

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

ELON MUSK,

Defendant.

Case No. 25-cv-000105-SLS

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S
MOTION FOR SUMMARY JUDGMENT AS TO LIABILITY**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Plaintiff Securities and Exchange Commission (“SEC”) moves for summary judgment on its claim that Defendant Elon Musk violated Section 13(d) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 13d-1 thereunder. Compl. ¶¶ 47–49, ECF No. 1.

As set forth in the accompanying Memorandum of Points and Authorities, Statement of Undisputed Material Facts, Declaration of James Becker, and related exhibits, “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

Dated: August 29, 2025

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS
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INTRODUCTION

This case involves a straightforward, strict liability violation of important public reporting requirements under the federal securities laws. By March 14, 2022, Defendant Elon Musk had acquired a significant number of shares of Twitter stock, becoming the beneficial owner of more than five percent of the company's outstanding common stock. When Musk crossed the five percent threshold, the federal securities laws required him to file within *ten days* a beneficial ownership report publicly disclosing his Twitter holdings. He did not do so until April 4, 2022—eleven days after the report was due.

These are the only material facts needed to decide Musk's liability on the SEC's single claim under Section 13(d) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 13d-1 thereunder. There is no credible dispute as to these facts—indeed, Musk admits them in sworn statements and in pleadings submitted in another case. Accordingly, the Court can and should grant summary judgment on liability.

Congress established the disclosure requirements in Section 13(d) of the Exchange Act to protect investors. "Section 13(d) serves a vital public function to alert the marketplace to every large, rapid aggregation or accumulation of securities." *SEC v. First City Fin. Corp.*, 688 F. Supp. 705, 725 (D.D.C. 1988), *aff'd*, 890 F.2d 1215 (D.C. Cir. 1989). "[S]ection 13(d) is a crucial requirement in the congressional scheme, and a violator, it is legislatively assumed, improperly benefits by purchasing stocks at an artificially low price because of a breach of the duty Congress imposed to disclose his investment position." *First City Fin. Corp.*,

890 F.2d at 1230. Failing to meet the required disclosure deadline “cause[s] injury to other market participants who sold stock without knowledge of [the filer’s] holdings.” *Id.*

Discovery is not necessary to decide this motion because there is no dispute that: (1) Section 13(d) and Rule 13d-1 applied to Twitter common stock; (2) Musk was the beneficial owner of more than five percent of Twitter’s outstanding common stock by March 14, 2022, triggering Musk’s obligation to file a Schedule 13D with the SEC (or if eligible, a Schedule 13G) within ten days—or by March 24, 2022; and (3) Musk did not do so. Failure to file within ten days is a violation of Section 13(d) and Rule 13d-1, *irrespective of a filer’s intent.*

The Court should thus grant summary judgment and find as a matter of law that Musk violated Section 13(d).

LEGAL STANDARDS

A. Summary Judgment Standard

A court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

When considering a motion for summary judgment, a court will view evidence “in the light most favorable to the nonmoving party and the court must draw all reasonable inferences in favor of the nonmoving party.” *Talavera v. Shah*, 638 F.3d 303, 308 (D.C. Cir. 2011). “The nonmoving party’s opposition, however, must consist of more than mere unsupported allegations or denials and must be supported by affidavits, declarations, or other competent evidence, setting forth specific facts

showing that there is a genuine issue for trial.” *Little v. Com. Audio Assocs., Inc.*, 81 F. Supp. 3d 58, 61 (D.D.C. 2015). “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

In certain circumstances, the Court may grant summary judgment before the defendant files an answer. The federal rules permit a party to move for summary judgment “at any time until 30 days after the close of all discovery.” Fed. R. Civ. P. 56(b). “[A]n answer to the complaint is not a prerequisite to the consideration of a motion for summary judgment.” *First Am. Bank, N. A. v. United Equity Corp.*, 89 F.R.D. 81, 87 (D.D.C. 1981) (ordering defendants to respond to a plaintiff’s motion for summary judgment filed before an answer); *see also Townsend v. Dep’t of the Navy*, No. 10-5332, 2011 WL 3419567, at *1 (D.C. Cir. Mar. 23, 2011) (affirming summary judgment and confirming that Rule 56 permits a party to move for summary judgment before an answer is filed); *HS Res., Inc. v. Wingate*, 327 F.3d 432, 440 (5th Cir. 2003) (affirming summary judgment for plaintiff before defendant submitted an answer); *In re Mem’l Prod. Partners LP*, No. CV H-18-412, 2018 WL 5634142, at *4 (S.D. Tex. Oct. 31, 2018), *aff’d sub nom. Matter of Mem’l Prod. Partners, L.P.*, 799 F. App’x 221 (5th Cir. 2020) (affirming bankruptcy court’s grant of summary judgment before non-movant filed an answer and before discovery); *Pacheco v. Joseph McMahon Corp.*, 698 F. Supp. 2d 291, 294 (D. Conn. 2010) (granting summary judgment to plaintiff on strict liability claim before defendant filed an answer).

Summary judgment is also appropriate before parties conduct discovery when undisputed facts resolve a claim and further discovery is not necessary. *Curtin v. United Airlines, Inc.*, 275 F.3d 88, 97 (D.C. Cir. 2001) (affirming summary judgment based on facts established by documents signed by non-movants and finding no discovery needed when pre-answer factual record already sufficient); *White v. Fraternal Ord. of Police*, 909 F.2d 512, 517 (D.C. Cir. 1990) (concluding that “the district court did not err by staying discovery prior to issuing the summary judgment rulings” because “the record [was] adequate to determine whether the standards for the grant of summary judgment [were] met”); *Baker v. Am. Airlines, Inc.*, 430 F.3d 750, 756 (5th Cir. 2005) (“Rule 56 does not require that *any* discovery take place before summary judgment can be granted”).

B. Elements for Section 13(d) Claim

The SEC seeks summary judgment as to liability on the sole claim in its complaint: that Musk violated Section 13(d) of the Exchange Act [15 U.S.C. § 78m(d)] and Rule 13d-1 thereunder [17 C.F.R. § 240.13d-1 (2021)].¹

Section 13(d) states that “[a]ny person who . . . is directly or indirectly the beneficial owner of more than 5 per centum of” an equity security registered with

¹ In 2023, the Commission adopted amendments to Rule 13d-1 to shorten the 10-calendar day deadlines to five business days. See SEC Release No. 34-98704 (Oct. 10, 2023), 88 Fed. Reg. 76896 (Nov. 7, 2023). Those amendments are not at issue here. The version of Exchange Act Rule 13d-1 that was in force during the conduct at issue in the complaint can be found in the Code of Federal Regulations released in 2021, 17 C.F.R. § 240.13d-1 (2021) (attached as Ex. A). Unless otherwise specified, when this brief mentions to Rule 13d-1, it refers to the version of the rule in effect in 2021–2022.

the SEC “shall, within ten days after such acquisition or within such shorter time as the Commission may establish by rule, file with the Commission, a statement containing” among other things, their identity, citizenship, and the number of shares which are beneficially owned. 15 U.S.C. § 78m(d); 17 C.F.R. § 240.13d-1(a) and (c) (2021). Section 13(d) and Rule 13d-1 apply to ownership of “any equity security of a class which is registered pursuant to section 78l of this title,” which means registered pursuant to Section 12 of the Exchange Act. 15 U.S.C. § 78m(d); *see* 15 U.S.C. § 78l (notes). Rule 13d-1(i) excludes from Section 13(d)’s definition of “equity security” any “class of non-voting securities”—so an equity security must have voting rights to trigger Section 13(d)’s disclosure requirement. 17 C.F.R. § 240.13d-1(i) (2021).

Rule 13d-3 provides standards to determine whether a person is a “beneficial owner” under Section 13(d) and Section 13(g). A beneficial owner is any person who, directly or indirectly, has “[v]oting power which includes the power to vote, or to direct the voting of, such security; and/or, [i]nvestment power which includes the power to dispose, or to direct the disposition of, such security.” 17 C.F.R. § 240.13d-3 (2021) (attached at Ex. A).

During the relevant time period, Musk had ten days after acquiring more than five percent of Twitter common stock to file the required disclosure. SEC Rules required beneficial owners of more than five percent of a covered class to file

electronically a Schedule 13D (or if eligible, a Schedule 13G)² with the SEC within ten days. *See* Regulation 13D–G (introduction) (Ex. A); 17 C.F.R. § 240.13d-1(a) and (c) (2021); *and* 17 C.F.R. § 232.101(a)(1)(iii); *see also* *Rondeau v. Mosinee Paper Corp.*, 422 U.S. 49, 51–52 (1975) (confirming that a person who “had acquired more than 5% of [outstanding shares] was therefore required to . . . fil[e] a Schedule 13D with . . . the Securities and Exchange Commission within 10 days”); *First City Fin. Corp.*, 890 F.2d at 1219 (explaining that if the defendant crossed the five percent threshold on March 4, then it “would have been obliged to file a Schedule 13D disclosure statement on March 14”); *SEC v. Bilzerian*, 814 F. Supp. 116, 119 (D.D.C. 1993), *aff’d*, 29 F.3d 689 (D.C. Cir. 1994) (finding that “defendant became the beneficial owner of in excess of five percent of Hammermill stock on June 27, 1986, and was thus required to file a Schedule 13D by July 7, 1986”—within ten calendar days); *CSX Corp. v. Children’s Inv. Fund Mgmt. (UK) LLP*, 654 F.3d 276, 284 (2d Cir. 2011) (holding that if defendants “crossed the 5 percent threshold by April 10, 2007 . . . [they] would have been required to file a section 13(d) disclosure within ten days, *i.e.*, by April 20, 2007”); *Drobbin v. Nicolet Instrument Corp.*, 631 F. Supp. 860, 887 (S.D.N.Y. 1986) (finding when 5% threshold crossed on May 31, 1985, a

² Exchange Act Section 13(d)(1) and Rule 13d-1(c) thereunder permit a person to file a Schedule 13G, in lieu of a Schedule 13D, if the person “[h]as not acquired the securities with any purpose, or with the effect, of changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect” and if the person beneficially owns less than 20% of the class of securities. 17 C.F.R. § 240.13d-1(c) and (f) (2001).

Schedule 13D filed on June 24, 1985 was filed “more than two weeks after the deadline mandated by the SEC”).

To prevail on its Section 13(d) claim, then, the SEC must prove that (i) shares of Twitter common stock are among those described by Section 13(d) and related regulations, (ii) Musk beneficially owned more than five percent of outstanding Twitter common stock, triggering the requirement to file the disclosure within ten days, and (iii) Musk did not file the required statement by the deadline.

Intent is not an element to a Section 13(d) claim. Section 13(d) places “a simple and affirmative duty of reporting on certain persons,” so the SEC does not need to prove state of mind. *SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1167 (D.C. Cir. 1978); *see SEC v. Jammin Java Corp.*, 15-cv-8921-SVW, 2016 WL 11783918, at *11 (C.D. Cal. Oct. 28, 2016) (“Section 13(d) is a strict liability statute.”); *SEC v. Verdiramo*, 890 F. Supp. 2d 257, 274 n.14 (S.D.N.Y. 2011) (“neither Section 13(d) nor Section 16(a) requires a showing of scienter to establish liability” (cleaned up)); *SEC v. Sierra Brokerage Services, Inc.*, 608 F. Supp. 2d 923, 957 n.32 (S.D. Ohio 2009) (“Section 13(d) . . . disclosure requirements do not require a showing of scienter”).

Any purported factual dispute over Musk’s intent is not material to the SEC’s Section 13(d) claim and cannot be a basis to deny summary judgment. In *SEC v. Levy*, for example, the district court granted summary judgment on the SEC’s Section 13(d) claim despite the defendant’s argument that “he was misled by his

lawyers” because “scienter is not an element that plaintiff must prove under section 13(d).” 706 F. Supp. 61, 69 (D.D.C. 1989).

ARGUMENT

There are no genuine disputes over the material facts, so the Court should grant summary judgment and find as a matter of law that Musk violated Section 13(d) and Rule 13d-1. This Court has undisputed jurisdiction over this case, and venue is proper. Musk’s filings with the SEC and admissions in other cases acknowledge that by March 14, 2022, he was the beneficial owner of more than five percent of outstanding shares of Twitter common stock. Section 13(d) and Rule 13d-1 required him to file a Schedule 13D (or if eligible, a Schedule 13G) within ten days—or by March 24, 2022. And there is no question that Musk missed that deadline.

I. Jurisdiction and Venue Are Proper

This Court has jurisdiction because Exchange Act Section 27(a) provides that “district courts of the United States . . . shall have exclusive jurisdiction of violations of this chapter or the rules and regulations thereunder,” which includes violations of Section 13(d) of the Exchange Act. 15 U.S.C. § 78aa. Exchange Act Section 21(d) also authorizes the SEC “in its discretion [to] bring an action in . . . the United States District Court for the District of Columbia” to enforce federal securities laws. 15 U.S.C. § 78u(d)(1).

Venue is also proper in this District. The “venue for civil enforcement actions of the Commission, involving reports required to be filed in the District of Columbia” is this District, because the “act of filing [a Schedule 13D] has a locus in

the District of Columbia, as does the failure to file.” *Savoy Indus.*, 587 F.2d at 1154 n.12 (citing *Invs. Funding Corp. of New York v. Jones*, 495 F.2d 1000, 1002 (D.C. Cir. 1974) (holding that a case based on a “late filing, as much as a failure to file, occurs within the district where the report is finally delivered to the designated agency or official”)); *SEC v. Hutchison*, 22-cv-2296-RJL, 2023 WL 6529544 (D.D.C. Sept. 20, 2023) (holding that when a case involves “filings with the Commission, which is headquartered in the District of Columbia,” this District “is where ‘act[s] or transaction[s] constituting the violation[s] occurred.’”) (citing 15 U.S.C. § 78aa(a)); SEC’s Statement of Undisputed Material Facts in Support of Its Motion for Summary Judgment (“Undisputed Facts”), ¶ 1.

II. Section 13(d) Applies to Shares of Twitter Common Stock

The reporting requirements in Section 13(d) applied to beneficial owners of Twitter common stock. Section 13(d)’s requirements apply to any person who is the beneficial owner of more than five percent of “any equity security of a class which is registered pursuant to section 78l of this title,” referring to Section 12 of the Exchange Act, and which has voting rights. 15 U.S.C. § 78m(d); *see* 15 U.S.C. § 78l (notes); 17 C.F.R. § 240.13d-1(i) (2021).

During the relevant time, shares of Twitter common stock were registered pursuant to Section 12(b) of the Exchange Act [15 U.S.C. § 78l(b)]. Undisputed Facts ¶ 2; *see also* 2/16/2022 Twitter Form 10-K (identifying shares of Twitter common stock as “Securities registered pursuant to Section 12(b) of the Act”) (submitted as Ex. 3 to the Declaration of James Becker (“Becker Decl.”)); 4/5/2022 Twitter Form 8-K (same) (submitted as Ex. 4 to the Becker Decl.); 4/11/2022 Twitter

Form 8-K/A (same) (submitted as Ex. 5 to the Becker Decl.); 4/18/2022 Twitter Form 8-K (same) (submitted as Ex. 6 to the Becker Decl.).³

During the relevant time, shares of Twitter common stock had voting rights because each share of common stock was entitled to one vote. Undisputed Facts ¶ 3; Becker Decl. Ex. 3 (p. 90, Note 14 “Common Stock and Stockholders’ Equity”).

Thus, any person who was the beneficial owner of more than five percent of Twitter’s outstanding common stock was subject to the reporting requirements of Section 13(d) and Rule 13d-1.

III. By March 14, 2022, Musk Was the Beneficial Owner of More than Five Percent of the Outstanding Shares of Twitter Common Stock

There is no dispute that by March 14, 2022, Musk was the beneficial owner of more than five percent of the outstanding shares of Twitter common stock.

The key—and undisputed—evidence of the Section 13(d) violation comes from two SEC filings: (1) Musk’s April 4, 2022 Schedule 13G (submitted as Becker Decl. Ex. 1) and (2) Musk’s April 5, 2022 Schedule 13D (submitted as Becker Decl. Ex. 2). Musk signed both filings certifying that “the information set forth in [each] statement is true, complete and correct.” Undisputed Facts ¶¶ 12, 19; Becker Decl. Ex. 1; Becker Decl. Ex. 2. Given Musk’s own certification of the truthfulness of their contents, the Court should find that there is no genuine dispute as to any material facts admitted within these filings.

³ The Court “may take judicial notice of the full contents of the SEC’s filings.” *See In re Morgan Stanley Info. Fund Sec. Litig.*, 592 F.3d 347, 355 n.5 (2d Cir. 2010).

In particular, there is no dispute that (1) Musk was the beneficial owner of shares of Twitter common stock held by the Elon Musk Revocable Trust dated July 22, 2003; and (2) that by March 14, 2022, Musk was the beneficial owner of more than five percent of outstanding shares of Twitter common stock.

A. Musk Was Beneficial Owner of Shares He Held in Trust

Musk's SEC filings acknowledge that he was the beneficial owner of shares of Twitter common stock held by the Elon Musk Revocable Trust dated July 22, 2003 ("Elon Musk Revocable Trust"). Undisputed Facts ¶¶ 17, 24; Becker Decl. Ex. 1; Becker Decl. Ex. 2.

Starting from at least January 31, 2022, Musk purchased shares of Twitter common stock on the open market. Undisputed Facts ¶ 4; Becker Decl. Ex. 2 (Item 3; Schedule I). Musk purchased those shares through the Elon Musk Revocable Trust. Undisputed Facts ¶¶ 5, 14, 21; Becker Decl. Ex. 1 (Item 4); Becker Decl. Ex. 2 (Item 5). Musk was the sole Trustee of the Elon Musk Revocable Trust. Undisputed Facts ¶ 6; Becker Decl. Ex. 1 (Item 4); Becker Decl. Ex. 2 (Item 5).

Musk had sole voting power and sole dispositive power over the Twitter common stock held by the Elon Musk Revocable Trust. Undisputed Facts ¶¶ 7, 8, 15, 16, 22, 23; Becker Decl. Ex. 1 (Table rows 5 and 7; Item 4(c)); Becker Decl. Ex. 2 (Table rows 7 and 9).

In fact, Musk admits that he was the beneficial owner of Twitter common stock held by Elon Musk Revocable Trust. Undisputed Facts ¶¶ 9, 17.

From Musk's Schedule 13G dated April 4, 2022:

Item 4. Ownership.

(a) Amount beneficially owned: 73,486,938 shares consisting of shares of Common Stock held by the Elon Musk Revocable Trust dated July 22, 2003 for which Elon Musk is the sole Trustee.

Becker Decl. Ex. 1 (Item 4); *see id.* Table row 1 (identifying Elon R. Musk as the reporting person) and Item 2 (identifying the filer as “Elon R. Musk”).

From Musk’s Schedule 13D dated April 5, 2022:

(a,b) For information regarding beneficial ownership, see the information presented on the cover page of this Schedule 13D. The Common Stock beneficial owned by the Reporting Person is held by the Elon Musk Revocable Trust dated July 22, 2003 for which Elon Musk is the sole Trustee.

Becker Decl. Ex. 2 (Item 5); *see id.* Item 2 (“This Schedule 13D is being filed by Elon Musk (the “Reporting Person”)”).

For all these reasons, there is no dispute that Musk was the beneficial owner of Twitter common stock held by Elon Musk Revocable Trust.

B. By March 14, 2022, Musk Owned More than Five Percent

The same two key SEC filings conclusively establish that by March 14, 2022, Musk had acquired beneficial ownership of more than five percent of outstanding shares of Twitter common stock.

March 14, 2022 is the “Date of Event which Requires Filing” — In his April 4, 2022 Schedule 13G, Musk admits that date of the event which required the filing of that statement is March 14, 2022. Undisputed Facts ¶ 13.

March 14, 2022
(Date of Event which Requires Filing of this Statement)

Becker Decl. Ex. 1, at 1. Under Section 13(d) and Rule 13d-1, the event that triggered the filing requirement was acquiring beneficial ownership of more than five percent of outstanding shares of Twitter common stock. This statement is an admission by Musk that he crossed the five percent threshold on March 14, 2022.

Musk’s Certified Transaction History Confirms He Beneficially Owned More than 5% of Twitter Common Stock by March 14, 2022 — On April 5, 2022, Musk filed a Schedule 13D, which included a table “list[ing] all transactions completed by the Reporting Person [Elon Musk] in [Twitter] Common Stock since January 31, 2022.” Undisputed Facts ¶ 27; Becker Decl. Ex. 2, Schedule I.

The table on the following page includes information certified and filed by Musk showing daily transactions. Undisputed Facts ¶¶ 27, 28. The columns in white come from Musk’s April 5, 2022 Schedule 13D. The SEC added the gray columns to show a running total of shares purchased and percentage of beneficial ownership based on the total number of outstanding shares (800,641,166) reported in Twitter’s Form 10-K dated February 16, 2022, which is the same denominator used by Musk to calculate the percentage of shares that he beneficially owned. Undisputed Facts ¶¶ 27, 28; Becker Decl. Ex. 3 (Cover); Becker Decl. Ex. 1 (Item 4(b)); Becker Decl. Ex. 2 (Table row 13 and footnote); *see* 17 C.F.R. § 13d-1(j) (allowing a filer to “rely upon information set forth in the issuer’s most recent quarterly or annual report, and any current report subsequent thereto, filed with the Commission pursuant to this Act, unless he knows or has reason to believe that the information contained therein is inaccurate.”).

Table 1 — Musk Transaction History of Twitter Common Stock

Date	Shares bought	Price	Total Shares*	Percentage**
1/31/2022	620,083	\$36.828	620,083	0.077%
2/1/2022	542,496	\$37.549	1,162,579	0.145%
2/2/2022	850,373	\$36.748	2,012,952	0.251%
2/3/2022	3,649,957	\$34.391	5,662,909	0.707%
2/4/2022	1,070,429	\$36.184	6,733,338	0.841%
2/7/2022	4,839,507	\$36.515	11,572,845	1.445%
2/8/2022	730,000	\$35.733	12,302,845	1.537%
2/9/2022	638,283	\$36.886	12,941,128	1.616%
2/10/2022	2,604,907	\$36.642	15,546,035	1.942%
2/11/2022	1,291,432	\$36.523	16,837,467	2.103%
2/14/2022	958,849	\$35.920	17,796,316	2.223%
2/15/2022	371,075	\$36.511	18,167,391	2.269%
2/16/2022	655,000	\$35.814	18,822,391	2.351%
2/17/2022	731,581	\$35.891	19,553,972	2.442%
2/18/2022	1,331,040	\$34.506	20,885,012	2.609%
2/22/2022	1,256,751	\$33.231	22,141,763	2.766%
2/23/2022	1,063,170	\$32.806	23,204,933	2.898%
2/24/2022	838,793	\$33.765	24,043,726	3.003%
2/25/2022	695,849	\$34.784	24,739,575	3.090%
2/28/2022	1,025,518	\$35.320	25,765,093	3.218%
3/1/2022	897,656	\$35.326	26,662,749	3.330%
3/2/2022	992,785	\$34.575	27,655,534	3.454%
3/3/2022	1,211,426	\$33.971	28,866,960	3.605%
3/4/2022	1,016,259	\$33.376	29,883,219	3.732%
3/7/2022	1,779,530	\$33.067	31,662,749	3.955%
3/8/2022	2,228,858	\$33.769	33,891,607	4.233%
3/9/2022	1,005,125	\$34.154	34,896,732	4.359%
3/10/2022	1,228,833	\$33.932	36,125,565	4.512%
3/11/2022	2,927,000	\$33.238	39,052,565	4.878%
3/14/2022	2,770,284	\$33.082	41,822,849	5.224%
3/15/2022	1,966,000	\$33.791	43,788,849	5.469%
3/16/2022	2,978,376	\$34.992	46,767,225	5.841%
3/17/2022	1,500,000	\$37.089	48,267,225	6.029%
3/18/2022	2,858,340	\$38.252	51,125,565	6.386%
3/21/2022	1,942,482	\$37.280	53,068,047	6.628%
3/22/2022	2,476,000	\$38.542	55,544,047	6.937%
3/23/2022	2,502,140	\$38.149	58,046,187	7.250%
3/24/2022	1,926,764	\$38.675	59,972,951	7.491%
3/25/2022	3,491,274	\$38.202	63,464,225	7.927%
3/28/2022	2,603,779	\$38.772	66,068,004	8.252%
3/29/2022	2,875,934	\$40.301	68,943,938	8.611%
3/31/2022	2,000,000	\$38.818	70,943,938	8.861%
4/1/2022	2,171,100	\$39.341	73,115,038	9.132%

* Total shares column reflects running total of “shares bought”

** Percentage column calculated based on 800,641,166 shares of Twitter common stock outstanding as of February 10, 2022, as reported in Twitter’s Annual Report on Form 10-K for the year ended December 31, 2021.

Undisputed Facts ¶ 28; *see id.* ¶ 27; Becker Decl. Ex. 2 (Schedule I). This transaction history certified by Musk and filed with the SEC shows that by March 14, 2022, Musk was the beneficial owner of around 5.22% of outstanding shares of Twitter common stock. Undisputed Facts ¶ 29; *see* Becker Decl. Ex. 2 (Schedule I).

Moreover, Musk has admitted in other litigation that he beneficially owned more than five percent of Twitter common stock by March 14, 2022. In his Answer to the First Amended Complaint filed in *Oklahoma Firefighters Pension and Retirement System v. Musk*, 22-cv-3026-ALC-GWG (S.D.N.Y.), Musk admitted:

On Monday, March 14, 2022, Defendants’ acquisitions of Twitter stock crossed the 5% ownership threshold. By this day, Musk had purchased 41,822,849 shares of Twitter stock. This represented over 5.2% of Twitter’s 800,641,166 shares of common stock outstanding as of February 10, 2022 as reported in Twitter’s Annual Report on Form 10-K for the year ended December 31, 2022. . . .

Am. Compl., ¶ 137, *Okla. Firefighters*, 1:22-cv-03026-ALC-GWG, ECF No. 99 (S.D.N.Y.); *see* Answer to Am. Compl., ¶ 137 *Okla. Firefighters*, 1:22-cv-03026-ALC-GWG, ECF No. 128 (S.D.N.Y.) (“admit[ting] the allegations in the first, second, and third sentences of Paragraph 137”).

In short, there is absolutely no dispute that Musk beneficially owned more than five percent of outstanding Twitter common stock by March 14, 2022. Under Section 13(d) and Rule 13d-1, his deadline to file a Schedule 13D (or if eligible, a Schedule 13G) was ten days later—March 24, 2022.

IV. Musk Did Not File by March 24, 2022

Musk did not file any statement disclosing his beneficial ownership of Twitter common stock by March 24, 2022. Undisputed Facts ¶ 10; Becker Decl. ¶¶ 13–15.

Musk filed a Schedule 13G on April 4, 2022—11 days after the deadline.

Undisputed Facts ¶ 11; Becker Decl. Ex. 1. Musk purported to amend that initial filing the next day with a Schedule 13D filed on April 5, 2022. Undisputed Facts ¶ 18; Becker Decl. Ex. 2. These were not timely filings.

Before April 4, 2022, Musk did not file anything with the SEC that disclosed his beneficial ownership of Twitter common stock as required by Section 13(d) and Rule 13d-1. Undisputed Facts ¶ 10; Becker Decl. ¶¶ 13–15. The Court can take judicial notice of SEC filings—or the lack thereof—that are publicly available on SEC’s Electronic Data Gathering, Analysis, and Retrieval (“EDGAR”) System. *See Heiner v. Watford*, No. 20-CV-02652-NYW-STV, 2022 WL 18777077, at *1 (D. Colo. Nov. 21, 2022), *report and recommendation adopted*, No. 20-CV-02652-NYW-STV, 2023 WL 2824288 (D. Colo. Mar. 27, 2023) (“The SEC Filings are each publicly available through the SEC’s ‘EDGAR’ filing system, and are proper for judicial notice.”); *In re Morgan Stanley Info. Fund Sec. Litig.*, 592 F.3d at 355 n.5.

Further undisputed evidence of the lack of timely SEC filings comes from James Becker, an Assistant Director in the EDGAR Business Office, who has submitted a declaration. He explains that his duties “include technical support and management of the SEC’s [EDGAR] system.” Becker Decl. ¶ 2. Mr. Becker’s declaration describes the query he conducted for any filings by Musk related to his beneficial ownership of Twitter common stock. *Id.* ¶ 13. Musk did not make any filings on the EDGAR system during the time period of March 14, 2022 to April 3, 2022. *Id.* ¶ 14. Based on Mr. Becker’s search and his familiarity with the EDGAR

system, he has concluded that Musk did not make any filings with the SEC disclosing his beneficial ownership of Twitter common stock between March 14, 2022 and April 4, 2022. *Id.* ¶¶ 13–15.

The undisputed evidence—from both the SEC’s publicly available records on EDGAR and the declaration of Mr. Becker—show that Musk did not make the required disclosure by March 24, 2022.

