognized immaterial interest and penalty expense in 2022, 2021 and 2020. The Company had approximately \$4 million accrued for the payment of interest and penalties as of December 31, 2022.

The Company files a U.S. Federal income tax return and other income tax returns in various states and foreign jurisdictions. With few exceptions, the Company is no longer subject to U.S. Federal and state and local income tax examinations for years before 2020 and 2017, respectively. The acquired OfficeMax U.S. consolidated group is no longer subject to U.S. Federal income tax examination and with few exceptions, is no longer subject to U.S. state and local income tax examinations for years before 2017. The U.S. Federal income tax returns for 2021 are currently under review. Generally, the Company is subject to routine examination for years 2017 and forward in its international tax jurisdictions.

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

NOTE 5. EARNINGS (LOSS) PER SHARE

The following table presents the calculation of net earnings (loss) per common share — basic and diluted:

<i>(In millions, except per share amounts)</i>	2022	2021	2020
Basic Earnings (Loss) Per Share			
Numerator:			
Net income (loss) from continuing operations	\$ 178	\$ 187	\$ (63)
Loss from discontinued operations, net of tax	(12)	(395)	(256)
Net income (loss)	<u>\$ 166</u>	<u>\$ (208)</u>	<u>\$ (319)</u>
Denominator:			
Weighted-average shares outstanding	48	53	53
Basic earnings (loss) per share:			
Continuing operations	\$ 3.73	\$ 3.54	\$ (1.20)
Discontinued operations	(0.25)	(7.47)	(4.85)
Net basic earnings (loss) per share	<u>\$ 3.48</u>	<u>\$ (3.93)</u>	<u>\$ (6.05)</u>
Diluted Earnings (Loss) Per Share			
Numerator:			
Net income (loss) from continuing operations	\$ 178	\$ 187	\$ (63)
Loss from discontinued operations, net of tax	(12)	(395)	(256)
Net income (loss)	<u>\$ 166</u>	<u>\$ (208)</u>	<u>\$ (319)</u>
Denominator:			
Weighted-average shares outstanding	48	53	53
Effect of dilutive securities:			
Stock options and restricted stock	1	2	—
Diluted weighted-average shares outstanding	<u>49</u>	<u>55</u>	<u>53</u>
Diluted earnings (loss) per share			
Continuing operations	\$ 3.61	\$ 3.42	\$ (1.20)
Discontinued operations	(0.24)	(7.21)	(4.85)
Net diluted earnings (loss) per share	<u>\$ 3.37</u>	<u>\$ (3.79)</u>	<u>\$ (6.05)</u>

Awards of stock options and nonvested shares representing additional shares of outstanding common stock were less than 1 million, 1 million and 2 million for the fiscal years ended December 31, 2022, December 25, 2021 and December 26, 2020, respectively, but were not included in the computation of diluted weighted-average shares outstanding because their effect would have been antidilutive.

NOTE 6. PROPERTY AND EQUIPMENT

Property and equipment consists of:

<i>(In millions)</i>	December 31, 2022	December 25, 2021
Land	\$ 30	\$ 45
Buildings	79	200
Computer software	764	693
Leasehold improvements	565	587
Furniture, fixtures and equipment	753	775
Construction in progress	17	12
	<u>2,208</u>	<u>2,312</u>
Less accumulated depreciation	<u>(1,856)</u>	<u>(1,835)</u>
Total	<u>\$ 352</u>	<u>\$ 477</u>

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The above table of property and equipment includes assets held under finance leases as follows:

<i>(In millions)</i>	December 31, 2022	December 25, 2021
Buildings	\$ 11	\$ 19
Furniture, fixtures and equipment	143	143
	154	162
Less accumulated depreciation	(125)	(123)
Total	\$ 29	\$ 39

Depreciation expense was \$75 million in 2022, \$88 million in 2021 and \$101 million in 2020.

Included in computer software and construction in progress above are capitalized software costs of \$773 million and \$699 million at December 31, 2022 and December 25, 2021, respectively. The unamortized amounts of the capitalized software costs are \$145 million and \$115 million at December 31, 2022 and December 25, 2021, respectively. Amortization of capitalized software costs totaled \$47 million, \$49 million and \$50 million in 2022, 2021 and 2020, respectively. Software development costs that do not meet the criteria for capitalization are expensed as incurred.

Estimated future amortization expense related to capitalized software at December 31, 2022 is as follows:

<i>(In millions)</i>	
2023	\$ 45
2024	38
2025	31
2026	21
2027	9
Thereafter	1

The weighted average remaining amortization period for capitalized software is 4 years.

Assets Held for Sale

The Company's corporate headquarters in Boca Raton met the criteria to be classified as held for sale during the third quarter of 2022. The asset was measured at the lower of its carrying amount or estimated fair value less costs to sell upon classification to held for sale, which was \$104 million, and did not result in any valuation reserve being recorded. Accordingly, the Company presented its corporate headquarters in Boca Raton within current assets held for sale in the Consolidated Balance Sheets as of December 31, 2022. The Company has entered into an agreement in principle with a third-party buyer to sell this facility. The completion of the sales transaction, which is expected to occur in the first half of 2023, is subject to various conditions, including an intention for the Company to lease back a portion of the building's office space from the new owner.

NOTE 7. GOODWILL AND OTHER INTANGIBLE ASSETS

GOODWILL

Goodwill and indefinite-lived intangible assets are tested for impairment annually as of the first day of fiscal December or more frequently when events or changes in circumstances indicate that impairment may have occurred. The changes in reportable segments described in Note 3 also resulted in the change of the Company's reporting units during the third quarter of 2022, where each reportable segment also represents a reporting unit. Goodwill was allocated to the new reporting units using their relative fair values. The Company performed a qualitative goodwill impairment assessment of its legacy reporting units immediately before the change and determined that it was more likely than not that the respective fair values of the legacy reporting units were greater than their respective carrying values. The Company also performed a quantitative goodwill impairment assessment of its current reporting units immediately after the change and determined the fair values of all reporting units exceeded their carrying amounts. There were no additions to goodwill during 2022. Changes in goodwill by segment were as follows:

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

<i>(In millions)</i>	Balance as of December 25, 2021	Allocation to New segment	Balance as of December 31, 2022
Business Solutions Division	\$ 318	\$ (318)	\$ —
Retail Division	78	(78)	—
ODP Business Solutions Division	—	142	142
Office Depot Division	—	219	219
Veyer Division	—	35	35
Varis Division	68	—	68
Total	\$ 464	\$ —	\$ 464

The Company performed its fourth quarter 2022 annual goodwill impairment test using a quantitative assessment for its Varis reporting unit, and qualitative assessments for all other reporting units. The Varis reporting unit comprises the Varis segment. The quantitative assessment for Varis reporting unit combined the income approach and the market approach valuation methodologies and concluded that the fair value of this reporting unit exceeded its carrying amount.

The fair value of the Varis reporting unit exceeded its carrying amount by 21%. The Varis reporting unit has been in operation since 2021, therefore the Company has less experience estimating the operating performance of this reporting unit. Changes to the critical assumptions used to estimate the fair value of this reporting unit, including changes in projected revenue growth rates, gross margin or expenses may result in a different calculation of fair value that could lead to the recognition of impairment charges in future periods.

The Company will continue to evaluate the recoverability of goodwill at the reporting unit level on an annual basis and whenever events or changes in circumstances indicate there may be a potential impairment. If the operating results of the Company's reporting units deteriorate in the future, it may cause the fair value of one or more of the reporting units to fall below their carrying value, resulting in additional goodwill impairment charges.

INDEFINITE-LIVED INTANGIBLE ASSETS

The Company had \$13 million of trade names as of both December 31, 2022 and December 25, 2021. These indefinite-lived intangible assets are included in Other intangible assets, net in the Consolidated Balance Sheets. There were no impairments identified related to the trade names as part of the Company's annual indefinite-lived intangible assets impairment test on the first day of fiscal month December in 2022.

DEFINITE INTANGIBLE ASSETS

Definite-lived intangible assets, which are included in Other intangible assets, net in the Consolidated Balance Sheets, are as follows:

<i>(In millions)</i>	December 31, 2022		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Customer relationships	\$ 122	\$ (90)	\$ 32
Technology	6	(5)	1
Total	\$ 128	\$ (95)	\$ 33

<i>(In millions)</i>	December 25, 2021		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Customer relationships	\$ 122	\$ (84)	\$ 38
Technology	6	(2)	4
Total	\$ 128	\$ (86)	\$ 42

Definite-lived intangible assets generally are amortized using the straight-line method. The remaining weighted average amortization periods for customer relationships is 10 years.

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Amortization of intangible assets was \$9 million in 2022, \$9 million in 2021 and \$6 million in 2020. Intangible assets amortization expenses are included in the Consolidated Statements of Operations in Selling, general and administrative expenses.

Estimated future amortization expense for the intangible assets is as follows:

<i>(In millions)</i>		
2023	\$	5
2024		3
2025		3
2026		3
2027		3
Thereafter		16
Total	\$	33

Definite-lived intangible assets are reviewed whenever events and circumstances indicate the carrying amount may not be recoverable and the remaining useful lives are appropriate. No impairment charges related to definite-lived intangible assets were recognized during 2022, 2021 and 2020.

NOTE 8. DEBT

Debt consists of the following:

<i>(In millions)</i>	December 31, 2022	December 25, 2021
Short-term borrowings and current maturities of long-term debt:		
Finance lease obligations	\$ 14	\$ 17
Other current maturities of long-term debt	2	3
Total	\$ 16	\$ 20
Long-term debt, net of current maturities:		
New Facilities loans under the Third Amended Credit Agreement, due 2025	57	100
Revenue bonds, due in varying amounts periodically through 2029	75	75
American & Foreign Power Company, Inc. 5% debentures, due 2030	15	15
Finance lease obligations	24	35
Other financing obligations	1	3
Total	\$ 172	\$ 228

The Company was in compliance with all applicable covenants of existing loan agreements at December 31, 2022.

THIRD AMENDED CREDIT AGREEMENT

On April 17, 2020, the Company entered into the Third Amended and Restated Credit Agreement (the "Third Amended Credit Agreement"), which provided for a \$1.2 billion asset-based revolving credit facility (the "Revolving Loan Facility") and a \$100 million asset-based first-in, last-out term loan facility (the "FILO Term Loan Facility"), for an aggregate principal amount of up to \$1.3 billion (the "New Facilities"). The New Facilities mature on April 17, 2025. The Third Amended Credit Agreement replaced the Company's then existing Amended Credit Agreement that was due to mature in May 2021. The Third Amended Credit Agreement also provides that the Revolving Loan Facility may be increased by up to \$250 million, subject to certain terms and conditions, including increased commitments from existing or new lenders. As provided by the Third Amended Credit Agreement, available amounts that can be borrowed at any given time are based on percentages of certain outstanding accounts receivable, credit card receivables, inventory, cash value of company-owned life insurance policies, and certain specific real estate of the Company (the "Borrowing Base"). The Revolving Loan Facility included two sub-facilities of: (1) up to \$1.150 billion which is available to the Company and certain of the Company's domestic subsidiaries (which includes a letter of credit sub-facility of up to \$400 million and a swingline loan sub-facility of up to \$115 million); and (2) up to \$50 million which is available to certain of the Company's Canadian subsidiaries (which included a letter of credit sub-facility of up to \$25 million and a swingline loan sub-facility of up to \$5 million). Certain of the Company's subsidiaries guarantee the obligations under the New Facilities (the "Guarantors"). All loans borrowed under the Revolving Loan Facility may be borrowed, repaid and reborrowed from time to time until the maturity date of April 17,

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

2025 as provided in the Third Amended Credit Agreement. The FILO Term Loan Facility, once repaid, may not be reborrowed. During the first quarter of 2022, the Company reduced its asset-based revolving credit facility by \$200 million to \$1.0 billion and retired \$43 million of outstanding FILO Term Loan Facility loans under the Third Amended Credit Agreement.

All amounts borrowed under the New Facilities, as well as the obligations of the Guarantors, are secured by a first priority lien on the Company's and such Guarantors' accounts receivables, inventory, cash, cash equivalents, deposit accounts, intercompany loan rights, certain pledged notes, certain life insurance policies, certain related assets, certain real estate and the proceeds thereof in each case. At the Company's option, borrowings made pursuant to the Third Amended Credit Agreement bear interest at either, (i) the alternate base rate (defined as the higher of the Prime Rate (as announced by the agent), the Federal Funds Rate plus 1/2 of 1% and the one month Adjusted LIBOR (defined below) plus 1%) or (ii) the Adjusted LIBOR (defined as the LIBOR as adjusted for statutory reserves) plus, in either case, a certain margin based on the aggregate average availability under the Third Amended Credit Agreement.

The Third Amended Credit Agreement contains representations, warranties, affirmative and negative covenants, and default provisions which are conditions precedent to borrowing. The most significant of these covenants and default provisions include limitations in certain circumstances on acquisitions, dispositions, share repurchases and the payment of cash dividends.

The New Facilities also include provisions whereby if the global availability is less than 12.5% of the Borrowing Base, the Company's cash collections go first to the agent to satisfy outstanding borrowings. Further, if total availability falls below 10% of the Borrowing Base, a fixed charge coverage ratio test is required. Any event of default that is not cured within the permitted period, including non-payment of amounts when due, any debt in excess of \$25 million becoming due before the scheduled maturity date, or the acquisition of more than 40% of the ownership of the Company by any person or group, within the meaning of the Securities and Exchange Act of 1934, could result in a termination of the New Facilities and all amounts outstanding becoming immediately due and payable.

In 2020, the Company incurred approximately \$6 million of new debt issuance costs under the Third Amended Credit Agreement, which will be recognized in interest expense through April 17, 2025, the maturity date of the New Facilities.

At December 31, 2022, the Company had no revolving loans outstanding, \$57 million of outstanding FILO Term Loan Facility loans, \$41 million of outstanding standby letters of credit, and \$856 million of available credit under the Third Amended Credit Agreement.

OTHER SHORT- AND LONG-TERM DEBT

As a result of the OfficeMax merger, the Company assumed the liability for the amounts in the table above on page 82 related to the (i) Revenue bonds, due in varying amounts periodically through 2029, and (ii) American & Foreign Power Company, Inc. 5% debentures, due 2030. Also, the Company has finance lease obligations which relate to buildings and equipment, and various other financing obligations for the amounts included in the table above on page 82.

SCHEDULE OF DEBT MATURITIES

Aggregate annual maturities of recourse debt, finance lease, and other financing obligations are as follows:

<i>(In millions)</i>	
2023	\$ 18
2024	10
2025	64
2026	36
2027	33
Thereafter	30
Total	191
Less interest on finance leases	(3)
Total	188
Less:	
Current portion	(16)
Total long-term debt	\$ 172

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

NOTE 9. LEASES

The Company leases retail stores and other facilities, vehicles, and equipment under operating lease agreements. Facility leases typically are for a fixed non-cancellable term with one or more renewal options. In addition to rent payments, the Company is required to pay certain variable lease costs such as real estate taxes, insurance and common-area maintenance on most of the facility leases. For leases beginning in 2019, the Company accounts for lease components (e.g., fixed payments including rent) and non-lease components (e.g., real estate taxes, insurance costs and common-area maintenance costs) as a single lease component. Certain leases contain provisions for additional rent to be paid if sales exceed a specified amount, though such payments have been immaterial during the periods presented and are recognized as variable lease cost. The Company subleases certain real estate to third parties, consisting mainly of operating leases for retail stores.

The components of lease expense were as follows:

<i>(In millions)</i>	2022	2021	2020
Finance lease cost:			
Amortization of right-of-use assets	\$ 14	\$ 18	\$ 18
Interest on lease liabilities	2	3	4
Operating lease cost	334	350	402
Short-term lease cost	6	4	6
Variable lease cost	94	99	112
Sublease income	(2)	(2)	(2)
Total lease cost	<u>\$ 448</u>	<u>\$ 472</u>	<u>\$ 540</u>

Supplemental cash flow information related to leases was as follows:

<i>(In millions)</i>	2022	2021	2020
Cash paid for amounts included in the measurement of lease liabilities			
Operating cash flows from finance leases	\$ 2	\$ 3	\$ 4
Operating cash flows from operating leases	370	408	447
Financing cash flows from finance leases	18	22	20
Right-of-use assets obtained in exchange for new finance lease liabilities	4	3	29
Right-of-use assets obtained in exchange for new operating lease liabilities	228	127	117

Supplemental balance sheets information related to leases was as follows:

<i>(In millions, except lease term and discount rate)</i>	December 31, 2022	December 25, 2021
Property and equipment, net	\$ 29	\$ 39
Operating lease right-of-use assets	874	936
Accrued expenses and other current liabilities	281	304
Short-term borrowings and current maturities of long-term debt	14	17
Long-term debt, net of current maturities	24	35
Operating lease liabilities	693	753
Weighted-average remaining lease term – finance leases	3	4
Weighted-average remaining lease term – operating leases	5	5
Weighted-average discount rate – finance leases	4.9%	5.0%
Weighted-average discount rate – operating leases	6.1%	5.8%

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Maturities of lease liabilities as of December 31, 2022 were as follows:

<i>(In millions)</i>	December 31, 2022	
	Operating Leases(1)	Finance Leases(2)
2023	\$ 333	\$ 15
2024	251	10
2025	182	7
2026	142	5
2027	96	3
Thereafter	125	1
	1,129	41
Less imputed interest	(155)	(3)
Total	\$ 974	\$ 38

Reported as of December 31, 2022

Accrued expenses and other current liabilities	\$ 281	\$ —
Short-term borrowings and current maturities of long-term debt	—	14
Long-term debt, net of current maturities	—	24
Operating lease liabilities	693	—
Total	\$ 974	\$ 38

(1) Operating lease payments include \$47 million related to options to extend lease terms that are reasonably certain of being exercised.

(2) Finance lease payments include \$1 million related to options to extend lease terms that are reasonably certain of being exercised and exclude \$5 million of legally binding minimum lease payments for leases signed but not yet commenced.

NOTE 10. STOCKHOLDERS' EQUITY

PREFERRED STOCK

As of each of December 31, 2022, and December 25, 2021, there were 1,000,000 shares of \$0.01 par value per share of preferred stock authorized; no shares were issued and outstanding.

TREASURY STOCK

In May 2021, the Board of Directors approved a stock repurchase program of up to \$300 million, available through June 30, 2022. The Board of Directors reviewed the Company's existing capital allocation programs in connection with the sale of CompuCom, and on December 31, 2021, authorized an additional \$200 million for share repurchases under the then existing stock repurchase program, for a total authorization of \$650 million. This stock repurchase program expired on June 30, 2022, and in July 2022, the Board of Directors approved a stock repurchase program of up to \$600 million, available through June 30, 2024. In October 2022, the Board of Directors approved a new stock repurchase program of up to \$1 billion, available through December 31, 2025 to replace the existing \$600 million stock repurchase program effective November 3, 2022. The new authorization may be suspended or discontinued at any time. The exact timing of share repurchases will depend on market conditions and other factors, and will be funded through available cash balances.

On November 16, 2021, as part of the stock repurchase program that expired on June 30, 2022, the Company entered into an accelerated share repurchase agreement ("ASR") to repurchase shares of the Company's common stock in exchange for an up-front payment of \$150 million and increased the authorization to \$450 million. The ASR repurchase period ran through May 25, 2022, and the Company received 0.7 million shares of its common stock as the final settlement of the ASR in the second quarter of 2022. The Company repurchased 3.6 million shares of its common stock in total at an average price per share of \$41.46 under the ASR. In July 2022, as part of the \$600 million stock repurchase program, the Board of Directors approved a Dutch auction tender offer to repurchase up to \$300 million worth of shares of its common stock, based on demand. Through this tender offer, the Company's shareholders had the opportunity to tender some or all of their shares at a price within the range of \$31.50 to \$36.00 per share subject to the conditions set forth in the tender offer documents. The tender offer commenced on July 18, 2022 and expired on August 12, 2022. The Company repurchased 14 thousand shares under the tender offer at a cost of \$1 million. The Company repurchased 6 million additional shares of its common stock, at a cost of \$266 million, in the third and fourth quarters of 2022. As a result, the Company repurchased 7 million shares in 2022, including the final settlement of the ASR at a weighted average price of \$41.21 per common share, for total consideration of \$295 million. As of December 31, 2022, \$847 million remains available for stock repurchases under the current stock repurchase program, after considering purchases made under the \$1 billion authorization effective November 3, 2022. Subsequent to the end of fiscal 2022 and through February 22, 2023, the Company repurchased 2 million shares of its common stock at a cost of \$100 million.