Finally, Musk admits that he missed the deadline in briefs submitted in support of a motion to dismiss private litigation. Musk argued that he acted without *scienter* (which is not an element of the Section 13(d) claim in this case) because in his Schedule 13G, he “disclosed and candidly admitted to missing the deadline” by listing the “Date of Event which Requires Filing of this Statement” as March 14, 2022. Reply ISO Mot to Dismiss First Am. Compl, *Okla. Firefighters*, 1:22-cv-03026, ECF No. 114, at 8 (S.D.N.Y.); *see also* Mem. ISO Mot. to Dismiss, *Okla. Firefighters*, 1:22-cv-03026, ECF No. 108 at 1 (S.D.N.Y.) (Musk’s Schedule 13G “disclosed the filing was late”); *id.* at 20 (arguing that the Schedule 13G “disclose[d] . . . the mistake” and “admitted that they were required to have disclosed earlier”). These admissions underscore that there is no dispute that Musk missed the deadline.

JUDGMENT AND REMEDIES

For these reasons, there are no material facts in dispute and the SEC is entitled to judgment as a matter of law as to liability on its claim that Defendant Elon Musk violated Section 13(d) of the Exchange Act and Rule 13d-1 thereunder.

The SEC proposes that the Court set a schedule for the parties to submit briefing on the issue of remedies.

Dated: August 29, 2025

Respectfully submitted,

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Securities and Exchange Commission

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Securities and Exchange Commission

Exhibit A

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(due to material violations of generally accepted accounting principles, the standards of the PCAOB, or other professional or regulatory standards);

(ii) Not to perform audit, review or other procedures required by the standards of the PCAOB or other professional standards;

(iii) Not to withdraw an issued report; or

(iv) Not to communicate matters to an issuer's audit committee.

(c) In addition, in the case of an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(48)), no officer or director of the company's investment adviser, sponsor, depositor, trustee, or administrator (or, in the case of paragraph (c)(2) of this section, any other person acting under the direction thereof) shall, directly or indirectly:

(1)(i) Make or cause to be made a materially false or misleading statement to an accountant in connection with; or

(ii) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with:

(A) Any audit, review, or examination of the financial statements of the investment company required to be made pursuant to this subpart; or

(B) The preparation or filing of any document or report required to be filed with the Commission pursuant to this subpart or otherwise; or

(2) Take any action to coerce, manipulate, mislead, or fraudulently influence any independent public or certified public accountant engaged in the performance of an audit or review of the financial statements of that investment company that are required to be filed with the Commission pursuant to this subpart or otherwise if that person knew or should have known that such action, if successful, could result in rendering the investment company's fi-

nancial statements materially misleading.

[68 FR 31830, May 28, 2003, as amended at 83 FR 50222, Oct. 4, 2018]

REGULATION 13D-G

SOURCE: Sections 240.13d-1 through 240.13f-1 appear at 43 FR 18495, Apr. 28, 1978, unless otherwise noted.

ATTENTION ELECTRONIC FILERS

THIS REGULATION SHOULD BE READ IN CONJUNCTION WITH REGULATION S-T (PART 232 OF THIS CHAPTER), WHICH GOVERNS THE PREPARATION AND SUBMISSION OF DOCUMENTS IN ELECTRONIC FORMAT. MANY PROVISIONS RELATING TO THE PREPARATION AND SUBMISSION OF DOCUMENTS IN PAPER FORMAT CONTAINED IN THIS REGULATION ARE SUPERSEDED BY THE PROVISIONS OF REGULATION S-T FOR DOCUMENTS REQUIRED TO BE FILED IN ELECTRONIC FORMAT.

§ 240.13d-1 Filing of Schedules 13D and 13G.

(a) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is specified in paragraph (i) of this section, is directly or indirectly the beneficial owner of more than five percent of the class shall, within 10 days after the acquisition, file with the Commission, a statement containing the information required by Schedule 13D (§240.13d-101).

(b)(1) A person who would otherwise be obligated under paragraph (a) of this section to file a statement on Schedule 13D (§240.13d-101) may, in lieu thereof, file with the Commission, a short-form statement on Schedule 13G (§240.13d-102), *Provided, That*:

(i) Such person has acquired such securities in the ordinary course of his business and not with the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to §240.13d-3(b), other than activities solely in connection with a nomination under §240.14a-11; and

(ii) Such person is:

(A) A broker or dealer registered under section 15 of the Act (15 U.S.C. 78o);

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(B) A bank as defined in section 3(a)(6) of the Act (15 U.S.C. 78c);

(C) An insurance company as defined in section 3(a)(19) of the Act (15 U.S.C. 78c);

(D) An investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8);

(E) Any person registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) or under the laws of any state;

(F) An employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001 *et seq.* (“ERISA”) that is subject to the provisions of ERISA, or any such plan that is not subject to ERISA that is maintained primarily for the benefit of the employees of a state or local government or instrumentality, or an endowment fund;

(G) A parent holding company or control person, provided the aggregate amount held directly by the parent or control person, and directly and indirectly by their subsidiaries or affiliates that are not persons specified in §240.13d-1(b)(1)(ii)(A) through (J), does not exceed one percent of the securities of the subject class;

(H) A savings association as defined in Section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(I) A church plan that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 (15 U.S.C. 80a-3);

(J) A non-U.S. institution that is the functional equivalent of any of the institutions listed in §240.13d-1(b)(1)(ii)(A) through (I), so long as the non-U.S. institution is subject to a regulatory scheme that is substantially comparable to the regulatory scheme applicable to the equivalent U.S. institution; and

(K) A group, provided that all the members are persons specified in §240.13d-1(b)(1)(ii)(A) through (J).

(iii) Such person has promptly notified any other person (or group within the meaning of section 13(d)(3) of the Act) on whose behalf it holds, on a discretionary basis, securities exceeding

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five percent of the class, of any acquisition or transaction on behalf of such other person which might be reportable by that person under section 13(d) of the Act. This paragraph only requires notice to the account owner of information which the filing person reasonably should be expected to know and which would advise the account owner of an obligation he may have to file a statement pursuant to section 13(d) of the Act or an amendment thereto.

INSTRUCTION 1 TO PARAGRAPH (b)(1). For purposes of paragraph (b)(1)(i) of this section, the exception for activities solely in connection with a nomination under §240.14a-1 will not be available after the election of directors.

(2) The Schedule 13G filed pursuant to paragraph (b)(1) of this section shall be filed within 45 days after the end of the calendar year in which the person became obligated under paragraph (b)(1) of this section to report the person’s beneficial ownership as of the last day of the calendar year, *Provided*, That it shall not be necessary to file a Schedule 13G unless the percentage of the class of equity security specified in paragraph (i) of this section beneficially owned as of the end of the calendar year is more than five percent; *However*, if the person’s direct or indirect beneficial ownership exceeds 10 percent of the class of equity securities prior to the end of the calendar year, the initial Schedule 13G shall be filed within 10 days after the end of the first month in which the person’s direct or indirect beneficial ownership exceeds 10 percent of the class of equity securities, computed as of the last day of the month.

(c) A person who would otherwise be obligated under paragraph (a) of this section to file a statement on Schedule 13D (§240.13d-101) may, in lieu thereof, file with the Commission, within 10 days after an acquisition described in paragraph (a) of this section, a short-form statement on Schedule 13G (§240.13d-102). *Provided*, That the person:

(1) Has not acquired the securities with any purpose, or with the effect, of changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect, including any

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transaction subject to §240.13d-3(b), other than activities solely in connection with a nomination under §240.14a-11;

INSTRUCTION 1 TO PARAGRAPH (c)(1). For purposes of paragraph (c)(1) of this section, the exception for activities solely in connection with a nomination under §240.14a-11 will not be available after the election of directors.

(2) Is not a person reporting pursuant to paragraph (b)(1) of this section; and

(3) Is not directly or indirectly the beneficial owner of 20 percent or more of the class.

(d) Any person who, as of the end of any calendar year, is or becomes directly or indirectly the beneficial owner of more than five percent of any equity security of a class specified in paragraph (i) of this section and who is not required to file a statement under paragraph (a) of this section by virtue of the exemption provided by Section 13(d)(6)(A) or (B) of the Act (15 U.S.C. 78m(d)(6)(A) or 78m(d)(6)(B)), or because the beneficial ownership was acquired prior to December 22, 1970, or because the person otherwise (except for the exemption provided by Section 13(d)(6)(C) of the Act (15 U.S.C. 78m(d)(6)(C))) is not required to file a statement, shall file with the Commission, within 45 days after the end of the calendar year in which the person became obligated to report under this paragraph (d), a statement containing the information required by Schedule 13G (§240.13d-102).

(e)(1) Notwithstanding paragraphs (b) and (c) of this section and §240.13d-2(b), a person that has reported that it is the beneficial owner of more than five percent of a class of equity securities in a statement on Schedule 13G (§240.13d-102) pursuant to paragraph (b) or (c) of this section, or is required to report the acquisition but has not yet filed the schedule, shall immediately become subject to §§240.13d-1(a) and 240.13d-2(a) and shall file a statement on Schedule 13D (§240.13d-101) within 10 days if, and shall remain subject to those requirements for so long as, the person:

(i) Has acquired or holds the securities with a purpose or effect of changing or influencing control of the issuer, or in connection with or as a participant in any transaction having that

purpose or effect, including any transaction subject to §240.13d-3(b); and

(ii) Is at that time the beneficial owner of more than five percent of a class of equity securities described in §240.13d-1(i).

(2) From the time the person has acquired or holds the securities with a purpose or effect of changing or influencing control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect until the expiration of the tenth day from the date of the filing of the Schedule 13D (§240.13d-101) pursuant to this section, that person shall not:

(i) Vote or direct the voting of the securities described therein; or

(ii) Acquire an additional beneficial ownership interest in any equity securities of the issuer of the securities, nor of any person controlling the issuer.

(f)(1) Notwithstanding paragraph (c) of this section and §240.13d-2(b), persons reporting on Schedule 13G (§240.13d-102) pursuant to paragraph (c) of this section shall immediately become subject to §§240.13d-1(a) and 240.13d-2(a) and shall remain subject to those requirements for so long as, and shall file a statement on Schedule 13D (§240.13d-101) within 10 days of the date on which, the person's beneficial ownership equals or exceeds 20 percent of the class of equity securities.

(2) From the time of the acquisition of 20 percent or more of the class of equity securities until the expiration of the tenth day from the date of the filing of the Schedule 13D (§240.13d-101) pursuant to this section, the person shall not:

(i) Vote or direct the voting of the securities described therein, or

(ii) Acquire an additional beneficial ownership interest in any equity securities of the issuer of the securities, nor of any person controlling the issuer.

(g) Any person who has reported an acquisition of securities in a statement on Schedule 13G (§240.13d-102) pursuant to paragraph (b) of this section, or has become obligated to report on the Schedule 13G (§240.13d-102) but has not yet filed the Schedule, and thereafter

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ceases to be a person specified in paragraph (b)(1)(ii) of this section or determines that it no longer has acquired or holds the securities in the ordinary course of business shall immediately become subject to §240.13d-1(a) or §240.13d-1(c) (if the person satisfies the requirements specified in §240.13d-1(c)), and §§240.13d-2 (a), (b) or (d), and shall file, within 10 days thereafter, a statement on Schedule 13D (§240.13d-101) or amendment to Schedule 13G, as applicable, if the person is a beneficial owner at that time of more than five percent of the class of equity securities.

(h) Any person who has filed a Schedule 13D (§240.13d-101) pursuant to paragraph (e), (f) or (g) of this section may again report its beneficial ownership on Schedule 13G (§240.13d-102) pursuant to paragraphs (b) or (c) of this section provided the person qualifies thereunder, as applicable, by filing a Schedule 13G (§240.13d-102) once the person determines that the provisions of paragraph (e), (f) or (g) of this section no longer apply.

(i) For the purpose of this regulation, the term “equity security” means any equity security of a class which is registered pursuant to section 12 of that Act, or any equity security of any insurance company which would have been required to be so registered except for the exemption contained in section 12(g)(2)(G) of the Act, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940; *Provided*, Such term shall not include securities of a class of non-voting securities.

(j) For the purpose of sections 13(d) and 13(g), any person, in determining the amount of outstanding securities of a class of equity securities, may rely upon information set forth in the issuer’s most recent quarterly or annual report, and any current report subsequent thereto, filed with the Commission pursuant to this Act, unless he knows or has reason to believe that the information contained therein is inaccurate.

(k)(1) Whenever two or more persons are required to file a statement containing the information required by Schedule 13D or Schedule 13G with re-

spect to the same securities, only one statement need be filed: *Provided*, That:

(i) Each person on whose behalf the statement is filed is individually eligible to use the Schedule on which the information is filed;

(ii) Each person on whose behalf the statement is filed is responsible for the timely filing of such statement and any amendments thereto, and for the completeness and accuracy of the information concerning such person contained therein; such person is not responsible for the completeness or accuracy of the information concerning the other persons making the filing, unless such person knows or has reason to believe that such information is inaccurate; and

(iii) Such statement identifies all such persons, contains the required information with regard to each such person, indicates that such statement is filed on behalf of all such persons, and includes, as an exhibit, their agreement in writing that such a statement is filed on behalf of each of them.

(2) A group’s filing obligation may be satisfied either by a single joint filing or by each of the group’s members making an individual filing. If the group’s members elect to make their own filings, each such filing should identify all members of the group but the information provided concerning the other persons making the filing need only reflect information which the filing person knows or has reason to know.

[43 FR 18495, Apr. 28, 1978, as amended at 43 FR 29768, July 11, 1978; 43 FR 55755, Nov. 29, 1978; 44 FR 10703, Feb. 23, 1979; 63 FR 2865, Jan. 16, 1998; 63 FR 15287, Mar. 31, 1998; 73 FR 60089, Oct. 9, 2008; 75 FR 56780, Sept. 16, 2010]

§ 240.13d-2 Filing of amendments to Schedules 13D or 13G.

(a) If any material change occurs in the facts set forth in the Schedule 13D (§240.13d-101) required by §240.13d-1(a), including, but not limited to, any material increase or decrease in the percentage of the class beneficially owned, the person or persons who were required to file the statement shall promptly file or cause to be filed with the Commission an amendment disclosing that change. An acquisition or disposition of beneficial ownership of

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securities in an amount equal to one percent or more of the class of securities shall be deemed “material” for purposes of this section; acquisitions or dispositions of less than those amounts may be material, depending upon the facts and circumstances.

(b) Notwithstanding paragraph (a) of this section, and provided that the person filing a Schedule 13G (§240.13d-102) pursuant to §240.13d-1(b) or §240.13d-1(c) continues to meet the requirements set forth therein, any person who has filed a Schedule 13G (§240.13d-102) pursuant to §240.13d-1(b), §240.13d-1(c) or §240.13d-1(d) shall amend the statement within forty-five days after the end of each calendar year if, as of the end of the calendar year, there are any changes in the information reported in the previous filing on that Schedule: *Provided, however,* That an amendment need not be filed with respect to a change in the percent of class outstanding previously reported if the change results solely from a change in the aggregate number of securities outstanding. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required unless the person thereafter becomes the beneficial owner of more than five percent of the class and is required to file pursuant to §240.13d-1.

(c) Any person relying on §240.13d-1(b) that has filed its initial Schedule 13G (§240.13d-102) pursuant to that paragraph shall, in addition to filing any amendments pursuant to §240.13d-2(b), file an amendment on Schedule 13G (§240.13d-102) within 10 days after the end of the first month in which the person’s direct or indirect beneficial ownership, computed as of the last day of the month, exceeds 10 percent of the class of equity securities. Thereafter, that person shall, in addition to filing any amendments pursuant to §240.13d-2(b), file an amendment on Schedule 13G (§240.13d-102) within 10 days after the end of the first month in which the person’s direct or indirect beneficial ownership, computed as of the last day of the month, increases or decreases by more than five percent of the class of equity securities. Once an amendment has been filed reflecting beneficial

ownership of five percent or less of the class of securities, no additional filings are required by this paragraph (c).

(d) Any person relying on §240.13d-1(c) and has filed its initial Schedule 13G (§240.13d-102) pursuant to that paragraph shall, in addition to filing any amendments pursuant to §240.13d-2(b), file an amendment on Schedule 13G (§240.13d-102) promptly upon acquiring, directly or indirectly, greater than 10 percent of a class of equity securities specified in §240.13d-1(d), and thereafter promptly upon increasing or decreasing its beneficial ownership by more than five percent of the class of equity securities. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required by this paragraph (d).

(e) The first electronic amendment to a paper format Schedule 13D (§240.13d-101 of this chapter) or Schedule 13G (§240.13d-102 of this chapter) shall restate the entire text of the Schedule 13D or 13G, but previously filed paper exhibits to such Schedules are not required to be restated electronically. *See* Rule 102 of Regulation S-T (§232.102 of this chapter) regarding amendments to exhibits previously filed in paper format. Notwithstanding the foregoing, if the sole purpose of filing the first electronic Schedule 13D or 13G amendment is to report a change in beneficial ownership that would terminate the filer’s obligation to report, the amendment need not include a restatement of the entire text of the Schedule being amended.

NOTE TO §240.13d-2: For persons filing a short-form statement pursuant to Rule 13d-1(b) or (c), see also Rules 13d-1(e), (f), and (g).

(Secs. 3(b), 13(d)(1), 13(d)(2), 13(d)(5), 13(d)(6), 14(d)(1), 23; 48 Stat. 882, 894, 895, 901; sec. 203(a), 49 Stat. 704, sec. 8, 49 Stat. 1379; sec. 10, 78 Stat. 88a; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3-5, 84 Stat. 1497; secs. 3, 18, 89 Stat. 97, 155 (15 U.S.C. 78c(b), 78m(d)(1), 89m(d)(2), 78m(d)(5), 78m(d)(6), 78n(d)(1), 78w); sec. 23, 48 Stat. 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 10, 78 Stat. 580; sec. 18, 89 Stat. 155; secs. 102, 202, 203, 91 Stat. 1494, 1498, 1499; 15 U.S.C. 78m(g), 78w(a))

[43 FR 18495, Apr. 28, 1978, as amended at 45 FR 81558, Dec. 11, 1980; 47 FR 49964, Nov. 4, 1982; 58 FR 14683, Mar. 18, 1993; 59 FR 67764, Dec. 30, 1994; 62 FR 36459, July 8, 1997; 63 FR 2866, Jan. 16, 1998]

§ 240.13d-3**17 CFR Ch. II (4-1-21 Edition)****§ 240.13d-3 Determination of beneficial owner.**

(a) For the purposes of sections 13(d) and 13(g) of the Act a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

(1) Voting power which includes the power to vote, or to direct the voting of, such security; and/or,

(2) Investment power which includes the power to dispose, or to direct the disposition of, such security.

(b) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement, or device with the purpose of effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of section 13(d) or (g) of the Act shall be deemed for purposes of such sections to be the beneficial owner of such security.

(c) All securities of the same class beneficially owned by a person, regardless of the form which such beneficial ownership takes, shall be aggregated in calculating the number of shares beneficially owned by such person.

(d) Notwithstanding the provisions of paragraphs (a) and (c) of this rule:

(1)(i) A person shall be deemed to be the beneficial owner of a security, subject to the provisions of paragraph (b) of this rule, if that person has the right to acquire beneficial ownership of such security, as defined in Rule 13d-3(a) (§240.13d-3(a)) within sixty days, including but not limited to any right to acquire: (A) Through the exercise of any option, warrant or right; (B) through the conversion of a security; (C) pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or (D) pursuant to the automatic termination of a trust, discretionary account or similar arrangement; provided, however, any person who acquires a security or power specified in paragraphs (d)(1)(i)(A), (B) or (C), of this section, with the purpose or effect of changing or influencing the control of the issuer, or in connection with or as a participant in any trans-

action having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the securities which may be acquired through the exercise or conversion of such security or power. Any securities not outstanding which are subject to such options, warrants, rights or conversion privileges shall be deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by such person but shall not be deemed to be outstanding for the purpose of computing the percentage of the class by any other person.

(ii) Paragraph (d)(1)(i) of this section remains applicable for the purpose of determining the obligation to file with respect to the underlying security even though the option, warrant, right or convertible security is of a class of equity security, as defined in §240.13d-1(i), and may therefore give rise to a separate obligation to file.

(2) A member of a national securities exchange shall not be deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities and, pursuant to the rules of such exchange, may direct the vote of such securities, without instruction, on other than contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted, but is otherwise precluded by the rules of such exchange from voting without instruction.

(3) A person who in the ordinary course of his business is a pledgee of securities under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged securities until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged securities will be exercised, provided, that:

(i) The pledgee agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with any transaction

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having such purpose or effect, including any transaction subject to Rule 13d-3(b);

(ii) The pledgee is a person specified in Rule 13d-1(b)(ii), including persons meeting the conditions set forth in paragraph (G) thereof; and

(iii) The pledgee agreement, prior to default, does not grant to the pledgee;

(A) The power to vote or to direct the vote of the pledged securities; or

(B) The power to dispose or direct the disposition of the pledged securities, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended subject to regulation T (12 CFR 220.1 to 220.8) and in which the pledgee is a broker or dealer registered under section 15 of the act.

(4) A person engaged in business as an underwriter of securities who acquires securities through his participation in good faith in a firm commitment underwriting registered under the Securities Act of 1933 shall not be deemed to be the beneficial owner of such securities until the expiration of forty days after the date of such acquisition.

(Secs. 3(b), 13(d)(1), 13(d)(2), 13(d)(5), 13(d)(6), 14(d)(1), 23; 48 Stat. 882, 894, 895, 901; sec. 203(a), 49 Stat. 704, sec. 8, 49 Stat. 1379; sec. 10, 78 Stat. 88a; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3-5, 84 Stat. 1497; secs. 3, 18, 89 Stat. 97, 155 (15 U.S.C. 78c(b), 78m(d)(1), 89m(d)(2), 78m(d)(5), 78m(d)(6), 78n(d)(1), 78w)

[43 FR 18495, Apr. 28, 1978, as amended at 43 FR 29768, July 11, 1978; 63 FR 2867, Jan. 16, 1998]

§ 240.13d-4 Disclaimer of beneficial ownership.

Any person may expressly declare in any statement filed that the filing of such statement shall not be construed as an admission that such person is, for the purposes of sections 13(d) or 13(g) of the Act, the beneficial owner of any securities covered by the statement.

(Secs. 3(b), 13(d)(1), 13(d)(2), 13(d)(5), 13(d)(6), 14(d)(1), 23; 48 Stat. 882, 894, 895, 901; sec. 203(a), 49 Stat. 704, sec. 8, 49 Stat. 1379; sec. 10, 78 Stat. 88a; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3-5, 84 Stat. 1497; secs. 3, 18, 89 Stat. 97, 155 (15 U.S.C. 78c(b), 78m(d)(1), 89m(d)(2), 78m(d)(5), 78m(d)(6), 78n(d)(1), 78w)

§ 240.13d-5 Acquisition of securities.

(a) A person who becomes a beneficial owner of securities shall be deemed to have acquired such securities for purposes of section 13(d)(1) of the Act, whether such acquisition was through purchase or otherwise. However, executors or administrators of a decedent's estate generally will be presumed not to have acquired beneficial ownership of the securities in the decedent's estate until such time as such executors or administrators are qualified under local law to perform their duties.

(b)(1) When two or more persons agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of an issuer, the group formed thereby shall be deemed to have acquired beneficial ownership, for purposes of sections 13(d) and (g) of the Act, as of the date of such agreement, of all equity securities of that issuer beneficially owned by any such persons.

(2) Notwithstanding the previous paragraph, a group shall be deemed not to have acquired any equity securities beneficially owned by the other members of the group solely by virtue of their concerted actions relating to the purchase of equity securities directly from an issuer in a transaction not involving a public offering: *Provided, That:*

(i) All the members of the group are persons specified in Rule 13d-1(b)(1)(ii);

(ii) The purchase is in the ordinary course of each member's business and not with the purpose nor with the effect of changing or influencing control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to Rule 13d-3(b);

(iii) There is no agreement among, or between any members of the group to act together with respect to the issuer or its securities except for the purpose of facilitating the specific purchase involved; and

(iv) The only actions among or between any members of the group with respect to the issuer or its securities subsequent to the closing date of the non-public offering are those which are

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necessary to conclude ministerial matters directly related to the completion of the offer or sale of the securities.

(Secs. 3(b), 13(d)(1), 13(d)(2), 13(d)(5), 13(d)(6), 14(d)(1), 23; 48 Stat. 882, 894, 895, 901; sec. 203(a), 49 Stat. 704, sec. 8, 49 Stat. 1379; sec. 10, 78 Stat. 88a; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3-5, 84 Stat. 1497; secs. 3, 18, 89 Stat. 97, 155 (15 U.S.C. 78c(b), 78m(d)(1), 89m(d)(2), 78m(d)(5), 78m(d)(6), 78n(d)(1), 78w))

§ 240.13d-6 Exemption of certain acquisitions.

The acquisition of securities of an issuer by a person who, prior to such acquisition, was a beneficial owner of more than five percent of the outstanding securities of the same class as those acquired shall be exempt from section 13(d) of the Act: *Provided, That:*

(a) The acquisition is made pursuant to preemptive subscription rights in an offering made to all holders of securities of the class to which the preemptive subscription rights pertain;

(b) Such person does not acquire additional securities except through the exercise of his pro rata share of the preemptive subscription rights; and

(c) The acquisition is duly reported, if required, pursuant to section 16(a) of the Act and the rules and regulations thereunder.

(Secs. 3(b), 13(d)(1), 13(d)(2), 13(d)(5), 13(d)(6), 14(d)(1), 23; 48 Stat. 882, 894, 895, 901; sec. 203(a), 49 Stat. 704, sec. 8, 49 Stat. 1379; sec. 10, 78 Stat. 88a; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3-5, 84 Stat. 1497; secs. 3, 18, 89 Stat. 97, 155 (15 U.S.C. 78c(b), 78m(d)(1), 89m(d)(2), 78m(d)(5), 78m(d)(6), 78n(d)(1), 78w))

§ 240.13d-7 Dissemination.

One copy of the Schedule filed pursuant to §§240.13d-1 and 240.13d-2 shall be sent to the issuer of the security at its principal executive office by registered or certified mail. A copy of Schedules filed pursuant to §§240.13d-1(a) and 240.13d-2(a) shall also be sent to each

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national securities exchange where the security is traded.

[63 FR 2867, Jan. 16, 1998]

§ 240.13d-101 Schedule 13D—Information to be included in statements filed pursuant to § 240.13d-1(a) and amendments thereto filed pursuant to § 240.13d-2(a).

Securities and Exchange Commission, Washington, D.C. 20549

Schedule 13D

Under the Securities Exchange Act of 1934 (Amendment No. __)*

(Name of Issuer)

(Title of Class of Securities)

(CUSIP Number)

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

(Date of Event Which Requires Filing of This Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box.

NOTE: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 13d-7 for other parties to whom copies are to be sent.

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

CUSIP No. _____

(1) Names of reporting persons.	(a)
(2) Check the appropriate box if a member of a group (see instructions)	(b)
(3) SEC use only.	
(4) Source of funds (see instructions).	

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(5) Check if disclosure of legal proceedings is required pursuant to Items 2(d) or 2(e).	
(6) Citizenship or place of organization.	
Number of shares beneficially owned by each reporting person with:	
(7) Sole voting power.	
(8) Shared voting power.	
(9) Sole dispositive power.	
(10) Shared dispositive power.	
(11) Aggregate amount beneficially owned by each reporting person.	
(12) Check if the aggregate amount in Row (11) excludes certain shares (see instructions).	
(13) Percent of class represented by amount in Row (11).	
(14) Type of reporting person (see instructions).	

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Instructions for Cover Page

(1) *Names of Reporting Persons*—Furnish the full legal name of each person for whom the report is filed—i.e., each person required to sign the schedule itself—including each member of a group. Do not include the name of a person required to be identified in the report but who is not a reporting person.

(2) If any of the shares beneficially owned by a reporting person are held as a member of the group and the membership is expressly affirmed, please check row 2(a). If the reporting person disclaims membership in a group or describes a relationship with other person but does not affirm the existence of a group, please check row 2(b) (unless it is a joint filing pursuant to Rule 13d-1(k)(1) in which case it may not be necessary to check row 2(b)).

(3) The 3rd row is for SEC internal use; please leave blank.

(4) Classify the source of funds or other consideration used or to be used in making the purchases as required to be disclosed pursuant to Item 3 of Schedule 13D and insert the appropriate symbol (or symbols if more than one is necessary) in row (4):

Category of Source	Symbol
Subject Company (Company whose securities are being acquired)	SC
Bank	BK
Affiliate (of reporting person)	AF
Working Capital (of reporting person)	WC
Personal Funds (of reporting person)	PF
Other	OO

(5) If disclosure of legal proceedings or actions is required pursuant to either Items 2(d) or 2(e) of Schedule 13D, row 5 should be checked.

(6) *Citizenship or Place of Organization*—Furnish citizenship if the named reporting person is a natural person. Otherwise, Furnish place of organization. (See Item 2 of Schedule 13D).

(7)–(11) [Reserved]

(12) Check if the aggregate amount reported as beneficially owned in row (11) does not include shares which the reporting person discloses in the report but as to which beneficial ownership is disclaimed pursuant to Rule 13d-4 [17 CFR 240.13d-4] under the Securities Exchange Act of 1934.

(13) *Aggregate Amount Beneficially Owned by Each Reporting Person, Etc.*—Rows (7) through (11), inclusive, and (13) are to be completed in accordance with the provisions of Item 5 of Schedule 13D. All percentages are to be rounded off to nearest tenth (one place after decimal point).

(14) *Type of Reporting Person*—Please classify each “reporting person” according to the following breakdown and place the appropriate symbol (or symbols, i.e., if more than one is applicable, insert all applicable symbols) on the form:

Category	Symbol
Broker Dealer	BD
Bank	BK
Insurance Company	IC
Investment Company	IV
Investment Adviser	IA
Employee Benefit Plan or Endowment Fund	EP
Parent Holding Company/Control Person	HC
Savings Association	SA
Church Plan	CP
Corporation	CO
Partnership	PN
Individual	IN
Other	OO

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NOTES: Attach as many copies of the second part of the cover page as are needed, one reporting person per page.

Filing persons may, in order to avoid unnecessary duplication, answer items on the schedules (Schedule 13D, 13G or TO) by appropriate cross references to an item or items on the cover page(s). This approach may only be used where the cover page item or items provide all the disclosure required by the schedule item. Moreover, such a use of a cover page item will result in the item becoming a part of the schedule and accordingly being considered as "filed" for purposes of section 18 of the Securities Exchange Act or otherwise subject to the liabilities of that section of the Act.

Reporting persons may comply with their cover page filing requirements by filing either completed copies of the blank forms available from the Commission, printed or typed facsimiles, or computer printed facsimiles, provided the documents filed have identical formats to the forms prescribed in the Commission's regulations and meet existing Securities Exchange Act rules as to such matters as clarity and size (Securities Exchange Act Rule 12b-12).

**SPECIAL INSTRUCTIONS FOR COMPLYING WITH
SCHEDULE 13D**

Under sections 13(d) and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this schedule by certain security holders of certain issuers.

Disclosure of the information specified in this schedule is mandatory. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can use it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the federal securities laws or other civil, criminal or regulatory statutes or provisions.

Failure to disclose the information requested by this schedule may result in civil or criminal action against the persons involved for violation of the federal securities laws and rules promulgated thereunder.

Instructions. A. The item numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items.

Answer every item. If an item is inapplicable or the answer is in the negative, so state.

B. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or sub-item of the statement unless it would render such answer misleading, incomplete, unclear or confusing. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required. A copy of any information or a copy of the pertinent pages of a document containing such information which is incorporated by reference shall be submitted with this statement as an exhibit and shall be deemed to be filed with the Commission for all purposes of the Act.

C. If the statement is filed by a general or limited partnership, syndicate, or other group, the information called for by Items 2-6, inclusive, shall be given with respect to (i) each partner of such general partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such partner or member. If the statement is filed by a corporation or if a person referred to in (i), (ii), (iii) or (iv) of this Instruction is a corporation, the information called for by the above mentioned items shall be given with respect to (a) each executive officer and director of such corporation; (b) each person controlling such corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of such corporation.

Item 1. Security and Issuer. State the title of the class of equity securities to which this statement relates and the name and address of the principal executive offices of the issuer of such securities.

Item 2. Identity and Background. If the person filing this statement or any person enumerated in Instruction C of this statement is a corporation, general partnership, limited partnership, syndicate or other group of persons, state its name, the state or other place of its organization, its principal business, the address of its principal office and the information required by (d) and (e) of this Item. If the person filing this statement or any person enumerated in Instruction C is a natural person, provide the information specified in (a) through (f) of this Item with respect to such person(s).

(a) Name;

(b) Residence or business address;

(c) Present principal occupation or employment and the name, principal business

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and address of any corporation or other organization in which such employment is conducted;

(d) Whether or not, during the last five years, such person has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give the dates, nature of conviction, name and location of court, any penalty imposed, or other disposition of the case;

(e) Whether or not, during the last five years, such person was a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws; and, if so, identify and describe such proceedings and summarize the terms of such judgment, decree or final order; and

(f) Citizenship.

Item 3. Source and Amount of Funds or Other Consideration. State the source and the amount of funds or other consideration used or to be used in making the purchases, and if any part of the purchase price is or will be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, trading or voting the securities, a description of the transaction and the names of the parties thereto. Where material, such information should also be provided with respect to prior acquisitions not previously reported pursuant to this regulation. If the source of all or any part of the funds is a loan made in the ordinary course of business by a bank, as defined in section 3(a)(6) of the Act, the name of the bank shall not be made available to the public if the person at the time of filing the statement so requests in writing and files such request, naming such bank, with the Secretary of the Commission. If the securities were acquired other than by purchase, describe the method of acquisition.

Item 4. Purpose of Transaction. State the purpose or purposes of the acquisition of securities of the issuer. Describe any plans or proposals which the reporting persons may have which relate to or would result in:

(a) The acquisition by any person of additional securities of the issuer, or the disposition of securities of the issuer;

(b) An extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the issuer or any of its subsidiaries;

(c) A sale or transfer of a material amount of assets of the issuer or any of its subsidiaries;

(d) Any change in the present board of directors or management of the issuer, including any plans or proposals to change the

number or term of directors or to fill any existing vacancies on the board;

(e) Any material change in the present capitalization or dividend policy of the issuer;

(f) Any other material change in the issuer's business or corporate structure, including but not limited to, if the issuer is a registered closed-end investment company, any plans or proposals to make any changes in its investment policy for which a vote is required by section 13 of the Investment Company Act of 1940;

(g) Changes in the issuer's charter, bylaws or instruments corresponding thereto or other actions which may impede the acquisition of control of the issuer by any person;

(h) Causing a class of securities of the issuer to be delisted from a national securities exchange or to cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association;

(i) A class of equity securities of the issuer becoming eligible for termination of registration pursuant to section 12(g)(4) of the Act; or

(j) Any action similar to any of those enumerated above.

Item 5. Interest in Securities of the Issuer. (a) State the aggregate number and percentage of the class of securities identified pursuant to Item 1 (which may be based on the number of securities outstanding as contained in the most recently available filing with the Commission by the issuer unless the filing person has reason to believe such information is not current) beneficially owned (identifying those shares which there is a right to acquire) by each person named in Item 2. The above mentioned information should also be furnished with respect to persons who, together with any of the persons named in Item 2, comprise a group within the meaning of section 13(d)(3) of the Act;

(b) For each person named in response to paragraph (a), indicate the number of shares as to which there is sole power to vote or to direct the vote, sole power to dispose or to direct the disposition, or shared power to dispose or to direct the disposition. Provide the applicable information required by Item 2 with respect to each person with whom the power to vote or to direct the vote or to dispose or direct the disposition is shared;

(c) Describe any transactions in the class of securities reported on that were effected during the past sixty days or since the most recent filing of Schedule 13D (§ 240.13d-101), whichever is less, by the persons named in response to paragraph (a).

Instruction. The description of a transaction required by Item 5(c) shall include, but not necessarily be limited to: (1) The identity of the person covered by Item 5(c) who effected the transaction; (2) the date of

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transaction; (3) the amount of securities involved; (4) the price per share or unit; and (5) where and how the transaction was effected.

(d) If any other person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such securities, a statement to that effect should be included in response to this item and, if such interest relates to more than five percent of the class, such person should be identified. A listing of the shareholders of an investment company registered under the Investment Company Act of 1940 or the beneficiaries of an employee benefit plan, pension fund or endowment fund is not required.

(e) If applicable, state the date on which the reporting person ceased to be the beneficial owner of more than five percent of the class of securities.

Instruction. For computations regarding securities which represent a right to acquire an underlying security, see Rule 13d-3(d)(1) and the note thereto.

Item 6. Contracts, Arrangements, Understandings or Relationships With Respect to Securities of the Issuer. Describe any contracts, arrangements, understandings or relationships (legal or otherwise) among the persons named in Item 2 and between such persons and any person with respect to any securities of the issuer, including but not limited to transfer or voting of any of the securities, finder's fees, joint ventures, loan or option arrangements, puts or calls, guarantees of profits, division of profits or loss, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, understandings or relationships have been entered into. Include such information for any of the securities that are pledged or otherwise subject to a contingency the occurrence of which would give another person voting power or investment power over such securities except that disclosure of standard default and similar provisions contained in loan agreements need not be included.

Item 7. Material to be Filed as Exhibits. The following shall be filed as exhibits: Copies of written agreements relating to the filing of joint acquisition statements as required by Rule 13d-1(k) and copies of all written agreements, contracts, arrangements, understanding, plans or proposals relating to: (1) The borrowing of funds to finance the acquisition as disclosed in Item 3; (2) the acquisition of issuer control, liquidation, sale of assets, merger, or change in business or corporate structure, or any other matter as disclosed in Item 4; and (3) the transfer or voting of the securities, finder's fees, joint ventures, options, puts, calls, guarantees of loans, guarantees against loss or of profit, or the giving or withholding of any proxy as disclosed in Item 6.

Signature. After reasonable inquiry and to the best of my knowledge and belief, I certify

that the information set forth in this statement is true, complete and correct.

Date _____
Signature _____
Name/Title _____

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the filing person), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement: *Provided, however,* That a power of attorney for this purpose which is already on file with the Commission may be incorporated by reference. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

ATTENTION—Intentional misstatements or omissions of fact constitute Federal criminal violations (See 18 U.S.C. 1001).

[44 FR 2145, Jan. 9, 1979; 44 FR 11751, Mar. 2, 1979; 44 FR 70340, Dec. 6, 1979; 47 FR 11466, Mar. 16, 1982; 61 FR 49959, Sept. 24, 1996; 62 FR 35340, July 1, 1997; 63 FR 2867, Jan. 16, 1998; 63 FR 15287, Mar. 31, 1998; 72 FR 45111, Aug. 10, 2007; 73 FR 17813, Apr. 1, 2008]

§ 240.13d-102 Schedule 13G—Information to be included in statements filed pursuant to § 240.13d-1(b), (c), and (d) and amendments thereto filed pursuant to § 240.13d-2.

Securities and Exchange Commission, Washington, D.C. 20549

Schedule 13G
Under the Securities Exchange Act of 1934
(Amendment No. __)*

(Name of Issuer)

(Title of Class of Securities)

(CUSIP Number)

(Date of Event Which Requires Filing of this Statement)

Check the appropriate box to designate the rule pursuant to which this Schedule is filed:

- Rule 13d-1(b)
- Rule 13d-1(c)
- Rule 13d-1(d)

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter the disclosures provided in a prior cover page.

The information required in the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the

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Securities Exchange Act of 1934 (“Act”) or otherwise subject to the liabilities of that section of the Act but shall be subject to all

other provisions of the Act (however, see the Notes).

CUSIP No. _____	
(1) Names of reporting persons. (2) Check the appropriate box if a member of a group (see instructions)	(a) (b)
(3) SEC use only.	
(4) Citizenship or place of organization.	
Number of shares beneficially owned by each reporting person with: (5) Sole voting power.	
(6) Shared voting power.	
(7) Sole dispositive power.	
(8) Shared dispositive power.	
(9) Aggregate amount beneficially owned by each reporting person.	
(10) Check if the aggregate amount in Row (9) excludes certain shares (see instructions).	
(11) Percent of class represented by amount in Row (9).	
(12) Type of reporting person (see instructions).	

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Instructions for Cover Page:

(1) *Names of Reporting Persons*—Furnish the full legal name of each person for whom the report is filed—i.e., each person required to sign the schedule itself—including each member of a group. Do not include the name of a person required to be identified in the report but who is not a reporting person.

(2) If any of the shares beneficially owned by a reporting person are held as a member of a group and that membership is expressly affirmed, please check row 2(a). If the reporting person disclaims membership in a group or describes a relationship with other person but does not affirm the existence of a group, please check row 2(b) [unless it is a joint filing pursuant to Rule 13d-1(k)(1) in which case it may not be necessary to check row 2(b)].

(3) The third row is for SEC internal use; please leave blank.

(4) *Citizenship or Place of Organization*—Furnish citizenship if the named reporting person is a natural person. Otherwise, furnish place of organization.

(5)–(9), (11) *Aggregated Amount Beneficially Owned By Each Reporting Person, etc.*—Rows (5) through (9) inclusive, and (11) are to be completed in accordance with the provisions of Item 4 of Schedule 13G. All percentages are to be rounded off to the nearest tenth (one place after decimal point).

(10) Check if the aggregate amount reported as beneficially owned in row (9) does not include shares as to which beneficial ownership is disclaimed pursuant to Rule 13d-4 [17 CFR 240.13d-4] under the Securities Exchange Act of 1934.

(12) *Type of Reporting Person*—Please classify each “reporting person” according to the following breakdown (see Item 3 of Schedule 13G) and place the appropriate Symbol on the form:

Category	Symbol
Broker Dealer	BD
Bank	BK
Insurance Company	IC
Investment Company	IV
Investment Adviser	IA
Employee Benefit Plan or Endowment Fund	EP
Parent Holding Company/Control Person	HC
Savings Association	SA
Church Plan	CP
Corporation	CO
Partnership	PN
Individual	IN
Non-U.S. Institution	FI
Other	OO

NOTES: Attach as many copies of the second part of the cover page as are needed, one reporting person per page.

Filing persons may, in order to avoid unnecessary duplication, answer items on the

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schedules (Schedule 13D, 13G or TO) by appropriate cross references to an item or items on the cover page(s). This approach may only be used where the cover page item or items provide all the disclosure required by the schedule item. Moreover, such a use of a cover page item will result in the item becoming a part of the schedule and accordingly being considered as “filed” for purposes of section 18 of the Securities Exchange Act or otherwise subject to the liabilities of that section of the Act.

Reporting persons may comply with their cover page filing requirements by filing either completed copies of the blank forms available from the Commission, printed or typed facsimiles, or computer printed facsimiles, provided the documents filed have identical formats to the forms prescribed in the Commission’s regulations and meet existing Securities Exchange Act rules as to such matters as clarity and size (Securities Exchange Act Rule 12b-12).

SPECIAL INSTRUCTIONS FOR COMPLYING WITH
SCHEDULE 13G

Under Sections 13(d), 13(g) and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this schedule by certain security holders of certain issuers.

Disclosure of the information specified in this schedule is mandatory. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can use it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions.

Failure to disclose the information requested by this schedule may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules promulgated thereunder.

Instructions. A. Statements filed pursuant to Rule 13d-1(b) containing the information required by this schedule shall be filed not later than February 14 following the calendar year covered by the statement or within the time specified in Rules 13d-1(b)(2) and 13d-2(c). Statements filed pursuant to Rule 13d-1(d) shall be filed within the time specified in Rules 13d-1(c), 13d-2(b) and 13d-2(d). Statements filed pursuant to Rule 13d-1(c) shall be filed not later than February 14 following the calendar year covered by the

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statement pursuant to Rules 13d-1(d) and 13d-2(b).

B. Information contained in a form which is required to be filed by rules under section 13(f) (15 U.S.C. 78m(f)) for the same calendar year as that covered by a statement on this schedule may be incorporated by reference in response to any of the items of this schedule. If such information is incorporated by reference in this schedule, copies of the relevant pages of such form shall be filed as an exhibit to this schedule.

C. The item numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative, so state.

Item 1(a) Name of issuer: _____

Item 1(b) Address of issuer’s principal executive offices: _____

2(a) Name of person filing: _____

2(b) Address or principal business office or, if none, residence: _____

2(c) Citizenship: _____

2(d) Title of class of securities: _____

2(e) CUSIP No.: _____

Item 3. If this statement is filed pursuant to §§240.13d-1(b) or 240.13d-2(b) or (c), check whether the person filing is a:

(a) Broker or dealer registered under section 15 of the Act (15 U.S.C. 78o);

(b) Bank as defined in section 3(a)(6) of the Act (15 U.S.C. 78c);

(c) Insurance company as defined in section 3(a)(19) of the Act (15 U.S.C. 78c);

(d) Investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8);

(e) An investment adviser in accordance with §240.13d-1(b)(1)(ii)(E);

(f) An employee benefit plan or endowment fund in accordance with §240.13d-1(b)(1)(ii)(F);

(g) A parent holding company or control person in accordance with §240.13d-1(b)(1)(ii)(G);

(h) A savings associations as defined in Section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(i) A church plan that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 (15 U.S.C. 80a-3);

(j) A non-U.S. institution in accordance with §240.13d-1(b)(1)(ii)(J);

(k) Group, in accordance with §240.13d-1(b)(1)(ii)(K). If filing as a non-U.S. institution in accordance with §240.13d-1(b)(1)(ii)(J),

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please specify the type of institution:

Item 4. Ownership

Provide the following information regarding the aggregate number and percentage of the class of securities of the issuer identified in Item 1.

- (a) Amount beneficially owned: _____.
- (b) Percent of class: _____.
- (c) Number of shares as to which the person has:
- (i) Sole power to vote or to direct the vote _____.
- (ii) Shared power to vote or to direct the vote _____.
- (iii) Sole power to dispose or to direct the disposition of _____.
- (iv) Shared power to dispose or to direct the disposition of _____.

Instruction. For computations regarding securities which represent a right to acquire an underlying security *see* §240.13d-3(d)(1).

Item 5. Ownership of 5 Percent or Less of a Class. If this statement is being filed to report the fact that as of the date hereof the reporting person has ceased to be the beneficial owner of more than 5 percent of the class of securities, check the following [].

Instruction. Dissolution of a group requires a response to this item.

Item 6. Ownership of More than 5 Percent on Behalf of Another Person. If any other person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such securities, a statement to that effect should be included in response to this item and, if such interest relates to more than 5 percent of the class, such person should be identified. A listing of the shareholders of an investment company registered under the Investment Company Act of 1940 or the beneficiaries of employee benefit plan, pension fund or endowment fund is not required.

Item 7. Identification and Classification of the Subsidiary Which Acquired the Security Being Reported on by the Parent Holding Company or Control Person. If a parent holding company or control person has filed this schedule pursuant to Rule 13d-1(b)(1)(ii)(G), so indicate under Item 3(g) and attach an exhibit stating the identity and the Item 3 classification of the relevant subsidiary. If a parent holding company or control person has filed this schedule pursuant to Rule 13d-1(c) or Rule 13d-1(d), attach an exhibit stating the identification of the relevant subsidiary.

Item 8. Identification and Classification of Members of the Group

If a group has filed this schedule pursuant to §240.13d-1(b)(1)(ii)(J), so indicate under Item 3(j) and attach an exhibit stating the identity and Item 3 classification of each

member of the group. If a group has filed this schedule pursuant to Rule 13d-1(c) or Rule 13d-1(d), attach an exhibit stating the identity of each member of the group.

Item 9. Notice of Dissolution of Group. Notice of dissolution of a group may be furnished as an exhibit stating the date of the dissolution and that all further filings with respect to transactions in the security reported on will be filed, if required, by members of the group, in their individual capacity. See Item 5.

Item 10. Certifications

(a) The following certification shall be included if the statement is filed pursuant to §240.13d-1(b):

By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were acquired and are held in the ordinary course of business and were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect, other than activities solely in connection with a nomination under §240.14a-11.

(b) The following certification shall be included if the statement is filed pursuant to §240.13d-1(b)(1)(ii)(J), or if the statement is filed pursuant to §240.13d-1(b)(1)(ii)(K) and a member of the group is a non-U.S. institution eligible to file pursuant to §240.13d-1(b)(1)(ii)(J):

By signing below I certify that, to the best of my knowledge and belief, the foreign regulatory scheme applicable to [insert particular category of institutional investor] is substantially comparable to the regulatory scheme applicable to the functionally equivalent U.S. institution(s). I also undertake to furnish to the Commission staff, upon request, information that would otherwise be disclosed in a Schedule 13D.

(c) The following certification shall be included if the statement is filed pursuant to §240.13d-1(c):

By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect, other than activities solely in connection with a nomination under §240.14a-11.

Signature. After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

ELON MUSK,

Defendant.

Case No. 25-cv-000105-SLS

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S
STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT AS TO LIABILITY**

Pursuant to LCvR 7(h), Plaintiff Securities and Exchange Commission (“SEC”) submits this Statement of Undisputed Material Facts (“Undisputed Facts”) in support of its Motion for Summary Judgment.

I. Venue

1. Securities and Exchange Commission headquarters and principal place of business is located at 100 F Street NE, Washington, DC 20549.

Declaration of James Becker ¶ 1 (“Becker Decl.”).

II. Section 13(d) of the Exchange Act Applies to Twitter Common Stock

2. From at least January 31, 2022, through April 15, 2022, shares of Common Stock issued by Twitter, Inc. (“Twitter”) were registered pursuant to Section 12(b) of the Securities and Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78l(b)]. 2/16/2022 Twitter Form 10-K (identifying Twitter, Inc.’s Common Stock as “Securities registered pursuant to Section 12(b) of the Act”)

(submitted as Becker Decl. Ex. 3 and available at

[https://www.sec.gov/Archives/edgar/data/1418091/000141809122000029/twtr-](https://www.sec.gov/Archives/edgar/data/1418091/000141809122000029/twtr-20211231.htm)

[20211231.htm](https://www.sec.gov/Archives/edgar/data/1418091/000141809122000029/twtr-20211231.htm))¹; 4/5/2022 Twitter Form 8-K (same) (submitted as Becker Decl.

Ex. 4 and available at

<https://www.sec.gov/Archives/edgar/data/1418091/000119312522095651/d342257>

[d8k.htm](https://www.sec.gov/Archives/edgar/data/1418091/000119312522095651/d342257)); 4/11/2022 Twitter Form 8-K/A (same) (submitted as Becker Decl. Ex. 5

and available at

<https://www.sec.gov/Archives/edgar/data/1418091/000119312522101041/d315205>

[d8ka.htm](https://www.sec.gov/Archives/edgar/data/1418091/000119312522101041/d315205)); 4/18/2022 Twitter Form 8-K (same) (submitted as Becker Decl. Ex. 6

and available at

<https://www.sec.gov/Archives/edgar/data/1418091/000119312522107462/d296740>

[d8k.htm](https://www.sec.gov/Archives/edgar/data/1418091/000119312522107462/d296740)).

3. From at least January 31, 2022, through April 15, 2022, each share of Twitter common stock was entitled to one vote. Becker Decl. Ex. 3 (at page 90, Note 14 “Common Stock and Stockholders’ Equity”).

III. Musk Beneficially Owned More than Five Percent of Twitter Stock

4. Starting from at least January 31, 2022, Musk began to purchase shares of Twitter common stock on the open market. 4/5/2022 Schedule 13D (Item 3; Schedule I) (submitted as Becker Decl. Ex. 2 and available at

¹ The Court “may take judicial notice of the full contents of the SEC’s filings.” *See In re Morgan Stanley Info. Fund Sec. Litig.*, 592 F.3d 347, 355 n.5 (2d Cir. 2010).

https://www.sec.gov/Archives/edgar/data/1418091/000110465922042863/tm2211757d1_sc13d.htm).

5. Musk purchased Twitter common stock through a trust named the Elon Musk Revocable Trust dated July 22, 2003 (“Elon Musk Revocable Trust”). 4/4/2022 Schedule 13G (Item 4) (submitted as Becker Decl. Ex. 1 and available at https://www.sec.gov/Archives/edgar/data/1418091/000110465922041911/tm2211482d1_sc13g.htm); Becker Decl. Ex. 2 (Item 5).

6. Elon Musk was the sole Trustee of the Elon Musk Revocable Trust. Becker Decl. Ex. 1 (Item 4); Becker Decl. Ex. 2 (Item 5).

7. Musk had sole dispositive power over the shares of Twitter common stock held by the Elon Musk Revocable Trust. Becker Decl. Ex. 1 (Table row 7); Becker Decl. Ex. 2 (Table row 9).

8. Musk had sole voting power over the shares held by the Elon Musk Revocable Trust. Becker Decl. Ex. 1 (Table row 5); Becker Decl. Ex. 2 (Table row 7).

9. By March 14, 2022, Defendant Elon Musk was the beneficial owner of at least five percent of outstanding shares of Twitter common stock. *See* Becker Decl. Ex. 1, (“Date of Event which Requires Filing of this Statement”); Becker Decl. Ex. 2 (Table); Answer to Am. Compl, ¶ 137 *Oklahoma Firefighters Pension and Retirement System v. Musk*, 1:22-cv-03026-ALC-GWG, ECF No. 128 (S.D.N.Y.) (“admit[ting] the allegations in the first, second, and third sentences of Paragraph 137”).

10. Prior to April 4, 2022, Defendant Musk did not make any filings pursuant to Exchange Act Section 13 related to his beneficial ownership Twitter common stock. Becker Decl. ¶¶ 13–15.

IV. April 4, 2022 Schedule 13G (Exhibit 1)

11. On April 4, 2022, Defendant Elon Musk filed with the SEC a Schedule 13G. Becker Declaration Exhibit 1 is a true and accurate copy of Musk’s Schedule 13G dated April 4, 2022 (“Schedule 13G”). Becker Decl. ¶ 12.

12. When Defendant Musk signed the Schedule 13G, he confirmed, “After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete, and correct.” Becker Decl. Ex. 1.

13. Musk’s Schedule 13G identified March 14, 2022, as the “Date of Event which Requires Filing of this Statement.” Becker Decl. Ex. 1.

14. Elon Musk Revocable Trust held the Twitter common stock described in Musk’s Schedule 13G. Becker Decl. Ex. 1.

15. In his Schedule 13G, Musk certified that he had sole voting power over the shares held by the Elon Musk Revocable Trust. Becker Decl. Ex. 1 (Table row 5; Item 4(c)).

16. In his Schedule 13G, Musk certified that he had sole dispositive power over the shares held by the Elon Musk Revocable Trust. Ex. 1 (Table row 7; Item 4(c)).

17. In his Schedule 13G dated April 4, 2022, Musk certified that he was

the beneficial owner of shares of Twitter common stock held by the Elon Musk Revocable Trust dated July 22, 2003. Becker Decl. Ex. 1 (Item 2; Item 4).

V. April 5, 2022 Schedule 13D (Exhibit 2)

18. On April 5, 2022, Defendant Elon Musk filed a Schedule 13D with the SEC, purportedly as an amendment to the Schedule 13G he filed the previous day. Becker Declaration Exhibit 2 is a true and accurate copy of Musk's Schedule 13D dated April 5, 2022 ("Schedule 13D"). Becker Decl. ¶ 12.

19. When Musk signed the Schedule 13D dated April 5, 2022, he confirmed, "After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete, and correct." Becker Decl. Ex. 2.

20. In his Schedule 13D, Musk certified that he was the beneficial owner of 73,115,038 shares of common stock issued by Twitter, Inc. as of that date. Becker Decl. Ex. 2 (Table row 11).

21. Elon Musk Revocable Trust held the Twitter common stock described in the Schedule 13D. Becker Decl. Ex. 2 (Item 5).

22. In his Schedule 13D, Musk certified that he had sole voting power over the shares held by the Elon Musk Revocable. Becker Decl. Ex. 2 (Table row 7).

23. In his Schedule 13D, Musk certified that he had sole dispositive power over the shares held by the Elon Musk Revocable Trust. Becker Decl. Ex. 2 (Table row 9).

24. In his Schedule 13D, Musk certified that he beneficially owned 9.1% of Twitter's outstanding common stock. Becker Decl. Ex. 2 (Table row 13 and footnote).

25. Musk's Schedule 13D calculated the percentage of Twitter common stock owned by Defendant Musk "[b]ased on 800,641,166 shares of Common Stock outstanding as of February 10, 2022 as reported in the Issuer's Annual Report on Form 10-K for the year ended December 31, 2021." Becker Decl. Ex. 2 (Table row 13 and footnote).

26. The number of shares of Twitter, Inc.'s common stock outstanding as of February 10, 2022 was 800,641,166. Becker Decl. Ex. 2; Becker Decl. Ex. 4.

27. Schedule I, attached to Musk's Schedule 13D, includes a table that "lists all transactions completed by the Reporting Person" which is Elon Musk, "in [Twitter's] Common Stock since January 31, 2022, which were all completed through open market purchases." Becker Decl. Ex. 2 (Schedule I).