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

At December 31, 2022, there were 23 million shares of common stock held in treasury. The Company's Third Amended Credit Agreement permits restricted payments, such as common stock repurchases, but may be limited if the Company does not meet the required minimum liquidity or fixed charge coverage ratio requirements. Refer to Note 8 for additional information about the Company's compliance with covenants.

DIVIDENDS ON COMMON STOCK

The Company did not declare any cash dividends in 2022. The Company does not anticipate declaring cash dividends in the foreseeable future. The Company's Third Amended Credit Agreement permits restricted payments, such as dividends, but may be limited if the Company does not meet the required minimum liquidity or fixed charge coverage ratio requirements. Refer to Note 8 for additional information about the Company's compliance with covenants.

ACCUMULATED OTHER COMPREHENSIVE LOSS

Accumulated other comprehensive loss activity, net of tax, where applicable, is provided in the following tables:

<i>(In millions)</i>	Foreign Currency Translation Adjustments	Change in Deferred Pension	Total
Balance at December 25, 2021	\$ (27)	\$ 21	\$ (6)
Other comprehensive income activity before reclassifications	(18)	(62)	(80)
Reclassification of foreign currency translation adjustments realized upon disposal of business	6		6
Tax impact	—	3	3
Total other comprehensive income, net of tax, where applicable	(12)	(59)	(71)
Balance at December 31, 2022	\$ (39)	\$ (38)	\$ (77)

<i>(In millions)</i>	Foreign Currency Translation Adjustments	Change in Deferred Pension	Total
Balance at December 26, 2020	\$ (27)	\$ (5)	\$ (32)
Other comprehensive income activity	—	32	32
Tax impact	—	(6)	(6)
Total other comprehensive income, net of tax, where applicable	—	26	26
Balance at December 25, 2021	\$ (27)	\$ 21	\$ (6)

NOTE 11. STOCK-BASED COMPENSATION

LONG-TERM INCENTIVE PLANS

During 2021, the Company's Board of Directors adopted, and the shareholders approved, the ODP Corporation 2021 Long-Term Incentive Plan (the "Plan"). The Plan replaces the Office Depot, Inc. 2019 Long-Term Incentive Plan, the Office Depot, Inc. 2017 Long-Term Incentive Plan, the Office Depot, Inc. 2015 Long-Term Incentive Plan, the Office Depot, Inc. 2007 Long-Term Incentive Plan, as amended, and the 2003 OfficeMax Incentive and Performance Plan (together, the "Prior Plans"). No additional awards were granted under the Prior Plans effective March 10, 2021, the effective date of the Plan. The Plan permits the issuance of stock options, nonqualified stock options, stock appreciation rights, restricted stock, restricted stock units, performance shares, and other equity-based incentive awards. Employee share-based awards are generally issued in the first quarter of the year. Total compensation expense

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

for share-based awards was \$40 million in 2022, \$38 million in 2021 and \$41 million in 2020, and the total recognized tax benefit related thereto was \$11 million in 2022, \$14 million in 2021 and \$3 million in 2020.

RESTRICTED STOCK AND RESTRICTED STOCK UNITS

In 2022, the Company granted 0.9 million shares of restricted stock and restricted stock units to eligible employees which included 25,000 shares granted to the Board of Directors. The Board of Directors are granted restricted stock units as part of their annual compensation which vest immediately on the grant date with distribution to occur following their separation from service with the Company. Restricted stock grants to Company employees typically vest annually over a three-year service period. A summary of the status of the Company's nonvested shares and changes during 2022, 2021 and 2020 is presented below.

	2022		2021		2020	
	Shares	Weighted Average Grant-Date Price	Shares	Weighted Average Grant-Date Price	Shares	Weighted Average Grant-Date Price
Outstanding at beginning of year	1,386,778	\$ 30.48	1,526,653	\$ 24.71	1,394,756	\$ 30.40
Granted	933,487	42.81	521,512	39.55	835,828	19.92
Vested	(585,563)	29.65	(593,249)	23.72	(579,584)	30.71
Forfeited	(203,740)	36.29	(68,138)	29.20	(124,347)	28.60
Outstanding at end of year	1,530,962	\$ 37.54	1,386,778	\$ 30.48	1,526,653	\$ 24.71

As of December 31, 2022, there was approximately \$34.6 million of total unrecognized compensation cost related to nonvested restricted stock. This expense, net of forfeitures, is expected to be recognized over a weighted-average period of approximately 2 years. Total outstanding shares of 1.5 million include 0.2 million granted to members of the Board of Directors that have vested but will not be issued until separation from service and 1.3 million unvested shares granted to employees. The Company estimates that all 1.3 million unvested shares at year end will vest. The total fair value of shares at the time they vested during 2022 was \$24.2 million.

PERFORMANCE-BASED INCENTIVE PROGRAM

The Company has a performance-based long-term incentive program consisting of performance stock units. Payouts under this program are based on achievement of certain financial targets, including the Company's financial performance and total shareholder return performance set by the Board of Directors and are subject to additional service vesting requirements, generally three years from the grant date.

A summary of the activity in the performance-based long-term incentive program since inception is presented below.

	2022		2021		2020	
	Shares	Weighted Average Grant-Date Price	Shares	Weighted Average Grant-Date Price	Shares	Weighted Average Grant-Date Price
Outstanding at beginning of year	2,175,831	\$ 29.33	2,458,978	\$ 24.22	1,994,111	\$ 29.05
Granted	421,038	45.01	1,298,868	41.44	932,344	19.42
Vested	(796,019)	29.71	(1,374,442)	23.47	(151,905)	41.80
Forfeited	(343,125)	30.21	(207,573)	28.71	(315,572)	27.10
Outstanding at end of year ⁽²⁾	1,457,725	\$ 31.84	2,175,831	\$ 29.33	2,458,978	\$ 24.22

⁽¹⁾ Outstanding shares at the end of 2022 include 5 million shares of awards granted in 2020 that will be settled in cash in 2023. These awards are remeasured to fair value at each reporting period. The remeasurement impact was not material in 2022, 2021, and 2020.

As of December 31, 2022, there was approximately \$18.6 million of total unrecognized compensation expense related to the performance-based long-term incentive program. This expense, net of forfeitures, is expected to be recognized over a weighted-average period of approximately 1.7 years. Forfeitures in the table above include adjustments to the share impact of anticipated

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

performance achievement. The Company estimates that 1.4 million unvested shares at year end will vest. The total fair value of shares at the time they vested during 2022 was \$36.1 million.

NOTE 12. EMPLOYEE BENEFIT PLANS

PENSION AND OTHER POSTRETIREMENT BENEFIT PLANS — NORTH AMERICA

The Company has retirement obligations under OfficeMax’s U.S. pension plans. The Company sponsors these defined benefit pension plans covering certain terminated employees, vested employees, retirees and some active employees. In 2004 or earlier, OfficeMax’s pension plans were closed to new entrants and the benefits of eligible participants were frozen. Under the terms of these plans, the pension benefit for employees was based primarily on the employees’ years of service and benefit plan formulas that varied by plan. The Company’s general funding policy is to make contributions to the plans in amounts that are within the limits of deductibility under current tax regulations, and not less than the minimum contribution required by law.

Additionally, under previous OfficeMax arrangements, the Company has responsibility for sponsoring retiree medical benefit and life insurance plans including plans related to operations in the U.S. and Canada (referred to as “Other Benefits” in the tables below). The type of retiree benefits and the extent of coverage vary based on employee classification, date of retirement, location, and other factors. All of these postretirement medical plans are unfunded. The Company explicitly reserves the right to amend or terminate its retiree medical and life insurance plans at any time, subject only to constraints, if any, imposed by the terms of collective bargaining agreements. Amendment or termination may significantly affect the amount of expense incurred.

Obligations and Funded Status

The following table provides a reconciliation of changes in the projected benefit obligation and the fair value of plan assets, as well as the funded status of the plans to amounts recognized on the Company’s Consolidated Balance Sheets.

<i>(In millions)</i>	Pension Benefits		Other Benefits	
	2022	2021	2022	2021
Changes in projected benefit obligation:				
Obligation at beginning of period	\$ 830	\$ 924	\$ 13	\$ 14
Service cost	—	—	—	—
Interest cost	21	20	—	—
Assumption changes	(144)	(28)	(3)	—
Actuarial gain	(9)	(12)	—	—
Currency exchange rate change	—	—	—	—
Benefits paid	(71)	(74)	(1)	(1)
Obligation at end of period	\$ 627	\$ 830	\$ 9	\$ 13
Change in plan assets:				
Fair value of plan assets at beginning of period	\$ 836	\$ 894	\$ —	\$ —
Actual return on plan assets	(142)	14	—	—
Employer contribution	2	2	1	1
Benefits paid	(71)	(74)	(1)	(1)
Fair value of plan assets at end of period	625	836	—	—
Net asset (liability) recognized at end of period	\$ (2)	\$ 6	\$ (9)	\$ (13)

The following table shows the amounts recognized in the Consolidated Balance Sheets related to the Company’s North America defined benefit pension and other postretirement benefit plans as of year-ends:

<i>(In millions)</i>	Pension Benefits		Other Benefits	
	2022	2021	2022	2021
Noncurrent assets	\$ 7	\$ 18	\$ —	\$ —
Current liabilities	(1)	(2)	(1)	(1)
Noncurrent liabilities	(8)	(10)	(8)	(12)
Net amount recognized	\$ (2)	\$ 6	\$ (9)	\$ (13)

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The following table provides the accumulated benefit obligation for the Company's North America defined benefit pension and other postretirement benefit plans with a projected benefit obligation and an accumulated benefit obligation in excess of plan assets as of year ends:

<i>(In millions)</i>	Pension Benefits		Other Benefits	
	2022	2021	2022	2021
Accumulated benefit obligation in excess of plan assets				
Accumulated benefit obligation at end of period	\$ (9)	\$ (11)	\$ (9)	\$ (13)
Fair value of plan assets at end of period	—	—	—	—
Projected benefit obligation in excess of plan assets				
Benefit obligation at end of period	(9)	(11)		
Fair value of plan assets at end of period	—	—		

Components of Net Periodic Cost (Benefit)

The components of net periodic benefit are as follows:

<i>(In millions)</i>	Pension Benefits			Other Benefits		
	2022	2021	2020	2022	2021	2020
Service cost	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —
Interest cost	21	20	28	—	—	—
Expected return on plan assets	(26)	(29)	(32)	—	—	—
Net periodic benefit	\$ (5)	\$ (9)	\$ (4)	\$ —	\$ —	\$ —

Other changes in plan assets and benefit obligations recognized in other comprehensive loss (income) are as follows:

<i>(In millions)</i>	Pension Benefits			Other Benefits		
	2022	2021	2020	2022	2021	2020
Accumulated other comprehensive loss (income) at beginning of year	\$ (46)	\$ (21)	\$ 9	\$ —	\$ 1	\$ —
Net loss (gain)	15	(25)	(30)	(2)	(1)	1
Accumulated other comprehensive loss (income) at end of year	\$ (31)	\$ (46)	\$ (21)	\$ (2)	\$ —	\$ 1

Accumulated other comprehensive loss (income) as of year-ends 2022 and 2021 consist of net losses (gains).

Assumptions

The assumptions used in accounting for the Company's plans are estimates of factors including, among other things, the amount and timing of future benefit payments. The following table presents the key weighted average assumptions used in the measurement of the Company's benefit obligations as of year-ends:

	Pension Benefits			Other Benefits					
				United States			Canada		
	2022	2021	2020	2022	2021	2020	2022	2021	2020
Discount rate	5.37%	2.69%	2.27%	4.90%	2.40%	1.90%	5.10%	2.90%	2.50%

The following table presents the weighted average assumptions used in the measurement of net periodic benefit:

	Pension Benefits			Other Benefits					
				United States			Canada		
	2022	2021	2020	2022	2021	2020	2022	2021	2020
Discount rate	2.69%	2.27%	3.26%	2.40%	1.90%	2.80%	2.90%	2.50%	3.10%
Expected long-term rate of return on plan assets	3.64%	4.31%	5.16%	—%	—%	—%	—%	—%	—%

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

For pension benefits, the selected discount rates (which is required to be the rates at which the projected benefit obligations could be effectively settled as of the measurement date) are based on the rates of return for a theoretical portfolio of high-grade corporate bonds (rated AA- or better) with cash flows that generally match expected benefit payments in future years. In selecting bonds for this theoretical portfolio, the Company focuses on bonds that match cash flows to benefit payments and limit the concentration of bonds by issuer. To the extent scheduled bond proceeds exceed the estimated benefit payments in a given period, the yield calculation assumes those excess proceeds are reinvested at an assumed forward rate. The implied forward rate used in the bond model is based on the FTSE (formerly Citigroup) Pension Discount Curve as of the last day of the year. The selected discount rate for other benefits is from a discount rate curve matched to the assumed payout of related obligations. In 2022, as a result of an increase in the discount rate assumption, pension and other postretirement plan obligations decreased by \$144 million and \$3 million, respectively. In 2021, as a result of an increase in the discount rate assumption, pension plan obligations decreased by \$31 million.

The expected long-term rates of return on plan assets assumptions are based on the weighted average of expected returns for the major asset classes in which the plans' assets are held. Asset-class expected returns are based on long-term historical returns, inflation expectations, forecasted gross domestic product and earnings growth, as well as other economic factors. The weights assigned to each asset class are based on the Company's investment strategy. The weighted average expected return on plan assets used in the calculation of net periodic pension cost for 2023 is 5.17%.

Obligation and costs related to the Canadian retiree health plan are impacted by changes in trend rates.

The following table presents the assumed healthcare cost trend rates used in measuring the Company's postretirement benefit obligations at year-ends:

	2022	2021	2020
Weighted average assumptions as of year-end:			
Healthcare cost trend rate assumed for next year	6.10 %	6.20%	6.10%
Rate to which the cost trend rate is assumed to decline (the ultimate trend rate)	4.00 %	4.00%	4.50%
Year that the rate reaches the ultimate trend rate	2041	2041	2029

The Company reassessed the assumptions, including those related to mortality, to measure the North American pension and other postretirement benefit plan obligations at year end 2022. The Society of Actuaries' Retirement Plan Experience Committee did not release a new mortality improvement scale in 2022. Thus, the mortality assumption was not updated in 2022. In 2021, as a result of an increase in the mortality assumption, pension and other postretirement benefit plan obligations increased by \$3 million and less than \$1 million, respectively.

For pension benefits, most of the obligation is based on participant data from the beginning of the year, which is rolled forward using standard actuarial techniques to the end of the year. Therefore, most actuarial (gains) losses that arise from demographic experience of participants varying from the selected assumptions, are not recognized until the following year. In 2022, pension plan obligations decreased by \$9 million due to actuarial gains (actual demographic experience varying from actuarial assumptions). In 2021, pension plan obligations decreased by \$12 million due to actuarial gains. This was primarily due to higher than assumed participant mortality in 2020 and a data clean-up of previously deceased beneficiaries.

Plan Assets

The allocation of pension plan assets by category at year-ends is as follows:

	2022	2021
Cash	1 %	1%
Common collective trust funds	99 %	99%
	100 %	100%

The Employee Benefit Committee is responsible for establishing and overseeing the implementation of the investment policy for the Company's pension plans. The investment policy is structured to optimize growth of the pension plan trust assets, while minimizing the risk of significant losses, in order to enable the plans to satisfy their benefit payment obligations over time. The Company uses a glide path investment strategy and Company contributions as its primary rebalancing mechanisms to maintain the asset class exposures within the guideline ranges established under the investment policy.

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

In the second quarter of 2017, the Company reinvested substantially all of the assets attributable to the U.S. pension plans in common collective trust funds. The common collective trust funds are comprised of a diversified portfolio of investments across various asset classes, including U.S. and international equities and fixed-income securities. The common collective trust funds are valued at the net asset value (“NAV”) provided by the administrator of the fund. The net asset value is based on the value of the underlying assets owned by the fund, minus its liabilities, divided by the number of units outstanding.

The investment policy for the pension plan assets allows for a broad range of asset allocations that permit the plans to de-risk in response to changes in funded position and market risks. The current investment policy includes a target asset allocation of 10% equity securities and 90% fixed income securities. Occasionally, the Company may utilize futures or other financial instruments to alter the pension trust’s exposure to various asset classes in a lower-cost manner than trading securities in the underlying portfolios.

The following table presents the pension plan assets by level within the fair value hierarchy at year-ends.

(In millions)

Asset Category	Fair Value Measurements 2022				
	Total	Assets Measured at NAV (a)	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Plan assets measured at net asset value: (a)					
Common collective trust funds:					
U.S. small and mid-cap equity securities	\$ 5	\$ 5	\$ —	\$ —	\$ —
U.S. large cap equity securities	20	20	—	—	—
International equity securities	31	31	—	—	—
Corporate bonds	281	281	—	—	—
Government securities	254	254	—	—	—
Other fixed-income	—	—	—	—	—
Cash	29	29	—	—	—
Total common collective trust funds	620	620	—	—	—
Total plan assets measured at net asset value	620	620	—	—	—
Plan assets measured in the fair value hierarchy:					
Cash	5	—	5	—	—
Total plan assets measured in the fair value hierarchy	5	—	5	—	—
Total plan assets	\$ 625	\$ 620	\$ 5	\$ —	\$ —

(a) Fair values of Common collective trust funds are estimated using net asset value per unit as a practical expedient which are excluded from the disclosure requirement to classify amounts in the fair value hierarchy in connection with the adoption of Accounting Standards Update (ASU) 2015-07, Fair Value Measurement (Topic 820): Disclosures for Investments in Certain Entities That Calculate Net Asset Value per Share (or Its Equivalent).

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(In millions)

Asset Category	Fair Value Measurements 2021				
	Total	Assets Measured at NAV (a)	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Plan assets measured at net asset value: (a)					
Common collective trust funds:					
U.S. small and mid-cap equity securities	\$ 7	\$ 7	\$ —	\$ —	\$ —
U.S. large cap equity securities	29	29	—	—	—
International equity securities	42	42	—	—	—
Corporate bonds	485	485	—	—	—
Government securities	245	245	—	—	—
Other fixed-income	4	4	—	—	—
Cash	18	18	—	—	—
Total common collective trust funds	830	830	—	—	—
Total plan assets measured at net asset value	830	830	—	—	—
Plan assets measured in the fair value hierarchy:					
Cash	6	—	6	—	—
Total plan assets measured in the fair value hierarchy	6	—	6	—	—
Total plan assets	\$ 836	\$ 830	\$ 6	\$ —	\$ —

(a) Fair values of Common collective trust funds are estimated using net asset value per unit as a practical expedient which are excluded from the disclosure requirement to classify amounts in the fair value hierarchy in connection with the adoption of Accounting Standards Update (ASU) 2015-07, Fair Value Measurement (Topic 820): Disclosures for Investments in Certain Entities That Calculate Net Asset Value per Share (or Its Equivalent).

Purchases and sales of securities are recorded on a trade-date basis. Interest income is recorded on the accrual basis. Dividends are recorded on the ex-dividend date.

Cash Flows

Pension plan contributions include required statutory minimum amounts and, in some years, additional discretionary amounts. In 2022, the Company contributed \$2 million to these pension plans. Pension contributions for the full year of 2023 are estimated to be \$2 million. The Company may elect at any time to make additional voluntary contributions.

Qualified pension benefit payments are paid from the assets held in the plan trust, while nonqualified pension and other benefit payments are paid by the Company. Anticipated benefit payments by year are as follows:

(In millions)	Pension Benefits	Other Benefits
2023	\$ 70	\$ 1
2024	67	1
2025	64	1
2026	61	1
2027	59	1
Next five years	247	3

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

PENSION PLAN — UNITED KINGDOM

The Company has a frozen defined benefit pension plan in the United Kingdom.

Obligations and Funded Status

The following table provides a reconciliation of changes in the projected benefit obligation, the fair value of plan assets and the funded status of the plan to amounts recognized on the Company's Consolidated Balance Sheets.