This is an accurate copy of that table:

Date	Shares bought	Price
1/31/2022	620,083	\$36.828
2/1/2022	542,496	\$37.549
2/2/2022	850,373	\$36.748
2/3/2022	3,649,957	\$34.391
2/4/2022	1,070,429	\$36.184
2/7/2022	4,839,507	\$36.515
2/8/2022	730,000	\$35.733
2/9/2022	638,283	\$36.886
2/10/2022	2,604,907	\$36.642
2/11/2022	1,291,432	\$36.523
2/14/2022	958,849	\$35.920
2/15/2022	371,075	\$36.511
2/16/2022	655,000	\$35.814

2/17/2022	731,581	\$35.891
2/18/2022	1,331,040	\$34.506
2/22/2022	1,256,751	\$33.231
2/23/2022	1,063,170	\$32.806
2/24/2022	838,793	\$33.765
2/25/2022	695,849	\$34.784
2/28/2022	1,025,518	\$35.320
3/1/2022	897,656	\$35.326
3/2/2022	992,785	\$34.575
3/3/2022	1,211,426	\$33.971
3/4/2022	1,016,259	\$33.376
3/7/2022	1,779,530	\$33.067
3/8/2022	2,228,858	\$33.769
3/9/2022	1,005,125	\$34.154
3/10/2022	1,228,833	\$33.932
3/11/2022	2,927,000	\$33.238
3/14/2022	2,770,284	\$33.082
3/15/2022	1,966,000	\$33.791
3/16/2022	2,978,376	\$34.992
3/17/2022	1,500,000	\$37.089
3/18/2022	2,858,340	\$38.252
3/21/2022	1,942,482	\$37.280
3/22/2022	2,476,000	\$38.542
3/23/2022	2,502,140	\$38.149
3/24/2022	1,926,764	\$38.675
3/25/2022	3,491,274	\$38.202
3/28/2022	2,603,779	\$38.772
3/29/2022	2,875,934	\$40.301
3/31/2022	2,000,000	\$38.818
4/1/2022	2,171,100	\$39.341

28. Based on the information submitted in Schedule I attached to Musk's Schedule 13D, the following table shows the total shares Twitter common stock that Musk purchased or were purchased on his behalf from January 31, 2022 through April 2, 2022. The table also shows the percentage of the total shares of outstanding Twitter stock that had been purchased by Musk or on his behalf as of each date within that period.

Date	Shares bought	Price	Total Shares*	Percentage**
1/31/2022	620,083	\$36.828	620,083	0.077%
2/1/2022	542,496	\$37.549	1,162,579	0.145%
2/2/2022	850,373	\$36.748	2,012,952	0.251%
2/3/2022	3,649,957	\$34.391	5,662,909	0.707%
2/4/2022	1,070,429	\$36.184	6,733,338	0.841%
2/7/2022	4,839,507	\$36.515	11,572,845	1.445%
2/8/2022	730,000	\$35.733	12,302,845	1.537%
2/9/2022	638,283	\$36.886	12,941,128	1.616%
2/10/2022	2,604,907	\$36.642	15,546,035	1.942%
2/11/2022	1,291,432	\$36.523	16,837,467	2.103%
2/14/2022	958,849	\$35.920	17,796,316	2.223%
2/15/2022	371,075	\$36.511	18,167,391	2.269%
2/16/2022	655,000	\$35.814	18,822,391	2.351%
2/17/2022	731,581	\$35.891	19,553,972	2.442%
2/18/2022	1,331,040	\$34.506	20,885,012	2.609%
2/22/2022	1,256,751	\$33.231	22,141,763	2.766%
2/23/2022	1,063,170	\$32.806	23,204,933	2.898%
2/24/2022	838,793	\$33.765	24,043,726	3.003%
2/25/2022	695,849	\$34.784	24,739,575	3.090%
2/28/2022	1,025,518	\$35.320	25,765,093	3.218%
3/1/2022	897,656	\$35.326	26,662,749	3.330%
3/2/2022	992,785	\$34.575	27,655,534	3.454%
3/3/2022	1,211,426	\$33.971	28,866,960	3.605%
3/4/2022	1,016,259	\$33.376	29,883,219	3.732%
3/7/2022	1,779,530	\$33.067	31,662,749	3.955%
3/8/2022	2,228,858	\$33.769	33,891,607	4.233%
3/9/2022	1,005,125	\$34.154	34,896,732	4.359%
3/10/2022	1,228,833	\$33.932	36,125,565	4.512%
3/11/2022	2,927,000	\$33.238	39,052,565	4.878%
3/14/2022	2,770,284	\$33.082	41,822,849	5.224%
3/15/2022	1,966,000	\$33.791	43,788,849	5.469%
3/16/2022	2,978,376	\$34.992	46,767,225	5.841%
3/17/2022	1,500,000	\$37.089	48,267,225	6.029%
3/18/2022	2,858,340	\$38.252	51,125,565	6.386%
3/21/2022	1,942,482	\$37.280	53,068,047	6.628%
3/22/2022	2,476,000	\$38.542	55,544,047	6.937%
3/23/2022	2,502,140	\$38.149	58,046,187	7.250%
3/24/2022	1,926,764	\$38.675	59,972,951	7.491%
3/25/2022	3,491,274	\$38.202	63,464,225	7.927%
3/28/2022	2,603,779	\$38.772	66,068,004	8.252%
3/29/2022	2,875,934	\$40.301	68,943,938	8.611%
3/31/2022	2,000,000	\$38.818	70,943,938	8.861%
4/1/2022	2,171,100	\$39.341	73,115,038	9.132%

* Total shares column reflects running total of “shares bought”

** Percentage column calculated based on 800,641,166 shares of Twitter common stock outstanding as of February 10, 2022, as reported in Twitter’s Annual Report on Form 10-K for the year ended December 31, 2021.

29. By March 14, 2022, Defendant Musk was the beneficial owner of at least 5.2% of outstanding shares of Twitter stock calculated based on 800,641,166 shares of Twitter common stock outstanding as of February 10, 2022, as reported in Twitter’s Annual Report on Form 10-K for the year ended December 31, 2021. *See* Becker Decl. Ex. 2 (Schedule I); Answer to Am. Compl, ¶ 137 *Okla. Firefighters*, 1:22-cv-03026-ALC-GWG, ECF No. 128 (S.D.N.Y.) (“admit[ting] the allegations in the first, second, and third sentences of Paragraph 137”).

Dated: August 29, 2025

Respectfully submitted,

By: /s/ Zachary A. Avallone

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Securities and Exchange Commission

100 F Street, N.E.

Washington, D.C. 20549

Counsel for Plaintiff

Securities and Exchange Commission

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No. 25-cv-000105-SLS

ELON MUSK,

Defendant.

**DECLARATION OF JAMES BECKER IN SUPPORT OF
PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S
MOTION FOR SUMMARY JUDGMENT AS TO LIABILITY**

I, James Becker, declare as follows:

1. I am employed as an Assistant Director in the EDGAR Business Office at the United States Securities and Exchange Commission (the "SEC"), with its principal place of business located at 100 F Street, N.E., Washington DC 20549, USA.

2. My duties include technical support and management of the SEC's Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR"). As such, I have personal knowledge of the facts in this declaration.

3. Filings made on the EDGAR system are among the ordinary electronic records kept by the SEC and are recorded in the usual and ordinary course of business of the SEC.

4. I have personal knowledge of the maintenance, custody and control of EDGAR records. I make this Declaration based upon, among other things, my review of the EDGAR

database and the filings located within that database.

5. Each EDGAR filer has its own EDGAR account on which the filer makes its filings.

6. Each EDGAR account is identified by a unique number known as a Central Index Key or CIK.

7. Elon Musk's EDGAR account is CIK 0001494730.

8. Twitter, Inc.'s EDGAR account is CIK 0001418091.

9. Schedule 13G, Schedule 13D, Form 10-K, Form 8-K, and Form 8-K/A, are filed with the SEC on EDGAR, and are accepted by, maintained in, and available through the public EDGAR database.

10. I reviewed the records listed in the table below that are attached as Exhibits 1 through 6 to this declaration.

11. The attached Exhibits 1 through 6 are duplicate copies of original records in the custody of EDGAR.

12. Exhibits 1 through 6, attached and listed in the table below, are true and correct copies of documents that are contained on the SEC's public EDGAR database, filed either on the EDGAR account of Elon Musk, CIK0001494730, or Twitter, Inc., CIK 0001418091, as indicated in the table below, and filed on the dates indicated in the table below:

Exhibit No.	CIK	Filer Name	Form Type	Filing Date
Exhibit No. 1	CIK 0001494730	Elon Musk	SC 13G	4/4/2022
Exhibit No. 2	CIK 0001494730	Elon Musk	SC 13D	4/5/2022
Exhibit No. 3	CIK 0001418091	Twitter, Inc.	10-K	2/16/2022

Exhibit No. 4	CIK 0001418091	Twitter, Inc.	8-K	4/5/2022
Exhibit No. 5	CIK 0001418091	Twitter, Inc.	8-K/A	4/11/2022
Exhibit No. 6	CIK 0001418091	Twitter, Inc.	8-K	4/18/2022

13. I conducted a query for any filings on the EDGAR account of Elon Musk, CIK 0001494730, made during the time period March 14, 2022 to April 5, 2022.

14. Based on my review of the EDGAR database, April 4, 2022 was the first date during the time period March 14, 2022 to April 5, 2022 that a Schedule 13G or Schedule 13D was filed on the EDGAR account of Elon Musk, CIK 0001494730.

15. No filings were made on the EDGAR account of Elon Musk, CIK 0001494730, during the time period March 14, 2022 to April 3, 2022.

Pursuant to 28 U.S.C. Section 1746, I certify under penalty of perjury that the foregoing is true and correct.

Executed on August 27, 2025 in Washington, D.C.

James Becker
Assistant Director
EDGAR Business Office
U.S. Securities and Exchange Commission

Exhibit 1



U.S. SECURITIES AND EXCHANGE COMMISSION

PDF Copy of Submission on SEC EDGAR system

This PDF document is a copy of the following submission on the SEC's EDGAR system:

Submission/Form SC 13G

Filed 2022-04-04

Accession number 0001104659-22-041911

Submitted on EDGAR account of TWITTER, INC., CIK 0001418091

This copy was generated on 2025-08-20.

The submission itself is available on SEC's public EDGAR database at:

<https://www.sec.gov/Archives/edgar/data/0001418091/000110465922041911/0001104659-22-041911-index.html>.

Additional submission information is available on [SEC.gov](https://www.sec.gov), including but not limited to whether any additional reporting entities are associated with the submission.

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

SCHEDULE 13G

**Under the Securities Exchange Act of 1934
(Amendment No.)***

Twitter Inc.
(Name of Issuer)

Common Stock
(Title of Class of Securities)

90184L102
(CUSIP Number)

March 14, 2022
(Date of Event which Requires Filing of this Statement)

Check the appropriate box to designate the rule pursuant to which this Schedule is filed:

- Rule 13d-1(b)
- Rule 13d-1(c)
- Rule 13d-1(d)

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter the disclosures provided in a prior cover page.

The information required in the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

CUSIP No. 90184L102

13G

Page 2 of 5 Pages

1	NAME OF REPORTING PERSONS Elon R. Musk	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a) <input type="checkbox"/> (b) <input type="checkbox"/>	
3	SEC USE ONLY	
4	CITIZENSHIP OR PLACE OF ORGANIZATION United States	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	5	SOLE VOTING POWER 73,486,938
	6	SHARED VOTING POWER --
	7	SOLE DISPOSITIVE POWER 73,486,938
	8	SHARED DISPOSITIVE POWER --

9	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON 73,486,938 shares of Common Stock
10	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (9) EXCLUDES CERTAIN SHARES ..
11	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (9) 9.2% of Common Stock
12	TYPE OF REPORTING PERSON IN

CUSIP No. 90184L102

13G

Page 3 of 5 Pages

Item 1.

- (a) Name of Issuer: Twitter Inc. (the "Issuer")
(b) Address of Issuer's Principal Executive Offices

1355 Market Street, Suite 900
San Francisco, CA 94103

Item 2.

- (a) Name of Person Filing
Elon R. Musk
- (b) Address of Principal Business Office or, if none, Residence

2110 Ranch Road 620 S. #341886
Austin, TX 78734

- (c) Citizenship
United States
- (d) Title of Class of Securities
Common Stock

- (e) CUSIP Number
90184L102

Item 3. If this statement is filed pursuant to §§240.13d-1(b) or 240.13d-2(b) or (c), check whether the person filing is a:

Not applicable

Item 4. Ownership.

- (a) Amount beneficially owned: 73,486,938 shares consisting of shares of Common Stock held by the Elon Musk Revocable Trust dated July 22, 2003 for which Elon Musk is the sole Trustee.
- (b) Percent of class: 9.2% (based on 800,641,166 shares of Common Stock outstanding as of February 10, 2022 as reported in the Issuer's Annual Report on Form 10-K for the year ended December 31, 2021).
- (c) Number of shares as to which the person has:
- (i) Sole power to vote or to direct the vote: 73,486,938
 - (ii) Shared power to vote or to direct the vote: --
 - (iii) Sole power to dispose or to direct the disposition of: 73,486,938
 - (iv) Shared power to dispose or to direct the disposition of: --

CUSIP No. 90184L102

13G

Page 4 of 5 Pages

Item 5. Ownership of Five Percent or Less of a Class.

If this statement is being filed to report the fact that as of the date hereof the reporting person has ceased to be the beneficial owner of more than five percent of the class of securities, check the following .

Item 6. Ownership of More than Five Percent on Behalf of Another Person.

Not Applicable

Item 7. Identification and Classification of the Subsidiary Which Acquired the Security Being Reported on By the Parent Holding Company.

Not Applicable

Item 8. Identification and Classification of Members of the Group.

Not Applicable

Item 9. Notice of Dissolution of Group.

Not Applicable

Item 10. Certification

Not Applicable

CUSIP No. 90184L102

13G

Page 5 of 5 Pages

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Date: April 4, 2022

By: /s/ Elon R. Musk
Elon R. Musk

Exhibit 2



U.S. SECURITIES AND EXCHANGE COMMISSION

PDF Copy of Submission on SEC EDGAR system

This PDF document is a copy of the following submission on the SEC's EDGAR system:

Submission/Form SC 13D

Filed 2022-04-05

Accession number 0001104659-22-042863

Submitted on EDGAR account of TWITTER, INC., CIK 0001418091

This copy was generated on 2025-08-20.

The submission itself is available on SEC's public EDGAR database at:

<https://www.sec.gov/Archives/edgar/data/0001418091/000110465922042863/0001104659-22-042863-index.html>.

Additional submission information is available on [SEC.gov](https://www.sec.gov), including but not limited to whether any additional reporting entities are associated with the submission.

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

SCHEDULE 13D
Under the Securities Exchange Act of 1934
(Amendment No. 1 to Schedule 13G)

Twitter Inc.
(Name of Issuer)

Common Stock
(Title of Class of Securities)

90184L102
(Cusip Number)

John Lutz
Heidi Steele
McDermott Will & Emery LLP
444 West Lake Street, Suite 4000
Chicago, IL 60657
(312) 984-3624
(Name, Address and Telephone Number of Person
Authorized to Receive Notices and Communications)

April 4, 2022
(Date of Event Which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box. x

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the act (however, see the Notes).

SCHEDULE 13D

CUSIP No. 90184L102

1	Name of Reporting Person: Elon R. Musk	I.R.S. Identification Nos. of Above Person (entities only):
2	Check the Appropriate Box if a Member of a Group (See Instructions): (a) .. (b) ..	
3	SEC Use Only:	
4	Source of Funds (See Instruction): OO	
5	Check if Disclosure of Legal Proceedings is Required Pursuant to Items 2(d) or 2(e): x	
6	Citizenship or Place of Organization: USA	
Number of Shares		7 Sole Voting Power: 73,115,038

Beneficially Owned by Each Reporting Person With	8	Shared Voting Power: --
	9	Sole Dispositive Power: 73,115,038
	10	Shared Dispositive Power: --
11	Aggregate Amount Beneficially Owned by Each Reporting Person: 73,115,038	
12	Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions) "	
13	Percent of Class Represented by Amount in Row (11): 9.1% ¹	
14	Type of Reporting Person (See Instructions): IN	

¹ Based on 800,641,166 shares of Common Stock outstanding as of February 10, 2022 as reported in the Issuer's Annual Report on Form 10-K for the year ended December 31, 2021.

SCHEDULE 13D

Item 1. Security and Issuer.

Elon Musk (the "Reporting Person") previously filed a Schedule 13G on April 4, 2022 (the "Schedule 13G"). This Schedule 13D (this "Schedule 13D") relates to the common stock (the "Common Stock") of Twitter Inc., a Delaware corporation (the "Issuer" or "Registrant"), and amends the Schedule 13G. The address of the principal executive offices of the Issuer is 1355 Market Street, Suite 900, San Francisco, CA 94103; its telephone number is (415) 222-9670.

Item 2. Identity and Background.

- (a) This Schedule 13D is being filed by Elon Musk (the "Reporting Person").
- (b) The principal business address for the Reporting Person is 2110 Ranch Road 620 S. #341886, Austin, TX 78734.
- (c) The principal occupation of the Reporting Person is serving as the Technoking and Chief Executive Officer of Tesla, Inc., the business address of which is 1 Tesla Road, Austin, Texas 78725. On April 4, 2022, the Reporting Person entered into a letter agreement with the Issuer in which the Issuer agreed to appoint the Reporting Person to the Board of Directors of Issuer, subject to certain onboarding procedures.
- (d) The Reporting Person has not been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) during the last five years.
- (e) During the last five years, the Reporting Person has not been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws, except for proceedings initiated by the Securities and Exchange Commission, and related settlement with the Securities and Exchange Commission filed with the U.S. District Court for the Southern District of New York on September 29, 2018 and further amended on April 26, 2019, with respect to Reporting Person's statement on August 7, 2018 that he was considering taking Tesla private.
- (f) The Reporting Person is a citizen of the United States.

Item 3. Source and Amount of Funds or Other Consideration.

The Reporting Person used cash to make the purchases of Common Stock listed on Schedule I hereto.

Item 4. Purpose of Transaction.

On April 4, 2022, the Reporting Person and the Issuer entered into a letter agreement (the "Agreement") which provides that: (i) the Issuer will appoint the Reporting Person to the Issuer's Board of Directors (the "Board") to serve as a Class II director with a term expiring at the Issuer's 2024 Annual Meeting of Stockholders; and (ii) for so long as the Reporting Person is serving on the Board and for 90 days thereafter, the Reporting Person will not, either alone or as a member of a group, become the beneficial owner of more than 14.9% of the Issuer's common stock outstanding at such time, including for these purposes economic exposure through derivative securities, swaps, or hedging transactions. The foregoing summary of the Agreement does not purport to be complete and

is subject to, and qualified in its entirety by, the full text of the Agreement, which is filed as Exhibit A and incorporated herein by reference.

The Reporting Person holds the Common Stock of the Issuer for investment purposes. Depending on the factors discussed herein, the Reporting Person may, from time to time, acquire additional shares of Common Stock and/or retain and/or sell all or a portion of the shares of Common Stock held by the Reporting Person in the open market or in privately negotiated transactions, and/or may distribute the Common Stock held by the Reporting Person to other entities. Any actions the Reporting Person might undertake will be dependent upon the Reporting Person's review of numerous factors, including, among other things, the price levels of the Common Stock, general market and economic conditions, ongoing evaluation of the Issuer's business, financial condition, operations and prospects, the relative attractiveness of alternative business and investment opportunities, investor's need for liquidity, and other future developments. Any future acquisitions of Common Stock will be subject to the Company's policies, including its insider trading policy, as applicable.

Except as set forth above, the Reporting Person has no present plans or intentions which would result in or relate to any of the transactions described in subparagraphs (a) through (j) of Item 4 of Schedule 13D.

Item 5. Interests in Securities of the Issuer

(a,b) For information regarding beneficial ownership, see the information presented on the cover page of this Schedule 13D. The Common Stock beneficial owned by the Reporting Person is held by the Elon Musk Revocable Trust dated July 22, 2003 for which Elon Musk is the sole Trustee.

(c) Schedule I sets forth the transactions in the Common Stock effected by the Reporting Person during the past 60 days.

(d) Not applicable

(e) Not applicable

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer.

On April 4, 2022, the Reporting Person and the Issuer entered the Agreement described in Item 4 above. The Agreement is filed as Exhibit A hereto and incorporated by herein reference.

Item 7. Exhibits

EXHIBIT A Letter Agreement, dated as of April 4, 2022, among Twitter, Inc. and Elon Musk (incorporated herein by reference to Exhibit 10.1 to the Current Report on Form 8-K filed by the Issuer with the Securities and Exchange Commission on April 5, 2022).

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Date: April 5, 2022

By: /s/ Elon Musk
Elon Musk

SCHEDULE I

The following table lists all transactions completed by the Reporting Person in the Common Stock since January 31, 2022, which were all completed through open market purchases.

Date	Shares bought	Price
1/31/2022	620,083	\$36.828
2/1/2022	542,496	\$37.549
2/2/2022	850,373	\$36.748
2/3/2022	3,649,957	\$34.391

2/4/2022	1,070,429	\$36.184
2/7/2022	4,839,507	\$36.515
2/8/2022	730,000	\$35.733
2/9/2022	638,283	\$36.886
2/10/2022	2,604,907	\$36.642
2/11/2022	1,291,432	\$36.523
2/14/2022	958,849	\$35.92
2/15/2022	371,075	\$36.511
2/16/2022	655,000	\$35.814
2/17/2022	731,581	\$35.891
2/18/2022	1,331,040	\$34.506
2/22/2022	1,256,751	\$33.231
2/23/2022	1,063,170	\$32.806
2/24/2022	838,793	\$33.765
2/25/2022	695,849	\$34.784
2/28/2022	1,025,518	\$35.320
3/1/2022	897,656	\$35.326
3/2/2022	992,785	\$34.575
3/3/2022	1,211,426	\$33.971
3/4/2022	1,016,259	\$33.376
3/7/2022	1,779,530	\$33.067
3/8/2022	2,228,858	\$33.769
3/9/2022	1,005,125	\$34.154
3/10/2022	1,228,833	\$33.932
3/11/2022	2,927,000	\$33.238
3/14/2022	2,770,284	\$33.082
3/15/2022	1,966,000	\$33.791
3/16/2022	2,978,376	\$34.992
3/17/2022	1,500,000	\$37.089
3/18/2022	2,858,340	\$38.252
3/21/2022	1,942,482	\$37.280
3/22/2022	2,476,000	\$38.542
3/23/2022	2,502,140	\$38.149
3/24/2022	1,926,764	\$38.675
3/25/2022	3,491,274	\$38.202
3/28/2022	2,603,779	\$38.772
3/29/2022	2,875,934	\$40.301
3/31/2022	2,000,000	\$38.818
4/1/2022	2,171,100	\$39.341

Exhibit 3



U.S. SECURITIES AND EXCHANGE COMMISSION

PDF Copy of Submission on SEC EDGAR system

This PDF document is a copy of the following submission on the SEC's EDGAR system:

Submission/Form 10-K

Filed 2022-02-16

Accession number 0001418091-22-000029

Submitted on EDGAR account of TWITTER, INC., CIK 0001418091

This copy was generated on 2025-08-20.

The submission itself is available on SEC's public EDGAR database at:

<https://www.sec.gov/Archives/edgar/data/0001418091/000141809122000029/0001418091-22-000029-index.html>.

Additional submission information is available on [SEC.gov](https://www.sec.gov), including but not limited to whether any additional reporting entities are associated with the submission.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 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, 2021
OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
FOR THE TRANSITION PERIOD FROM _____ TO _____
Commission File Number 001-36164

Twitter, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

20-8913779
(I.R.S. Employer
Identification No.)

1355 Market Street, Suite 900
San Francisco, California 94103
(Address of principal executive offices and Zip Code)
(415) 222-9670
(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.000005 per share	TWTR	New York Stock Exchange

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, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer", "accelerated filer", "smaller reporting company", and "emerging growth company" in Rule 12b-2 of the Exchange Act.

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

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

Indicate by check mark whether the registrant 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.

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant, based on the closing price of a share of the registrant's common stock on June 30, 2021 as reported by the New York Stock Exchange on such date was approximately \$53.55 billion.

The number of shares of the registrant's common stock outstanding as of February 10, 2022 was 800,641,166.

Portions of the registrant's Definitive Proxy Statement relating to the Annual Meeting of Stockholders are incorporated by reference into Part III of this Annual Report on Form 10-K where indicated. Such Definitive Proxy Statement will be filed with the Securities and Exchange Commission within 120 days after the end of the registrant's fiscal year ended December 31, 2021.

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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, which statements involve substantial risks and uncertainties. Forward-looking statements generally relate to future events or our future financial or operating performance. In some cases, you can identify forward-looking statements because they contain words such as “may,” “will,” “should,” “expects,” “plans,” “anticipates,” “could,” “intends,” “target,” “projects,” “contemplates,” “believes,” “estimates,” “predicts,” “potential” or “continue” or the negative of these words or other similar terms or expressions that concern our expectations, strategy, plans or intentions. Forward-looking statements contained in this Annual Report on Form 10-K include, but are not limited to, statements about:

- our ability to attract and retain people on Twitter and increase their level of engagement, including ad engagement, and its impact on revenue;
- our expectations regarding our revenue growth, including the impact of COVID-19 and Apple’s App Tracking Transparency policy, and our cost and expenses growth;
- our expectations regarding our monetizable daily active usage or users (mDAU), mDAU growth and growth rates and related opportunities, as well as the continued usage of our website and mobile applications, including the impact of seasonality;
- our plans regarding health and safety and our other top priorities, including our expectations regarding the impact on our reported metrics, policies, enforcement and preventing manipulation of our platform;
- the impact of the COVID-19 pandemic and related responses of businesses and governments to the pandemic on our operations and personnel, and on commercial activity and advertiser demand across our platform and on our operating results;
- our ability to develop or acquire new products, product features and services, improve our existing products and services, including with respect to Promoted Products, video and performance advertising, and increase the value of our products and services;
- our business strategies, plans and priorities, our plans for headcount growth, investment in our research and development efforts, investment in capital expenditures, and our plans to scale capacity and enhance capability and reliability of our infrastructure and new data center;
- our ability to provide new content from third parties, including our ability to secure video content on terms that are acceptable to us;
- our ability to attract advertisers to our platforms, products and services and increase the amount that advertisers spend with us;
- our ability to improve monetization of our products and services;
- our future financial performance, including trends in ad engagements and cost per ad engagement, revenue, costs and expenses (including stock-based compensation) and income taxes;
- our expectations and plans related to the sale of our MoPub business, as well as the expected timing for us to recoup the revenue impact from the sale;
- our expectations regarding certain deferred tax assets and fluctuations in our tax expense and cash taxes;
- the impact of laws and regulations relating to privacy, data protection, cybersecurity, content or copyright;
- our expectations regarding outstanding litigation or the decisions of the courts and the results of the draft complaint we received from the Federal Trade Commission;

- the effects of seasonal trends on our results of operations;
- the impact of our future transactions and corporate structuring on our income and other taxes;
- our expectations regarding our future share repurchases;
- the sufficiency of our cash and cash equivalents, short-term investment balance and credit facility together with cash generated from operations and continued access to capital markets to meet our working capital, capital expenditure, and other cash requirements including authorized share repurchases;
- our ability to timely and effectively develop, invest in, scale and adapt our existing technology and network infrastructure;
- our ability to successfully acquire and integrate companies and assets; and
- our expectations regarding international operations and foreign exchange gains and losses.

We caution you that the foregoing list may not contain all of the forward-looking statements made in this Annual Report on Form 10-K.

You should not rely upon forward-looking statements as predictions of future events. We have based the forward-looking statements contained in this Annual Report on Form 10-K primarily on our current expectations and projections about future events and trends that we believe may affect our business, financial condition, operating results, cash flows or prospects. The outcome of the events described in these forward-looking statements is subject to risks, uncertainties and other factors described in the section titled "Risk Factors" and elsewhere in this Annual Report on Form 10-K. Moreover, we operate in a very competitive and rapidly changing environment. New risks and uncertainties emerge from time to time and it is not possible for us to predict all risks and uncertainties that could have an impact on the forward-looking statements contained in this Annual Report on Form 10-K. We cannot assure you that the results, events and circumstances reflected in the forward-looking statements will be achieved or occur, and actual results, events or circumstances could differ materially from those described in the forward-looking statements.

The forward-looking statements made in this Annual Report on Form 10-K relate only to events as of the date on which the statements are made. We undertake no obligation to update any forward-looking statements made in this Annual Report on Form 10-K to reflect events or circumstances after the date of this Annual Report on Form 10-K or to reflect new information or the occurrence of unanticipated events, except as required by law. We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements and you should not place undue reliance on our forward-looking statements. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures or investments we may make.

NOTE REGARDING KEY METRICS

We review a number of metrics, including monetizable daily active usage or users, or mDAU, changes in ad engagements and changes in cost per ad engagement, to evaluate our business, measure our performance, identify trends affecting our business, formulate business plans and make strategic decisions. See the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations— Key Metrics” for a discussion of how we calculate mDAU, changes in ad engagements and changes in cost per ad engagement.

We define mDAU as people, organizations, or other accounts who logged in or were otherwise authenticated and accessed Twitter on any given day through twitter.com, Twitter applications that are able to show ads, or paid Twitter products, including subscriptions⁽¹⁾. Average mDAU for a period represents the number of mDAU on each day of such period divided by the number of days for such period. Changes in mDAU are a measure of changes in the size of our daily logged in or otherwise authenticated active total accounts. To calculate the year-over-year change in mDAU, we subtract the average mDAU for the three months ended in the previous year from the average mDAU for the same three months ended in the current year and divide the result by the average mDAU for the three months ended in the previous year. Additionally, our calculation of mDAU is not based on any standardized industry methodology and is not necessarily calculated in the same manner or comparable to similarly titled measures presented by other companies. Similarly, our measures of mDAU growth and engagement may differ from estimates published by third parties or from similarly-titled metrics of our competitors due to differences in methodology.

The numbers of mDAU presented in this Annual Report on Form 10-K are based on internal company data. While these numbers are based on what we believe to be reasonable estimates for the applicable period of measurement, there are inherent challenges in measuring usage and engagement across our large number of total accounts around the world. Furthermore, our metrics may be impacted by our information quality efforts, which are our overall efforts to reduce malicious activity on the service, inclusive of spam, malicious automation, and fake accounts. For example, there are a number of false or spam accounts in existence on our platform. We have performed an internal review of a sample of accounts and estimate that the average of false or spam accounts during the fourth quarter of 2021 represented fewer than 5% of our mDAU during the quarter. The false or spam accounts for a period represents the average of false or spam accounts in the samples during each monthly analysis period during the quarter. In making this determination, we applied significant judgment, so our estimation of false or spam accounts may not accurately represent the actual number of such accounts, and the actual number of false or spam accounts could be higher than we have estimated. We are continually seeking to improve our ability to estimate the total number of spam accounts and eliminate them from the calculation of our mDAU, and have made improvements in our spam detection capabilities that have resulted in the suspension of a large number of spam, malicious automation, and fake accounts. We intend to continue to make such improvements. After we determine an account is spam, malicious automation, or fake, we stop counting it in our mDAU, or other related metrics. We also treat multiple accounts held by a single person or organization as multiple mDAU because we permit people and organizations to have more than one account. Additionally, some accounts used by organizations are used by many people within the organization. As such, the calculations of our mDAU may not accurately reflect the actual number of people or organizations using our platform.

In addition, geographic location data collected for purposes of reporting the geographic location of our mDAU is based on the IP address or phone number associated with the account when an account is initially registered on Twitter. The IP address or phone number may not always accurately reflect a person’s actual location at the time they engaged with our platform. For example, someone accessing Twitter from the location of the proxy server that the person connects to rather than from the person’s actual location.

We regularly review and may adjust our processes for calculating our internal metrics to improve their accuracy.

⁽¹⁾ We have updated our mDAU definition in the fourth quarter of 2021 to also include “paid Twitter products, including subscriptions,” so this key metric continues to accurately reflect our audience as our products evolve. This change had no material impact on the number of mDAU reported in the fourth quarter of 2021, and is unlikely to do so in the near future. This change is effective for the fourth quarter of 2021 and for future periods, and it did not affect prior periods.

PART I**Item 1. BUSINESS****Overview**

Twitter is what's happening in the world and what people are talking about right now.

Our primary product, Twitter, is a global platform for public self-expression and conversation in real time. We have democratized content creation and distribution so people can consume, create, distribute and discover content about the topics and events they care about most. Through Topics, Interests, and Trends, we help people discover what's happening through text, images, on demand and live video, and audio from people, content partners, media organizations, advertisers and others. Media outlets, websites, and other partners extend the reach of Twitter content by distributing Tweets beyond our app and website.

In 2021, we continued our work to serve the public conversation by helping people find trusted sources of information and by better organizing and surfacing the many topics and interests that bring people to Twitter, with a focus on personalization and selection. We launched products to continue helping people stay informed and discuss what matters to them such as Twitter Spaces, a new way to have live audio conversations on Twitter, and Communities, a new way to easily find and connect with people who have similar interests. We also worked to help people and businesses get paid on Twitter by introducing Ticketed Spaces, Super Follows, and Tips, which give people the ability to pay creators using a variety of payment methods to send currency or Bitcoin to creators. We also introduced Twitter Blue, Twitter's first-ever consumer subscription offering. Twitter Blue allows our most passionate and engaged accounts to pay for exclusive features and perks that enhance and complement their existing Twitter experience.

We are making it easier to follow and participate in healthier conversations by rolling out new conversation settings globally, and giving people everywhere more control over the conversations they start on Twitter. We have furthered our efforts to improve the health of the platform, as we work to make sure that people and advertisers feel safe being a part of the conversation and can find credible information on our service. Major areas of focus within health include reducing abuse, providing more context around misinformation, and protecting the integrity of civic-related conversations.

In addition, we have made significant progress on our brand and direct response offerings with updated ad formats, improved targeting, and better measurement. We have also continued to refine our Mobile Application Promotion (MAP) and Website Traffic offerings.

On January 1, 2022, we closed the sale of our MoPub business to AppLovin Corporation. The sale of MoPub enables us to concentrate more of our efforts on the significant opportunity for performance-based advertising, small and medium-sized business (SMB) offerings, and commerce initiatives on Twitter.

Products and Services for Advertisers

Our Promoted Products enable advertisers to promote their brands, and products and services. We enable advertisers to target an audience based on a variety of factors, including who an account follows and actions taken on our platform, such as Tweets created and engagement with Tweets. We believe this data produces a clear and real-time signal of what is relevant to that account, greatly enhancing the performance of the ads we can serve on behalf of advertisers. Our Promoted Products are incorporated into our platform as native advertising and are designed to be as compelling and useful as organic content on our platform.

Currently, our Promoted Products consist of:

- *Promoted Ads and Twitter Amplify.* Promoted Ads (previously branded as Promoted Tweets), which are labeled as "promoted," appear within a timeline, search results, profile pages, and Tweet conversations. Using our proprietary algorithms and understanding what is relevant to each account, we can deliver Promoted Ads that are intended to achieve the outcome that the advertiser is seeking. We enable our advertisers to target an audience based on many criteria. Our Promoted Ads are pay-for-performance or pay-for-impression delivered advertising that are priced through an auction. Our Promoted Ads include objective-based features that allow advertisers to optimize for the goal selected by the advertisers, such as Tweet engagements (e.g., Retweets, replies and likes), website traffic, mobile application installs or engagements, obtaining new followers, or video views.
- *Follower Ads.* Follower Ads (previously branded as Promoted Accounts), which are labeled as "promoted," provide a way for our advertisers to build and grow an audience that is interested in their business, product or service. Our Follower Ads are pay-for-performance advertising priced through an auction.
- *Twitter Takeover.* Twitter Takeover (previously branded as Promoted Trends), which are labeled as "promoted," appear at the top of the list of trending topics or timeline for an entire day in a particular country. We sell our Twitter Takeover on a fixed-fee-per-day basis.

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Advertisers can also run short video ads either before or around premium video content, such as before live premium video content from publishing partners or clips from a variety of interest categories such as news, sports and entertainment. Our technology dynamically inserts those advertisers' ads into the relevant videos and delivers the ads to the audience targeted by those advertisers. We may pay content partners a portion of our advertising revenue for the right to use and distribute their content on our platform. In addition, Amplify Sponsorships allow advertisers to build brand association by sponsoring premium video content from a single publishing partner.

We recently redesigned our Amplify pre-roll video ads, designed to drive better brand lift with more ways to match content with ads. We continue to focus our investment on features that differentiate Twitter and capitalize on our value proposition for advertisers. We have made progress on our brand and direct response offerings, with updated ad formats, improved targeting, and better measurement for both MAP and website traffic (formerly named website clicks).

Our platform enables us to provide targeting capabilities based on audience attributes like geography, interests, keyword, conversation, content, and events that make it possible for advertisers to promote their brands, products and services, amplify their visibility and reach, and complement and extend the conversation around their advertising campaigns.

Our platform also enables customers to advertise across the mobile ecosystem, both on Twitter's owned and operated properties as well as off Twitter on third-party publishers' websites, applications and other offerings. We enable advertisers to extend their reach beyond Twitter through the Twitter Audience Platform, an advertising offering that enables advertisers to extend their advertising campaigns with Twitter Promoted Products to audiences off Twitter while retaining access to Twitter's measurement, targeting and creative tools.

Content Partnerships

Video is an important way to stay informed, enabling people on Twitter and our premium content partners to better share experiences, engage in events, and converse with broader audiences. We continue to improve the conversation around global events and to increase reach, engagement, and monetization for content partners and advertisers around the world through brand safe live-streaming, highlight video clips, and video-on-demand agreements designed to complement the content from people on Twitter across a number of verticals including sports, news, gaming and entertainment. These partnerships enable content publishers and advertisers to reach fans where it all happens, when it's happening.

Creator Monetization

Creators drive conversations, shape culture, and are some of the most engaging voices on Twitter. By helping them make money, we provide a clear and direct incentive for them to invest more of their time and money into our platform. To that end, in 2021 we launched three new monetization products for creators:

- *Tips*. Tips are a way to directly send small one-time payments to anyone on Twitter using a variety of payment methods, including bitcoin.
- *Super Follows*. Super Follows is a paid monthly subscription that offers bonus content, exclusive previews, and perks as a way to support and connect with creators on Twitter.
- *Ticketed Spaces*. Ticketed Spaces is a way to support creators on Twitter for their time and effort in hosting, speaking, and moderating the public conversation on Twitter Spaces. Creators can earn a share of revenue from tickets purchased to their Ticketed Spaces.

We've also built an earnings dashboard for creators to see a unified view of what they're making over their monetized products and for customers to see their purchase history.

Products for Developers and Data Partners

The Twitter Developer Platform (formerly Developer and Enterprise Solutions) empowers developers around the world to build tools for people and businesses using our public application programming interface (API), or in simpler terms, it gives people more ways to interact with what's happening on Twitter. This includes data and insights from Tweets, Spaces, polls, and other features that help make Twitter more useful to more people in more places. The Twitter Developer Platform serves commercial and non-commercial developers including businesses, academics, and consumer developers, among others. We believe this work has the potential to help us with our efforts to improve the health of and participation in the public conversation. Developers use Twitter's platform to build apps and websites that integrate with our publicly available APIs to improve people's experience on Twitter by connecting them with the conversations they care about. They also help brands and publishers engage with what's happening and gain insights from the public conversation.

We also offer paid access to Twitter data for partners with commercial use cases and those who wish to access more data beyond what is available for free through our public APIs. Paying developers typically sign subscriptions, or enterprise agreements, based on the type and volume of usage. Our commercial data products and services offer sophisticated APIs and other services to support developers. Our customer-centric approach positions both Twitter and our key partners for greater growth and monetization, and we are investing in deeper partnerships with select solution providers to help businesses and organizations realize greater value from our platform. A goal of our platform is to make it easy for developers to integrate seamlessly with Twitter, while protecting the privacy and safety of the people who use Twitter.

Competition

Our business is characterized by rapid technological change, frequent product innovation and the continuously evolving preferences and expectations of people on Twitter, advertisers, content partners, platform partners and developers. We face significant competition in every aspect of our business, including from companies that provide tools to facilitate communications and the sharing of information, companies that enable marketers to display advertising, and other online ad networks, exchanges and platforms. We also compete to attract, engage, and retain people who use our products, and to attract and retain marketers, content and platform partners, and developers. We have seen escalating competition for digital ad spending and expect this trend to continue. We also compete to attract and retain employees, especially software engineers, designers, and product managers.

We compete with the following companies for people's attention and for advertisers' budgets:

- Companies that offer products that enable people to create and share ideas, videos, and other content and information. These offerings include, for example, Meta (including Facebook, Instagram and WhatsApp), Alphabet (including Google and YouTube), Microsoft (including LinkedIn), Snapchat, TikTok, Pinterest, and Yahoo, as well as largely regional social media and messaging companies that have strong positions in particular countries (including WeChat, Kakao, and Line). Although we often seek differentiated content from other licensors, we face competition for live premium video content rights from other digital distributors and traditional television providers, which may limit our ability to secure such content on economic and other terms that are acceptable to us in the future.
- Companies that offer advertising inventory and opportunities to advertisers.
- Companies that develop applications, particularly mobile applications, that create, syndicate and distribute content across internet properties.
- Traditional, online, and mobile businesses and media companies that enable people to consume content or marketers to reach their audiences and/or develop tools and systems for managing and optimizing advertising campaigns.

As we introduce new products, as our existing products evolve, or as other companies introduce new products and services, we may become subject to additional competition.

Our industry is evolving rapidly and is highly competitive. See the sections titled "Risk Factors—If we are unable to compete effectively for people to use our platform, and for content and data partners, our business and operating results could be harmed.", "Risk Factors—If we are unable to compete effectively for advertising spend, our business and operating results could be harmed." and "Risk Factors—We depend on highly skilled personnel to grow and operate our business. If we are unable to hire, retain and motivate our personnel, we may not be able to grow effectively."

Technology, Research and Development

Twitter is composed of a set of core, scalable and distributed services that are built from proprietary and open source technologies. These systems are capable of delivering billions of messages, including images and video, to hundreds of millions of people a day in an efficient and reliable way. We continue to invest in our existing products and services as well as develop new products and services through research and product development. We also continue to invest in protecting the safety, security and integrity of our platform by investing in both people and technology, including machine learning.

Sales and Marketing

We have a global sales force and sales support staff that is focused on attracting and retaining advertisers while certain advertisers use our self-serve advertising platform to launch and manage their advertising campaigns. Our sales force and sales support staff assist advertisers throughout the advertising campaign cycle, from pre-purchase decision making to real-time optimizations as they utilize our campaign management tools, and to post-campaign analytics reports to assess the effectiveness of their advertising campaigns.

We use marketing campaigns to help drive audiences to our platform. In 2021, we continued to deliver marketing campaigns focused on celebrating and highlighting the voices of the people who make Twitter unique. We also continued to highlight our value proposition for advertisers, including how brands turn to Twitter to launch something new, and connect with what's happening.

Intellectual Property

We seek to protect our intellectual property rights by relying on federal, state and common law rights in the United States and other countries, as well as contractual restrictions. We generally enter into confidentiality and invention assignment agreements with our employees and contractors, and confidentiality agreements with other third parties, in order to limit access to, and disclosure and use of, our confidential information and proprietary technology. In addition to these contractual arrangements, we also rely on a combination of trademarks, trade dress, domain names, copyrights, trade secrets and patents to help protect our brand and our other intellectual property.

Government Regulation

We are subject to a number of U.S. federal and state and foreign laws and regulations that involve matters central to our business. These laws and regulations may involve privacy, data protection, cybersecurity, rights of publicity, content regulation, data localization, intellectual property, competition, protection of minors, consumer protection, credit card processing, taxation or other subjects. Many laws and regulations impacting our business are being proposed, are still evolving or are being tested in courts and could be interpreted and applied in a manner that is inconsistent from country to country and inconsistent with our current policies and practices and in ways that could harm our business. In addition, the application and interpretation of these laws and regulations often are uncertain, particularly in the new and rapidly evolving industry in which we operate.

With regard to privacy, data protection and cybersecurity, we are subject to a variety of federal, state and foreign laws and regulations. For example, the California Consumer Privacy Act (CCPA) requires covered companies to, among other things, provide disclosures to California consumers, and afford such consumers the ability to opt-out of certain sales of personal information. Similar legislation has been proposed or adopted in other states. Additionally, the California Privacy Rights Act (CPRA) created obligations relating to consumer data beginning on January 1, 2022, with implementing regulations expected on or before July 1, 2022, and enforcement beginning July 1, 2023. Aspects of the CCPA, the CPRA and these other state laws and regulations, as well as their interpretation and enforcement, remain unclear, and we may be required to modify our practices in an effort to comply with them. Foreign data protection, privacy, cybersecurity, consumer protection, content regulation and other laws and regulations are often more restrictive or burdensome than those in the United States. For example, the General Data Protection Regulation, or the GDPR, imposes stringent operational requirements for entities processing personal information and significant penalties for non-compliance. There are also a number of legislative proposals pending before the U.S. Congress, various state legislative bodies and foreign governments concerning content regulation and data protection that could affect us.

In March 2011, to resolve an investigation into various incidents, we entered into a settlement agreement with the Federal Trade Commission, or FTC, that, among other things, requires us to establish an information security program designed to protect non-public consumer information and requires that we obtain biennial independent security assessments. The obligations under the settlement agreement remain in effect until the later of March 2, 2031, or the date 20 years after the date, if any, on which the U.S. government or the FTC files a complaint in federal court alleging any violation of the order. On July 28, 2020, we received a draft complaint from the FTC alleging violation of the order and the Federal Trade Commission Act (FTC Act). The allegations relate to our use of phone number and/or email address data provided for safety and security purposes for targeted advertising during periods between 2013 and 2019. The matter remains unresolved, and there can be no assurance as to the timing or the terms of any final outcome. Violation of other existing or future regulatory orders, settlements, or consent decrees could subject us to substantial monetary fines and other penalties that could negatively affect our financial condition and results of operations.

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People may be restricted from accessing Twitter from certain countries, and other countries have intermittently restricted access to Twitter. For example, Twitter is not directly accessible in China and has been intermittently blocked in the past in Turkey. It is possible that other governments may seek to restrict access to or block our website or mobile applications, censor content available through our products or impose other restrictions that may affect the accessibility or usability of Twitter for an extended period of time or indefinitely, including because of our decisions with respect to the enforcement of our rules. For instance, some countries have enacted laws that allow websites to be blocked for hosting certain types of content.

For additional information, see the section titled “Risk Factors—Our business is subject to complex and evolving U.S. and foreign laws and regulations. These laws and regulations are subject to change and uncertain interpretation, and could result in claims, changes to our business practices, monetary penalties, increased cost of operations or declines in mDAU growth, mDAU engagement or ad engagement, or otherwise harm our business.”

Seasonality

Advertising spending is traditionally strongest in the fourth quarter of each year. Historically, this seasonality in advertising spending has affected our quarterly results, with higher sequential advertising revenue growth from the third quarter to the fourth quarter compared to sequential advertising revenue from the fourth quarter to the subsequent first quarter.

Human Capital

We believe the strength of our workforce is critical to our success as we strive to become a more inclusive, diverse, and accessible technology company. Our key human capital management objectives are to attract, retain, and develop the talent we need to deliver on our commitment to serve the public conversation in a safe and responsible way by offering exceptional products and services. Examples of our key programs and initiatives that are focused to achieve these objectives include:

Inclusion, Diversity, Equity, and Accessibility (IDEA). People come to Twitter to freely express themselves. Just as inclusion lives on our platform, we are working to ensure our workplace reflects our service. In 2020, we introduced our vision for our workforce representation: an objective that by 2025, we aspire to have at least half of our global workforce represented by women and at least a quarter of our U.S. workforce represented by historically-excluded and/or under-represented communities. We accompanied our vision with a strategy to help drive progress, including:

- A company-wide three-year objective focused on diversity and decentralization;
- Clearly-defined targets for workforce representation and inclusion metrics across every executive leader;
- An internal dashboard accessible to all employees to track progress against our objective;
- An expanded team of Inclusion, Diversity, Equity, and Accessibility leaders across our business;
- Refreshing our hiring practices to require diverse slates for all open roles and put inclusive hiring principles at the forefront;
- A Consistency & Fairness Taskforce to review our employee promotions process;
- Investing in our employee Business Resource Group leaders, who foster a culture of inclusivity and belonging within our company, including introducing a formal compensation program.

We have made significant progress towards our inclusion, diversity, equity, and accessibility objectives through leadership, transparency and accountability. In 2021, we focused on equity across every stage of our employee lifecycle: recruitment and hiring, onboarding, compensation and pay transparency, learning and development, and our work cultivating an inclusive environment across teams and regional geographies with our Business Resource Groups at the center. As we continue to learn, we also evolved our vision to more impactfully integrate accessibility and equity into our work and merged the Inclusion and Diversity (I&D) and Accessibility teams into a new Inclusion, Diversity, Equity, & Accessibility team to reflect this commitment.

Flexibility and Decentralization. Even before the COVID-19 pandemic drove a shift to remote work, we recognized the need to evolve our workforce to achieve our purpose. We designed a workplace strategy to provide more flexible work options and to build more distributed teams who work effectively without the need to be co-located. In 2020 we announced that most employees will be able to work where they feel most productive, whether that is working full-time from home, from a Twitter office or splitting their time between their home and a Twitter office. Recent employee surveys show that the future of work at Twitter is hybrid, with a substantial majority of our workforce planning to work from home full time or a combination of home and a Twitter office.

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Pay. Our primary compensation strategy is to promote a pay-for-performance culture. Our guiding principles are anchored on the goals of being able to attract, incentivize, and retain talented employees who can develop, implement, and deliver on long-term value creation strategies; promote a healthy approach to risk by reinforcing our values which serve to motivate our employees; and provide competitive compensation that is aligned with the market and fair relative to our peers. We are committed to both pay equity and transparency.

Health and Wellness. Beyond the fundamental needs of health, welfare and retirement programs, we are focused on the specific needs of our individual employees. Over the past two years, our employees adapted to an unprecedented amount of change and uncertainty driven by the COVID-19 pandemic, including an abrupt shift to working from home, rescheduled work priorities, and closure of schools and daycare facilities. We continued to provide resources and ongoing support to employees facing these challenges throughout 2021, such as a wellness reimbursement, home office setup allowance, expanded health coverage, and flexible work schedules.

As of December 31, 2021, we employed over 7,500 full-time employees.

Corporate Information

We were incorporated in Delaware in April 2007. Our principal executive offices are located at 1355 Market Street, Suite 900, San Francisco, California 94103, and our telephone number is (415) 222-9670. We completed our initial public offering in November 2013 and our common stock is listed on the New York Stock Exchange under the symbol "TWTR." Unless the context requires otherwise, the words "Twitter," "we," "Company," "us" and "our" refer to Twitter, Inc. and our wholly-owned subsidiaries.

Available Information

Our website is located at <https://www.twitter.com>, and our investor relations website is located at <https://investor.twitterinc.com>. Copies of our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to these reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, are available, free of charge, on our investor relations website as soon as reasonably practicable after we file such material electronically with or furnish it to the Securities and Exchange Commission, or the SEC. The SEC also maintains a website that contains our SEC filings. The address of the SEC website is <https://www.sec.gov>.

We webcast our earnings calls and certain events we participate in or host with members of the investment community on our investor relations website. Additionally, we provide notifications of news or announcements regarding our financial performance, including SEC filings, investor events, press and earnings releases, and blogs as part of our investor relations website. We have used, and intend to continue to use, our investor relations website, as well as certain Twitter accounts (@paraga, @nedsegal, @twitter and @twitterIR), as means of disclosing material non-public information and for complying with our disclosure obligations under Regulation FD. Further corporate governance information, including our certificate of incorporation, bylaws, corporate governance guidelines, board committee charters, and code of business conduct and ethics, is also available on our investor relations website under the heading "Corporate governance." The contents of our websites are not intended to be incorporated by reference into this Annual Report on Form 10-K or in any other report or document we file with the SEC, and any references to our websites are intended to be inactive textual references only.

Item 1A. RISK FACTORS

Investing in our common stock involves a high degree of risk. You should carefully consider the risks and uncertainties described below, together with all of the other information in this Annual Report on Form 10-K, including the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes, before making a decision to invest in our common stock. The risks and uncertainties described below may not be the only ones we face. If any of the risks actually occurs, our business, financial condition, operating results, cash flows and prospects could be materially and adversely affected. In that event, the market price of our common stock could decline, and you could lose part or all of your investment.

Risk Factor Summary

Our business operations are subject to numerous risks and uncertainties, including those outside of our control, that could cause our business, financial condition or operating results to be harmed, including risks regarding the following:

Business and Operational Factors

- our ability to increase our mDAU, ad engagement or other general engagement on our platform;
- the loss of advertising revenue;
- competition for people to use our platform and for content and data partners;
- competition for advertising spend;
- our prioritization of the long-term health of our service;
- our prioritization of product innovation;
- our ability to maintain and promote our brand;
- our ability to hire, retain and motivate highly skilled personnel;
- the interoperability of our products and services across third-party services and systems;
- the impact of spam and fake accounts on our platform experience;
- actual or perceived security breaches or incidents, as well as errors, vulnerabilities or defects in our software and in products of third-party providers;
- our international operations;
- the impact of the COVID-19 pandemic and responsive measures;
- our significant past operating losses and any inability to maintain profitability or accurately predict fluctuations in the future;
- our reliance on assumptions and estimates to calculate certain key metrics;
- catastrophic events and interruptions by man-made problems;

Intellectual Property and Technology

- our ability to scale our existing technology and infrastructure;
- our failure to protect our intellectual property rights;
- our use of open source software;
- current and future litigation related to intellectual property rights;

Regulatory and Legal

- complex and evolving U.S. and foreign laws and regulations;
- regulatory investigations and adverse settlements;

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- lawsuits or liability as a result of content published through our products and services;
- our ability to maintain an effective system of disclosure controls and internal control over financial reporting;
- our ability to obtain adequate insurance coverage or self-insure for potential exposures;

Financial and Transactional Risks

- our ability to make and successfully integrate acquisitions and investments or complete divestitures;
- our debt obligations;
- our tax liabilities;
- our ability to realize the anticipated benefits of our share repurchase programs;
- our ability to use our net operating loss carryforwards;
- the impairment of our goodwill or intangible assets;

Governance Risks and Risks related to Ownership of our Capital Stock

- provisions of Delaware law and our certificate of incorporation and bylaws could impair a takeover attempt if deemed undesirable by our board of directors;
- the volatility of the trading price of our common stock; and
- our note hedge and warrant transactions.

Business and Operational Factors

If we fail to increase our mDAU, ad engagement or other general engagement on our platform, our revenue, business and operating results may be harmed.

Our mDAU and their level of engagement with advertising are critical to our success and our long-term financial performance will continue to be significantly determined by our success in increasing the growth rate of our mDAU as well as the number of ad engagements. Our mDAU growth rate has fluctuated over time, and it may slow or decline in general or in certain geographies or among certain groups. To the extent our mDAU growth rate slows or the absolute number of mDAU declines, our revenue growth will become dependent on our ability to increase levels of engagement on Twitter, generate advertiser demand, and increase revenue growth from third-party publishers' websites and applications, data licensing and other offerings. We generate a substantial majority of our revenue based upon engagement with the ads that we display. A number of factors have affected and could potentially negatively affect mDAU growth and engagement, including if:

- accounts, including influential accounts, such as those of world leaders, government officials, celebrities, athletes, journalists, sports teams, media outlets and brands or certain age demographics, do not contribute unique or engaging content, or engage with other products, services or activities as an alternative to ours;
- we are unable to convince people of the value and usefulness of our products and services;
- there is a decrease in the perceived quality, usefulness, trustworthiness or relevance of the content generated by people on Twitter or by our content partners;
- the actions we take to better foster a healthy conversation or to improve relevancy negatively impact, or are perceived to negatively impact, people's experiences on the platform;
- there are concerns related to communication, privacy, data protection, safety, cybersecurity, spam, manipulation or other hostile or inappropriate usage or other factors, or our health efforts result in the removal of certain accounts;
- we remove certain influential accounts from our platform for violations of our terms of service or otherwise;
- our content partners terminate their relationships with us or do not renew their agreements on economic or other terms that are favorable to us;
- technical or other problems prevent us from delivering our products or services in a rapid and reliable manner or otherwise affect people's experiences on Twitter;

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- people have difficulty installing, updating, or otherwise accessing our products or services on mobile devices as a result of actions by us or third parties that we rely on to distribute our products and deliver our services;
- changes in our products or services that are mandated by, or that we elect to make to address, laws (such as the General Data Protection Regulation (GDPR) and the California Consumer Protection Act (CCPA)) or legislation, inquiries from legislative bodies, regulatory authorities or litigation (including settlements or consent decrees) adversely affect our products or services;
- we fail to provide adequate customer service; or
- we do not maintain our brand image or reputation.

We have made certain projections regarding our mDAU growth. If we are unable to achieve these projections, or to generally increase our mDAU or engagement, or if these metrics decline, our products and services could be less attractive to people on Twitter, as well as to advertisers, content partners and platform partners, which would have a material and adverse impact on our business, financial condition and operating results.

We generate the substantial majority of our revenue from advertising. The loss of advertising revenue could harm our business.

The substantial majority of our revenue is currently generated from third parties advertising on Twitter. We generate substantially all of our advertising revenue through the sale of our Promoted Products: Promoted Ads, Twitter Amplify, Follower Ads and Twitter Takeover. As is common in our industry, our advertisers do not have long-term advertising commitments with us.

In addition, many of our advertisers purchase our advertising services through one of several large advertising agencies' holding companies. To sustain or increase our revenue, we must add new advertisers and encourage existing advertisers to maintain or increase the amount of advertising inventory purchased through our platform and adopt new features and functionalities that we add to our platform. However, advertising agencies and potential new advertisers may view our Promoted Products or any new products or services we offer as experimental and unproven, and we may need to devote additional time and resources to educate them about our products and services. Further, our advertisers' ability to effectively target their advertising to our audience's interests may be impacted by the degree to which people on Twitter agree in our settings to certain types of personalization or ad targeting, which could have an impact on our revenue. People that already have accounts may change their choices as a result of changes to our privacy control settings that we have implemented or may implement in the future, and people new to Twitter may choose varied levels of personalization, whether in connection with future changes we make to product privacy settings, regulations, regulatory actions, the customer experience, or otherwise.