<i>(In millions)</i>	2022	2021
Changes in projected benefit obligation:		
Obligation at beginning of period	\$ 257	\$ 269
Service cost	—	—
Interest cost	4	4
Plan settlements	—	(7)
Benefits paid	(8)	(5)
Actuarial (gain) loss	(89)	(1)
Currency translation	(23)	(3)
Obligation at end of period	<u>141</u>	<u>257</u>
Changes in plan assets:		
Fair value of plan assets at beginning of period	358	360
Actual return on plan assets	(130)	12
Company contributions	1	2
Plan settlements	—	(7)
Benefits paid	(8)	(4)
Currency translation	(32)	(5)
Fair value of plan assets at end of period	<u>189</u>	<u>358</u>
Net asset recognized at end of period	<u>\$ 48</u>	<u>\$ 101</u>

In the Consolidated Balance Sheets, the net funded amounts are classified as a non-current asset in the caption Other assets.

Components of Net Periodic Benefit

The components of net periodic benefit are presented below:

<i>(In millions)</i>	2022		2021		2020	
Service cost	\$	—	\$	—	\$	—
Interest cost		4		4		5
Expected return on plan assets		(6)		(6)		(5)
Settlement gain		—		(1)		—
Net periodic pension benefit	<u>\$</u>	<u>(2)</u>	<u>\$</u>	<u>(3)</u>	<u>\$</u>	<u>—</u>

Included in Accumulated other comprehensive income (loss) was deferred income of (\$25) million and \$24 million in 2022 and 2021, respectively.

Assumptions

Assumptions used in calculating the funded status and net periodic benefit included:

	2022	2021	2020
Expected long-term rate of return on plan assets	3.47%	2.03%	1.64%
Discount rate	5.00%	1.80%	1.40%
Inflation	3.00%	3.20%	2.70%

The long-term rate of return on assets assumption has been derived based on long-term UK government fixed income yields, having regard to the proportion of assets in each asset class. The funds invested in equities have been assumed to return 2.71% above the

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

return on UK government securities of appropriate duration. A return equal to a 15-year AA bond index is assumed for funds invested in corporate bonds. Allowance is made for expenses of 0.17% of assets.

Plan Assets

The allocation of Plan assets is as follows:

	2022	2021
Cash	—%	2%
Equity securities	5%	14%
Fixed-income securities	95%	84%
Total	100%	100%

A Trustee committee, comprised of representatives appointed by the Company and of members of this plan, is responsible for establishing and overseeing the implementation of the investment policy for this plan. The plan's investment policy and strategy are to ensure assets are available to meet the obligations to the beneficiaries and to adjust plan contributions accordingly. The plan trustees are also committed to reducing the level of risk in the plan over the long term, while retaining a return above that of the growth of liabilities. Matching investments are intended to provide a return similar to the increase in the plan liabilities. Growth investments are assets intended to provide a return in excess of the increase in liabilities. At December 31, 2022, the asset allocation was in accordance with the target investment strategy. Asset-class allocations within the ranges are continually evaluated based on expectations for future returns, the funded position of the plan and market risks.

The following table presents the pension plan assets by level within the fair value hierarchy.

(In millions)

Asset Category	Total	Fair Value Measurements 2022		
		Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Cash	\$ 1	\$ 1	\$ —	\$ —
Equity securities				
Developed market equity funds	—	—	—	—
Emerging market equity funds	—	—	—	—
Mutual funds real estate	—	—	—	—
Mutual funds	9	—	9	—
Total equity securities	9	—	9	—
Fixed-income securities				
UK debt funds	86	—	86	—
Liability term matching debt funds	76	—	76	—
Emerging market debt fund	—	—	—	—
High yield debt	17	—	17	—
Total fixed-income securities	179	—	179	—
Total	\$ 189	\$ 1	\$ 188	\$ —

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(In millions)

Asset Category	Fair Value Measurements 2021			
	Total	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Cash	\$ 9	\$ 9	\$ —	\$ —
Equity securities				
Developed market equity funds	13	13	—	—
Emerging market equity funds	4	4	—	—
Mutual funds real estate	2	—	—	2
Mutual funds	30	—	30	—
Total equity securities	49	17	30	2
Fixed-income securities				
UK debt funds	154	—	154	—
Liability term matching debt funds	115	—	115	—
Emerging market debt fund	2	—	2	—
High yield debt	29	—	29	—
Total fixed-income securities	300	—	300	—
Total	\$ 358	\$ 26	\$ 330	\$ 2

The following is a reconciliation of the change in fair value of the pension plan assets calculated based on Level 3 inputs:

(In millions)

	Total
Balance at December 25, 2021	\$ 2
Net sales	(2)
Balance at December 31, 2022	\$ —

Cash Flows

Anticipated benefit payments for the UK pension plan, at 2022 year-end exchange rates, are as follows:

(In millions)

	Benefit Payments
2023	\$ 9
2024	9
2025	9
2026	9
2027	10
Next five years	52

RETIREMENT SAVINGS PLANS

The Company also sponsors defined contribution plans for most of its employees. Eligible Company employees may participate in the Office Depot, Inc. Retirement Savings Plans (a plan for U.S. employees and a plan for Puerto Rico employees). All of the Company's defined contribution plans (the "401(k) Plans") allow eligible employees to contribute a percentage of their salary, commissions and bonuses in accordance with plan limitations and provisions of Section 401(k) of the Internal Revenue Code and the Company makes partial matching contributions to each plan subject to the limits of the respective 401(k) Plans. Matching contributions are invested in the same manner as the participants' pre-tax contributions. The 401(k) Plans also allow for a discretionary matching contribution in addition to the normal match contributions if approved by the Board of Directors.

ODP and OfficeMax previously sponsored non-qualified deferred compensation plans that allowed certain employees, who were limited in the amount they could contribute to their respective 401(k) plans, to defer a portion of their earnings and receive a Company matching amount. Both plans are closed to new contributions.

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Compensation expense for the Company's contributions to these retirement savings plans was \$17 million in 2022, \$16 million in 2021 and \$17 million in 2020.

NOTE 13. FAIR VALUE MEASUREMENTS

RECURRING FAIR VALUE MEASUREMENTS

In accordance with GAAP, certain assets and liabilities are required to be recorded at fair value on a recurring basis. The Company's assets and liabilities that are adjusted to fair value on a recurring basis are money market funds that qualify as cash equivalents, and derivative financial instruments, which may be entered into to mitigate risks associated with changes in foreign currency exchange rates, fuel and other commodity prices and interest rates. Amounts associated with derivative instruments were not significant.

NONRECURRING FAIR VALUE MEASUREMENTS

In addition to assets and liabilities that are recorded at fair value on a recurring basis, the Company records certain assets and liabilities at fair value on a nonrecurring basis as required by GAAP. Generally, assets are recorded at fair value on a nonrecurring basis as a result of impairment charges. The Company recognized asset impairment charges of \$14 million, \$20 million and \$182 million in 2022, 2021 and 2020, respectively. Of the asset impairment charges in 2022, \$12 million was related to impairment of operating lease ROU assets associated with the Company's retail store locations, and the remainder was related to impairment of fixed assets at these retail store locations. Of the asset impairment charges in 2021, \$16 million was related to impairment of operating lease ROU assets associated with the Company's retail store locations, and the remainder was related to impairment of fixed assets at these retail store locations. Of the asset impairment charges in 2020, \$115 million was related to the impairment of goodwill in the Contract reporting unit, \$48 million was related to impairment of operating lease ROU assets associated with the Company's retail store locations, \$12 million was related to impairment of fixed assets at these retail store locations, and the remainder related to a cost method investment and write-down of intangible assets that are not currently used. All impairment charges discussed in the sections below are presented in Asset impairments in the Consolidated Statements of Operations.

The Company regularly reviews retail store assets for impairment indicators at the individual store level, as this represents the lowest level of identifiable cash flows. When indicators of impairment are present, a recoverability analysis is performed which considers the estimated undiscounted cash flows over the retail store's remaining life and uses input from retail operations and accounting and finance personnel. These inputs include management's best estimates of retail store-level sales, gross margins, direct expenses, exercise of future lease renewal options when reasonably certain to be exercised, and resulting cash flows that can naturally include judgments about how current initiatives will impact future performance. The assumptions used within the recoverability analysis for the retail stores were updated to consider current quarter retail store operational results and formal plans for future retail store closures as part of the Company's restructuring programs, including the probability of closure at the retail store level. While it is generally understood that closures will approximate the store's lease termination date, it is possible that changes in store performance or other conditions could result in future changes in assumptions utilized. These assumptions reflected declining sales over the forecast period, and gross margin and operating cost assumptions that are consistent with recent actual results and consider plans for future initiatives. The Company also analyzed the impact of the COVID-19 pandemic on store asset recoverability. Due to the nature of products sold, the retail stores were considered to be essential by most local jurisdictions and as a result, the substantial majority of these retail stores have remained open and operational with the appropriate safety measures in place since the beginning of the COVID-19 outbreak, including a curbside pickup option. The Company's recoverability assessment included evaluating the impact of these developments.

If the undiscounted cash flows of a retail store cannot support the carrying amount of its assets, the assets are impaired if necessary and written down to estimated fair value. The fair value of retail store assets is determined using a discounted cash flow analysis which uses Level 2 unobservable inputs that are corroborated by market data such as independent real estate valuation opinions. Specifically, the analysis uses assumptions of potential rental rates for each retail store location which are based on market data for comparable locations. These estimated cash flows used in the 2022 impairment calculation were discounted at a weighted average discount rate of 8%. For the fourth quarter 2022 calculation, a 100-basis-point decrease in next year sales combined with a 50-basis-point decrease in next year gross margin would have increased the impairment by less than \$1 million. Further, a 100-basis-point decrease in sales for all future periods would increase the impairment by less than \$1 million.

The Company will continue to evaluate initiatives to improve performance and lower operating costs. There is uncertainty regarding the impact of the COVID-19 pandemic, supply chain and macroeconomic conditions on the future results of operations, including the forecast period used in the recoverability analysis. To the extent that forward-looking sales and operating assumptions are not

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

achieved and are subsequently reduced, additional impairment charges may result. However, at the end of 2022, the impairment recognized reflects the Company's best estimate of future performance.

In addition to its retail store assets, the Company also regularly evaluates whether there are impairment indicators associated with its other long-lived assets, which were negatively impacted by the COVID-19 pandemic, as discussed in Note 7. The Company did not identify any impairment indicators for these long-lived assets as of December 31, 2022 and as a result there were no associated impairment charges. Refer to Note 7 for additional information about the impairment charges related to goodwill and other intangible assets.

OTHER FAIR VALUE DISCLOSURES

The fair values of cash and cash equivalents, receivables, trade accounts payable and accrued expenses and other current liabilities approximate their carrying amounts because of their short-term nature.

The following table presents information about financial instruments at the balance sheet dates indicated.

<i>(In millions)</i>	December 31, 2022		December 25, 2021	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
Financial assets:				
Company-owned life insurance	138	138	137	137
Financial liabilities:				
Long-term debt:				
New Facilities loans under the Third Amended Credit Agreement, due 2025	57	57	100	100
Revenue bonds, due in varying amounts periodically through 2029	75	76	75	76
American & Foreign Power Company, Inc. 5% debentures, due 2030	15	14	15	16

The following methods and assumptions were used to estimate the fair value of each class of financial instruments:

- **Company-owned life insurance:** In connection with the 2013 OfficeMax merger, the Company acquired company-owned life insurance policies on certain former employees. The fair value of the company-owned life insurance policies is derived using determinable net cash surrender value, which is the cash surrender value less any outstanding loans (Level 2 measure). The carrying amounts of the company-owned life insurance policies are included in Other assets in the Consolidated Balance Sheets.
- **Long-term debt:** Long-term debt, for which there were no transactions on the measurement date, was valued based on quoted market prices near the measurement date when available or by discounting the future cash flows of each instrument using rates based on the most recently observable trade or using rates currently offered to the Company for similar debt instruments of comparable maturities (Level 2 measure). The carrying amount of the New Facilities loans under the Third Amended Credit Agreement approximates fair value because the interest rates vary with market interest rates. Refer to Note 8 for additional information about the Third Amended Credit Agreement.

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

NOTE 14. COMMITMENTS AND CONTINGENCIES

COMMITMENTS

The Company has a paper purchase agreement with Boise White Paper, L.L.C. (“Boise Paper”) under which it agreed to purchase office paper from Boise Paper and Boise Paper has agreed to supply office paper to the Company, subject to the terms and conditions of the paper purchase agreement. Under the agreement, the Company has committed to purchase a portion of its paper product offering from Boise Paper. Purchases under the agreement were \$354 million in 2022, \$336 million in 2021 and \$326 million in 2020.

INDEMNIFICATIONS

Indemnification obligations may arise from the Asset Purchase Agreement between OfficeMax Incorporated, OfficeMax Southern Company, Minidoka Paper Company, Forest Products Holdings, L.L.C. and Boise Land & Timber Corp. The Company has agreed to provide indemnification with respect to a variety of obligations. These indemnification obligations are subject, in some cases, to survival periods, deductibles and caps. At December 31, 2022, the Company is not aware of any material liabilities arising from these indemnifications. Additionally, the Company retains certain guarantees in place with respect to the liabilities or obligations of the European Business and remains contingently liable for these obligations. However, the Purchaser must indemnify and hold the Company harmless for any losses in connection with these guarantees. The Company currently does not believe it is probable it would be required to perform under any of these guarantees or any of the underlying obligations.

LEGAL MATTERS

The Company is involved in litigation arising in the normal course of business. While, from time to time, claims are asserted that make demands for a large sum of money (including, from time to time, actions which are asserted to be maintainable as class action suits), the Company does not believe that contingent liabilities related to these matters (including the matters discussed below), either individually or in the aggregate, will materially affect the Company’s financial position, results of operations or cash flows.

In addition, in the ordinary course of business, sales to and transactions with government customers may be subject to lawsuits, investigations, audits and review by governmental authorities and regulatory agencies, with which the Company cooperates. Many of these lawsuits, investigations, audits and reviews are resolved without material impact to the Company. While claims in these matters may at times assert large demands, the Company does not believe that contingent liabilities related to these matters, either individually or in the aggregate, will materially affect its financial position, results of operations or cash flows.

In addition to the foregoing, OfficeMax is named a defendant in a number of lawsuits, claims, and proceedings arising out of the operation of certain paper and forest products assets prior to those assets being sold in 2004, for which OfficeMax agreed to retain responsibility. Also, as part of that sale, OfficeMax agreed to retain responsibility for all pending or threatened proceedings and future proceedings alleging asbestos-related injuries arising out of the operation of the paper and forest products assets prior to the closing of the sale. The Company has made provision for losses with respect to the pending proceedings. Additionally, as of December 31, 2022, the Company has made provision for environmental liabilities with respect to certain sites where hazardous substances or other contaminants are or may be located. For these liabilities, the Company’s estimated range of reasonably possible losses was approximately \$15 million to \$25 million. The Company regularly monitors its estimated exposure to these liabilities. As additional information becomes known, these estimates may change, however, the Company does not believe any of these OfficeMax retained proceedings are material to the Company’s financial position, results of operations or cash flows.

NOTE 15. DISCONTINUED OPERATIONS

In January 2021, the Company’s Board of Directors announced that as a result of a business review of CompuCom, management had initiated a process to explore a value-maximizing sale of the Company’s former CompuCom Division. On June 29, 2021, the Company’s Board of Directors aligned with management’s commitment to a plan to sell CompuCom through a single disposal group. Although management did not bring forth a specific transaction to the Board of Directors at the time, the Company was actively marketing CompuCom for sale at a price that the Company believed was reasonable in relation to CompuCom’s current fair value. CompuCom was available for immediate sale in its present condition and any sale was expected to be subject to customary regulatory approvals. Based on these considerations, and management’s experience and ability to complete similar transactions in the past, management believed the sale was probable and expected to complete it within one year from June 29, 2021. Accordingly, management concluded that the CompuCom disposal group had met the accounting criteria to be classified as held for sale as of June 29, 2021 and is presented as such in the Consolidated Balance Sheet as of December 25, 2021. The planned disposition of CompuCom represented a strategic shift that will have a major impact on the Company’s operations and financial results. Accordingly, the

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Company also presented the operating results and cash flows of its CompuCom Division as discontinued operations for all periods presented.

The sale of CompuCom was completed on December 31, 2021, and the transaction was structured and will be accounted for as an equity sale. The related Securities Purchase Agreement (“SPA”) provides for consideration consisting of a cash purchase price equal to \$125 million (subject to customary adjustments, including for cash, debt and working capital), an interest-bearing promissory note in the amount of \$55 million, and a holding fee (“earn-out”) provision providing for payments of up to \$125 million in certain circumstances. The promissory note accrues interest at six percent per annum, payable on a quarterly basis in cash or in-kind, and is due in full on June 30, 2027. Under the earn-out provision, if the purchaser receives dividends or sale proceeds from the CompuCom business equal to (i) three (3) times its initial capital investment in the CompuCom business plus (ii) 15% per annum on subsequent capital investments, the Company will be entitled to 50% of any subsequent dividends or sale proceeds up to and until the Company has received an aggregate of \$125 million. The Company also agreed to provide certain transitional services to the purchaser for a period of three to twelve months under a separate agreement after closing. The SPA contains customary warranties of the Company and the purchaser.

CompuCom was presented as held for sale as of December 25, 2021, and the loss from classification to held for sale was measured at the lower of its carrying amount or estimated fair value less costs to sell and was included in the valuation allowance of current assets held for sale as of December 25, 2021. The estimated fair value of CompuCom was based on the terms of the SPA, and amounted to \$190 million, which included \$126 million for cash purchase price after adjusting for cash, debt and working capital, \$55 million for the promissory note, and \$9 million for the earn-out. Of the cash purchase price, \$30 million was related to adjustments for cash, debt and working capital and was recorded as a current receivable upon completion of the sale. The promissory note and the earn-out are non-current receivables as of December 31, 2022. The earn-out provision was identified to be a derivative in accordance with ASC 815, and its fair value was determined using Monte Carlo simulation. The resulting loss from classification to held for sale was \$170 million in the fourth quarter of 2021.

In the fourth quarter of 2022, the Company and the purchaser settled on the cash, debt and working capital adjustments, which resulted in a total receivable of \$9 million, of which \$5 million was recorded as a current receivable, and the remaining \$4 million as a non-current receivable as of December 31, 2022. In February 2023, the promissory note was amended to include the additional \$4 million non-current receivable, bringing its principal balance to \$59 million. Since the agreed upon receivable amount was lower than the \$30 million estimated, discussed above, it resulted in an adjustment to loss on disposal of \$21 million related to the sale of CompuCom in 2022. During 2022, the Company also incurred additional \$2 million in third-party professional fees related to the sale of CompuCom. These losses were partially offset by \$10 million of insurance proceeds received for the malware incident that occurred in 2021.

Merger and restructuring expenses incurred by the former CompuCom Division, that were previously presented as Corporate expenses, are included in the measurement and presentation of discontinued operations in all periods presented.

The following table represents a reconciliation of the major components of Discontinued operations, net of tax presented in the Consolidated Statements of Operations.

<i>(In millions)</i>	2022	2021	2020
Major components of discontinued operations before income taxes:			
Sales	\$ —	\$ 802	\$ 838
Cost of goods and occupancy costs	-	645	657
Gross profit	—	157	181
Selling, general and administrative expenses	—	152	171
Asset impairments	—	252	248
Merger, restructuring and other operating expenses, net	—	(2)	20
Operating loss	—	(245)	(258)
Other income (expense), net	—	(1)	1
Loss from major components of discontinued operations before income taxes	—	(246)	(257)
Loss from classification to held for sale	(13)	(170)	—
Loss from discontinued operations before income taxes	(13)	(416)	(257)
Income tax benefit	(1)	(21)	(1)
Discontinued operations, net of tax	<u>\$ (12)</u>	<u>\$ (395)</u>	<u>\$ (256)</u>

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The following table represents the major classes of assets and liabilities of the disposal group classified as held for sale presented in the Consolidated Balance Sheet as of December 25, 2021. The Company completed the sale of CompuCom on December 31, 2021, and therefore no assets or liabilities are included in discontinued operations as of December 31, 2022.