Changes to operating systems' practices and policies, such as Apple's changes related to its App Tracking Transparency policy, have reduced and may continue to reduce the quantity and quality of the data and metrics that can be collected or used by us and our partners or harm our ability to target advertising. These limitations have affected and may continue to adversely affect both our and our advertisers' ability to effectively target advertisements and measure their performance, thereby reducing the demand and pricing for our advertising products and harming our business, and have led to us to retool some of our revenue products and adjust our product roadmap in light of Apple's changes. The impact of these changes on the overall mobile advertising ecosystem, our business, and the developers, partners, and advertisers in the ecosystem are evolving and their ultimate impact is not yet clear. Over time, personalization rates will impact our ability to grow our performance advertising business. Advertisers also may choose to use our free products and services instead of our Promoted Products. Advertisers will not continue to do business with us, or they will reduce the prices they are willing to pay to advertise with us, if we do not deliver ads in an effective manner, or if they do not believe that their investment in advertising with us will generate a competitive return on investment relative to alternatives, including online, mobile and traditional advertising platforms. In addition, competition for advertising is becoming increasingly more intense, and our advertising revenue could be further impacted by escalating competition for digital ad spending.

Our advertising revenue growth is primarily driven by increases in mDAU, increases in ad pricing or number of ads shown and increases in our clickthrough rate. To date, our available advertising inventory has been greater than demand. Our future revenue growth, however, may be limited by available advertising inventory for specific ad types on certain days if we do not increase our mDAU or monetize our larger global audience. Our advertising revenue also could be affected by a number of other factors, including advertiser reaction to content published on our platform or our policies and responses thereto, bugs or other product issues that may impact our ability to effectively help advertisers target ads or share data with our measurement and ad partners. In addition, macroeconomic factors, such as supply chain disruptions and inflation, have caused advertisers to reduce or delay ad spending and may continue to do so. The occurrence of any of these factors could result in a reduction in demand for our ads, which may reduce the prices we receive for our ads, either of which would adversely impact our revenue, business, financial condition and operating results.

If we are unable to compete effectively for people to use our platform, and for content and data partners, our business and operating results could be harmed.

We face intense competition for people to use our platform, and for content and data partners. We compete for our audience against a variety of social networking platforms, messaging companies and media companies, some of which have greater financial resources, larger audiences or more established relationships with advertisers, such as Meta (including Facebook, Instagram and WhatsApp), Alphabet (including Google and YouTube), Microsoft (including LinkedIn), Snapchat, TikTok, Pinterest and Yahoo, or in certain regions WeChat, Kakao and Line. New or existing competitors may draw people towards their products or services and away from ours by introducing new product features, including features similar to those we offer, investing their greater resources in audience acquisition efforts or otherwise developing products or services that audiences choose to engage with rather than Twitter, any of which could decrease mDAU growth or engagement and negatively affect our business.

We also compete with respect to content generated by our content partners and the availability of applications developed by platform partners. We may not establish and maintain relationships with content partners who publish on our platform or platform partners who develop applications that integrate with our platform. Our content and platform partners may choose to publish content on, or develop applications for, other platforms, and if they cease to utilize our platform or decrease their use of our platform, then mDAU, engagement, and advertising revenue may decline.

We believe that our ability to compete effectively for audiences and content partners depends upon many factors both within and beyond our control, including:

- the popularity, usefulness, ease of use, performance and reliability of our products and services compared to those of our competitors, as well as our reputation and brand, and our ability to adapt to continuously evolving preferences and expectations of people on Twitter, advertisers, content partners, platform partners and developers;
- the amount, quality and timeliness of content generated on our platform, including the relative mix of ads;
- the timing and market acceptance of our products and services;
- the prominence of our applications in application marketplaces and of our content in search engine results, as well as those of our competitors;
- our ability, in and of itself, and in comparison to the ability of our competitors, to develop new products and services and enhancements to existing products and services, and to maintain the reliability and security of our products and services as usage increases globally;
- changes mandated by, or that we elect to make to address legislation, regulatory authorities or litigation, including settlements, antitrust matters, consent decrees and privacy, data protection and cybersecurity laws and regulations, some of which may have a disproportionate effect on us compared to our competitors; and
- the continued adoption and monetization of our products and services internationally.

Additionally, there have been significant acquisitions and consolidation by and among our actual and potential competitors. We anticipate this trend of consolidation will continue, which will present heightened competitive challenges for our business. Acquisitions by our competitors may result in reduced functionality of our products and services. For example, following Facebook's acquisition of Instagram, Facebook disabled Instagram's photo integration with Twitter such that Instagram photos were no longer viewable within Tweets and people are instead re-directed to Instagram to view Instagram photos through a link within a Tweet. As a result, people who use Twitter may be less likely to click on links to Instagram photos in Tweets, and people who use Instagram may be less likely to Tweet or remain active on Twitter. Any similar elimination of integration with Twitter in the future, whether by Facebook or other competitors, may adversely impact our business and operating results. Consolidation may also enable our larger competitors to offer bundled or integrated products that feature alternatives to our platform and provide alternative opportunities for advertisers.

If we are not able to compete effectively for audience, content and platform partners, our mDAU and engagement would decline and our business and operating results would be materially and adversely impacted.

If we are unable to compete effectively for advertising spend, our business and operating results could be harmed.

We face significant competition for advertiser spend. We compete against online and mobile businesses and traditional media outlets, such as television, radio and print, for advertising budgets. In order to grow our revenue and improve our operating results, we must increase our share of spending on advertising relative to our competitors, many of which are larger companies that offer more traditional and widely accepted advertising products. In addition, some of our larger competitors have substantially broader product or service offerings and leverage their relationships based on other products or services to gain additional share of advertising budgets.

We believe that our ability to compete effectively for advertiser spend depends upon many factors both within and beyond our control, including:

- the size and composition of our audience relative to those of our competitors;
- our ad targeting and measurement capabilities, and those of our competitors;
- the timing and market acceptance of our advertising services, and those of our competitors, including our ability to demonstrate to advertisers the value of our advertising services, particularly during the periods in which they are determining their budgets, which may be annually or biannually;
- our marketing and selling efforts, and those of our competitors;
- the pricing of our advertising services, including the actual or perceived return our advertisers receive from our advertising services, and those of our competitors; and
- our reputation and the strength of our brand relative to our competitors, including advertisers' perception of the health and safety of our platform.

If we are not able to compete effectively for advertiser spend, our mDAU and engagement would decline and our business and operating results would be materially and adversely impacted.

Our prioritization of the long-term health of our service may adversely impact our short-term operating results.

We believe that our long-term success depends on our ability to improve the health of the public conversation on Twitter. We have made this one of our top priorities and have focused our efforts on improving the quality of that conversation, including by devoting substantial internal resources to our strategy. These efforts include the reduction of abuse, harassment, spam, manipulation and malicious automation on the platform, as well as a focus on improving information quality (including information around elections and the COVID-19 pandemic), and the health of conversation on Twitter. Some of the health initiatives that we have implemented as part of our ongoing commitment to a healthy public conversation have negatively impacted, and may in the future negatively impact, our publicly reported metrics in a few ways.

First, our health efforts include the removal of accounts pursuant to our terms and services that are abusive, spammy, fake or malicious, and these accounts may have been included in our mDAU, as well as actions taken to detect and challenge potentially automated, spammy or malicious accounts during the sign-up process. If we make a sudden improvement to one of the algorithms we use to detect spammy or suspicious behavior, we may remove a larger number of accounts as a result and impact the year-over-year average of mDAU growth. Additionally, we may remove certain influential accounts for violations of our terms of service and the removal of such accounts has in the past reduced and may in the future reduce our mDAU growth and engagement.

Second, we are also making active decisions to prioritize certain health-related initiatives over other near-term product improvements that may drive more usage of Twitter as a daily utility. These decisions may not be consistent with the short-term expectations of our advertising customers or investors and may not produce the long-term benefits that we expect, in which case our mDAU growth and engagement, our relationships with advertisers and our business and operating results could be harmed.

Our decision to invest in the long-term health of our service may not produce the long-term benefits that we expect, in which case our mDAU growth and engagement, our relationships with advertisers and our business and operating results would be adversely impacted, and may not be consistent with the expectations of investors, which could have a negative effect on the trading price of our common stock.

Our prioritization of innovations to improve the experience of people using our products and services and performance for advertisers in the long term may adversely impact our short-term operating results and our new or enhanced products, product features or services may fail to increase engagement on our platform or generate revenue.

We encourage employees to quickly develop and help us launch new and innovative features. We focus on improving the experience for people using our products and services, which includes measures to help protect the privacy of people on Twitter. Similarly, we prioritize developing new and improved products and services for advertisers on our platform. We frequently make product, product feature and service decisions that may reduce our short-term operating results if we believe that the decisions are consistent with our goals to improve the long-term experience for people on Twitter and/or performance for advertisers, which we believe will improve our operating results over the long term. For example, in January 2022, we completed the sale of our MoPub business. The sale of MoPub enables us to accelerate the development of our core revenue products and drive growth across key areas of the business, including performance-based advertising, small and medium-sized business (SMB) offerings, and commerce initiatives on Twitter. While the product, engineering, and go-to-market teams associated with MoPub began to shift over to these key focus areas immediately upon the closing of the transaction, it will take time for their work to deliver results. As a result, we do not expect to recoup the full revenue loss associated with the sale of MoPub in 2022, but there are no changes to our long-term goals with an increased focus and additional resources working on increasing our market share within the addressable market for ads on our website and apps. However, we can provide no assurance that we will recoup the revenue impact from MoPub on the expected timeline, or at all.

Our industry is subject to rapid and frequent changes in technology, evolving customer needs and the frequent introduction by our competitors of new and enhanced offerings. We must constantly assess the playing field and determine whether we need to improve or re-allocate resources amongst our existing products and services or create new ones (independently or in conjunction with third parties). Our ability to increase mDAU and engagement, attract content partners, advertisers and platform partners and generate revenue will depend on those decisions. We may introduce significant changes to our existing products and services or develop and introduce new and unproven products and services, including technologies with which we have little or no prior development or operating experience. For example, we are in the early stages of exploring additional potential revenue product opportunities that could, if successful, complement our advertising business in the future, although we do not expect any significant revenue attributable to these opportunities in the near-term and these opportunities may not prove successful at all. We are also continuing our work to increase the stability, performance and scale of our ads platform and our Mobile Application Promotion (MAP) product, and such work will take place over multiple quarters, and any positive revenue impact will be gradual in its impact.

If our decisions to invest in product innovations rather than short-term results do not produce the long-term benefits that we expect, and if our new or enhanced products, product features or services fail to engage people on Twitter, content partners and advertisers, we may fail to attract or retain mDAU or to generate sufficient revenue or operating profit to justify our investments, and our business, financial condition and operating results would be adversely impacted.

If we are unable to maintain and promote our brand, our business and operating results may be harmed.

We believe that maintaining and promoting our brand is critical to increasing mDAU, content partners and advertiser spend. Maintaining and promoting our brand will depend largely on our ability to continue to provide timely, useful, reliable and innovative products and services with a focus on a positive experience on Twitter, which we may not do successfully. We may introduce new features, products, services or terms of service that people on Twitter, content partners, advertisers or platform partners do not like, which may negatively affect our brand. Additionally, the actions of content partners may affect our brand if people do not have a positive experience using third-party applications or websites integrated with Twitter or that make use of Twitter content. We will also continue to experience media, legislative or regulatory scrutiny of our decisions regarding privacy, data protection, cybersecurity, content (including our removal of certain influential accounts for violations of our terms of service) and other issues, which may adversely affect our reputation and brand. Our brand may also be negatively affected by the actions of people that are hostile or inappropriate to other people, by accounts impersonating other people, by accounts identified as spam, by use or perceived use, directly or indirectly, of our products or services by people (including governments and government-sponsored actors) to disseminate information that may be viewed as misleading (or intended to manipulate people's opinions), by accounts introducing excessive amounts of spam on our platform, by third parties obtaining control over people's accounts, such as the security breach in July 2020 whereby attackers gained control of certain highly-visible accounts, or by other security or cybersecurity incidents. Maintaining and enhancing our brand may require us to make substantial investments and these investments may not achieve the desired goals.

Additionally, we and our executive leadership receive a high degree of media coverage around the world. Negative publicity about our company or executives, including about the quality and reliability of our products or of content shared on our platform, changes to our products, policies and services, our privacy, data protection, policy enforcement and cybersecurity practices (including actions taken or not taken with respect to certain accounts or reports regarding government surveillance or compliance with government legal requests), litigation, regulatory activity, the actions of certain accounts (including actions taken by prominent accounts on our platform or the dissemination of information that may be viewed as misleading or manipulative), even if inaccurate, could adversely affect our reputation. Such negative publicity and reputational harm could adversely affect mDAU and their confidence in and loyalty to our platform and could result in decreased revenue or increased costs to reestablish our brand, which would adversely impact our business, financial condition and operating results.

We depend on highly skilled personnel to grow and operate our business. If we are unable to hire, retain and motivate our personnel, we may not be able to grow effectively.

Our future success and strategy will depend upon our continued ability to identify, hire, develop, motivate and retain highly skilled personnel. We depend on contributions from our employees, and, in particular, our senior management team, to execute efficiently and effectively. We do not have employment agreements other than offer letters with any member of our senior management or other key employees, and we do not maintain key person life insurance for any employee. We also face significant competition for experienced employees, whose talents are in high demand. As a result, we may not be able to retain our existing employees or hire new employees quickly enough to meet our needs.

From time to time, we have also experienced high voluntary attrition, and in those times, the resulting influx of new leaders and other employees has required us to expend time, attention and resources to recruit and retain talent, restructure parts of our organization and train and integrate new employees. In addition, to attract and retain skilled personnel, we have had to offer, and believe we will need to continue to offer, highly competitive compensation packages. We may need to invest significant amounts of cash and equity to attract and retain employees and we may not realize sufficient return on these investments. In addition, changes to U.S. immigration and work authorization laws and regulations can be significantly affected by political forces and levels of economic activity. Our business may be materially and adversely affected if legislative or administrative changes to immigration or visa laws and regulations impair our hiring processes or projects involving personnel who are not citizens of the country where the work is to be performed. If we are not able to effectively attract and retain employees, we may not be able to innovate or execute quickly on our strategy and our ability to achieve our strategic objectives will be adversely impacted, and our business will be harmed.

We also believe that our culture and core values have been, and will continue to be, a key contributor to our success and our ability to foster the innovation, creativity and teamwork we believe we need to support our operations. We allow most of our employees to work where they feel most productive, whether that is working full-time from home, from a Twitter office or splitting their time between their home and a Twitter office. If we fail to effectively manage our hiring needs and successfully integrate our new hires, our efficiency and ability to meet our forecasts, as well as our culture, employee morale, productivity and retention, could suffer, and our business and operating results would be adversely impacted.

Our products, mDAU growth, and engagement depend upon the availability of a variety of third-party services and systems and the effective interoperation with operating systems, networks, devices, web browsers and standards. We do not control all of these systems and cannot guarantee their availability, and we cannot guarantee that third parties will not take actions that harm our products or profitability.

One of the reasons people come to Twitter every day is for real-time information, and our products and the success of our business is dependent upon the ability of people to access the Internet and the proper functioning of the various operating systems, platforms, and services upon which we rely. These systems are provided and controlled by factors outside of our control, including nation-state actors who may suppress or censor our products, and broadband and Internet access marketplace, including incumbent telephone companies, cable companies, mobile communications companies, government-owned service providers, device manufacturers and operating system providers. Any of these actors could take actions that degrade, disrupt or increase the cost of access to our products or services, which would, in turn, negatively impact our business. The adoption or repeal of any laws or regulations that adversely affect the growth, popularity or use of the Internet, including laws or practices limiting Internet neutrality, could decrease the demand for, or the usage of, our products and services, increase our cost of doing business and adversely affect our operating results. For example, access to Twitter is blocked in China and has been intermittently blocked in Turkey in the past.

We also rely on other companies to maintain reliable network systems that provide adequate speed, data capacity and security. We utilize third-party cloud computing services in connection with certain aspects of our business and operations, and any disruption of, or interference with, our use of such cloud services could adversely impact our business and operations. As the Internet continues to experience growth in the number of consumers, frequency of use and amount of data transmitted, the Internet infrastructure that we rely on may be unable to support the demands placed upon it. The failure of the Internet infrastructure that we rely on, even for a short period of time, could undermine our operations and harm our operating results.

Furthermore, these systems, devices or software or services may experience changes, bugs or technical issues that may affect the availability of services or the accessibility of our products. We have experienced, and may in the future experience, service disruptions, outages and other performance problems due to a variety of factors, including infrastructure changes, human or software errors, hardware failure, capacity constraints due to an overwhelming number of people accessing our products and services simultaneously, computer viruses and denial of service or fraud or security attacks. In the past, we have experienced brief service outages during which Twitter.com and Twitter mobile clients were inaccessible as a result, in part, of software misconfigurations. Additionally, although we are investing significantly to improve the capacity, capability and reliability of our infrastructure, we are not currently serving traffic equally through our co-located data centers that support our platform. Accordingly, in the event of a significant issue at the data center supporting most of our network traffic, some of our products and services may become inaccessible to the public or the public may experience difficulties accessing our products and services. Any disruption or failure in our infrastructure could hinder our ability to handle existing or increased traffic on our platform, which could significantly harm our business.

The availability of these services are also dependent upon our relationships with third parties, which may change, including if they change their terms of service or policies that diminish the functionality of our products and services, make it difficult for people to access our content, limit our ability to target or measure the effectiveness of ads, impose fees related to our products or services or give preferential treatment to competitive products or services could adversely affect usage of our products and services. Additionally, some of our mobile carriers have experienced infrastructure issues due to natural disasters, which have caused deliverability errors or poor quality communications with our products. Because a majority of people on Twitter access our products and services through mobile devices, we are particularly dependent on the interoperability of our products and services with mobile devices and operating systems in order to deliver our products and services. We also may not be successful in developing relationships with key participants in the mobile industry or in developing products or services that operate effectively with these operating systems, networks, devices, web browsers and standards. Further, if the number of platforms for which we develop our product expands, it will result in an increase in our operating expenses. In order to deliver high quality products and services, it is important that our products and services work well with a range of operating systems, networks, devices, web browsers and standards that we do not control. In the event that it is difficult for people to access and use our products and services, particularly on their mobile devices, our mDAU growth and engagement could be harmed, and our business and operating results could be adversely impacted.

Our release of new products, product features and services on mobile devices is dependent upon and can be impacted by digital storefront operators, such as the Apple App Store and Google Play Store review teams, which decide what guidelines applications must operate under and how to enforce such guidelines. Such review processes can be difficult to predict and certain decisions may harm our business. Additionally, changes to operating systems' practices and policies, such as Apple's changes related to its App Tracking Transparency policy, have reduced and may continue to reduce the quantity and quality of the data and metrics that can be collected or used by us and our partners or our ability to target advertising. These limitations have affected and may continue to adversely affect both our and our advertisers' ability to effectively target advertisements and measure their performance, thereby reducing the demand and pricing for our advertising products and harming our business.

Spam and fake accounts could diminish the experience on our platform, which could damage our reputation and deter people from using our products and services.

"Spam" on Twitter refers to a range of abusive activities that are prohibited by our terms of service and is generally defined as unsolicited, repeated actions that negatively impact other people with the general goal of drawing attention to a given account, site, product or idea. This includes posting large numbers of unsolicited mentions of an account, duplicate Tweets, malicious automation, misleading links (e.g., to malware or "click-jacking" pages) or other false or misleading content, and aggressively following and unfollowing accounts, adding accounts to lists, sending invitations, Retweeting and liking Tweets to inappropriately attract attention. Our terms of service prohibit the creation of serial or bulk accounts, both manually or using automation, for disruptive or abusive purposes, such as to Tweet spam or to artificially inflate the popularity of accounts seeking to promote themselves on Twitter. Although we continue to invest resources to reduce spam and fake accounts on Twitter, which includes our investments to improve the health of the public conversation on Twitter, we expect spammers will continue to seek ways to act inappropriately on our platform. In addition, we expect that increases in the number of accounts on our platform will result in increased efforts by spammers to misuse our platform. We continuously combat spam and fake accounts, including by suspending or terminating accounts we believe to be spammers and launching algorithmic changes focused on curbing abusive activities. Our actions to combat spam and fake accounts require significant resources and time. If spam and fake accounts increase on Twitter, this could hurt our reputation for delivering relevant content or reduce mDAU growth rate and mDAU engagement and result in continuing operational cost to us.

Our products may contain errors or our security measures may be breached, resulting in the exposure of private information. Our products and services may be subject to attacks that degrade or deny the ability of people to access our products and services. These issues may result in the perception that our products and services are not secure, and people on Twitter and advertisers may curtail or stop using our products and services and our business and operating results could be harmed.

Our products and services involve the storage and transmission of people's and advertisers' information, and security incidents, including those caused by unintentional errors and those intentionally caused by third parties, may expose us to a risk of loss of this information, litigation, increased security costs and potential liability. We and our third-party service providers experience cyber-attacks of varying degrees on a regular basis. We expect to incur significant costs in an effort to detect and prevent security breaches and other security-related incidents, including those that our third-party suppliers and service providers may suffer, and we may face increased costs in the event of an actual or perceived security breach or other security-related incident. In particular, the COVID-19 pandemic has increased the opportunities available to criminals, as more companies and individuals work online, and as such, the risk of a cybersecurity incident potentially occurring has increased. We cannot provide assurances that our preventative efforts will be successful. If an actual or perceived breach of our security occurs, the market perception of the effectiveness of our security measures could be harmed, people on Twitter and our advertisers may be harmed, lose trust and confidence in us, decrease the use of our products and services or stop using our products and services in their entirety. We may also incur significant legal and financial exposure, including legal claims, higher transaction fees and regulatory fines and penalties. Any of these actions could have a material and adverse effect on our business, reputation and operating results. While our insurance policies include liability coverage for certain of these matters, if we experienced a significant security incident, we could be subject to liability or other damages that exceed our insurance coverage.

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Our products and services incorporate complex software and we encourage employees to quickly develop and help us launch new and innovative features. Our software, including any open source software that is incorporated into our code, has contained, and may now or in the future contain, errors, bugs or vulnerabilities. For example, in 2019, we discovered, and took steps to remediate, bugs that primarily affected our legacy MAP product, impacting our ability to target ads and share data with our measurement and ad partners. We also discovered that certain personalization and data settings were not operating as expected. As was the case with these errors, errors in our software code may only be discovered after the product or service has been released. Errors, vulnerabilities, or other design defects within the software on which we rely may result in a negative experience for people on Twitter, partners and advertisers who use our products, delay product introductions or enhancements, result in targeting, measurement, or billing errors, compromise our ability to protect the data of the people on Twitter and/or our intellectual property or lead to reductions in our ability to provide some or all of our services. We have policies and procedures in place to address security as part of our software development, testing, evaluation, and deployment process. Additionally, we have implemented and maintain vulnerability scanning and management policies and procedures, including a bug bounty program. However, these measures may not be sufficient in all cases. Any errors, bugs or vulnerabilities discovered in our code after release could result in damage to our reputation, loss of accounts, loss of content or platform partners, loss of advertisers or advertising revenue or liability for damages or other relief sought in lawsuits, regulatory inquiries or other proceedings, any of which could adversely impact our business and operating results.

Our products operate in conjunction with, and we are dependent upon, third-party products and components across a broad ecosystem. There have been and may continue to be significant attacks on certain third-party providers, and we cannot guarantee that our or our third-party providers' systems and networks have not been breached or that they do not contain exploitable defects or bugs that could result in a breach of or disruption to our systems and networks or the systems and networks of third parties that support us and our services. If there is a security vulnerability, error, or other bug in one of these third-party products or components and if there is a security exploit targeting them, we could face increased costs, liability claims, reduced revenue, or harm to our reputation or competitive position. The natural sunset of third-party products and operating systems that we use requires that our infrastructure teams reallocate time and attention to migration and updates, during which period potential security vulnerabilities could be exploited.

Unauthorized parties may also gain access to Twitter handles and passwords without attacking Twitter directly and, instead, access people's accounts by using credential information from other recent breaches, using malware on victim machines that are stealing passwords for all sites, or a combination of both. In addition, some of our developers or other partners, such as third-party applications to which people have given permission to Tweet on their behalf, may receive or store information provided by us or by people on Twitter through mobile or web applications integrated with us. If these third parties or developers fail to adopt or adhere to adequate data security practices, or in the event of a breach of their networks, our data or data of people on Twitter may be improperly accessed, used or disclosed. Unauthorized parties have obtained, and may in the future obtain, access to our data, data of people on Twitter or our advertisers' data. Any systems failure or actual or perceived compromise of our security that results in the unauthorized access to or release of data of people on Twitter or our advertisers' data, such as credit card data, could significantly limit the adoption of our products and services, as well as harm our reputation and brand and, therefore, our business.

Our security measures may also be breached due to employee error, malfeasance or otherwise. Additionally, outside parties may attempt to fraudulently induce employees, people on Twitter, or advertisers to disclose sensitive information in order to gain access to our data, data of people on Twitter or advertisers' data, or may otherwise obtain access to such data or accounts. Since people on Twitter and our advertisers may use Twitter to establish and maintain online identities, unauthorized communications from Twitter accounts that have been compromised may damage their personal security, reputations and brands as well as our reputation and brand. Because the techniques used to obtain unauthorized access, disable or degrade service or sabotage systems change frequently and often are not recognized until launched against a target, we may be unable to anticipate these techniques or to implement adequate preventative measures.

For example, in July 2020, we became aware of what we believe to be a coordinated social engineering attack by people who successfully targeted one or more of our employees with access to internal systems and tools. The attackers used this access to target a small group of accounts (130) and to gain control of a subset of these accounts and send Tweets from those accounts and access non-public information relating to at least some of those accounts. This security breach may have harmed the people and accounts affected by it. It may also impact the market perception of the effectiveness of our security measures, and people may lose trust and confidence in us, decrease the use of our products and services or stop using our products and services in their entirety. It may also result in damage to our reputation, loss of accounts, loss of content or platform partners, loss of advertisers or advertising revenue, or legal and financial exposure, including legal claims, regulatory inquiries or other proceedings. Any of these effects could have a material and adverse impact on our business, reputation and operating results.

Our international operations are subject to increased challenges and risks.

We have offices and employees around the world and our products and services are available in multiple languages. However, our ability to manage our business, monetize our products and services and conduct our operations internationally requires considerable management attention and resources and is subject to the particular challenges of supporting a rapidly growing business in an environment of multiple languages, cultures, customs, legal and regulatory systems, alternative dispute systems and commercial markets. Our international operations have required and will continue to require us to invest significant funds and other resources. Operating internationally subjects us to new risks and may increase risks that we currently face, including risks associated with:

- recruiting and retaining talented and capable employees in foreign countries and maintaining our company culture across all geographies;
- providing our products and services and operating across a significant distance, in different languages and among different cultures, including the potential need to modify our products, services, content and features to ensure that they are culturally relevant in different countries;
- increased competition from largely regional websites, mobile applications and services that provide real-time communications and have strong positions in particular countries, which have expanded and may continue to expand their geographic footprint;
- differing and potentially lower levels of mDAU growth, engagement and ad engagement in new and emerging geographies;
- different levels of advertiser demand, including fluctuations in advertiser demand due to regional activities, regional economic effects of the COVID-19 pandemic and political upheaval;
- greater difficulty in monetizing our products and services, including costs to adapt our products and services in light of the manner in which people access Twitter in such jurisdictions, such as the use of feature phones in certain emerging markets such as India and Pakistan, and challenges related to different levels of Internet access or mobile device adoption in different jurisdictions;
- compliance with applicable foreign laws and regulations, including laws and regulations with respect to privacy, data protection, data localization, cybersecurity, taxation, consumer protection, copyright, fake news, hate speech, spam and content, as well as laws regarding the environment and climate change, and the risk of penalties to the people who use our products and services and individual members of management if our practices are deemed to be out of compliance;
- actions by governments or others to restrict access to Twitter or censor content on Twitter, such as how domestic Internet service providers in China have blocked access to Twitter and other countries, including Iran, Libya, Pakistan, Turkey, Syria and Nigeria, have intermittently restricted access to Twitter, whether these actions are taken for political reasons, in response to decisions we make regarding governmental requests or content generated by people on Twitter, or otherwise;
- actions by governments or others that may result in Twitter being unable or unwilling to continue to operate in a particular country or jurisdiction;
- longer payment cycles in some countries;
- credit risk and higher levels of payment fraud;
- operating in jurisdictions that do not protect intellectual property rights to the same extent as the United States;
- compliance with anti-bribery laws including, without limitation, compliance with the Foreign Corrupt Practices Act and the U.K. Bribery Act, including by our business partners;
- currency exchange rate fluctuations, as we conduct business in currencies other than U.S. dollars but report our operating results in U.S. dollars and any foreign currency forward contracts into which we enter may not mitigate the impact of exchange rate fluctuations;
- foreign exchange controls that might require significant lead time in setting up operations in certain geographic territories and might prevent us from repatriating cash earned outside the United States;
- political and economic instability in some countries;

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- double taxation of our international earnings and potentially adverse tax consequences due to changes in the tax laws of the United States or the foreign jurisdictions in which we operate; and
- higher costs of doing business internationally, including increased accounting, travel, infrastructure and legal compliance costs.

If our revenue from our international operations, and particularly from our operations in the countries and regions where we have focused our spending, does not exceed the expense of establishing and maintaining these operations, our business and operating results will suffer. In addition, mDAU may grow more rapidly than revenue in international regions where our monetization of our products and services is not as developed. If we are unable to successfully expand our business, manage the complexity of our global operations or monetize our products and services internationally, it could adversely impact our business, financial condition and operating results.

The COVID-19 pandemic has disrupted and harmed, and may in the future disrupt and harm, our business, financial condition and operating results. We are unable to predict the extent to which it may impact our business, financial condition and operating results and the achievement of our strategic objectives in the future.

Our business, operations and financial performance have been, and may in the future be, negatively impacted by the COVID-19 pandemic and related public health responses, such as travel bans, restrictions, social distancing requirements and shelter-in-place orders. The pandemic and these related responses have caused, and may in the future cause, decreased advertiser demand for our platform, global slowdown of economic activity, disruptions of major events, volatility and disruption of financial markets, and changes in consumer behavior.

Our past results may not be indicative of our future performance, and historical trends in revenue, income (loss) from operations, net income (loss), and net income (loss) per share may differ materially. For example, to the extent the pandemic continues to disrupt economic activity globally, it could adversely affect our business, financial condition and operating results through prolonged decreases in advertising spend, credit deterioration of our customers, depressed economic activity, or declines in capital markets. The impacts of the COVID-19 pandemic, including supply chain constraints, labor shortages and inflation, have caused advertisers in a variety of industries to be cautious in their spending, and in 2021 had a modest negative impact on, and may negatively impact in future periods, our advertising revenue. While the economy is reopening in various parts of the world, some countries and locations are reinstating lockdowns and other restrictions that make a full recovery difficult to predict. We continue to monitor the evolving situation and guidance from international and domestic authorities, including federal, state and local public health authorities, and there may be developments outside our control requiring us to adjust our operating plan.

We have incurred significant operating losses in the past, and we may not be able to maintain profitability or accurately predict fluctuations in our operating results from quarter to quarter.

While we have been profitable on a generally accepted accounting principles in the United States (GAAP) basis at times, our quarterly operating results have fluctuated in the past and will fluctuate in the future. As a result, our past quarterly operating results are not necessarily indicators of future performance. Our operating results in any given quarter have been and can be influenced by numerous factors, many of which we are unable to predict or are outside of our control, including:

- our ability to attract and retain mDAU, advertisers, content partners and platform partners;
- the occurrence of planned significant events or changes to the timing of events, such as major sporting events, political elections, or awards shows, or unplanned significant events, such as natural disasters and political revolutions, as well as seasonality which may differ from our expectations;
- the impacts of the COVID-19 pandemic and governmental and business actions in response thereto on the global economy;
- the pricing of our advertising services or data licensing, and our ability to maintain or improve revenue and margins;
- the development and introduction of new products or services, changes in features of existing products or services or de-emphasis or termination of existing products, product features or services;
- the actions of our competitors;
- increases in research and development, marketing and sales and other operating expenses that we may incur to grow and expand our operations and to remain competitive, including stock-based compensation expense and costs related to our technology infrastructure;
- costs related to the acquisition or divestiture of businesses, talent, technologies or intellectual property, including potentially significant amortization costs;

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- changes as a result of acquisitions or dispositions of assets or businesses;
- system failures resulting in the inaccessibility of our products and services;
- actual or perceived privacy or cybersecurity breaches or incidents, and the costs associated with remediating any such breaches or incidents;
- adverse litigation judgments, settlements or other litigation-related costs, and the fees associated with investigating and defending claims;
- changes in the legislative or regulatory environment, including with respect to security, tax, privacy, data protection, or content, or enforcement by government regulators, including fines, orders or consent decrees;
- changes in reserves or other non-cash credits or charges, such as establishment or releases of deferred tax assets valuation allowance, impairment charges or purchase accounting adjustments;
- changes in our expected estimated useful life of property and equipment and intangible assets;
- fluctuations in currency exchange rates and changes in the proportion of our revenue and expenses denominated in foreign currencies;
- changes in U.S. generally accepted accounting principles; and
- changes in global or regional business or macroeconomic conditions.

In January 2022, we completed the sale of our MoPub business. The sale of MoPub enables us to concentrate more of our efforts on the significant opportunity for performance-based advertising, SMB offerings, and commerce initiatives on Twitter. While the product, engineering, and go-to-market teams associated with MoPub largely began to shift over to these key focus areas immediately upon the closing of the transaction, it will take time for their work to deliver results. As a result, we do not expect to recoup the full revenue loss associated with the sale of MoPub in 2022, but there are no changes to our long-term goals with an increased focus and additional resources working on increasing our market share within the addressable market for ads on our website and apps. However, we can provide no assurance that we will recoup the revenue impact from MoPub on the expected timeline, or at all.

Given the rapidly evolving markets in which we compete, our historical operating results may not be useful to you in predicting our future operating results. If our revenue growth rate slows, we expect that the seasonality in our business may become more pronounced and may in the future cause our operating results to fluctuate. For example, advertising spending is traditionally seasonally strong in the fourth quarter of each year, and we believe that this seasonality affects our quarterly results, which generally reflect higher sequential advertising revenue growth from the third to fourth quarter compared to sequential advertising revenue growth from the fourth quarter to the subsequent first quarter. Additionally, certain new revenue products or product features may carry higher costs relative to our other products, which may decrease our margins, and we may incur increased costs to scale our operations if mDAU and engagement on our platform increase. If we are unable to generate adequate revenue growth and to manage our expenses, we may incur significant losses in future periods and may not be able to maintain profitability.

We rely on assumptions and estimates to calculate certain of our key metrics, and real or perceived inaccuracies in such metrics may harm our reputation and negatively affect our business.

We calculate our mDAU using internal company data that has not been independently verified. While these numbers are based on what we believe to be reasonable calculations for the applicable period of measurement, there are inherent challenges in measuring mDAU and mDAU engagement. For example, there are a number of false or spam accounts in existence on our platform. We estimate that the average of false or spam accounts during the fourth quarter of 2021 continued to represent fewer than 5% of our mDAU during the quarter. However, this estimate is based on an internal review of a sample of accounts and we apply significant judgment in making this determination. As such, our estimation of false or spam accounts may not accurately represent the actual number of such accounts, and the actual number of false or spam accounts could be higher than we have currently estimated. We are continually seeking to improve our ability to estimate the total number of spam accounts and eliminate them from the calculation of our mDAU, but we otherwise treat multiple accounts held by a single person or organization as multiple accounts for purposes of calculating our mDAU because we permit people and organizations to have more than one account. Additionally, some accounts used by organizations are used by many people within the organization. As such, the calculations of our mDAU may not accurately reflect the actual number of people or organizations using our platform. We regularly review and may adjust our processes for calculating our internal metrics to improve their accuracy. Our measures of mDAU growth and engagement may differ from estimates published by third parties or from similarly-titled metrics of our competitors due to differences in methodology. If advertisers, content or platform partners or investors do not perceive our metrics to be accurate representations of our total accounts or mDAU engagement, or if we discover material inaccuracies in our metrics, our reputation may be harmed and content partners, advertisers and platform partners may be less willing to allocate their budgets or resources to our products and services, which could negatively affect our business and operating results. Further, as our business develops, we may revise or cease reporting metrics if we determine that such metrics are no longer accurate or appropriate measures of our performance. If investors, analysts or customers do not believe our reported measures, such as mDAU, are sufficient or accurately reflect our business, we may receive negative publicity and our operating results may be adversely impacted.

Our business is subject to the risks of earthquakes, fire, power outages, floods and other catastrophic events, and to interruption by man-made problems such as terrorism.

A significant natural disaster, such as the COVID-19 pandemic or an earthquake, fire, flood or significant power outage could have a material adverse impact on our business, operating results, and financial condition. For example, the COVID-19 pandemic led to certain business disruptions, including travel bans and restrictions, shelter-in-place orders and the postponement or cancellation of major events, which adversely affected demand for our advertising products and the economy as a whole, and which may have an adverse effect on our business, financial condition and operating results in the future. We have offices and a significant number of employees in the San Francisco Bay Area, a region known for seismic activity. Additionally, despite any precautions we may take, the occurrence of a natural disaster or other unanticipated problems at our data centers could result in lengthy interruptions in our services. In addition, our employees, offices, and infrastructure have recently been the subject of increased threats by extremists. Acts of terrorism and other geo-political unrest could cause disruptions in our business. All of the aforementioned risks may be further increased if our disaster recovery plans prove to be inadequate. We have implemented a disaster recovery program, which allows us to move production to a back-up data center in the event of a catastrophe. Although this program is functional, we do not currently serve network traffic equally from each data center, so if our primary data center shuts down, there will be a period of time that our products or services, or certain of our products or services, will remain inaccessible or people may experience severe issues accessing our products and services. We do not carry business interruption insurance sufficient to compensate us for the potentially significant losses, including the potential harm to our business that may result from interruptions in our ability to provide our products and services. Any such natural disaster or man-made problem could adversely impact our business, financial condition and operating results.

Intellectual Property and Technology

Our business and operating results may be harmed by our failure to timely and effectively scale and adapt our existing technology and infrastructure.

As accounts generate more content, including photos and videos hosted by Twitter, we may be required to expand and adapt our technology and infrastructure to continue to reliably store, serve and analyze this content. It may become increasingly difficult to maintain and improve the performance of our products and services, especially during peak usage times, as our products and services become more complex and our account traffic increases. In addition, because we lease our data center facilities, we cannot be assured that we will be able to expand our data center infrastructure to meet demand in a timely manner, or on favorable economic terms. If people are unable to access Twitter or we are not able to make information available rapidly on Twitter, people may seek other channels to obtain the information, and may not return to Twitter or use Twitter as often in the future, or at all. This would negatively impact our ability to attract new people to Twitter, content partners and advertisers and increase the frequency of people returning to Twitter. We expect to continue to make significant investments to maintain and improve the capacity, capability and reliability of our infrastructure. To the extent that we do not effectively address capacity constraints, upgrade our systems as needed and continually develop our technology and infrastructure to accommodate actual and anticipated changes in technology, our business and operating results may be harmed.

We continue to scale the capacity of, and enhance the capability and reliability of, our infrastructure to support mDAU growth and increased activity on our platform. We expect that investments and expenses associated with our infrastructure will continue to grow, including the expansion and improvement of our data center operations and related operating costs, additional servers and networking equipment to increase the capacity of our infrastructure, increased utilization of third-party cloud computing and associated costs thereof, increased bandwidth costs and costs to secure our customers' data. The improvement of our infrastructure requires a significant investment of our management's time and our financial resources. If we fail to efficiently scale and manage our infrastructure, our business, financial condition and operating results would be adversely impacted.

Our intellectual property rights are valuable, and any inability to protect them could reduce the value of our products, services and brand.

Intellectual property rights are important assets of our business and we seek protection for such rights as appropriate. To establish and protect our trade secrets, trademarks, copyrights, and patents as well as restrictions in confidentiality, license and intellectual property assignment agreements we enter into with our employees, consultants and third parties. Various circumstances and events outside of our control, however, pose threats to our intellectual property rights. We may fail to obtain effective intellectual property protection, effective intellectual property protection may not be available in every country in which our products and services are available, or such laws may provide only limited protection. Also, the efforts we have taken to protect our intellectual property rights may not be sufficient or effective, and any of our intellectual property rights may be challenged, circumvented, infringed or misappropriated which could result in them being narrowed in scope or declared invalid or unenforceable. There can be no assurance our intellectual property rights will be sufficient to protect against others offering products or services that are substantially similar to ours and compete with our business.

We rely on restrictions on the use and disclosure of our trade secrets and other proprietary information contained in agreements we sign with our employees, contractors, and other third parties to limit and control access to and disclosure of our trade secrets and confidential information. These agreements may be breached, or this intellectual property may otherwise be disclosed or become known to our competitors, including through hacking or theft, which could cause us to lose any competitive advantage resulting from these trade secrets and proprietary information.

We are pursuing registration of trademarks and domain names in the United States and in certain jurisdictions outside of the United States. Effective protection of trademarks and domain names is expensive and difficult to maintain, both in terms of application and registration costs as well as the costs of defending and enforcing those rights. We may be required to protect our rights in an increasing number of countries, a process that is expensive and may not be successful or which we may not pursue in every country in which our products and services are distributed or made available.

We are party to numerous agreements that grant licenses to third parties to use our intellectual property. For example, many third parties distribute their content through Twitter, or embed Twitter content in their applications or on their websites, and make use of our trademarks in connection with their services. We have a policy designed to assist third parties in the proper use of our trademarks, and an internal team dedicated to enforcing this policy and protecting our brand. This team routinely reviews reports of improper and unauthorized use of the Twitter trademarks and issues takedown notices or initiates discussions with the third parties to correct the issues. However, there can be no assurance that we will be able to protect against the unauthorized use of our brand or trademarks. If the licensees of our trademarks are not using our trademarks properly and we fail to maintain and enforce our trademark rights, we may limit our ability to protect our trademarks which could result in diminishing the value of our brand or in our trademarks being declared invalid or unenforceable. There is also a risk that one or more of our trademarks could become generic, which could result in such trademark being declared invalid or unenforceable. For example, there is a risk that the word "Tweet" could become so commonly used that it becomes synonymous with any short comment posted publicly on the Internet, and if this happens, we could lose protection of this trademark.

We also seek to obtain patent protection for some of our technology. We may be unable to obtain patent protection for our technologies. Even if patents are issued from our patent applications, which is not certain, our existing patents, and any patents that may be issued in the future, may not provide us with competitive advantages or distinguish our products and services from those of our competitors. In addition, any patents may be contested, circumvented, or found unenforceable or invalid, and we may not be able to prevent third parties from infringing or otherwise violating them. Effective protection of patent rights is expensive and difficult to maintain, both in terms of application and maintenance costs, as well as the costs of defending and enforcing those rights.

Our Innovator's Patent Agreement, or IPA, also can limit our ability to prevent infringement of our patents. In May 2013, we implemented the IPA, which we enter into with our employees and consultants, including our founders. The IPA, which applies to our current and future patents, allows us to assert our patents defensively. The IPA also allows us to assert our patents offensively with the permission of the inventors of the applicable patent. Under the IPA, an assertion of claims is considered to be for a defensive purpose if the claims are asserted: (i) against an entity that has filed, maintained, threatened or voluntarily participated in a patent infringement lawsuit against us or any people on Twitter, or any of our affiliates, customers, suppliers or distributors; (ii) against an entity that has used its patents offensively against any other party in the past ten years, so long as the entity has not instituted the patent infringement lawsuit defensively in response to a patent litigation threat against the entity; or (iii) otherwise to deter a patent litigation threat against us or people on Twitter, or any of our affiliates, customers, suppliers or distributors. In addition, the IPA provides that the above limitations apply to any future owner or exclusive licensee of any of our patents, which could limit our ability to sell or license our patents to third parties. In this case, while we may be able to claim protection of our intellectual property under other rights (such as trade secrets or contractual obligations with our employees not to disclose or use confidential information), we may be unable to assert our patent rights against third parties that we believe are infringing our patents, even if such third parties are developing products and services that compete with our products and services. For example, in the event that an inventor of one of our patents goes to work for another company and that company uses the inventor's patented invention to compete with us, we would not be able to assert that patent against such other company unless the assertion of the patent right is for a defensive purpose since it would be unlikely the employee would consent to offensive use of the patent against his or her current employer. In such event, we would need to rely on trade secret protection or the contractual obligation of the inventor to us not to disclose or use our confidential information. In addition, the terms of the IPA could affect our ability to monetize our intellectual property portfolio.

Significant impairments of our intellectual property rights, and limitations on our ability to assert our intellectual property rights against others, could harm our business and our ability to compete.

Also, obtaining, maintaining and enforcing our intellectual property rights is costly and time consuming. Any increase in the unauthorized use of our intellectual property would adversely impact our business, financial condition and operating results.

Many of our products and services contain open source software, and we license some of our software through open source projects, which may pose particular risks to our proprietary software, products, and services in a manner that could adversely impact our business.

We use open source software in our products and services and will use open source software in the future. In addition, we regularly contribute software source code to open source projects under open source licenses or release internal software projects under open source licenses, and anticipate doing so in the future. The terms of many open source licenses to which we are subject have not been interpreted by U.S. or foreign courts, and there is a risk that open source software licenses could be construed in a manner that imposes unanticipated conditions or restrictions on our ability to provide or distribute our products or services. Additionally, under some open source licenses, if we combine our proprietary software with open source software in a certain manner, third parties may claim ownership of, or demand release of, the open source software or derivative works that we developed using such software, which could include our proprietary source code. Such third parties may also seek to enforce the terms of the applicable open source license through litigation which, if successful, could require us to make our proprietary software source code freely available, purchase a costly license or cease offering the implicated products or services unless and until we can re-engineer them to avoid infringement. This re-engineering process could require significant additional research and development resources, and we may not be able to complete it successfully. In addition to risks related to open source license requirements, use of certain open source software may pose greater risks than use of third-party commercial software, since open source licensors generally do not provide warranties or controls on the origin of software. Any of these risks could be difficult to eliminate or manage, and, if not addressed, could adversely impact our business, financial condition and operating results.

We are currently, and expect to be in the future, party to intellectual property rights claims that are expensive and time consuming to defend, and, if resolved adversely, would adversely impact our business, financial condition and operating results.

Companies in the internet, technology and media industries are subject to litigation based on allegations of infringement, misappropriation or other violations of intellectual property rights. Many companies in these industries, including many of our competitors, have substantially larger patent and intellectual property portfolios than we do, which could make us a target for litigation as we may not be able to assert counterclaims against parties that sue us for patent, or other intellectual property infringement. In addition, various "non-practicing entities" that own patents and other intellectual property rights often attempt to assert claims in order to extract value from technology companies. From time to time we receive claims from third parties which allege that we have infringed upon their intellectual property rights. Further, from time to time we may introduce new products, product features and services, including in areas where we currently do not have an offering, which could increase our exposure to patent and other intellectual property claims from competitors and non-practicing entities. In addition, although our standard terms and conditions for our Promoted Products and public APIs do not provide advertisers and platform partners with indemnification for intellectual property claims against them, some of our agreements with advertisers, content partners, platform partners and data partners require us to indemnify them for certain intellectual property claims against them, which could require us to incur considerable costs in defending such claims, and may require us to pay significant damages in the event of an adverse ruling. Such advertisers, content partners, platform partners and data partners may also discontinue use of our products, services and technologies as a result of injunctions or otherwise, which could result in loss of revenue and adversely impact our business.

We presently are involved in a number of intellectual property lawsuits, and as we face increasing competition and develop new products, the number of patent and other intellectual property claims against us may grow. There may be intellectual property or other rights held by others, including issued or pending patents, that cover significant aspects of our products and services, and we cannot be sure that we are not infringing or violating, and have not infringed or violated, any third-party intellectual property rights or that we will not be held to have done so or be accused of doing so in the future. Any claim or litigation alleging that we have infringed or otherwise violated intellectual property or other rights of third parties, with or without merit, and whether or not settled out of court or determined in our favor, could be time-consuming and costly to address and resolve, and could divert the time and attention of our management and technical personnel. Some of our competitors have substantially greater resources than we do and are able to sustain the costs of complex intellectual property litigation to a greater degree and for longer periods of time than we could. The outcome of any litigation is inherently uncertain, and there can be no assurances that favorable final outcomes will be obtained in all cases. In addition, plaintiffs may seek, and we may become subject to, preliminary or provisional rulings in the course of any such litigation, including potential preliminary injunctions requiring us to cease some or all of our operations. We may decide to settle such lawsuits and disputes on terms that are unfavorable to us. Similarly, if any litigation to which we are a party is resolved adversely, we may be subject to an unfavorable judgment that may not be reversed upon appeal. The terms of such a settlement or judgment may require us to cease some or all of our operations or pay substantial amounts to the other party. In addition, we may have to seek a license to continue practices found to be in violation of a third-party's rights. If we are required, or choose to enter into royalty or licensing arrangements, such arrangements may not be available on reasonable terms, or at all, and may significantly increase our operating costs and expenses. As a result, we may also be required to develop or procure alternative non-infringing technology, which could require significant effort and expense or discontinue use of the technology. An unfavorable resolution of the disputes and litigation referred to above would adversely impact our business, financial condition and operating results.

Regulatory and Legal

Our business is subject to complex and evolving U.S. and foreign laws and regulations. These laws and regulations are subject to change and uncertain interpretation, and could result in claims, changes to our business practices, monetary penalties, increased cost of operations or declines in mDAU growth, mDAU engagement or ad engagement, or otherwise harm our business.

We are subject to a variety of laws and regulations in the United States and abroad that involve matters central to our business, including privacy, data protection, cybersecurity, advertising, rights of publicity, content regulation, intellectual property, competition, protection of minors, consumer protection, provision of online payment services and credit card processing, securities law compliance, and taxation, as well as laws and regulations regarding the environment and climate change. For example, new content regulation laws may affect our ability to operate in certain markets and/or subject us to significant fines or penalties. Compliance with these laws may be onerous and/or inconsistent with our work to serve the public conversation. Many of these laws and regulations are still evolving and being tested in courts and new laws and regulations are being proposed. As a result, it is possible that these laws and regulations may be interpreted and applied in a manner that is inconsistent from country to country and inconsistent with our current policies and practices and in ways that could harm our business, particularly in the new and rapidly evolving industry in which we operate. Additionally, the introduction of new products or services may subject us to additional laws and regulations.

From time to time, governments, regulators and others have expressed concerns about whether our products, services or practices compromise the privacy or data protection rights of the people on Twitter and others. While we strive to comply with applicable laws and regulations relating to privacy, data protection and cybersecurity, our privacy policies and other obligations we may have with respect to privacy, data protection and cybersecurity, the failure or perceived failure to comply may result, and in some cases has resulted, in inquiries and other proceedings or actions against us by governments, regulators or others. A number of proposals have recently been adopted or are currently pending before federal, state and foreign legislative and regulatory bodies that could significantly affect our business. For example, the California Consumer Privacy Act (CCPA) requires, among other things, covered companies to provide disclosures to California consumers and afford such consumers the ability to opt-out of certain sales of personal information. Similar legislation has been proposed or adopted in other states. Additionally, the California Privacy Rights Act (CPRA) created obligations relating to consumer data beginning on January 1, 2022, with implementing regulations expected on or before July 1, 2022, and enforcement beginning July 1, 2023. On March 2, 2021, Virginia enacted the Virginia Consumer Data Protection Act, or CDPA, a comprehensive privacy statute that becomes effective on January 1, 2023, and on June 8, 2021, Colorado enacted the Colorado Privacy Act, or CPA, which takes effect on July 1, 2023. The CDPA and CPA share similarities with the CCPA, CPRA, and legislation proposed in other states. Aspects of the CCPA, the CPRA and these other state laws and regulations, as well as their enforcement, remain unclear, and we may be required to modify our practices in an effort to comply with them. Moreover, foreign data protection, privacy, cybersecurity, and other laws and regulations are often more restrictive or burdensome than those in the United States. For example, the GDPR imposes stringent operational requirements for entities processing personal information and significant penalties for non-compliance, including fines of up to €20 million or 4% of total worldwide revenue, whichever is higher. Additionally, we have historically relied upon a variety of legal bases to transfer certain personal information outside of the European Economic Area (EEA), including the EU-U.S. Privacy Shield Framework, the Swiss-U.S. Privacy Shield Framework, and EU Standard Contractual Clauses (SCCs). These legal bases all have been, and may be, the subject of legal challenges and on July 16, 2020, the Court of Justice of the European Union (CJEU) invalidated the U.S.-EU Privacy Shield framework and imposed additional obligations on companies when relying on the SCCs. The Swiss-U.S. Privacy Shield framework subsequently was invalidated by the Swiss Federal Data Protection and Information Commissioner. These developments may result in different EEA data protection regulators applying differing standards for, or require ad hoc verification of measures taken with respect to, certain data flows. The CJEU's decision, the European Commission's issuance of new SCCs in June 2021, the use of which was required in connection with new contracts and new personal data processing operations as of September 27, 2021, continued guidance from the European Commission and European Data Protection Board (EDPB), and other developments with regard to cross-border data transfers may require us to take additional steps to legitimize impacted personal data transfers, and we may find it necessary or desirable to modify our data handling practices in connection with these or future legal challenges or other developments relating to cross-border data transfers. This could result in additional contractual negotiations and increased costs of compliance and limitations on our customers, vendors, and us. This CJEU decision and related developments, or future legal challenges or other developments, also could result in us being required to implement duplicative, and potentially expensive, information technology infrastructure and business operations in Europe or could limit our ability to collect or process personal information in Europe, and may serve as a basis for our personal data handling practices, or those of our customers and vendors, to be challenged. Moreover, the GDPR and other similar regulations require companies to give specific types of notice and in some cases seek consent from consumers and other data subjects before collecting or using their data for certain purposes, including some marketing activities. In addition to the GDPR, the European Commission has another draft regulation in the approval process that focuses on a person's right to conduct a private life. The proposed legislation, known as the Regulation of Privacy and Electronic Communications (ePrivacy Regulation), would replace the current ePrivacy Directive. Originally planned to be adopted and implemented at the same time as the GDPR, the ePrivacy Regulation is still being negotiated. Most recently, on February 10, 2021, the Council of the EU agreed on its version of the draft ePrivacy Regulation. If adopted, the earliest date for entry into force is in 2023, with broad potential impacts on the use of internet-based services and tracking technologies, such as cookies. Aspects of the ePrivacy Regulation remain for negotiation between the European Commission and the Council. Any of these changes or other developments with respect to EU data protection law could disrupt our business and otherwise adversely impact our business, financial condition and operating results.

Further, the UK officially left the EU in 2020 (often referred to as Brexit). The full effect of Brexit remains uncertain, but Brexit creates economic and legal uncertainty in the region and could adversely affect the tax, currency, operational, legal and regulatory regimes to which our business is subject, including with respect to privacy and data protection. Brexit may adversely affect our revenues and subject us to new regulatory costs and challenges, in addition to other adverse effects that we are unable effectively to anticipate. The UK has implemented a Data Protection Act, and legislation referred to as the UK GDPR, that substantially implement the GDPR, with penalties for noncompliance of up to the greater of £17.5 million or four percent of worldwide revenues. On June 28, 2021, the European Commission adopted an adequacy decision with respect to the UK, which allows cross-border data transfers from the EEA to the UK for a four-year period, subject to renewal and the potential for earlier modification or termination. Nevertheless, substantial uncertainty remains regarding future regulation of data protection in the UK, and we may face challenges and significant costs and expenses in addressing applicable requirements and making necessary changes to our policies and practices.

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Legislative changes in the United States, at both the federal and state level, could impose new obligations in areas such as moderation of content posted on our platform by third parties, including with respect to requests for removal based on claims of copyright. Further, there are various Executive and Congressional efforts to restrict the scope of the protections from legal liability for content moderation decisions and third-party content posted on online platforms that are currently available to online platforms under Section 230 of the Communications Decency Act, and our current protections from liability for content moderation decisions and third-party content posted on our platform in the United States could decrease or change, potentially resulting in increased liability for content moderation decisions and third-party content posted on our platform and higher litigation costs. Additionally, recent amendments to U.S. patent laws may affect the ability of companies, including us, to protect their innovations and defend against claims of patent infringement.

In April 2019, the EU passed the Directive on Copyright in the Digital Single Market (the EU Copyright Directive), which expands the liability of online platforms for third-party content posted on the platform. Each EU member state had two years to implement it, with a deadline of June 7, 2021, though implementation has been delayed in several EU member states. The EU Copyright Directive may increase our costs of operations, our liability for third-party content posted on our platform, and our litigation costs.

Additionally, we have relationships with third parties that perform a variety of functions such as payments processing, tokenization, vaulting, currency conversion, fraud prevention and cybersecurity audits. The laws and regulations related to online payments and other activities of these third parties, including those relating to the processing of data, are complex, subject to change, and vary across different jurisdictions in the United States and globally. As a result, we may be required to spend significant time, effort and expense to comply with applicable laws and regulations. Any failure or claim of our failure to comply, or any failure or claim of failure by the above-mentioned third parties to comply, could increase our costs or could result in liabilities. Additionally, because we accept payment via credit cards, we are subject to global payments industry operating rules and certification requirements governed by the PCI Security Standards Council, including the Payment Card Industry Data Security Standard. Any failure by us to comply with these operating rules and certification requirements also may result in costs and liabilities and may result in us losing our ability to accept certain payment cards. We recently announced new subscription and paid features on Twitter. Depending on how these products and features evolve, we may also be subject to other laws and regulations related to online payments, money transmission, prepaid access, electronic fund transfers or other financial laws or regulations, and we may need to register as a money services business with the U.S. Treasury Department and obtain state money transmitter licenses in the United States and an Electronic Money (E-money) license in the EEA to permit us to conduct certain activities. These licenses and other legal requirements will generally require us to demonstrate compliance with many domestic and foreign laws in these areas, including anti-money laundering, counter-terrorist financing, government sanctions, cybersecurity, privacy, and consumer protection laws, and failure to do so may limit our ability to offer these products and features as they evolve.