<i>(In millions)</i>	December 25, 2021
Major classes of assets included in discontinued operations:	
Cash and cash equivalents	\$ 23
Receivables, net	221
Inventories	20
Prepaid expenses and other current assets	15
Property and equipment, net	25
Operating lease right-of-use assets	66
Other intangible assets, net	255
Other assets	14
Less: valuation allowance	(170)
Total assets of the disposal group classified as held for sale	\$ 469
Major classes of liabilities included in discontinued operations:	
Trade accounts payable	\$ 83
Accrued expenses and other current liabilities	86
Deferred income taxes and other long-term liabilities	75
Operating lease liabilities	46
Total liabilities of the disposal group classified as held for sale	\$ 290

NOTE 16. QUARTERLY FINANCIAL DATA (UNAUDITED)

<i>(In millions, except per share amounts)</i>	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Fiscal Year Ended December 31, 2022*				
Net sales	\$ 2,178	\$ 2,034	\$ 2,172	\$ 2,106
Gross profit	484	431	486	446
Operating income (1)	76	28	84	55
Net income from continuing operations	55	20	67	36
Discontinued operations, net of tax	—	7	—	(19)
Net income	55	27	67	17
Basic earnings (loss) per share (2)				
Continuing operations	\$ 1.14	\$ 0.40	\$ 1.39	\$ 0.79
Discontinued operations	—	0.15	(0.01)	(0.41)
Net basic earnings per share	\$ 1.14	\$ 0.55	\$ 1.38	\$ 0.38
Diluted earnings (loss) per share (2)				
Continuing operations	\$ 1.09	\$ 0.39	\$ 1.36	\$ 0.76
Discontinued operations	—	0.15	(0.01)	(0.40)
Net diluted earnings per share	\$ 1.09	\$ 0.54	\$ 1.35	\$ 0.36

* Due to rounding, the sum of the quarterly amounts may not equal the reported amounts for the year.

(1) Includes Merger, restructuring and other operating expenses, net totaling \$10 million, \$23 million, \$8 million and (\$3) million in the first, second, third and fourth quarters of 2022, respectively. The first, second, third and fourth quarters of 2022 also include asset impairments of \$2 million, \$3 million, \$3 million and \$6 million, respectively.

(2)

THE ODP CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The sum of the quarterly earnings (loss) per share does not equal the annual earnings (loss) per share due to differences in quarterly and annual weighted-average shares outstanding.

<i>(In millions, except per share amounts)</i>	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Fiscal Year Ended December 25, 2021*				
Net sales	\$ 2,174	\$ 2,070	\$ 2,179	\$ 2,042
Gross profit	495	432	504	432
Operating income (3)	69	30	104	31
Net income from continuing operations	63	20	73	32
Discontinued operations, net of tax	(10)	(108)	28	(306)
Net income (loss)	53	(88)	101	(274)
Basic earnings (loss) per share (4)				
Continuing operations	\$ 1.17	\$ 0.36	\$ 1.38	\$ 0.63
Discontinued operations	(0.18)	(1.98)	0.54	(6.07)
Net basic earnings (loss) per share	\$ 0.99	\$ (1.62)	\$ 1.92	\$ (5.44)
Diluted earnings (loss) per share (4)				
Continuing operations	\$ 1.12	\$ 0.35	\$ 1.33	\$ 0.61
Discontinued operations	(0.17)	(1.93)	0.52	(5.87)
Net diluted earnings (loss) per share	\$ 0.95	\$ (1.58)	\$ 1.85	\$ (5.26)

* Due to rounding, the sum of the quarterly amounts may not equal the reported amounts for the year.

(3) Includes Merger, restructuring and other operating expenses, net totaling \$13 million, \$11 million, \$13 million and \$14 million in the first, second, third and fourth quarters of 2021, respectively. The first, second, third and fourth quarters of 2021 also include asset impairments of \$12 million, \$1 million, \$5 million and \$2 million, respectively.

(4) The sum of the quarterly earnings (loss) per share does not equal the annual earnings (loss) per share due to differences in quarterly and annual weighted-average shares outstanding.

NOTE 17. SUBSEQUENT EVENTS

In January 2023, the Company acquired a small independent regional office supply distribution business in the U.S. Consistent with acquisitions of similar sized businesses in the past, the business was acquired within a range of \$5 million to \$15 million, which is not material to the Company. Additionally, certain disclosures set forth under ASC 805, including supplemental pro forma financial information, are not disclosed because the operating results of the acquired business is not material to the Company.

FORM 10-K CROSS-REFERENCE INDEX

	<u>Page</u>
<u>PART I</u>	
Item 1. Business	3
Item 1A. Risk Factors	12
Item 1B. Unresolved Staff Comments	Not Applicable
Item 2. Properties	25
Item 3. Legal Proceedings	26
Item 4. Mine Safety Disclosures	Not Applicable
<u>PART II</u>	
Item 5. Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities	27
Item 6. Selected Financial Data	Not Applicable
Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations	29
Item 7A. Quantitative and Qualitative Disclosures About Market Risk	46
Item 8. Financial Statements and Supplementary Data	(a)
Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure	Not Applicable
Item 9A. Controls and Procedures	46
Item 9B. Other Information	47
Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections	Not Applicable
<u>PART III</u>	
Item 10. Directors, Executive Officers and Corporate Governance	49
Item 11. Executive Compensation	49
Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	49
Item 13. Certain Relationships and Related Transactions, and Director Independence	49
Item 14. Principal Accountant Fees and Services	49
<u>PART IV</u>	
Item 15. Exhibits and Financial Statement Schedules	50
Item 16. Form 10-K Summary	Not Applicable
<u>SIGNATURES</u>	53

(a) Refer to Part IV — Item 15 of this Annual Report.

**AMENDED AND RESTATED BYLAWS OF
THE ODP CORPORATION,
A DELAWARE CORPORATION ARTICLE I
OFFICES**

Section 1. Registered Office. The registered office of the corporation shall be located at the corporation's principal place of business in the State of Delaware or at the office of the person or entity then acting as the corporation's registered agent in Delaware. The registered office and/or registered agent of the corporation may be changed from time to time by resolution of the Board of Directors.

Section 2. Other Offices. The corporation may also have offices at such other places as the Board of Directors may from time to time determine or the business of the corporation may require.

**ARTICLE II
STOCKHOLDERS**

Section 1. Annual Meeting. The annual meeting of stockholders for the election of directors and the conduct of such other business as may properly come before the meeting in accordance with these Bylaws shall be held at such place, if any, and time on such day, other than a legal holiday, as the Board of Directors in each such year determines. The Board of Directors may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board of Directors.

Section 2. Special Meetings. Special meetings of stockholders may be called for any purpose and may be held at such time and place as shall be stated in a notice of meeting or in a duly executed waiver of notice thereof. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the corporation's notice of meeting.

(a) A special meeting of stockholders may be called at any time by the Chief Executive Officer or, if directed by resolution of the Board of Directors, the Secretary.

(b) A special meeting of stockholders shall be called by the Secretary at the written request (a "Special Meeting Request") of holders of record of at least 25% of the outstanding common stock of the corporation entitled to vote on the matter or matters to be brought before the proposed special meeting (the "Requisite Percentage"). A Special Meeting Request to the Secretary shall be signed by each stockholder requesting the special meeting (each, a "Requesting Stockholder") and shall be accompanied by a notice setting forth the information required by Section 14(a)(2)(A)-(D) of this Bylaw, as if such Section were applicable to Special Meeting Requests. Requesting Stockholders who collectively hold at least the Requisite Percentage on the date the Special Meeting Request is submitted to the Secretary must (i) continue to hold at least the number of shares of common stock set forth in the Special Meeting Request with respect to each such Requesting Stockholder through the date of the special meeting and (ii) submit a written certification (an "Ownership Certification") confirming the continuation of such holdings on the business day immediately preceding the special meeting, which Ownership Certification shall include the information required by Section 14(a)(2)(A) of this Bylaw as of the date of such special meeting with respect to each such Requesting Stockholder.

(c) A special meeting called pursuant to Section 2(a) or Section 2(b) of this Bylaw shall be held at such date, time and place as may be fixed by the Board of Directors in accordance with these Bylaws; *provided, however*, that the date of any special meeting called pursuant to Section 2(b) of this Bylaw shall not be more than 90 days after a Special Meeting Request that satisfies the requirements of this Section 2 is received by the Secretary. The day, place and hour of such special meeting shall be set forth in the notice of special meeting. If a valid Special Meeting Request is received by the Secretary subsequent to a valid Special Meeting Request and before the date of the corresponding special meeting of shareholders, all items of business contained in such Special Meeting Requests may be presented at one special meeting.

(d) Notwithstanding the foregoing provisions of this Section 2, a special meeting requested by stockholders pursuant to Section 2(b) of this Bylaw shall not be held if (i) the Special Meeting Request does not comply with this Section 2; (ii) the Special Meeting Request relates to an item of business that is not a proper subject for stockholder action under applicable law; (iii) the Special Meeting Request is received by the corporation during the period commencing 90 days prior to the first anniversary of the date of the immediately preceding annual meeting and ending on the date of the next annual meeting; (iv) an annual or special meeting of stockholders that included a substantially similar item of business (“Similar Business”) (as determined in good faith by the Board of Directors) was held not more than 120 days before the Special Meeting Request was received by the Secretary; (v) the Board of Directors has called or calls for an annual or special meeting of stockholders to be held within 90 days after the Special Meeting Request is received by the Secretary and the Board of Directors determines in good faith that the business to be conducted at such meeting includes the Similar Business; (vi) such Special Meeting Request was made in a manner that involved a violation of Regulation 14A under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or other applicable law; or (vii) two or more special meetings of stockholders called pursuant to the request of stockholders have been held within the 12-month period before the Special Meeting Request was received by the Secretary. For purposes of this Section 2(d), the nomination, election or removal of directors shall be deemed to be Similar Business with respect to all items of business involving the nomination, election or removal of directors, changing the size of the Board of Directors and filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors.

(e) Any Requesting Stockholder may revoke such stockholder’s participation in a Special Meeting Request at any time by written revocation delivered to the Secretary and if, following any such revocation, there are outstanding un-revoked requests from stockholders holding less than the Requisite Percentage in accordance with this Section 2, the Board of Directors may, in its discretion, cancel the special meeting. If none of the Requesting Stockholders appears or sends a duly authorized agent to present the business to be presented for consideration that was specified in the Special Meeting Request, or if the Ownership Certification does not satisfy the requirements set forth in Section 2(b) of this Bylaw, the corporation need not present such business for a vote at such special meeting.

(f) Business conducted at a special meeting requested by stockholders pursuant to Section 2(b) of this Bylaw shall be limited to the matters described in the applicable Special Meeting Request; *provided* that nothing herein shall prohibit the Board of Directors from submitting matters to the stockholders at any such special meeting requested by stockholders.

Section 3. Place of Meetings. Annual and special meetings may be held at such place, if any, either within or without the State of Delaware, as the Board of Directors may determine. The Board of Directors may, in its sole discretion, determine that meetings of the stockholders shall not be held at any place, but may instead be held solely by means of remote communication as described in Article II, Section 17 of these Bylaws in accordance with Section 211(a)(2) of the General Corporation Law of the State of Delaware.

Section 4. Notice. Whenever stockholders are required or permitted to take action at a meeting, written or printed notice stating the place, date, time, and, in the case of special meetings, the purpose or purposes, of such meeting, shall be given to each stockholder entitled to vote at such meeting not less than 10 nor more than 60 days before the date of the meeting. All such notices shall be delivered, either (a) personally or by mail, by or at the direction of the Chief Executive Officer or the Secretary, and if mailed, such notice shall be deemed to be delivered when deposited in the United States mail, postage prepaid, addressed to the stockholder at his, her or its address as the same appears on the records of the corporation or (b) by a form of electronic transmission, including electronic mail, in the manner provided in and to the extent permitted by the General Corporation Law of the State of Delaware (the “Delaware General Corporation Law”). Nothing in these Bylaws shall preclude the stockholders from waiving notice as provided in Article IV hereof. Any previously scheduled annual meeting of the stockholders may be postponed, and any previously scheduled special meeting of the stockholders may be postponed or cancelled, by resolution of the Board of Directors upon public notice given prior to the time previously scheduled for such meeting of stockholders.

Section 5. Fixing a Record Date for Stockholder Meetings. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 60 nor less than 10 days before the date of any such meeting. Only stockholders as of the record date are entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof. If no record date is fixed by the Board of Directors, the

record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be the close of business on the next day preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment or postponement of the meeting; *provided, however*, that the Board of Directors may fix a new record date for the adjourned or postponement meeting.

Section 6. Quorum. The holders of a majority of the issued and outstanding shares of common stock of the corporation entitled to vote, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders. If a quorum is not present, the chairman of the meeting or the holders of a majority of the shares present in person or represented by proxy at the meeting and entitled to vote at the meeting may adjourn the meeting to another time and/or place from time to time. When a quorum is once present to commence a meeting of stockholders, it shall not be broken by the subsequent withdrawal of the stockholders or their proxies.

Section 7. Adjourned Meetings. When a meeting is adjourned to another time and place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At any such adjourned meeting at which a quorum shall be present or represented, the corporation may transact any business which might have been transacted at the original meeting. Notwithstanding the foregoing, if the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given as provided in Section 4 of Article II hereof, but such notice may be waived as provided in Article IV hereof.

Section 8. Voting by Stockholders on Matters Other Than the Election of Directors. With respect to any matters as to which no other voting requirement is specified by the Delaware General Corporation Law, the certificate of incorporation of the corporation (the "Certificate of Incorporation") or these Bylaws, the affirmative vote required for stockholder action shall be that of a majority of the shares present in person or represented by proxy (as counted for purposes of determining the existence of a quorum) and entitled to vote at a meeting of stockholders at which a quorum is present. In the case of a matter submitted for a vote of the stockholders as to which a stockholder approval requirement is applicable under the stockholder approval policy of the NASDAQ Stock Market (or any other exchange on which the corporation's securities are listed), the requirements of Rule 16b-3 under the Exchange Act, or any provision of the Internal Revenue Code of 1986, as amended (the "Code"), including Code Section 162(m), in each case for which no higher voting requirement is specified by the Delaware General Corporation Law, the Certificate of Incorporation or these Bylaws, the vote required for approval shall be the requisite vote specified in such stockholder approval policy, Rule 16b-3 or such Code provision, as the case may be (or the highest such requirement if more than one is applicable). For the approval of the appointment of independent public accountants (if submitted for a vote of the stockholders), the vote required for approval shall be a majority of the votes cast on the matter.

Section 9. Voting by Stockholders in the Election of Directors. Each director to be elected by the stockholders shall be elected by a majority of the votes cast at any meeting held for the purpose of the election of directors at which a quorum is present, subject to the following provisions:

(a) Resignation of Incumbent Director Who Fails to Receive a Majority Vote: In any non-contested election of directors, any director nominee who is an incumbent director who receives a greater number of votes "against" his or her election than votes "for" such election shall immediately tender his or her resignation to the Board of Directors, which resignation shall be irrevocable. Thereafter, the Board of Directors shall decide, through a process managed by the Corporate Governance and Nominating Committee (and excluding the nominee in question from all Board of Directors and Committee deliberations), whether to accept such resignation within 90 days of the date of such resignation. Absent a compelling reason for the director to remain on the Board of Directors (as determined by the Board of Directors), the Board of Directors shall accept the resignation from the director. To the extent that the Board of Directors determines that there is a compelling reason for the director to remain on the Board of Directors and does not accept the resignation, the Board of Directors' explanation of its decision shall be disclosed promptly in a Current Report on Form 8-K filed with the United States Securities and Exchange Commission (the "SEC") or in a press release that is widely disseminated.

(b) Definition of "Compelling Reason": For purposes of this policy, a "compelling reason" shall be determined by the Board of Directors (excluding the nominee in question from all Board of Directors and Committee deliberations) and could include, by way of example and without limitation, situations in which a director nominee

was the target of a “vote no” campaign on what the Board of Directors believes to be an illegitimate or inappropriate basis or if the resignation would cause the corporation to be in violation of its constituent documents or regulatory requirements.

- (c) Consequences of the Board of Directors’ Acceptance or Non-Acceptance of a Director’s Resignation: If such incumbent director’s resignation is accepted by the Board of Directors, then such director shall immediately cease to be a member of the Board of Directors upon the date of action taken by the Board of Directors to accept such resignation. If such incumbent director’s resignation is not accepted by the Board of Directors, such director will continue to serve until the next annual meeting, or until his or her subsequent resignation or removal.
- (d) Failure of a Non-Incumbent Director to Win Election: If any nominee for director who is not an incumbent fails in a non-contested election to receive a majority vote for his or her election at any meeting for the purpose of the election of directors at which a quorum is present, such candidate shall not be elected and shall not take office.
- (e) Filling Vacancies: If an incumbent director’s resignation is accepted by the Board of Directors pursuant to this Bylaw, or if a non-incumbent nominee for director is not elected, the Board of Directors, may fill any resulting vacancy pursuant to the provisions of Article III, Section 4 of these Bylaws, or may decrease the size of the Board of Directors pursuant to the provisions of Article III, Section 2 of these Bylaws.
- (f) Nominees to Agree in Writing to Abide by this Bylaw: To be eligible for election as a director of the corporation, each nominee (including incumbent directors and nominees proposed by stockholders in accordance with Article II, Section 14 of these Bylaws) must agree in writing in advance to comply with the requirements of this Section 9 of Article II of these Bylaws.
- (g) Majority Vote Defined: For purposes of this Bylaw, a majority of votes cast shall mean that the number of shares voted “for” a director’s election exceeds 50% of the total number of votes cast with respect to that director’s election. Votes “cast” shall include votes “against” but shall exclude abstentions with respect to a director’s election or with respect to the election of directors in general.
- (h) Vote Standard in Contested Elections: Notwithstanding anything to the contrary contained in this Article II, Section 9 of these Bylaws, in the event of a contested election, directors shall be elected by the vote of a plurality of the votes cast at any meeting for the election of directors at which a quorum is present. For purposes of this Bylaw, a contested election shall mean any election of directors in which the number of candidates for election as directors exceeds the number of directors to be elected, with the determination thereof being made by the Secretary (i) as of the close of the applicable notice of nomination period set forth in Article II, Section 14(a)(2) or Article II, Section 14(a)(4) of these Bylaws, whichever is later, based on whether one or more notice(s) of nomination were timely filed in accordance with said Bylaws or (ii) if later, reasonably promptly following the determination by any court or other tribunal of competent jurisdiction that one or more notice(s) of nomination were timely filed in accordance with said Bylaws; *provided*, that the determination that an election is a contested election by the Secretary pursuant to clause (i) or (ii) shall be determinative only as to the timeliness of a notice of nomination and not otherwise as to its validity. If, prior to the time the corporation mails its initial proxy statement in connection with such election of directors, one or more notices of nomination are withdrawn (or declared invalid or untimely by any court or other tribunal of competent jurisdiction) such that the number of candidates for election as director no longer exceeds the number of directors to be elected, the election shall not be considered a contested election, but in all other cases, once an election is determined to be a contested election, directors shall be elected by the vote of a plurality of the votes cast.

Section 10. Voting Rights. Except as otherwise provided by the Delaware General Corporation Law or by the Certificate of Incorporation and subject to Article VIII, Section 3 of these Bylaws, every stockholder shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of common stock held by such stockholder.

Section 11. Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him or her by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy specifically provides for a longer period. Each proxy shall be in writing executed by the stockholder or by a transmission permitted by law, including Rule 14a-19 promulgated under the Exchange Act, giving the proxy or by his duly authorized attorney. Unless and until voted, every proxy shall be revocable at the pleasure of

the person who executed it, or his legal representatives or assigns except in those cases where an irrevocable proxy permitted by statute has been given. Any proxy is suspended when the person executing the proxy is present at a meeting of stockholders and elects to vote, except that when such proxy is coupled with an interest sufficient in law to support an irrevocable power and the fact of the interest appears on the face of the proxy, the agent named in the proxy shall have all voting and other rights referred to in the proxy, notwithstanding the presence of the person executing the proxy. At each meeting of the stockholders, and before any voting commences, all proxies filed at or before the meeting shall be submitted to and examined by the Secretary or a person designated by the Secretary, and no shares may be represented or voted under a proxy that has been found to be invalid or irregular.

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

Section 12. Action by Written Consent.

(a) General. Any action required to be taken at any annual or special meeting of stockholders of the corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken and bearing the dates of signature of the stockholders who signed the consent or consents, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in the State of Delaware, or the corporation's principal place(s) of business, or an officer or agent of the corporation having custody of the book or books in which proceedings of meetings of the stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested, *provided, however*, that no consent or consents delivered by certified or registered mail shall be deemed delivered until received at the registered office. All consents properly delivered in accordance with this Section shall be deemed to be recorded when so delivered. Any action taken pursuant to such written consent or consents of the stockholders shall have the same force and effect as if taken by the stockholders at a meeting of stockholders.

(b) Inspectors of Written Consent. In the event of the delivery, in the manner provided by Section 12(a) of this Bylaw, to the corporation of the requisite written consent or consents to take corporate action and/or any related revocation or revocations, the corporation shall engage nationally recognized independent inspectors of elections for the purpose of promptly performing a ministerial review of the validity of the consents and revocations. For the purpose of permitting the inspectors to perform such review, no action by written consent without a meeting shall be effective until such date as the independent inspectors certify to the corporation that the consents delivered to the corporation in accordance with Section 12(a) of this Bylaw represent at least the minimum number of votes that would be necessary to take the corporate action. Nothing contained in this paragraph shall in any way be construed to suggest or imply that the Board of Directors or any stockholder shall not be entitled to contest the validity of any consent or revocation thereof, whether before or after such certification by the independent inspectors, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

(c) Effectiveness of Action by Written Consent. No written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered to the corporation as required by this section, written consents signed by the holders of a sufficient number of shares to take such corporate action are so recorded.

(d) Notice of Action by Written Consent. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of stockholders to take the action were recorded.

(e) Fixing a Record Date for Action by Written Consent. In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Only stockholders as of the record date are entitled to consent to corporate action in writing without a meeting. Any stockholder of record seeking to have the stockholders

authorize or take corporate action by written consent shall, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within 10 days after the date on which such a request is received, adopt a resolution fixing the record date (unless a record date has previously been fixed by the Board of Directors pursuant to the first sentence of this Bylaw). If no record date has been fixed by the Board of Directors, pursuant to this Bylaw or otherwise within 10 days of the date on which such a request is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by statute, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place(s) of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by statute, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 13. Stock Records. The corporation shall prepare, at least 10 days before each meeting or any adjournment thereof, a complete list of the stockholders entitled to vote at the meeting (provided, however, if the record date for determining the stockholders entitled to vote is less than 10 days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date) arranged in alphabetical order and showing the address of and the number and class and series, if any, of shares held by each. For a period of 10 days prior to such meeting, such list shall be kept at the principal place(s) of business of the corporation or at the office of the transfer agent or registrar of the corporation and such other places, if any, as required by statute and shall be subject to inspection by any stockholder at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any stockholder at any time during the meeting.

Section 14. Notice of Stockholder Nominations and Other Business.

(a) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board of Directors and the proposal of other business to be considered by the corporation's stockholders may be made at an annual meeting of stockholders (A) by or at the direction of the Board of Directors, including pursuant to the corporation's notice of meeting, or (B) by any stockholder of the corporation who, (x) with respect to nominations of persons and the proposal of any business not intended to be included in the corporation's proxy statement for such annual meeting, (i) was a stockholder of record at the time of giving of notice provided for in Section (a)(2) of this Bylaw and at the time of the annual meeting (including any adjournment or postponement thereof), (ii) is entitled to vote at the meeting and (iii) complies with the notice procedures set forth in Section (a)(2) of this Bylaw as to such business or nomination or (y) with respect to nominations of persons intended to be included in the corporation's proxy statement for such annual meeting, by a Nominator (as defined below) who complies with the notice and other procedures set forth in Section (a)(4) of this Bylaw; this clause (B) shall be the exclusive means for a stockholder to make nominations or submit other business (other than matters properly brought under Rule 14a-8 under the Exchange Act and included in the corporation's notice of meeting) before an annual meeting of stockholders.

(2) Without qualification, for any nominations or any other business to be properly brought before an annual meeting by a stockholder pursuant to Section 14(a)(1)(B)(x) of this Bylaw, the stockholder must have given timely notice in writing to the Secretary 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 earlier than the close of business on the 120th day and not later than the close of business on the 90th day prior to the first anniversary of the preceding year's annual meeting; *provided, however*, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to the date of such annual meeting and not later than the close of business on the later of the 90th day prior to the date of such annual meeting or, if the first public announcement of the date of such annual meeting is less than 100 days prior to the date of such annual meeting, the tenth day following the day on which public announcement of the date of such meeting is first made by the corporation. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

To be in proper form, a stockholder's notice (whether given pursuant to this Section 14(a)(2), Section 14(a)(4) or Section 14(b) of this Bylaw) to the Secretary must:

(A) set forth, 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, if any, (ii) (1) the class or series and number of shares of the corporation which are, directly or indirectly, owned beneficially and of record by such stockholder and such beneficial owner, (2) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the corporation or with a value derived in whole or in part from the value of any class or series of shares of the corporation, or which is intended to increase or decrease (or has the effect of increasing or decreasing) the voting power of any person with respect to the shares of any class or series of shares in the corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the corporation or otherwise (a "Derivative Instrument") directly or indirectly owned beneficially by such stockholder and such beneficial owner and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the corporation, (3) any proxy, contract, arrangement, understanding, or relationship pursuant to which such stockholder has a right to vote any shares of any security of the corporation or influence the voting over any such shares, (4) any short interest in any security of the corporation (for purposes of this Bylaw a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (5) any rights to dividends on the shares of the corporation owned beneficially by such stockholder and such beneficial owner that are separated or separable from the underlying shares of the corporation, (6) any proportionate interest in shares of the corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder and such beneficial owner is a general partner or, directly or indirectly, beneficially owns an interest in a general partner and (7) any performance-related fees (other than an asset-based fee) that such stockholder and such beneficial owner is entitled to based on any increase or decrease in the value of shares of the corporation or Derivative Instruments, if any, as of the date of such notice, including without limitation any such interests held by members of such person's immediate family sharing the same household (which information shall be supplemented by such stockholder and beneficial owner, if any, not later than 10 days after the record date for the meeting to disclose such ownership as of the record date), (iii) any other information relating to such stockholder and beneficial owner, if any, that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder; (iv) a representation that the stockholder is a stockholder of record of stock of the corporation at the time of the giving of notice provided for in these Bylaws, is entitled to vote at such meeting and that the stockholder (or a qualified representative thereof) intends to appear in person at the meeting to present such nominee for election or to bring such business before the meeting; and (v) a statement as to whether or not such stockholder or beneficial owner intends to deliver a proxy statement and form of proxy to, in the case of a nomination, a number of holders representing at least 67% of the voting power of shares entitled to vote on the election in support of such nominee or nominees or, in the case of a proposal to carry such proposal under applicable law;

(B) if the notice relates to nominations of persons not intended to be included in the corporation's proxy statement, a stockholder who has delivered such notice shall promptly certify to the corporation, and notify the corporation in writing, that it has met the requirements of Rule 14a-19(a) (including for the avoidance of doubt Rule 14a-19(a)(3) which provides that "No person may solicit proxies in support of director nominees other than the registrant's nominees unless such person: ... Solicits the holders of shares representing at least 67% of the voting power of shares entitled to vote on the election of directors and includes a statement to that effect in the proxy statement or form of proxy.") and upon request of the corporation, shall, not later than five (5) business days prior to date of the applicable meeting of stockholders deliver to the corporation reasonable evidence of such compliance;

(C) if the notice relates to any business other than a nomination of a director or directors that the stockholder proposes to bring before the annual meeting, set forth (i) 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, in such business and (ii) a description of all agreements, arrangements and understandings between such stockholder and beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder;

(D) set forth, as to each person, if any, whom the stockholder proposes to nominate for election or reelection to the Board of Directors (i) all information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected) and (ii) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such stockholder and beneficial owner, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; and

(E) with respect to each nominee for election or reelection to the Board of Directors, include a completed and signed questionnaire, representation and agreement required by Article II, Section 15 of these Bylaws. The corporation may require any proposed nominee to furnish such other information as may reasonably be required by the corporation to determine the eligibility of such proposed nominee to serve as an independent director of the corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee.

(3) Notwithstanding anything in the second sentence of Section 14(a)(2) of this Bylaw to the contrary, with respect to nominations of persons not intended to be included in the corporation's proxy statement, in the event that the number of directors to be elected to the Board of Directors is increased and there is no public announcement by the corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least 100 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by Section (a)(2) of 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 tenth day following the day on which such public announcement is first made by the corporation.

(4) Proxy Access for Director Nominations.

(A) Whenever the Board of Directors solicits proxies with respect to the election of directors at an annual meeting, in addition to any persons nominated for election to the Board of Directors by or at the direction of the Board of Directors, subject to the provisions of this Section 14(a)(4), the corporation shall: (i) include in its notice of meeting and proxy materials, as applicable, for any annual meeting of stockholders (1) the name of any person nominated for election (the "Stockholder Nominee") by a stockholder as of the date that the Notice of Proxy Access Nomination (as defined below) is received by the Secretary at the principal executive offices of the corporation in accordance with this Section 14(a)(4) who is entitled to vote for the election of directors at the annual meeting and who satisfies the notice, ownership and other requirements of this Section 14(a)(4) (such stockholder, together with the beneficial owner of such shares, a "Nominator") or by a group of no more than 20 such stockholders (such stockholders, together with the beneficial owners of such shares, a "Nominator Group") that, collectively as a Nominator Group, satisfies the notice, ownership and other requirements of this Section 14(a)(4) applicable to a Nominator Group; provided that, in the case of a Nominator Group, each member thereof (each a "Group Member") shall have satisfied the notice, ownership and other requirements of this Section 14(a)(4) applicable to Group Members, and (2) if the Nominator or the Nominator Group, as applicable, so elects, the Nomination Statement (as defined below) furnished by such Nominator or Nominator Group; and (ii) include such Stockholder Nominee's name on any ballot distributed at such annual meeting and on the corporation's proxy card (or any other format through which the corporation permits proxies to be submitted) distributed in connection with such annual meeting. Nothing in this Section 14(a)(4) shall limit the corporation's ability to solicit against, and include in its proxy materials its own statements relating to, any Stockholder Nominee, Nominator or Nominator Group, or to include such Stockholder Nominee as a nominee of the Board of Directors.

(B) At each annual meeting, a Nominator or Nominator Group may nominate one or more Stockholder Nominees for election at such meeting pursuant to this Section 14(a)(4); provided that the maximum number of Stockholder Nominees nominated by all Nominators and Nominator Groups (including Stockholder Nominees that were submitted by a Nominator or Nominator Group for inclusion in the corporation's proxy materials pursuant to

this Section 14(a)(4) but either are subsequently withdrawn, disregarded, declared invalid or ineligible pursuant to this Section 14(a)(4)) to appear in the corporation's proxy materials with respect to an annual meeting shall not exceed the greater of (i) two nominees and (ii) 20% of the total number of directors in office as of the Final Proxy Access Deadline (as defined below), or if such number is not a whole number, the closest whole number below 20% (the "Maximum Number").

The Maximum Number shall be reduced, but not below zero, by the sum of:

(x) the number of persons that the Board of Directors decides to nominate pursuant to an agreement, arrangement or other understanding with one or more stockholders or beneficial owners, as the case may be, in lieu of such person being formally nominated as a director pursuant to this Section 14(a)(4) or Section 14(a)(2); and

(y) the number of persons that the Board decides to nominate for re-election who were previously elected to the Board based on a nomination made pursuant to this Section 14(a)(4) or Section 14(a)(2) or pursuant to an agreement, arrangement or other understanding with one or more stockholders or beneficial owners, as the case may be, in lieu of such person being formally nominated as a director pursuant to this Section 14(a)(4) or Section 14(a)(2), in each case, at one of the previous two annual meetings.

If one or more vacancies for any reason occurs on the Board of Directors at any time after the Final Proxy Access Deadline but before the date of the applicable annual meeting and the Board of Directors determines to reduce the size of the Board of Directors in connection therewith, the Maximum Number shall be calculated based on the number of directors in office as so reduced.

Any Nominator or Nominator Group submitting more than one Stockholder Nominee for inclusion in the corporation's proxy materials pursuant to this Section 14(a)(4) shall rank in its Notice of Proxy Access Nomination such Stockholder Nominees based on the order that the Nominator or Nominator Group desires such Stockholder Nominees to be selected for inclusion in the corporation's proxy materials in the event that the total number of Stockholder Nominees submitted by Nominators or Nominator Groups pursuant to this Section 14(a)(4) exceeds the Maximum Number. In the event that the number of Stockholder Nominees submitted by Nominators or Nominator Groups pursuant to this Section 14(a)(4) exceeds the Maximum Number, the highest ranking Stockholder Nominee who meets the requirements of this Section 14(a)(4) from each Nominator and Nominator Group will be selected for inclusion in the corporation's proxy materials until the Maximum Number is reached, beginning with the Nominator or Nominator Group with the largest number of shares disclosed as owned (as defined below) in its respective Notice of Proxy Access Nomination submitted to the corporation and proceeding through each Nominator or Nominator Group in descending order of ownership. If the Maximum Number is not reached after the highest ranking Stockholder Nominee who meets the requirements of this Section 14(a)(4) from each Nominator and Nominator Group has been selected, this process will continue as many times as necessary, following the same order each time, until the Maximum Number is reached.

If, after the Final Proxy Access Deadline, whether before or after the mailing of the corporation's definitive proxy statement, (i) a Stockholder Nominee who satisfies the requirements of this Section 14(a)(4) becomes ineligible for inclusion in the corporation's proxy materials pursuant to this Section 14(a)(4), becomes unwilling to serve on the Board of Directors, dies, becomes disabled or is otherwise disqualified from being nominated for election or serving as a director of the corporation or (ii) a Nominator or Nominator Group withdraws its nomination or becomes ineligible, in each case as determined by the Board of Directors or the chairman of the meeting, then the Board of Directors or the chairman of the meeting shall declare each nomination by such Nominator or Nominator Group to be invalid, and each such nomination shall be disregarded, no replacement nominee or nominees shall be included in the corporation's proxy materials or otherwise submitted for election as a director in substitution thereof and the corporation (1) may omit from its proxy materials information concerning such Stockholder Nominee and (2) may otherwise communicate to its stockholders, including without limitation by amending or supplementing its proxy materials, that the Stockholder Nominee will not be eligible for election at the annual meeting and will not be included as a Stockholder Nominee in the proxy materials.

(C) To nominate a Stockholder Nominee, the Nominator or Nominator Group shall submit to the Secretary the information required by this Section 14(a)(4) on a timely basis. To be timely, the Notice of Proxy Access Nomination must be addressed to and received by the Secretary not less than 120 days nor more than 150 days prior

to the first anniversary of the date on which the corporation's definitive proxy statement was released to stockholders in connection with the prior year's annual meeting; provided, however, that if the annual meeting is convened more than 30 days prior to or delayed by more than 60 days after the first anniversary of the date of the preceding year's annual meeting, the information must be so received not earlier than 120 days prior to such annual meeting and not later than the close of business on the later of (x) the 90th day prior to such annual meeting or (y) the 10th day following the day on which a public announcement of the date of the annual meeting is first made (the last day on which a Notice of Proxy Access Nomination may be delivered pursuant to and in accordance with this Section 14(a)(4), the "Final Proxy Access Deadline"); provided further that in no event shall any adjournment or postponement of an annual meeting, or the public announcement thereof, commence a new time period or extend any time period for the receipt of the information required by this Section 14(a)(4). The written notice required by this Section 14(a)(4) (the "Notice of Proxy Access Nomination") shall include:

(i) a written notice of the nomination by such Nominator or Nominator Group expressly requesting to have its Stockholder Nominee included in the corporation's proxy materials pursuant to this Section 14(a)(4) that includes, with respect to the Stockholder Nominee and the Nominator (including any beneficial owner on whose behalf the nomination is made) or, in the case of a Nominator Group, with respect to each Group Member (including any beneficial owner on whose behalf the nomination is made) all of the representations, agreements and other information required in a stockholder notice submitted under Section 14(a)(2) of these By-Laws;

(ii) if the Nominator or Nominator Group so elects, a written statement of the Nominator or Nominator Group for inclusion in the corporation's proxy statement in support of the election of the Stockholder Nominee(s) to the Board of Directors, which statement shall not exceed 500 words with respect to each Stockholder Nominee (the "Nomination Statement") and for the avoidance of doubt, the Nomination Statement shall be limited to 500 words and shall not include any images, charts, pictures, graphic presentations or similar items;

(iii) in the case of a nomination by a Nominator Group, the designation by all Group Members of one specified Group Member (or a qualified representative thereof) that is authorized to act on behalf of all Group Members with respect to the nomination and matters related thereto, including withdrawal of the nomination;

(iv) a representation by the Stockholder Nominee and the Nominator or Nominator Group (including each Group Member) and any beneficial owner on whose behalf the nomination is made that each such person has provided and will provide facts, statements and other information in all communications with the corporation and its stockholders and beneficial owners, including without limitation the Notice of Proxy Access Nomination and the Nomination Statement, that are and will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made in light of the circumstances under which they were made, not misleading;

(v) a statement of the Nominator or Nominator Group (including each Group Member) and any beneficial owner on whose behalf the nomination is made, setting forth and certifying the number of shares such Nominator or Nominator Group is deemed to own (as determined in accordance with sub-paragraph (d) of this Section 14(a)(4)) continuously for at least three years as of the date of the Notice of Proxy Access Nomination and one or more written statements from the stockholder of the Required Shares (as defined below), and from each intermediary through which such shares are or have been held during the requisite three-year holding period, verifying that, as of a date within seven days prior to the date that the Notice of Proxy Access Nomination is received by the Secretary, the Nominator or the Nominator Group, as the case may be, owns, and has owned continuously for the preceding three years, the Required Shares, and the Nominator's or, in the case of a Nominator Group, each Group Member's agreement to provide (1) within seven days after the record date for the applicable annual meeting, written statements from the stockholder and intermediaries verifying the Nominator's or the Nominator Group's, as the case may be, continuous ownership of the Required Shares through the record date; provided that if and to the extent that a stockholder is acting on behalf of one or more beneficial owners, such written statements shall also be submitted by any such beneficial owner or owners, and (2) immediate notice if the Nominator or the Nominator Group, as the case may be, ceases to own the Required Shares prior to the date of the applicable annual meeting;

(vi) a copy of any Schedule 14N that has been filed with the SEC as required by Rule 14a-18 under the Exchange Act;

(vii) a representation by the Nominator (including any beneficial owner on whose behalf the nomination is made), or, in the case of a Nominator Group, each Group Member (including any beneficial owner on whose behalf the nomination is made) that:

- (1) the Required Shares were acquired in the ordinary course of business and not with intent to change or influence control of the corporation, and each such person does not presently have such intent;
- (2) each such person will maintain ownership (as defined in this Section 14(a)(4)) of the Required Shares through the date of the applicable annual meeting;
- (3) each such person has not nominated, and will not nominate, for election to the Board of Directors at the applicable annual meeting any person other than its Stockholder Nominee(s) pursuant to this Section 14(a)(4);
- (4) each such person has not distributed, and will not distribute, to any stockholders or beneficial owners any form of proxy for the applicable annual meeting other than the form distributed by the corporation;
- (5) each such person has not engaged in, and will not directly or indirectly engage in, and has not been and will not be a participant (as defined in Schedule 14A of the Exchange Act) in, a “solicitation” within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the applicable annual meeting other than with respect to such Nominator or Nominator Group’s Stockholder Nominee(s) or a nominee of the Board of Directors; and
- (6) each such person consents to the public disclosure of the information provided pursuant to this Section 14(a)(4);

(viii) an executed agreement, in a form deemed satisfactory by the Board of Directors or any committee thereof, pursuant to which the Nominator (including any beneficial owner on whose behalf the nomination is made) or, in the case of a Nominator Group, each Group Member (including any beneficial owner on whose behalf the nomination is made) agrees to:

- (1) comply with all applicable laws, rules and regulations arising out of or relating to the nomination of each Stockholder Nominee pursuant to this Section 14(a)(4);
- (2) assume all liability stemming from any legal or regulatory violation arising out of the communications and information provided by such person(s) to the corporation and its stockholders and beneficial owners, including without limitation the Notice of Proxy Access Nomination and Nomination Statement;
- (3) indemnify and hold harmless the corporation and each of its directors, officers, employees, agents and affiliates individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the corporation or any of its directors, officers, employees, agents and affiliates arising out of or relating to any nomination submitted by such person(s) pursuant to this Section 14(a)(4);
- (4) file with the SEC any solicitation by or on behalf of the Nominator or Nominator Group (including each Group Member) and any beneficial owner on whose behalf the nomination is made relating to the meeting at which the Stockholder Nominee will be nominated, regardless of whether any such filing is required under Regulation 14A of the Exchange Act or whether any exemption from filing is available for such solicitation under Regulation 14A of the Exchange Act;
- (5) furnish to the corporation all notifications and updated information required by this Section 14(a)(4), including, without limitation, the information required by sub-paragraph (E) of this Section 14(a)(4); and

(6) upon request, provide to the corporation within five business days after such request, but in any event prior to the day of the annual meeting, such additional information as reasonably requested by the corporation; and

(ix) a letter of resignation signed by each Stockholder Nominee, which letter shall specify that such Stockholder Nominee's resignation is irrevocable and that it shall become effective upon a determination by the Board of Directors or any committee thereof that (1) any of the information provided to the corporation by the Nominator, the Nominator Group, any Group Member (including, in each case, any beneficial owner on whose behalf the nomination is made) or the Stockholder Nominee in respect of the nomination of such Stockholder Nominee pursuant to this Section 14(a)(4) is or was untrue in any material respect (or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading) or (2) the Stockholder Nominee, the Nominator, the Nominator Group or any Group Member (including, in each case, any beneficial owner on whose behalf the nomination is made) or any affiliate thereof shall have breached any of its representations, obligations or agreements under this Section 14(a)(4).

(D) Ownership Requirements.

(i) To nominate a Stockholder Nominee pursuant to this Section 14(a)(4), the Nominator or Nominator Group shall have owned shares representing 3% or more of the voting power entitled to vote generally in the election of directors (the "Required Shares") continuously for at least three years as of both the date the Notice of Proxy Access Nomination is submitted to the corporation and the record date for determining stockholders eligible to vote at the applicable annual meeting and must continue to own the Required Shares at all times between and including the date the Notice of Proxy Access Nomination is submitted to the corporation and the date of the applicable annual meeting; provided that if and to the extent a stockholder is acting on behalf of one or more beneficial owners (i) only the shares owned by such beneficial owner or owners, and not any other shares owned by any such stockholder, shall be counted for purposes of satisfying the foregoing ownership requirement and (ii) the aggregate number of stockholders and all such beneficial owners whose share ownership is counted for the purposes of satisfying the foregoing ownership requirement shall not exceed 20. For the purposes of determining whether the Nominator or Nominator Group owned the Required Shares for the requisite three-year period, the aggregate number of shares entitled to vote generally in the election of directors shall be determined by reference to the corporation's periodic filings with the SEC during the ownership period. Two or more funds that are (i) under common management and investment control, (ii) under common management and funded primarily by the same employer or (iii) a "group of investment companies," as such term is defined in the Investment Company Act of 1940, as amended, shall be treated as one stockholder or beneficial owner, as the case may be, for the purpose of satisfying the foregoing ownership requirements; provided that each fund otherwise meets the requirements set forth in this Section 14(a)(4); and provided further that any such funds for which shares are aggregated for the purpose of satisfying the foregoing ownership requirements provide documentation reasonably satisfactory to the corporation that demonstrates that the funds satisfy the criteria for being treated as one stockholder within seven days after the Notice of Proxy Access Nomination is delivered to the corporation. No shares may be attributed to more than one Nominator or Nominator Group, and no stockholder or beneficial owner may be a member of more than one Nominator Group (other than a stockholder directed to act by more than one beneficial owner) for the purposes of this Section 14(a)(4).

(ii) For purposes of this Section 14(a)(4), "ownership" shall be deemed to consist of and include only the outstanding shares as to which a person possesses both (i) the full voting and investment rights pertaining to such shares and (ii) the full economic interest in (including the opportunity for profit and risk of loss on) such shares; provided that the ownership of shares calculated in accordance with clauses (i) and (ii) shall not include any shares (1) that a person or any of its affiliates has sold in any transaction that has not been settled or closed, including any short sale, (2) that a person or any of its affiliates has borrowed for any purposes or purchased pursuant to an agreement to resell or (3) that are subject to any Derivative Instrument or similar agreement entered into by a person or any of its affiliates, whether any such security, instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares, in any case in which such security, instrument or agreement has, or is

intended to have, or if exercised by either party would have, the purpose or effect of (x) reducing in any manner, to any extent or at any time in the future, the person's or such person's affiliates' full right to vote or direct the voting of any such shares, and/or (y) hedging, offsetting or altering to any degree any gain or loss arising from the full economic ownership of such person's or such person's affiliates' shares. "Ownership" shall include shares held in the name of a nominee or other intermediary so long as the person claiming ownership of such shares retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. A person's ownership of shares shall be deemed to continue during any period in which the person has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement that is revocable at any time by the person. A person's ownership of shares shall be deemed to continue during any period in which the person has loaned such shares provided that the person has the power to recall such loaned shares on five business days' notice, will vote such shares at the annual meeting and will hold such shares through the date of the annual meeting. The determination of whether the requirements of "ownership" of shares for purposes of this Section 14(a)(4) are met shall be made by the Board of Directors or any committee thereof. Any such determination adopted in good faith by the Board of Directors or any committee thereof shall be conclusive and binding on the corporation, its stockholders and beneficial owners and all other parties. For the purposes of this Section 14(a)(4), the terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. For the purposes of this Section 14(a)(4), the term "affiliate" or "affiliates" shall have the meaning ascribed thereto under the rules and regulations of the Exchange Act.

(E) For the avoidance of doubt, with respect to any nomination submitted by a Nominator Group pursuant to this Section 14(a)(4), the information required by sub-paragraph (C) of this Section 14(a)(4) to be included in the Notice of Proxy Access Nomination shall be provided by each Group Member (including any beneficial owner on whose behalf the nomination is made), and each such Group Member (including any beneficial owner on whose behalf the nomination is made) shall execute and deliver to the Secretary the representations and agreements required under sub-paragraph (C) of this Section 14(a)(4) at the time the Notice of Proxy Access Nomination is submitted to the corporation. In the event that the Nominator, Nominator Group or any Group Member shall have breached any of their agreements with the corporation or any information included in the Nomination Statement or the Notice of Proxy Access Nomination, or any other communications by the Nominator, Nominator Group or any Group Member (including any beneficial owner on whose behalf the nomination is made) with the corporation or its stockholders and beneficial owners, ceases to be true and correct in all material respects (or omits a material fact necessary to make the statements made, in light of the circumstances under which they were made and as of such later date, not misleading), each Nominator, Nominator Group or Group Member (including any beneficial owner on whose behalf the nomination is made), as the case may be, shall promptly (and in any event within 48 hours of discovering such breach or that such information has ceased to be true and correct in all material respects (or omits a material fact necessary to make the statements made, in light of the circumstances under which they were made and as of such later date, not misleading)) notify the Secretary of any such breach, inaccuracy or omission in such previously provided information and shall provide the information that is required to correct any such defect, if applicable, it being understood that providing any such notification shall not be deemed to cure any defect or limit the corporation's rights to omit a Stockholder Nominee from its proxy materials as provided in this Section 14(a)(4).

(F) Stockholder Nominee Requirements.

(i) Within the time period specified in this Section 14(a)(4) for delivering the Notice of Proxy Access Nomination, each Stockholder Nominee must deliver to the Secretary a written representation and agreement, which shall be deemed a part of the Notice of Proxy Access Nomination for purposes of this Section 14(a)(4), that such person: (1) consents to being named in the corporation's proxy statement as a nominee, to serve as a director if elected and to the public disclosure of the information provided pursuant to this Section 14(a)(4); (2) understands his or her duties as a director under the Delaware General Corporation Law and agrees to act in accordance with those duties while serving as a director; (3) is not and will not become a party to (x) any Voting Commitment (as defined in Article II, Section 15 herein) that has not been disclosed to the corporation or (y) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the corporation, with such person's fiduciary duties under applicable law; (4) is not and will not become a party to any Third Party Compensation Arrangement (as defined in Article II, Section 15 herein) that has not been disclosed to the corporation, and has not and will not receive any such Third Party Compensation Arrangement that has not been disclosed to the corporation; (5) if elected as a director of the corporation, will comply with all applicable laws and stock exchange listing standards and the corporation's policies, guidelines and principles applicable to directors, including, without limitation, the corporation's publicly disclosed

corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines and any other codes, policies and guidelines or any rules, regulations and listing standards, in each case, as applicable to directors; (6) agrees to meet with the Board of Directors or any committee or delegate thereof to discuss matters relating to the nomination of the Stockholder Nominee, including information in the Notice of Proxy Access Nomination and such Stockholder Nominee's eligibility to serve as a member of the Board of Directors; and (7) will provide facts, statements and other information in all communications with the corporation and its stockholders and beneficial owners that are and will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(ii) At the request of the corporation, each Stockholder Nominee must promptly submit (but in no event later than seven days after receipt of the request) to the Secretary all completed and signed questionnaires required of directors. The corporation may request such additional information as necessary to permit the Board of Directors to determine if each nominee is independent, including for purposes of serving on the committees of the Board of Directors, under the listing standards of each principal securities exchange upon which the corporation's shares are listed, any applicable rules of the SEC and any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the corporation's directors and to determine whether the nominee otherwise meets all other publicly disclosed standards applicable to directors.

(iii) In the event that a Stockholder Nominee shall have breached any of their agreements with the corporation or any information or communications provided by a Stockholder Nominee to the corporation or its stockholders and beneficial owners ceases to be true and correct in any respect or omits a fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, such nominee shall promptly (and in any event within 48 hours of discovering such breach or that such information has ceased to be true and correct in all material respects (or omits a material fact necessary to make the statements made, in light of the circumstances under which they were made and as of such later date, not misleading)) notify the Secretary of any such breach, inaccuracy or omission in such previously provided information and shall provide the information that is required to make such information or communication true and correct, if applicable, it being understood that providing any such notification shall not be deemed to cure any defect or limit the corporation's rights to omit a Stockholder Nominee from its proxy materials as provided in this Section 14(a)(4).

(G) Notwithstanding anything to the contrary contained in this Section 14(a)(4), the corporation shall not be required to include, pursuant to this Section 14(a)(4), a Stockholder Nominee in its proxy materials for any annual meeting, or, if the proxy statement already has been filed, to submit the nomination of a Stockholder Nominee to a vote at the annual meeting, notwithstanding that proxies in respect of such vote may have been received by the corporation:

(i) for any meeting for which the Secretary receives notice that any stockholder or beneficial owner, as the case may be, intends to nominate one or more persons for election to the Board of Directors pursuant to Section 14(a)(2);

(ii) who is not determined by the Board of Directors in its sole discretion to be independent under the listing standards of each principal securities exchange upon which the shares of the corporation are listed, any applicable rules of the SEC and any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the corporation's directors, including those applicable to a director's service on any of the committees of the Board of Directors, in each case as determined by the Board of Directors or any committee thereof, in its sole discretion;

(iii) whose election as a member of the Board of Directors would cause the corporation to be in violation of these Bylaws, the Certificate of Incorporation, the rules and listing standards of the principal securities exchanges upon which the shares of the corporation are listed, or any applicable law, rule or regulation or of any publicly disclosed standards of the corporation applicable to directors, in each case, as determined by the Board of Directors or any committee thereof, in its sole discretion;

(iv) who is or has been, within the past three years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, as amended;

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

(vi) who is subject to any order of the type specified in Rule 506(d) of Regulation D under the Securities Act of 1933, as amended;

(vii) if the Stockholder Nominee or Nominator (including any beneficial owner on whose behalf the nomination is made), or, in the case of a Nominator Group, any Group Member (including any beneficial owner on whose behalf the nomination is made) shall have provided information to the corporation in connection with such nomination that was untrue in any material respect or omitted to state a material fact necessary in order to make any statement made, in light of the circumstances under which it was made, not misleading, as determined by the Board of Directors or any committee thereof, in its sole discretion;

(viii) the Nominator (or a qualified representative thereof) or, in the case of a Nominator Group, the representative designated by the Nominator Group in accordance with sub-paragraph (c)(iii) of this Section 14(a)(4) (or a qualified representative thereof), or the Stockholder Nominee does not appear at the applicable annual meeting to present the Stockholder Nominee for election;

(ix) if the Nominator (including any beneficial owner on whose behalf the nomination is made), or, in the case of a Nominator Group, any Group Member (including any beneficial owner on whose behalf the nomination is made) has engaged in or is currently engaged in, or has been or is a participant (as defined in Schedule 14A of the Exchange Act) in, a "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a director at the applicable annual meeting other than with respect to such Nominator or Nominator Group's Stockholder Nominee(s) or a nominee of the Board of Directors; or

(x) the Nominator or, in the case of a Nominator Group, any Group Member, or applicable Stockholder Nominee otherwise breaches or fails to comply with its representations or obligations pursuant to these By-Laws, including, without limitation, this Section 14(a)(4).

For the purpose of this sub-paragraph (G), clauses (ii) through (x) will result in the exclusion from the proxy materials pursuant to this Section 14(a)(4) of the specific Stockholder Nominee(s) to whom the ineligibility applies, or, if the proxy statement has already been filed, the ineligibility of the Stockholder Nominee(s) and, in either case, the inability of the Nominator or Nominator Group that nominated any such Stockholder Nominee to substitute another Stockholder Nominee therefor; however, clause (i) will result in the exclusion from the proxy materials pursuant to this Section 14(a)(4) of all Stockholder Nominees for the applicable annual meeting, or, if the proxy statement already has been filed, the ineligibility of all Stockholder Nominees.

(H) Notwithstanding anything to the contrary contained in this Section 14(a)(4):

(i) the corporation may omit from its proxy materials any information, including all or any portion of the Nomination Statement, if the Board of Directors determines that the disclosure of such information would violate any applicable law or regulation or that such information is not true and correct in all material respects or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

(ii) if any Nominator, Nominator Group or Group Member (including any beneficial owner on whose behalf the nomination is made) or Stockholder Nominee has failed to comply with the requirements of this Section 14(a)(4), the Board of Directors or the chairman of the meeting shall declare the nomination by such Nominator or Nominator Group to be invalid, and such nomination shall be disregarded.

(I) The Board of Directors (or any other person or body authorized by the Board of Directors) shall have the exclusive power and authority to interpret the provisions of this Section 14(a)(4) and make all determinations deemed necessary or advisable in connection with this Section 14(a)(4) to any person, facts or circumstances. All

such actions, interpretations and determinations that are done or made by the Board of Directors (or any other person or body authorized by the Board of Directors) shall be final, conclusive and binding on the corporation, its stockholders and beneficial owners and all other parties.

(J) This Section 14(a)(4) shall be the exclusive method for stockholders to include nominees for director in the corporation's proxy materials other than with respect to Rule 14a-19 under the Exchange Act to the extent applicable with respect to form of proxies.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected (1) by or at the direction of the Board of Directors, including pursuant to the corporation's notice of meeting, (2) pursuant to Section 2 of this Bylaw, or (3) by any stockholder of the corporation who (i) is a stockholder of record at the time of giving of notice provided for in this Bylaw and at the time of the special meeting, (ii) is entitled to vote at the meeting (including any adjournment or postponement thereof), and (iii) complies with the notice procedures set forth in this Bylaw as to such nomination. In the event a special meeting of stockholders is called for the purpose of electing one or more directors to the Board of Directors, any such stockholder 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 Section 14(a)(2) of this Bylaw with respect to any nomination (including the completed and signed questionnaire, representation and agreement required by Section 15 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 120th day prior to the date of such special meeting and not later than the close of business on the later of the 90th day prior to the date of such special meeting or, if the first public announcement of the date of such special meeting is less than 100 days prior to the date of such special meeting, the tenth 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 any adjournment or postponement of a special meeting or the announcement thereof 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 and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Bylaw. Except as otherwise provided by law, the Certificate of Incorporation or this Bylaw, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this 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 SEC pursuant to Sections 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(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; *provided, however*, that any references in this Bylaw to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the requirements applicable to nominations or proposals as to any other business to be considered pursuant to Section 14(a)(1)(B) or Section 14(b) of 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 and to the extent provided for under law, the Certificate of Incorporation or this Bylaw.

Section 15. Submission of Questionnaire, Representation and Agreement. To be eligible to be a nominee for election or reelection as a director of the corporation, a person must complete and deliver (in accordance with the time periods prescribed for delivery of notice under Article II, Section 14 of these Bylaws) to the Secretary at the principal executive offices of the corporation a written questionnaire with respect to the background and

qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be in the form provided by the corporation, and shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such person (a) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the corporation or (2) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the corporation, with such person's fiduciary duties under applicable law, (b) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director (a "Third Party Compensation Arrangement") that has not been disclosed therein and (c) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the corporation.

Section 16. Fixing a Record Date for Other Purposes. In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purposes of any other lawful action, the Board of Directors may fix a record date, which record date, shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. Only stockholders as of the record date are entitled to receive such payments, distributions or other allotments or exercise such rights or take such other lawful action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 17. Remote Communication. If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxy holders not physically present at a meeting of stockholders may, by means of remote communication:

- (a) participate in a meeting of stockholders; and
- (b) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication,

provided, that

- (1) the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder;
- (2) the corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and
- (3) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

ARTICLE III DIRECTORS

Section 1. General Powers. The business and affairs of the corporation shall be managed by or under the direction of the Board of Directors.

Section 2. Number, Election and Term of Office. The number of directors which shall constitute the Board of Directors shall be established from time to time by a vote of a majority of the entire Board of Directors; *provided, however,* that the number of Directors shall not be reduced so as to shorten the term of any Director at the time in

office. The Board of Directors shall be elected at the annual meeting of the stockholders and each director elected shall hold office until the next annual meeting of stockholders or until a successor is duly elected and qualified or until his or her earlier resignation or removal as hereinafter provided.

Section 3. Removal and Resignation. Any director or the entire Board of Directors may be removed at any time, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, except as otherwise provided by law. Any director may resign at any time upon written notice to the corporation. Such written resignation shall take effect at the time specified therein, and if no time is specified, at the time of its receipt by the Chairman of the Board, Chief Executive Officer or the Secretary. Except as provided in Article II, Section 9(a) of these Bylaws, the acceptance of a resignation shall not be necessary to make it effective.

Section 4. Vacancies. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may only be filled by a majority of the directors then in office, even if less than a quorum, or by a sole remaining director. Each director so chosen shall hold office until the next annual meeting of stockholders or until a successor is duly elected and qualified or until his or her earlier resignation or removal as herein provided. Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected. Each director chosen by any class or classes of stock or series thereof shall hold office until the next election of the class for which such directors have been chosen and until their successors shall be elected and qualified.

Section 5. Annual Meetings of Board of Directors. The annual meeting of each newly elected Board of Directors shall be held without other notice than this Bylaw as soon as practicable after the annual meeting of stockholders at such location as is convenient and established by the Chief Executive Officer.

Section 6. Other Meetings and Notice. Regular meetings, other than the annual meeting, of the Board of Directors may be held at such location as is convenient and without notice at such time and at such place as shall from time to time be determined by resolution of the Board of Directors. Special meetings of the Board of Directors may be called (i) by the Chairman of the Board or the Chief Executive Officer on at least 24 hours prior notice to each director, either personally, by telephone, by mail, by telegraph, by telecopy or by e-mail or (ii) upon the request of at least three directors, by the Secretary on at least 72 hours' prior notice. If notice of less than three days is given, it shall be oral, whether by telephone or in person, or sent by special delivery mail, facsimile, telegraph or e-mail. If mailed, the notice shall be given when deposited in the United States mail, postage pre-paid. Nothing herein contained shall preclude the directors from waiving notice as provided in Article IV hereof.

Section 7. Chairman of the Board. The Chairman of the Board shall be appointed by resolution of the Board of Directors and shall preside at all meetings of the Board of Directors and stockholders.

Section 8. Quorum, Required Vote and Adjournment. A majority of the total number of directors shall constitute a quorum for the transaction of business except as otherwise provided by statute or by the Certificate of Incorporation or these Bylaws. The vote of a majority of directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless otherwise provided by an applicable provision of law, by these Bylaws, by the Certificate of Incorporation or by a resolution of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 9. Emergency Management Committee. If as a result of a catastrophe or other emergency condition a quorum of any committee of the Board of Directors having power to act in the premises cannot readily be convened and a quorum of the Board of Directors cannot readily be convened, then all the powers and duties of the Board of Directors shall automatically vest and continue, until a quorum of the Board of Directors can be convened, in the Emergency Management Committee, which shall consist of all readily available members of the Board of Directors and two of whose members shall constitute a quorum. The Emergency Management Committee shall call a meeting of the Board of Directors as soon as circumstances permit for the purpose of filling any vacancies on the Board of Directors and its committees and taking such other action as may be appropriate.

Section 10. Other Committees of the Board. The corporation shall have an Audit Committee, a Compensation Committee, and a Corporate Governance and Nominating Committee. The Board of Directors may, by resolution

passed by a majority of the whole Board, designate other committees, and each such other committee shall consist of two or more of the directors of the corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of a committee. Such committee or committees (including the members thereof) shall serve at the pleasure of the Board of Directors and have such name or names and have as many members as may be determined from time to time by resolution adopted by the Board of Directors. Any member of the Board of Directors may participate in the meetings of any such committee, subject to the approval of the chairman of such committee. The Board of Directors shall adopt a charter for each committee it designates (other than special committees), and each committee shall assess the adequacy of such charter annually and recommend any changes to the Board of Directors. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

Section 11. Limitations on Committee Powers. No committee of the Board of Directors, acting without concurrence of the entire Board, shall have power or authority to:

- (a) amend the Certificate of Incorporation or recommend the same to the stockholders;
- (b) adopt an agreement of merger or consolidation or recommend the same to the stockholders;
- (c) recommend to the stockholders the sale, lease, or exchange of all or substantially all of the corporation's property and assets;
- (d) recommend to the stockholders a dissolution of the corporation or a revocation of a dissolution;
- (e) amend or repeal these Bylaws;
- (f) unless expressly so provided by resolution of the Board of Directors, (i) declare a dividend; or (ii) authorize the issuance of shares of the corporation of any class; and
- (g) amend, alter, or repeal any resolution of the Board of Directors which, by its terms, provides that it shall not be amended, altered or repealed by any committee or, as applicable, a certain committee.

Section 12. Committee Rules. Each committee of the Board of Directors may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may otherwise be provided by a resolution of the Board of Directors designating such committee. Unless otherwise provided in such a resolution, the presence of at least a majority of the members of the committee shall be necessary to constitute a quorum. In the event that a member and that member's alternate, if alternates are designated by the Board of Directors as provided in Section 10 of this Article III, of such committee is or are absent or disqualified, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member.

Section 13. Use of Communications Equipment in Conducting Meetings. Members of the Board of Directors or any committee thereof may participate in and act at any meeting of the Board of Directors or committee through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in the meeting pursuant to this section shall constitute attendance and presence in person at the meeting of the person or persons so participating.

Section 14. Action Without a Meeting by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmissions are filed with the minutes of proceedings of the Board of Directors or committee.

Section 15. Compensation. The Board of Directors shall have the authority to fix the compensation of directors by written resolution. Nothing herein shall be construed to preclude any director from serving the corporation in any other capacity as an officer, employee, agent or otherwise, and receiving compensation therefor.

Section 16. Books and Records. The Board of Directors shall cause to be kept a record containing the minutes of the proceedings of the meetings of the Board of Directors and of the stockholders, appropriate stock books and registers and such books of records and accounts as may be necessary for the proper conduct of the business of the corporation.

**ARTICLE IV WAIVER OF
NOTICE**

Whenever a notice is required to be given by any provision of law, by these Bylaws, or by the Certificate of Incorporation, a written waiver, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to such notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the sole and express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

**ARTICLE V
OFFICERS**

Section 1. Number and Authority. The Board of Directors of the corporation shall from time to time elect from its membership a Chairman of the Board, who may also be the Chief Executive Officer or any other officer of the corporation. The officers of the corporation shall consist of at least the following: (1) a Chief Executive Officer, (2) a Chief Financial Officer, (3) a Secretary and (4) a Treasurer.

The Board of Directors may appoint such other officers and agents, including but not limited to, a President, a Chief Operating Officer, one or more Presidents of Divisions or Business Groups, one or more Executive Vice Presidents, Senior Vice Presidents, Vice Presidents, Assistant Vice Presidents, Assistant Secretaries and Assistant Treasurers, as it shall at any time or from time to time deem necessary or advisable. Pursuant to Section 10 of this Article V, the Board of Directors may delegate to the Chief Executive Officer the right to appoint such Executive Vice Presidents, Senior Vice Presidents, Vice Presidents, Assistant Vice Presidents, Assistant Secretaries, Assistant Treasurers and agents, as the Chief Executive Officer shall deem appropriate and necessary from time to time.

Any number of offices may be held by the same person, except that neither the Chief Executive Officer nor any President shall also hold the office of either Treasurer or Secretary. All officers, as between themselves and the corporation, shall have such authority and perform such duties in the management of the business and affairs of the corporation as may be provided in these Bylaws, or, to the extent not so provided, as may be prescribed by the Board of Directors or by the Chief Executive Officer.

Section 2. Election and Term of Office. The officers of the corporation (other than those appointed by the Chief Executive Officer pursuant to Section 10 of this Bylaw) shall be elected at least once annually by the Board of Directors, and each such officer shall hold office until the next annual meeting of the Board of Directors or until a successor is duly elected and qualified or until his or her earlier resignation or removal as herein provided. Vacancies may be filled or new offices created and filled at any meeting of the Board of Directors (or by the Chief Executive Officer pursuant to Section 10 of this Bylaw).

Section 3. Removal. All officers and agents shall hold office at the pleasure of the Board of Directors, and any officer or agent elected or appointed by the Board of Directors (or appointed by the Chief Executive Officer pursuant to Section 10 of this Bylaw) may be removed at any time by the Board of Directors for cause or without cause at any regular or special meeting, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Officers and agents appointed by the Chief Executive Officer pursuant to Section 10 of this Bylaw may be removed at any time by the Chief Executive Officer for cause or without cause, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 4. Vacancies. Any vacancy occurring in any office because of death, resignation, removal, disqualification or otherwise, may be filled by resolution of the Board of Directors.

Section 5. Compensation. Compensation of all officers and agents (other than the Chief Executive Officer) shall be fixed by or in the manner prescribed by the Compensation Committee, and no officer shall be prevented

from receiving such compensation by virtue of his or her also being a director of the corporation. The compensation of the Chief Executive Officer shall be fixed by or in the manner prescribed by the Compensation Committee, but such compensation shall be subject to the approval of a majority of the independent directors of the Board of Directors.

Section 6. Chairman of the Board. The Chairman of the Board shall preside at all meetings of the directors, or (a) if the offices of the Chairman of the Board and Lead Director are separate, the Chairman may delegate such duties to the Lead Director or (b) if the offices of the Chief Executive Officer and Chairman of the Board are separate, the Chairman may delegate such duties to the Chief Executive Officer. The Chairman of the Board shall perform such other duties as are required of him by the Board of Directors and shall have no other duties except such as are delegated to him by the Board of Directors.

Section 7. Chief Executive Officer. The Chief Executive Officer of the corporation shall have the general charge of the business and affairs of the corporation and shall oversee the management of the business of the corporation. In the absence of the Chairman of the Board, or if designated to do so by the Board of Directors, the Chief Executive Officer shall preside at all meetings of the stockholders and of the directors and shall exercise the other powers and perform the other duties of the Chairman of the Board or designate the executive officers of the corporation by whom such other powers shall be exercised and other duties performed. The Chief Executive Officer shall see to it that all resolutions and orders of the Board of Directors are carried into effect, and the Chief Executive Officer shall have full power of delegation in so doing. The Chief Executive Officer shall have such other powers and perform such other duties as the Board of Directors or these Bylaws may, from time to time, prescribe. The Chief Executive Officer shall have the power to execute any and all instruments and documents on behalf of the corporation and to delegate to any other officer of the corporation the power to execute any and all such instruments and documents.

Section 8. Secretary. The Secretary or the Secretary's designee shall attend all meetings of the Board of Directors and its committees and all meetings of the stockholders and shall record all the proceedings of the meetings in a book or books to be kept for that purpose; he or she shall see that all notices required to be given by these Bylaws or by law are duly given in accordance with the provisions of these Bylaws or as required by law; he or she shall be the custodian of the records and of the corporate seal or seals of the corporation; he or she shall have authority to affix the corporate seal or seals to all documents, the execution of which, on behalf of the corporation, under its seal, is duly authorized, and when so affixed it may be attested by his or her signature; and in general, he or she shall perform all duties incident to the office of the Secretary of a corporation, and such other duties as the Board of Directors or the Chief Executive Officer may from time to time prescribe.

Section 9. Treasurer. The Treasurer shall have charge of and be responsible for all funds, securities, receipts and disbursements of the corporation and shall deposit, or cause to be deposited, all moneys and other valuable effects in the name and to the credit of the corporation in such banks, trust companies, or other depositories as shall from time to time be selected by the Board of Directors. He or she shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation; he or she shall render to the Chairman of the Board and to each member of the Board of Directors, whenever requested, an account of the Treasurer's actions and of the financial condition of the corporation. The Treasurer shall perform all of the duties incident to the office of the Treasurer of a corporation, and have such other powers and perform such other duties as the Board of Directors may, from time to time, prescribe. In the event the corporation shall fail to have a Treasurer at any time, then the duties of the Treasurer may be assumed and performed by the Chief Financial Officer and delegated by him to one or more assistant Treasurers.

Section 10. Other Officers, Assistant Officers and Agents. The Board of Directors may also elect or may delegate to the Chief Executive Officer the power to appoint such other officers, assistant officers and agents, as it may at any time or from time to time deem advisable, and any officers, assistant officers and agents so elected or appointed shall have such authority and perform such duties as the Board of Directors or the Chief Executive Officer may from time to time prescribe.

Section 11. Reservation of Authority. All other powers not expressly delegated or provided for herein, or in the Delaware General Corporation Law to any officer, are expressly reserved to the Board of Directors and may be delegated by it to any officer by resolution adopted from time to time by the Board of Directors.

ARTICLE VI

Reserved.

ARTICLE VII

INDEMNIFICATION OF OFFICERS, DIRECTORS AND OTHERS

Section 1. Coverage. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (“proceeding”), by reason of the fact that he or she is or was a director, officer of the corporation (which term shall include any predecessor corporation of the corporation) or is or was serving at the request of the corporation as a director, officer, employee, fiduciary or agent of another corporation or of a partnership, joint venture, trust or other enterprise of any type or kind, domestic or foreign, including service with respect to employee benefit plans (“indemnitee”), whether the basis of such proceeding is an alleged action in an official capacity as a director, officer, employee, fiduciary or agent or in any other capacity while serving as a director, officer, employee, fiduciary or agent, shall be indemnified and held harmless by the corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the corporation to provide broader indemnification rights than said law permitted the corporation to provide prior to such amendment), against all expenses, liability and loss (including attorneys’ fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement or other disposition) incurred or suffered by such indemnitee in connection therewith and such indemnification shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the indemnitee’s heirs, executors and administrators. The right to indemnification conferred in this Bylaw shall be a contract right that vests at the time of such person’s service to or at the request of the corporation and includes the right to be paid by the corporation the expenses incurred in defending any such proceeding in advance of its final disposition, such advances to be paid by the corporation within 20 days after the receipt by the corporation of a statement or statements from the claimant requesting such advance or advances from time to time; provided, however, that if the Delaware General Corporation Law requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the corporation of an undertaking by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Bylaw or otherwise.

Section 2. Claims. To obtain indemnification under this Bylaw, a claimant shall submit to the corporation a written request, including therein or therewith such documentation and information as is reasonably available to the claimant and is reasonably necessary to determine whether and to what extent the claimant is entitled to indemnification. Upon such written request by a claimant for indemnification, a determination, if required by applicable law, with respect to the claimant’s entitlement thereto shall be made as follows: (a) if requested by the claimant, by Independent Counsel (as defined below), or (b) if no request is made by the claimant for a determination by Independent Counsel, (i) by the Board of Directors by a majority vote of a quorum consisting of Disinterested Directors (as defined below), or (ii) if a quorum of the Board of Directors consisting of Disinterested Directors is not obtainable or, even if obtainable, such quorum of Disinterested Directors so directs, by Independent Counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the claimant, or (iii) if a quorum of Disinterested Directors so directs, by the stockholders of the corporation. In the event the determination of entitlement to indemnification is to be made by Independent Counsel at the request of the claimant, the Independent Counsel shall be selected by the Board of Directors unless there shall have occurred within two years prior to the date of the commencement of the action, suit or proceeding for which indemnification is claimed a “Change of Control” as defined in the 2008 Office Depot Bonus Plan for Executive Management Employees, in which case the Independent Counsel shall be selected by the claimant unless the claimant shall request that such selection be made by the Board of Directors. If it is so determined that the claimant is entitled to indemnification, payment to the claimant shall be made within 10 days after such determination.

For purposes of this Bylaw:

“Disinterested Director” means a director of the corporation who is not and was not a party to the matter in respect of which indemnification is sought by the claimant.

“Independent Counsel” means a law firm, a member of a law firm, or an independent practitioner, that is experienced in matters of corporation law and shall include any person who, under the applicable standards of professional conduct then prevailing, would not have a conflict of interest in representing either the corporation or the claimant in an action to determine the claimant’s rights under this Bylaw.

Section 3. Enforcement of Claims. If a claim under Section 1 of this Bylaw is not paid in full by the corporation within 60 days after a written claim pursuant to Section 2 of this Bylaw has been received by the corporation, the claimant may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the corporation) that the claimant has not met the standard of conduct which makes it permissible under the Delaware General Corporation Law for the corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the corporation. Neither the failure of the corporation (including its Board of Directors, Independent Counsel or stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the corporation (including its Board of Directors, Independent Counsel or stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct. If a determination shall have been made pursuant to this Section 2 that the claimant is entitled to indemnification, the corporation shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 3. The corporation shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 3 that the procedures and presumptions of this Bylaw are not valid, binding and enforceable and shall stipulate in such proceeding that the corporation is bound by all the provisions of this Bylaw.

Section 4. Enforceability. If any provision or provisions of this Bylaw shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Bylaw (including, without limitation, each portion of any paragraph of this Bylaw containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Bylaw (including, without limitation, each such portion of any paragraph of this Bylaw containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

Section 5. Rights Not Exclusive. The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Bylaw (i) shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or Disinterested Directors or otherwise and (ii) cannot be terminated by the corporation, the Board of Directors or the stockholders of the corporation with respect to a person’s service prior to the date of such termination. No repeal or modification of this Bylaw shall in any way diminish or adversely affect the rights of any current or former director, officer, employee or agent of the corporation hereunder in respect of any occurrence or matter arising prior to any such repeal or modification.

Section 6. Employees and Agents. Persons who are not covered by the foregoing provisions of this Article VII and who are or were employees or agents of the corporation may be indemnified and may have their expenses paid to the extent and subject to such terms and conditions as may be authorized at any time or from time to time by the Board of Directors or the Chief Executive Officer.

Section 7. Insurance. The corporation may purchase and maintain insurance on its own behalf and on behalf of any person who is or was a director, officer, employee, fiduciary or agent of the corporation or who is serving or has served at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the corporation would have the power to indemnify such person against such liability under this Article VII.

Section 8. Merger or Consolidation. For purposes of this Article VII, 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, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this Article VII with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

Section 9. Notices. Any notice, request or other communication required or permitted to be given to the corporation under this Article VII shall be in writing and either delivered in person or sent by telecopy, telex, telegram, overnight mail or courier service, or certified or registered mail, postage prepaid, return receipt requested, to the Secretary and shall be effective only upon receipt by the Secretary.

ARTICLE VIII CERTIFICATES OF STOCK

Section 1. Form. The shares of capital stock of the corporation shall be represented by certificates; provided, that the Board of Directors of the corporation may provide by a resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Every holder of capital stock in the corporation represented by certificates shall be entitled to have a certificate for shares of capital stock of the corporation signed by or in the name of the corporation by any two authorized officers of the corporation (it being understood that each of the Chairman of the Board, the President, any Vice President, the Treasurer, any Assistant Treasurer, the Secretary and any Assistant Secretary of the corporation shall be an authorized officer for such purpose), certifying the number of shares owned by such holder in the corporation and registered in certificated form. Any or all such signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed, or whose facsimile signature has been placed upon, any such certificate or certificates shall cease to be such officer, transfer agent or registrar of the corporation whether because of death, resignation or otherwise before such certificate or certificates have been delivered by the corporation, such certificate or certificates may nevertheless be issued and delivered as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures have been used thereon had not ceased to be such officer, transfer agent or registrar of the corporation. All certificates for shares shall be consecutively numbered or otherwise identified. The name of the person to whom certificated or uncertificated shares are issued, together with the number of shares and date of issue, shall be entered on the books of the corporation. Shares of stock of the corporation shall only be transferred on the books of the corporation by the holder of record thereof or by such holder’s attorney duly authorized in writing and, (i) if such shares are certificated, upon surrender to the corporation of the certificate or certificates for such shares endorsed by the appropriate person or persons, with such evidence of the authenticity of such endorsement, transfer, authorization and other matters as the corporation may reasonably require, and accompanied by all necessary stock transfer stamps, or (ii) upon proper instructions from the holder of uncertificated shares. In the event of such transfer of certificated shares, it shall be the duty of the corporation to issue a new certificate or evidence of the issuance of uncertificated shares to the person entitled thereto, cancel the old certificate or certificates and record the transaction on its books. Upon receipt of proper transfer instructions from the holder of uncertificated shares, the corporation shall cancel such uncertificated shares and issue new equivalent uncertificated shares or certificated shares to the person entitled thereto and record such transaction upon its books. Except as otherwise provided by law, the Board of Directors may make or adopt such additional rules and regulations, not inconsistent with these Bylaws, as it may deem expedient, concerning the issue, transfer and registration of securities of the corporation. The Board of Directors may appoint or authorize any officer or officers to appoint, one or more transfer agents or registrars or both in connection with the transfer of any class or series of securities of the corporation.

Section 2. Lost Certificates. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates previously issued by the corporation alleged to have been lost, stolen or destroyed upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his or her legal representative, to indemnify the corporation or to give the corporation a

bond sufficient to indemnify the corporation against any claim that may be made against the corporation on account of the loss, theft or destruction of any such certificate or the issuance of such new certificate.

Section 3. Registered Stockholders. Prior to the surrender to the corporation of the certificate or certificates for a share or shares of stock with a request to record the transfer of such share or shares, the corporation may treat the registered owner as the person entitled to receive dividends or other distributions, to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner, and as the person to hold liable for calls and assessments. The corporation shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof.

ARTICLE IX GENERAL PROVISIONS

Section 1. Dividends and Distributions. The Board of Directors shall have full power and discretion pursuant to law, at any regular or special meeting, subject to the provisions of the Certificate of Incorporation or the terms of any other corporate document or instrument, to determine what, if any, dividends or distributions shall be declared and paid or made upon or with respect to outstanding shares of the capital stock of the corporation. Dividends may be paid in cash, bonds, property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or any other purpose and the directors may modify or abolish any such reserve in the manner in which it was created.

Section 2. Checks, Drafts or Orders. All checks, drafts, or other orders for the payment of money by or to the corporation and all notes and other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers or agent, or agents of the corporation, and in such manner, as shall be determined by resolution of the Board of Directors or a duly authorized committee thereof.

Section 3. Contracts. The Board of Directors may authorize any officer or officers or any agent or agents of the corporation to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

Section 4. Loans. Subject to applicable laws limiting or prohibiting the corporation's ability to make such loans, the corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiary, including any officer or employee who is a director of the corporation or its subsidiary, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the corporation. The loan, guaranty or other assistance may be with or without interest, and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in this section contained shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

Section 5. Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

Section 6. Corporate Seal. The Board of Directors may provide a corporate seal, which shall be in the form of a circle and shall have inscribed thereon the name of the corporation and the words "Corporate Seal, Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

Section 7. Voting Securities Owned By Corporation. Voting securities in any other entity held by the corporation shall be voted by the Chairman of the Board or the Chief Executive Officer, unless the Board of Directors specifically confers authority to vote with respect thereto, which authority may be general or confined to specific instances, upon some other person or officer. Any person authorized to vote securities shall have the power to appoint proxies, with or without general power of substitution.

Section 8. General and Special Bank Accounts. The Board of Directors may authorize from time to time the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as

the Board of Directors may designate or as may be designated by any officer or officers of the corporation to whom such power of designation may be delegated by the Board of Directors from time to time. The Board of Directors may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these Bylaws, as it may deem expedient.

Section 9. Section Headings. Section headings in these Bylaws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

Section 10. Election Out of Section 203. The corporation expressly elects not to be governed by Section 203 of the Delaware General Corporation Law. The Bylaw amendment adopting this provision shall not be further amended by the Board of Directors of the corporation.

Section 11. Forum Selection Bylaw. Unless the corporation consents in writing to the selection of an alternative forum, the Court of Chancery (the "Court of Chancery") of the State of Delaware (or, in the event that the Court of Chancery does not have jurisdiction, the federal district court for the District of Delaware or other state courts of the State of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for any stockholder (including a beneficial owner) to bring (1) any derivative action or proceeding brought on behalf of the corporation, (2) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer or other employee of the corporation to the corporation or the corporation's stockholders, (3) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, the Certificate of Incorporation or these Bylaws, or (4) any action asserting a claim governed by the internal affairs doctrine, except as to each of (1) through (4) above, for any claim as to which the Court of Chancery determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten days following such determination). Any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the corporation shall be deemed to have notice of and consented to the provisions of this Section 11.

ARTICLE X AMENDMENTS

These Bylaws may be amended, altered, or repealed and new Bylaws adopted at any meeting of the Board of Directors by a majority vote; provided, that these Bylaws and any other Bylaws amended or adopted by the Board of Directors may be amended, may be reinstated, and new Bylaws may be adopted, by the stockholders of the corporation entitled to vote at the time for the election of directors; provided, that notice of the proposed change was given in the corporation's notice of meeting.

**DESCRIPTION OF REGISTRANT'S SECURITIES
REGISTERED PURSUANT TO SECTION 12 OF THE
SECURITIES EXCHANGE ACT OF 1934**

The ODP Corporation (“ODP,” “we,” “our,” or “us”) has two classes of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended: our common stock, par value \$0.01 per share (our “Common Stock”), and our preferred share purchase rights (our “Preferred Rights”).

The following description of our Common Stock is based upon our [Amended and Restated Certificate of Incorporation](#) (our “Charter”), our [Amended and Restated Bylaws](#) (our “Bylaws”), our [Certificate of Designations of Series A Junior Participating Preferred Stock](#) (our “Certificate of Designations”), and applicable provisions of the Delaware General Corporation Law (the “DGCL”). The description does not purport to be complete and is subject to, and qualified in its entirety by express reference to, our Charter, our Bylaws, and our Certificate of Designations, each of which is incorporated by reference as an exhibit to the Annual Report on Form 10-K of which this exhibit is a part, and to the applicable provisions of the DGCL. We encourage you to read our Charter, our Bylaws, our Certificate of Designations and the applicable provisions of the DGCL for additional information.

Under our Charter, our authorized capital stock consists of 80,000,000 shares of Common Stock, and 1,000,000 shares of Preferred Stock, par value \$0.01 per share (our “Preferred Stock”). The outstanding shares of our Common Stock are duly authorized, validly issued, fully paid and nonassessable.

DESCRIPTION OF COMMON STOCK

Listing

Our Common Stock is listed and principally traded on the Nasdaq Global Select Market under the ticker symbol “ODP.”

Voting Rights

Each holder of our Common Stock is entitled to one vote for each share held by such holder on all matters voted upon by our stockholders.

Dividend Rights

The holders of our Common Stock are entitled to receive dividends when, as, and if declared by our board of directors out of funds legally available therefor, subject to the rights of any then outstanding shares of Preferred Stock.

Liquidation Rights

Subject to the rights of any then outstanding shares of Preferred Stock, in the event of a liquidation, dissolution or winding up of ODP, the holders of our Common Stock will be entitled to receive, after payment or provision for payment of all of its debts and liabilities, all of the assets of ODP legally available for distribution to stockholders.

Special Meeting of Stockholders

Our Bylaws vest the power to call special meetings of stockholders in the Chief Executive Officer, board of directors, or stockholders holding shares representing not less than 25% of our outstanding Common Stock entitled to vote on the matter or matters to be brought before the meeting. Stockholders are permitted under the Bylaws to act by written consent in lieu of a meeting.

Preemptive and Other Rights

Holders of our Common Stock are not entitled to preemptive rights with respect to any shares which may be issued, and there are no conversion rights or redemption, purchase, retirement or sinking fund provisions with respect to our Common Stock.

Transfer Agent and Registrar

The transfer agent and registrar for our Common Stock is Computershare Shareowner Services LLC.

Series A Junior Participating Preferred Stock

Of our 1,000,000 shares of authorized Preferred Stock, our board of directors has designated 80,000 shares as “Series A Junior Participating Preferred Shares”.

Dividends. Subject to the rights of the holders of any shares of any series of Preferred Stock (or any similar stock) ranking prior and superior to the Series A Preferred Stock with respect to dividends, the holders of Preferred Shares, in preference to the holders of our Common Stock and of any other junior stock, shall be entitled to receive, when, as and if declared by our board of directors out of funds legally available for the purpose, quarterly dividends payable in cash on the first day of March, June, September and December in each year (each such date, a “Quarterly Dividend Payment Date”), commencing on the first Quarterly Dividend Payment Date after the first issuance of a Preferred Share or fraction of a Preferred Share, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$1.00 or (b) subject to the provision for adjustment discussed below, 1,000 times the aggregate per share amount of all cash dividends, and 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions, other than a dividend payable in shares of our Common Stock or a subdivision of the outstanding shares of our Common Stock (by reclassification or otherwise), declared on our Common Stock since the immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any Preferred Share or fraction of a Preferred Share. In the event ODP shall at any time declare or pay any dividend on our Common Stock payable in shares of our Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of our Common Stock (by reclassification or otherwise than by payment of a dividend in shares of our Common Stock) into a greater or lesser number of shares of our Common Stock, then in each such case the amount to which holders of Preferred Shares were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of our Common Stock outstanding immediately after such event and the denominator of which is the number of shares of our Common Stock that were outstanding immediately prior to such event.

ODP shall declare a dividend or distribution on the Series A Preferred Stock as discussed in the above paragraph immediately after it declares a dividend or distribution on our Common Stock (other than a dividend payable in shares of our Common Stock); provided that, in the event no dividend or distribution shall have been declared on our Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$1.00 per share on the Series A Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

Dividends shall begin to accrue and be cumulative on outstanding Preferred Shares from the Quarterly Dividend Payment Date next preceding the date of issue of such shares, subject to certain exceptions. Accrued but unpaid dividends shall not bear interest.

Dividends paid on the Preferred Shares in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. Our board of directors may fix a record date for the determination of holders of Preferred Shares entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than 60 days prior to the date fixed for the payment thereof.

Voting Rights. The holders of Preferred Shares shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each Preferred Share shall entitle the holder thereof to 1,000 votes on all matters submitted to a vote of our stockholders. In the event ODP shall at any time declare or pay any dividend on our Common Stock payable in shares of our Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of our Common Stock (by reclassification or otherwise than by payment of a dividend in shares of our Common Stock) into a greater or lesser number of shares of our Common Stock, then in each such case the number of votes per share to which holders of Series A Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction, the numerator of which is the number of shares of our Common Stock outstanding immediately after such event and the denominator of which is the number of shares of our Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein, in any other Certificate of Designations creating a series of Preferred Stock or any similar stock, or by law, the holders of Preferred Shares and the holders of shares of our Common Stock and any other capital stock of ODP having general voting rights shall vote together as one class on all matters submitted to a vote of our stockholders.

(C) Except as set forth in the Certificate of Designations, or as otherwise provided by law, holders of Preferred Shares shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of our Common Stock as set forth herein) for taking any corporate action.

Certain Restrictions. Whenever quarterly dividends or other dividends or distributions payable on the Series A Preferred Stock are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on Preferred Shares outstanding shall have been paid in full, ODP shall not: (i) declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock; (ii) declare or pay dividends, or make any other distributions, on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except dividends paid ratably on the Series A Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled; (iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock, provided that ODP may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of ODP ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Preferred Stock; or (iv) redeem or purchase or otherwise acquire for consideration any Preferred Shares, or any shares of stock ranking on a parity with the Series A Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by our board of directors) to all holders of such shares upon such terms as our board of directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine will result in fair and equitable treatment among the respective series or classes.

ODP shall not permit any of its subsidiaries to purchase or otherwise acquire for consideration any shares of stock of ODP unless ODP could, under the terms of the Certificate of Designations, purchase or otherwise acquire such shares at such time and in such manner.

Liquidation, Dissolution or Winding Up. Upon any liquidation, dissolution or winding up of ODP, no distribution shall be made (A) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock unless, prior thereto, the holders of Preferred Shares shall have received the greater of (a) \$1.00 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, or (b) an aggregate amount per share, subject to the provision for adjustment described below, equal to 1,000 times the aggregate amount to be distributed per share to holders of shares of our Common Stock, or (B) to the holders of shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except distributions made ratably on the Series A Preferred Stock and all such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up. In the event ODP shall at any time declare or pay any dividend on our Common Stock payable in shares of our Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of our Common Stock (by reclassification or otherwise than by payment of a dividend in shares of our Common Stock) into a greater or lesser number of shares of our Common Stock, then in each such case the aggregate amount to which holders of Preferred Shares were entitled immediately prior to such event under the proviso in clause (A) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of our Common Stock outstanding immediately after such event and the denominator of which is the number of shares of our Common Stock that were outstanding immediately prior to such event.

Consolidation, Merger, etc. In case ODP shall enter into any consolidation, merger, combination or other transaction in which the shares of our Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property (other than any merger of ODP with and into a direct or indirect subsidiary of ODP pursuant to which ODP becomes a direct or indirect wholly-owned subsidiary of a holding company that is, immediately prior to the effective time of such merger, a direct or indirect subsidiary of ODP, in accordance with Section 251(g) of the DGCL), then in any such case each Preferred Share shall at the same time be similarly exchanged or changed into an amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1,000 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of our Common Stock is changed or exchanged. In the event ODP shall at any time declare or pay any dividend on our Common Stock payable in shares of our Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of our Common Stock (by reclassification or otherwise than by payment of a dividend in shares of our Common Stock) into a greater or lesser number of shares of our Common Stock, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of Preferred Shares shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of our Common Stock outstanding immediately after such event and the denominator of which is the number of shares of our Common Stock that were outstanding immediately prior to such event.

No Redemption. The Preferred Shares shall not be redeemable.

Rank. The Series A Preferred Stock shall rank, with respect to the payment of dividends and the distribution of assets, junior to all series of any other class of ODP's Preferred Stock.

CERTAIN ANTI-TAKEOVER EFFECTS

Certain provisions of our Charter, our Bylaws and the DGCL could have certain anti-takeover effects and may delay, deter or prevent a tender offer or takeover attempt that a stockholder might consider to be in its best interests, as discussed below:

Authorized but Unissued Shares. Subject to the requirements of The NASDAQ Stock Market LLC and other applicable law, authorized but unissued shares of our Common Stock may be available for future issuance without stockholder approval. We may use these additional shares for a variety of corporate purposes, including future public offerings to raise additional capital, corporate acquisitions and employee benefit plans. The existence of authorized but unissued

shares of our Common Stock could render more difficult or discourage an attempt to obtain control of us by means of a tender offer, takeover attempt or otherwise.

Undesignated Preferred Stock. Our Charter provides that our board of directors may issue shares of Preferred Stock and fix the designations, voting powers, preferences and rights related to that Preferred Stock. Preferred Stock could be issued by our board of directors to increase the number of outstanding shares making a takeover more difficult and expensive.

Advance Notice Requirements. Our Bylaws establish an advance notice procedure for stockholders seeking to nominate candidates for election to the board of directors or for proposing matters which can be acted upon at stockholders' meetings.

Proxy Access. Our Bylaws contain provisions which provide that a stockholder, or group of up to 20 stockholders, that has owned continuously for at least three years shares of our Common Stock representing an aggregate of at least 3% of the voting power entitled to vote generally in the election of directors, may nominate and include in ODP's proxy materials a specified number of director nominees, provided that the stockholder(s) and nominee(s) satisfy the requirements in our Bylaws. The maximum number of stockholder nominees is generally the greater of (x) two or (y) 20% of the total number of our directors in office as of the last day on which notice of a nomination may be delivered or, if such amount is not a whole number, the closest whole number below 20%.

No Cumulative Voting or Classified Board. Our Charter and Bylaws do not provide for cumulative voting on the election of directors and we currently do not have a classified board.

Delaware Business Combination Statute. In general, Section 203 of the DGCL ("Section 203") prohibits a publicly held Delaware corporation from engaging in various "business combination" transactions with any interested stockholder for a period of three years following the date of the transactions in which the person became an interested stockholder. We are not subject to Section 203, as our Charter contains a provision electing to "opt-out" of Section 203.

LIST OF THE ODP CORPORATION'S SIGNIFICANT SUBSIDIARIES

Domestic/US Subsidiaries:

<i>Name</i>	<i>Jurisdiction of Incorporation</i>
The Office Club, LLC	California
Viking Office Products, Inc.	California
Computers4Sure.com, Inc.	Connecticut
Solutions4Sure.com, Inc.	Connecticut
OD International, Inc.	Delaware
Japan Office Supplies, LLC	Delaware
ODV France LLC	Delaware
OD France L.L.C.	Delaware
4Sure.com, Inc.	Delaware
Swinton Avenue Trading Limited, Inc.	Delaware
2300 South Congress LLC	Delaware
Neighborhood Retail Development Fund, LLC	Delaware
HC Land Company LLC	Delaware
Notus Aviation, Inc.	Delaware
OD Medical Solutions, LLC	Delaware
OD Brazil Holdings, LLC	Delaware
Office Depot N.A. Shared Services LLC	Delaware
Office Depot Foreign Holdings GP, LLC	Delaware
Office Depot Foreign Holdings LP, LLC	Delaware
eDepot, LLC	Delaware
Mapleby Holdings Merger Corporation	Delaware
Wahkiakum Gas Corporation	Delaware
Reliable Express Corporation	Delaware
OMX Timber Finance Holdings II, LLC	Delaware
OMX Timber Finance Holdings I, LLC	Delaware
OfficeMax, LLC	North Carolina
Minidoka Paper Holdings, LLC	North Carolina
Office Depot Pension Finance LLC	Delaware
OfficeMax Southern Company	Louisiana
OfficeMax Nevada Company	Nevada
OMX, Inc.	Nevada
OfficeMax North America, Inc.	Ohio
North American Card and Coupon Services, LLC	Virginia
Premium Inc.	Hawaii
6600 North Holdings, LLC	Delaware
6600 North Owner, LLC	Delaware
Office Depot Puerto Rico, LLC	Puerto Rico
Complete Office, LLC	Washington
Complete Office of Wisconsin, Inc.	Wisconsin
Complete Office of California, Inc.	California
Lincoln Merger Sub Two, LLC	Delaware
Sandia Office Supply, Inc.	New Mexico
Admiral Express, LLC	Oklahoma
Midway Office Supply, LLC	New Mexico
SOS Investments, LLC	New Mexico
Regency Office Products, LLC	North Carolina
Regency Franchise Group, LLC	North Carolina
POP Pinnacle Office Products, LLC	Texas
Chicago Regency, LLC	North Carolina
Regency Office Products of Missouri, LLC	Delaware
Garvey's Office Products, Inc.	Illinois
Perimeter Office Products, Inc.	Georgia
Bertelson Brothers, Inc.	Minnesota
ZerBee, LLC	Minnesota

Trio Supply Company
COS Business Products & Interiors, Inc.
Americas Office Source, Inc.
Discount Office Items, Inc.
Office Essentials Inc.
Veyer, LLC (fka Office Depot Logistics, Inc.)
Veyer Logistics, LLC
Office Depot, LLC
ODP Investment, LLC
ODP Business Solutions, LLC
ODP Business Solutions Holdings, LLC
ODP Holdings, LLC
ODP International Holdings, LLC
Federation HoldCo, LLC
ODP Puerto Rico, Inc.

Minnesota
Tennessee
Florida
Wisconsin
Missouri
Delaware
Delaware
Delaware
Delaware
Delaware
Delaware
Delaware
Delaware
Delaware
Delaware
Puerto Rico

Foreign Subsidiaries of the Company:

<i>Name</i>	<i>Jurisdiction of Incorporation</i>
Clearfield Insurance Limited	Bermuda
Office Depot Overseas Holding Limited	Bermuda
Grand & Toy Limited	Canada (Ontario)
AsiaEC.com Limited	Cayman Islands
Office Depot Merchandising (Shenzhen) Co. Ltd.	China
Office Depot Asia Holding Limited	Hong Kong
Office Depot Global Sourcing Ltd	Hong Kong
OM Luxembourg Holdings S.à r.l.	Luxembourg
Guilbert UK Pension Trustees Ltd	United Kingdom
Office Depot UK Pension Sponsor Limited	United Kingdom

* Ownership may consist of one subsidiary or any combination of subsidiaries, which may include The ODP Corporation

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement Nos. 333-255421, 333-192185, 333-205084, 333-219380, and 333-231370 on Form S-8 of our reports dated March 1, 2023 relating to the financial statements of The ODP Corporation and subsidiaries (the “Company”) and the effectiveness of the Company’s internal control over financial reporting, appearing in this Annual Report on Form 10-K of the Company for the fiscal year ended December 31, 2022.

/s/ DELOITTE & TOUCHE LLP

Boca Raton, Florida

March 1, 2023

Rule 13a-14(a)/15d-14(a) Certification

I, Gerry P. Smith, certify that:

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

/s/ GERRY P. SMITH

Name: Gerry P. Smith

Title: Chief Executive Officer (Principal Executive Officer)

Date: March 1, 2023

Rule 13a-14(a)/15d-14(a) Certification

I, D. Anthony Scaglione, certify that:

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

/s/ D. ANTHONY SCAGLIONE

Name: D. Anthony Scaglione
Title: Chief Financial Officer (Principal Financial Officer)
Date: March 1, 2023

The ODP Corporation**Certification of Principal Executive Officer and Principal Financial Officer Pursuant to
18 U.S.C. Section 1350, as Adopted Pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Annual Report on Form 10-K (the "Report") of The ODP Corporation (the "Company") for the fiscal year ended December 31, 2022 as filed with the U.S. Securities and Exchange Commission on the date hereof, Gerry P. Smith, as Chief Executive Officer of the Company, and D. Anthony Scaglione, as Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to each officer's knowledge:

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

/s/ GERRY P. SMITH

Name: Gerry P. Smith
Title: Chief Executive Officer (Principal Executive Officer)
Date: March 01, 2023

/s/ D. ANTHONY SCAGLIONE

Name: D. Anthony Scaglione
Title: Chief Financial Officer (Principal Financial Officer)
Date: March 01, 2023

A signed original of this certification required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the U.S. Securities and Exchange Commission or its staff upon request.

The foregoing certification is being furnished as an exhibit to the Report pursuant to Item 601(b)(32) of Regulation S-K and Section 1350 of Title 18 of the United States Code and, accordingly, is not being filed with the U.S. Securities and Exchange Commission as part of the Report and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933 or the Securities Exchange Act of 1934 (whether made before or after the date of the Report, irrespective of any general incorporation language contained in such filing).