The U.S. and foreign laws and regulations described above, as well as any associated inquiries or investigations or any other regulatory actions, may be onerous and costly to comply with and may be inconsistent from jurisdiction to jurisdiction, further increasing the cost of compliance and doing business. Any such costs may delay or impede the development of new products and services, result in negative publicity, increase our operating costs, require significant management time and attention, and subject us to remedies that may result in a loss of mDAU or advertisers and otherwise harm our business, including fines or demands or orders that we modify or cease existing business practices.

We currently allow use of our platform without the collection of extensive personal information. We may experience additional pressure to expand our collection of personal information in order to comply with new and additional legal or regulatory demands or we may independently decide to do so. If we obtain such additional personal information, we may be subject to additional legal or regulatory obligations.

Regulatory investigations and settlements could cause us to incur additional expenses or change our business practices in a manner material and adverse to our business.

From time to time we notify the Irish Data Protection Commission and other regulators of certain personal data breaches and privacy, cybersecurity or data protection issues, and are subject to inquiries and investigations regarding various aspects of our regulatory compliance. We are currently the subject of inquiries by the Irish Data Protection Commission with respect to our compliance with the GDPR. In the past, we have been subject to regulatory investigations and orders, and we expect to continue to be subject to regulatory scrutiny as our business grows and awareness of our brand increases.

In March 2011, to resolve an investigation into various incidents, we entered into a consent order with the FTC that, among other things, required us to establish an information security program designed to protect non-public consumer information and also requires that we obtain biennial independent security assessments. The obligations under the consent order remain in effect until the later of March 2, 2031, or the date 20 years after the date, if any, on which the U.S. government or the FTC files a complaint in federal court alleging any violation of the order. We expect to continue to be the subject of regulatory inquiries, investigations and audits in the future by the FTC and other regulators around the world. Violation of existing or future regulatory orders, settlements or consent decrees could subject us to substantial fines, penalties and costs that would adversely impact our financial condition and operating results. For example, on July 28, 2020, we received a draft complaint from the FTC alleging violations of the 2011 consent order with the FTC and the FTC Act. The allegations relate to our use of phone number and/or email address data provided for safety and security purposes for targeted advertising during periods between 2013 and 2019. We estimate that the range of probable loss in this matter is \$150.0 million to \$250.0 million. The matter remains unresolved, and there can be no assurance as to the timing or the terms of any final outcome.

It is possible that a regulatory inquiry, investigation or audit could cause us to incur substantial fines and costs, result in reputational harm, prevent us from offering certain products, services, features or functionalities, require us to change our policies or practices, divert management and other resources from our business, or otherwise materially and adversely impact our business, financial condition and operating results.

We may face lawsuits or incur liability as a result of content published or made available through our products and services.

We have faced and will continue to face claims relating to content that is published or made available through our products and services or third-party products or services. In particular, the nature of our business exposes us to claims related to defamation, intellectual property rights, rights of publicity and privacy, illegal content, misinformation, content regulation and personal injury torts. The laws relating to the liability of providers of online products or services for activities of the people who use them remains somewhat unsettled, both within the United States and internationally. For example, there are various Executive and Congressional efforts to restrict the scope of the protections from legal liability for content moderation decisions and third-party content posted on online platforms that are currently available to online platforms under Section 230 of the Communications Decency Act, and our current protections from liability for content moderation decisions and third-party content posted on our platform in the United States could decrease or change, potentially resulting in increased liability for content moderation decisions and third-party content posted on our platform and higher litigation costs. This risk may be enhanced in certain jurisdictions outside the United States where we may be less protected under local laws than we are in the United States. For example, we are subject to legislation in Germany that may impose significant fines for failure to comply with certain content removal and disclosure obligations. Other countries, including Brazil, Turkey, Singapore, India, Australia, and the United Kingdom, have implemented or are considering similar legislation imposing penalties for failure to remove certain types of content. In addition, the public nature of communications on our platform exposes us to risks arising from the creation of impersonation accounts intended to be attributed to people on Twitter or our advertisers. We could incur significant costs investigating and defending these claims. If we incur material costs or liability as a result of these occurrences, our business, financial condition and operating results would be adversely impacted.

If we fail to maintain an effective system of disclosure controls and internal control over financial reporting, our ability to produce timely and accurate financial statements or comply with applicable regulations could be impaired.

As a public company, we are subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act, the Sarbanes-Oxley Act of 2002, as amended, or the Sarbanes-Oxley Act, and the listing standards of the New York Stock Exchange. The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. In order to maintain and improve the effectiveness of our disclosure controls and procedures and internal control over financial reporting, we have expended, and anticipate that we will continue to expend, significant resources, including accounting-related costs and significant management oversight.

Any failure to develop or maintain effective controls, or any difficulties encountered in their implementation or improvement, could cause us to be subject to one or more investigations or enforcement actions by state or federal regulatory agencies, stockholder lawsuits or other adverse actions requiring us to incur defense costs, pay fines, settlements or judgments. Any such failures could also cause investors to lose confidence in our reported financial and other information, which would likely have a negative effect on the trading price of our common stock. In addition, if we are unable to continue to meet these requirements, we may not be able to remain listed on the New York Stock Exchange.

Our inability to obtain insurance at acceptable rates or our failure to adequately reserve for self-insured exposures may negatively impact our business, financial condition and operating results.

We maintain insurance coverage, but these policies do not cover all of our potential losses, costs, or liabilities. Our ability to purchase and maintain insurance policies for various aspects of our business may be affected by conditions in the insurance market or other factors over which we have no control. Costs and premiums for insurance have increased over time, and insurance coverage for all types of risk is becoming more restrictive, and, in many cases, subject to higher deductibles or retentions. It has and may continue to become more difficult to maintain insurance coverage at historic levels, and at reasonable costs. Accordingly, we may determine that we cannot obtain insurance at acceptable rates, or at all. In some cases, we have chosen, and may in the future choose, to forego or limit our purchase of insurance for certain business risks, electing instead to self-insure for all or a portion of potential liabilities. We record reserves for potential liability based on historical experience. However, if a significant loss, judgment, claim or other event is not covered by insurance or exceeds our self-insurance reserves, the loss and related expenses could harm our business, financial condition and operating results.

Financial and Transactional Risks

Acquisitions, divestitures and investments could disrupt our business and harm our financial condition and operating results.

Our success will depend, in part, on our ability to expand our products, product features and services, and grow our business in response to changing technologies, demands of people on Twitter and our advertisers and competitive pressures. In some circumstances, we may determine to do so through the acquisition of complementary businesses and technologies rather than through internal development. The identification of suitable acquisition candidates can be difficult, time-consuming and costly, and we may not be able to successfully complete identified acquisitions. The risks we face in connection with acquisitions include:

- diversion of management time and focus from operating our business to addressing acquisition integration challenges;
- retention of key employees from the acquired company;
- cultural challenges associated with integrating employees from the acquired company into our organization;
- integration of the acquired company's accounting, management information, human resources and other administrative systems and processes;
- the need to implement or improve controls, procedures, and policies at a business that prior to the acquisition may have lacked effective controls, procedures and policies;
- liability for activities of the acquired company before the acquisition, including intellectual property infringement claims, violations of laws, commercial disputes, tax liabilities and other known and unknown liabilities;
- unanticipated write-offs or charges; and
- litigation or other claims in connection with the acquired company, including claims from terminated employees, former stockholders or other third parties.

Our failure to address these risks or other problems encountered in connection with our past or future acquisitions and investments could cause us to fail to realize the anticipated benefits of these acquisitions or investments, cause us to incur unanticipated liabilities, and harm our business generally. Future acquisitions could also result in dilutive issuances of our equity securities, the incurrence of debt, contingent liabilities, amortization expenses, incremental operating expenses or the impairment of assets, any of which could adversely impact our financial condition and operating results.

We also make investments in privately-held companies in furtherance of our strategic objectives. Many of the instruments in which we invest are non-marketable at the time of our initial investment. We may not realize a return and may recognize a loss on such investments.

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In certain cases, we have also divested or stopped investing in certain businesses or products, including products that we acquired, and we may continue to do so. For example, in January 2022, we completed the sale of our MoPub business. The sale of a business or product line may require us to restructure operations and/or terminate employees, and could expose us to unanticipated ongoing obligations and liabilities, including as a result of our indemnification obligations. Additionally, such transactions could disrupt our customer, supplier and/or employee relationships and divert management and our employees' time and attention. During the pendency of a divestiture, we may be subject to risks related to a decline in the business, loss of employees, customers, or suppliers, and that the transaction may not close, which could have a material and adverse effect on the business to be divested and on us. If a divestiture is not completed for any reason, we may not be able to find a buyer on the same terms. If we decide to sell a business or product line, we may experience difficulty separating out portions of or entire businesses, incur additional expenses and potential loss of revenue or experience a negative impact on margins. Ultimately, we may experience harm to our financial results, including loss of revenue, and we may not realize the expected benefits and cost savings of these actions and our operating results may be adversely impacted.

Our debt obligations could adversely affect our financial condition.

In 2018, we issued \$1.15 billion in aggregate principal amount of 0.25% convertible senior notes due 2024, or the 2024 Notes. In 2019, we issued \$700.0 million in aggregate principal amount of 3.875% senior notes due 2027, or the 2027 Notes. In 2020, we issued \$1.0 billion in aggregate principal amount of 0.375% convertible senior notes due 2025, or the 2025 Notes. In March 2021, we issued \$1.44 billion in aggregate principal amount of 0% convertible senior notes due 2026, or the 2026 Notes. We refer to the 2024 Notes, the 2025 Notes, and the 2026 Notes as the Convertible Notes, and we refer to the Convertible Notes and the 2027 Notes as the Notes. As of December 31, 2021, we had \$4.29 billion in aggregate principal amount of Notes outstanding and an undrawn unsecured revolving credit facility providing for loans in the aggregate principal amount of \$500.0 million.

Our debt obligations could adversely impact us. For example, these obligations could:

- require us to use a substantial portion of our cash flow from operations to pay principal and interest on debt, including the Notes, or to repurchase our Notes when required upon the occurrence of certain change of control events or otherwise pursuant to the terms thereof, which will reduce the amount of cash flow available to fund working capital, capital expenditures, acquisitions, and other business activities;
- require us to use cash and/or issue shares of our common stock to settle any conversion obligations of the Convertible Notes;
- result in certain of our debt instruments, including the Notes, being accelerated or being deemed to be in default if certain terms of default are triggered, such as applicable cross payment default and/or cross-acceleration provisions;
- adversely impact our credit rating, which could increase future borrowing costs;
- limit our future ability to raise funds for capital expenditures, strategic acquisitions or business opportunities, and other general corporate requirements;
- restrict our ability to create or incur liens and enter into sale-leaseback financing transactions;
- increase our vulnerability to adverse economic and industry conditions;
- with respect to indebtedness other than the Notes, increase our exposure to interest rate risk from variable rate indebtedness;
- dilute our earnings per share as a result of the conversion provisions in the Convertible Notes; and
- place us at a competitive disadvantage compared to our less leveraged competitors.

Our ability to meet our payment obligations under our debt instruments depends on our ability to generate significant cash flows in the future. This, to some extent, is subject to market, economic, financial, competitive, legislative, and regulatory factors as well as other factors that are beyond our control. There can be no assurance that our business will generate cash flow from operations, or that additional capital will be available to us, in amounts sufficient to enable us to meet our debt payment obligations and to fund other liquidity needs. Additionally, events and circumstances may occur which would cause us to not be able to satisfy applicable draw-down conditions and utilize our revolving credit facility. If we are unable to generate sufficient cash flows to service our debt payment obligations, we may need to refinance or restructure our debt, sell assets, reduce or delay capital investments, or seek to raise additional capital. If we are unable to implement one or more of these alternatives on commercially reasonable terms or at all, we may be unable to meet our debt payment obligations, which would materially and adversely impact our business, financial condition and operating results.

We may have exposure to greater than anticipated tax liabilities, which could adversely impact our operating results.

Our income tax obligations are based in part on our corporate operating structure, including the manner in which we develop, value, manage, protect and use our intellectual property and the scope of our international operations. We are subject to review and audit by tax authorities in the United States (federal and state), Ireland, and other foreign jurisdictions and the laws in those jurisdictions are subject to interpretation. Tax authorities may disagree with and challenge some of the positions we have taken and any adverse outcome of such an audit could have a negative effect on our financial position and operating results. In addition, our future income taxes could be adversely affected by earnings being lower than anticipated in jurisdictions that have lower statutory tax rates and higher than anticipated in jurisdictions that have higher statutory tax rates, by changes in the valuation of our deferred tax assets and liabilities, or by changes in tax laws, regulations or accounting principles, as well as certain discrete items.

In addition, the Organization for Economic Cooperation and Development (OECD) has published proposals covering a number of issues, including country-by-country reporting, permanent establishment rules, transfer pricing rules, tax treaties and taxation of the digital economy. A significant majority of countries in the OECD's Inclusive Framework have agreed in principle to a proposed solution to address the tax challenges arising from the digitalization of the economy. Future tax reform resulting from these developments may result in changes to long-standing tax principles, which could adversely affect our effective tax rate or result in higher cash tax liabilities. Nearly 140 countries have signed up or agreed to sign up on a plan that would be implemented in 2023, setting a 15% minimum tax rate on corporations and a plan to reallocate part of the profits from the largest and most profitable businesses to countries where they make sales. The OECD's proposed solution envisages new international tax rules and the removal of all Digital Services Taxes (DST). The European Union has also published its proposal for a directive aimed at implementing the OECD rules on a 15% minimum effective tax rate in the European Union Member States. Notwithstanding this, some countries, in the European Union and beyond, continue to operate a DST regime to capture tax revenue on digital services more immediately. Overall, future tax laws may increase our tax obligations in those countries or change the manner in which we operate our business.

We may not realize the anticipated long-term stockholder value of our share repurchase programs and any failure to repurchase our common stock after we have announced our intention to do so may negatively impact our stock price.

In February 2022, we announced that our board of directors authorized the repurchase of up to \$4.0 billion of our common stock, replacing our previously authorized \$2.0 billion program from 2020, of which approximately \$819 million remained. As part of the new program, we entered into a \$2.0 billion accelerated share repurchase on February 10, 2022 and may repurchase the remaining \$2.0 billion over time.

Under this or any other future share repurchase programs, we may make share repurchases through a variety of methods, including open share market purchases, block transactions or privately negotiated transactions, in accordance with applicable federal securities laws. Future share repurchase programs may have no time limit, may not obligate us to repurchase any specific number of shares and may be suspended at any time at our discretion and without prior notice. The timing and amount of any repurchases, if any, will be subject to liquidity, stock price, market and economic conditions, compliance with applicable legal requirements such as Delaware surplus and solvency tests and other relevant factors. Any failure to repurchase stock after we have announced our intention to do so may negatively impact our reputation and investor confidence in us and may negatively impact our stock price.

The existence of these share repurchase programs could cause our stock price to be higher than it otherwise would be and could potentially reduce the market liquidity for our stock. Although these programs are intended to enhance long-term stockholder value, there is no assurance they will do so because the market price of our common stock may decline below the levels at which we repurchased shares and short-term stock price fluctuations could reduce the effectiveness of the programs.

Repurchasing our common stock will reduce the amount of cash we have available to fund working capital, capital expenditures, strategic acquisitions or business opportunities, and other general corporate requirements, and we may fail to realize the anticipated long-term stockholder value of these share repurchase programs.

Our ability to use our net operating loss carryforwards and certain other tax attributes may be limited.

As of December 31, 2021, we had U.S. federal and state net operating loss carryforwards of \$2.39 billion and \$1.36 billion, respectively, and we had U.S. federal and state research and development credit carryforwards of \$494.8 million and \$349.4 million, respectively. A portion of the U.S. net operating loss carryforwards and tax credit carryforwards could be subject to ownership change limitations governed by Section 382 or 383 of the Internal Revenue Code and similar provisions of state law, or other limitations imposed under state law. Any such limitations on the ability to use our net operating loss carryforwards and other tax assets could adversely impact our business, financial condition and operating results.

If our goodwill or intangible assets become impaired, we may be required to record a significant charge to earnings.

Under GAAP, we review our intangible assets for impairment when events or changes in circumstances indicate the carrying value may not be recoverable. Goodwill is required to be tested for impairment at least annually. An adverse change in market conditions or financial results, particularly if such change has the effect of changing one of our critical assumptions or estimates, could result in a change to the estimation of fair value that could result in an impairment charge to our goodwill or intangible assets. Any such material charges may have a material and adverse impact on our operating results.

Governance Risks and Risks related to Ownership of our Capital Stock***Anti-takeover provisions contained in our amended and restated certificate of incorporation and amended and restated bylaws, as well as provisions of Delaware law, could impair a takeover attempt.***

Our amended and restated certificate of incorporation, amended and restated bylaws and Delaware law contain provisions which could have the effect of rendering more difficult, delaying, or preventing an acquisition deemed undesirable by our board of directors. Among other things, our amended and restated certificate of incorporation and amended and restated bylaws include provisions:

- providing for a classified board of directors whose members serve staggered three-year terms;
- authorizing “blank check” preferred stock, which could be issued by our board of directors without stockholder approval and may contain voting, liquidation, dividend and other rights superior to our common stock;
- limiting the liability of, and providing indemnification to, our directors and officers;
- limiting the ability of our stockholders to call and bring business before special meetings;
- requiring advance notice of stockholder proposals for business to be conducted at meetings of our stockholders and for nominations of candidates for election to our board of directors; and
- controlling the procedures for the conduct and scheduling of stockholder meetings.

These provisions, alone or together, could delay or prevent hostile takeovers and changes in control or changes in our management, and amendment of our amended and restated certificate of incorporation to change or modify certain of these provisions requires approval of a super-majority of our stockholders, which we may not be able to obtain.

As a Delaware corporation, we are also subject to provisions of Delaware law, including Section 203 of the Delaware General Corporation law, which prevents certain stockholders holding more than 15% of our outstanding common stock from engaging in certain business combinations without approval of the holders of at least two-thirds of our outstanding common stock not held by such 15% or greater stockholder.

Any provision of our amended and restated certificate of incorporation, amended and restated bylaws or Delaware law that has the effect of delaying, preventing or deterring a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our common stock, and could also affect the price that some investors are willing to pay for our common stock.

The market price of our common stock has been and will likely continue to be volatile, and you could lose all or part of your investment.

The market price of our common stock has been and may continue to be highly volatile in response to various factors, some of which are beyond our control. In addition to the factors discussed in this “Risk Factors” section and elsewhere in this report, factors that could cause fluctuations in the market price of our common stock include the following:

- price and volume fluctuations in the overall stock market from time to time, including fluctuations due to general economic uncertainty or negative market sentiment, including related to the COVID-19 pandemic;
- volatility in the market prices and trading volumes of technology stocks;
- changes in operating performance and stock market valuations of other technology companies generally, or those in our industry in particular;
- sales of shares of our common stock by us or our stockholders;
- rumors and market speculation involving us or other companies in our industry;
- changes in the recommendations of securities analysts regarding our common stock, changes in financial estimates by securities analysts who follow our company, or our failure to meet these estimates or the expectations of investors;
- the financial or non-financial metric projections we may provide to the public, any changes in those projections or our failure to meet those projections;
- announcements by us or our competitors of new products or services;
- the public’s reaction to our press releases, other public announcements and filings with the SEC;
- actual or anticipated changes in our operating results or fluctuations in our operating results;
- actual or anticipated developments in our business, our competitors’ businesses or the competitive landscape generally;
- our issuance of shares of our common stock, whether in connection with an acquisition or upon conversion of some or all of our outstanding Convertible Notes;
- litigation or regulatory action involving us, our industry or both, or investigations by regulators into our operations or those of our competitors;
- developments or disputes concerning our intellectual property or other proprietary rights;
- announced or completed acquisitions of businesses or technologies by us or our competitors;
- new laws or regulations or new interpretations of existing laws or regulations applicable to our business and our responses thereto;
- changes in accounting standards, policies, guidelines, interpretations or principles;
- any significant change in our management; and
- general economic conditions and slow or negative growth of our markets.

In addition, in the past, following periods of volatility in the overall market and the market price of a particular company’s securities, securities class action litigation has often been instituted against these companies. Any securities litigation can result in substantial costs and a diversion of our management’s attention and resources. We are currently subject to securities litigation and in September 2021, we entered into a binding agreement to settle a shareholder class action lawsuit. The proposed settlement resolves all claims asserted against us and the other named defendants in the shareholder class action lawsuit without any liability or wrongdoing attributed to them personally or to us. Under the terms of the proposed settlement, we paid \$809.5 million from cash on hand in the fourth quarter of 2021. The settlement agreement is subject to final approval by the U.S. District Court for the Northern District of California. We may experience more such litigation following any future periods of volatility.

The note hedge and warrant transactions may affect the value of our common stock.

Concurrent with the issuance of the 2024 Notes and 2026 Notes we entered into note hedge transactions with certain financial institutions, which we refer to as the option counterparties. The note hedge transactions are generally expected to reduce the potential dilution upon any conversion of the 2024 Notes and 2026 Notes and/or offset any cash payments we are required to make in excess of the principal amount converted with respect to the 2024 Notes or 2026 Notes as the case may be. We also entered into warrant transactions with the option counterparties. However, the warrant transactions could separately have a dilutive effect to the extent that the market price of our common stock exceeds the applicable strike price of the warrants.

The option counterparties or their respective affiliates may modify their initial hedge positions by entering into or unwinding various derivatives contracts with respect to our common stock and/or purchasing or selling our common stock or other securities of ours in secondary market transactions prior to the maturity of the 2024 Notes and 2026 Notes, as applicable (and are likely to do so during any applicable observation period related to a conversion of the 2024 Notes and 2026 Notes as applicable, or following any repurchase of the 2024 Notes and 2026 Notes, as applicable, by us on any fundamental change repurchase date or otherwise). This activity could cause or avoid an increase or a decrease in the market price of our common stock.

Additionally, we entered into similar note hedge transactions and warrant transactions in connection with the issuance of our 2021 Notes which matured on September 15, 2021. The note hedge transactions entered into in connection with the 2021 Notes expired on September 15, 2021 and the warrant transactions in connection with the 2021 Notes expire over a 60 trading day settlement period commencing 90 days after the maturity of the 2021 Notes and scheduled to end on March 11, 2022. These warrant transactions could also have a dilutive effect to the extent that the market price of our common stock exceeds the strike price of such warrants.

Item 1B. UNRESOLVED STAFF COMMENTS

None.

Item 2. PROPERTIES**Facilities**

As of December 31, 2021, we leased office facilities around the world totaling approximately 1,700,000 square feet, including approximately 700,000 square feet for our largest office in San Francisco, California. We also lease data center facilities in the United States pursuant to various lease agreements and co-location arrangements with data center operators. We believe our facilities are sufficient for our current needs.

Item 3. LEGAL PROCEEDINGS

Legal Proceedings

We are currently involved in, and may in the future be involved in, legal proceedings, claims, investigations, and government inquiries and investigations arising in the ordinary course of business. These proceedings, which include both individual and class action litigation and administrative proceedings, have included, but are not limited to matters involving content on the platform or our actions related thereto, intellectual property, privacy, data protection, cybersecurity, consumer protection, securities, employment and contractual rights. Legal risk may be enhanced in jurisdictions outside the United States where our protection from liability for content published on our platform by third parties may be unclear and where we may be less protected under local laws than we are in the United States. Future litigation may be necessary, among other things, to defend ourselves, and the people on Twitter or to establish our rights. For information regarding legal proceedings in which we are involved, see “Legal Proceedings” in Note 16 of the Notes to Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K, which is incorporated herein by reference.

Item 4. MINE SAFETY DISCLOSURE

Not applicable.

PART II**Item 5. MARKET FOR REGISTRANT'S COMMON EQUITY RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES****Market Information for Common Stock**

Our common stock has been listed on the New York Stock Exchange under the symbol "TWTR".

Holders of Record

As of February 10, 2022, there were 802 holders of record of our common stock. Because many of our shares of common stock are held by brokers and other institutions on behalf of stockholders, we are unable to estimate the total number of stockholders represented by these record holders.

Dividend Policy

We have never declared or paid any cash dividends on our capital stock. We intend to retain any future earnings and do not expect to pay any dividends in the foreseeable future. Any future determination to declare cash dividends will be made at the discretion of our board of directors, subject to applicable laws, and will depend on a number of factors, including our financial condition, results of operations, capital requirements, contractual restrictions, general business conditions and other factors that our board of directors may deem relevant. In addition, the credit facility contains restrictions on payments including cash payments of dividends.

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

The following table summarizes the share repurchase activity for the three months ended December 31, 2021:

Period	Total Number of Shares Purchased (in thousands) ⁽¹⁾	Average Price Paid Per Share ⁽²⁾	Total Number of Shares Purchased as Part of Publicly Announced Programs (in thousands) ⁽¹⁾	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Program (in millions) ⁽¹⁾
October 1 - 31	905	\$ 61.44	905	1,029
November 1 - 30	230	\$ 54.10	230	1,016
December 1 - 31	4,589	\$ 43.08	4,589	819
Total	5,724		5,724	

⁽¹⁾ In March 2020, our board of directors authorized a program to repurchase up to \$2.0 billion of our common stock over time. Repurchases may be made from time to time through open market purchases or through privately negotiated transactions, under trading plans complying with Rules 10b5-1 and 10b-18 under the Exchange Act, subject to market conditions, applicable legal requirements and other relevant factors. The repurchase program does not obligate us to acquire any particular amount of our common stock, and may be suspended at any time at our discretion. The program does not have an expiration date. In February 2022, our board of directors authorized a new \$4.0 billion share repurchase program. The program became effective immediately, and replaced the previously authorized \$2.0 billion program authorized in March 2020. Please refer to Notes 14 and 20 of the Notes to Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K for additional information.

⁽²⁾ Average price paid per share includes costs associated with the repurchases.

Unregistered Sales of Equity Securities

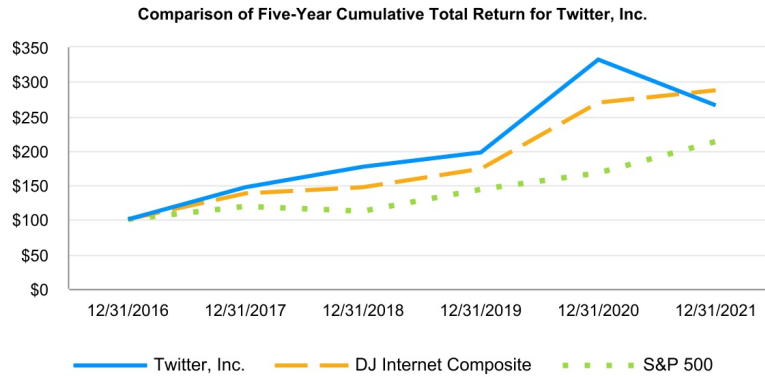
During the three months ended December 31, 2021, we issued a total of 512,460 shares of our common stock in connection with the acquisition of one company to certain former shareholders of the acquired company.

The foregoing transaction did not involve any underwriters, any underwriting discounts or commissions, or any public offering. We believe the offer, sale, and issuance of the above securities was exempt from registration under the Securities Act of 1933, as amended (the Act) by virtue of Section 4(a)(2) of the Act, because the issuance of securities to the recipients did not involve a public offering. The recipients of the securities in this transaction represented their intentions to acquire the securities for investment only and not with a view to or for sale in connection with any distribution thereof, and appropriate legends were placed upon the stock certificates issued in this transaction. All recipients had adequate access, through their relationships with us or otherwise, to information about us. The issuance of these securities was made without any general solicitation or advertising.

Performance Graph

This performance graph shall not be deemed “soliciting material” or to be “filed” with the SEC for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (Exchange Act), or otherwise subject to the liabilities under that Section, and shall not be deemed to be incorporated by reference into any filing of Twitter, Inc. under the Securities Act of 1933, as amended, or the Exchange Act.

The following graph compares the cumulative 5-year total return to stockholders on our common stock relative to the cumulative total returns of the Standard & Poor’s 500 Index, or S&P 500, and the Dow Jones Internet Composite Index, or DJ Internet Composite. An investment of \$100 (with reinvestment of all dividends) is assumed to have been made in our common stock and in each index at the market close on the last trading day for the fiscal year ended December 31, 2016 and its relative performance is tracked through December 31, 2021. The returns shown are based on historical results and are not intended to suggest future performance.



Item 6. [RESERVED]

Item 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with the consolidated financial statements and related notes thereto included in Item 8 "Financial Statements and Supplementary Data" in this Annual Report on Form 10-K. This section of this Form 10-K generally discusses 2021 and 2020 items and year-to-year comparisons between 2021 and 2020. Discussions of 2019 items and year-to-year comparisons between 2020 and 2019 are not included in this Form 10-K, and can be found in "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Part II, Item 7 of our Form 10-K for the fiscal year ended December 31, 2020. This discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those discussed below. Factors that could cause or contribute to such differences include, but are not limited to, those identified below and those discussed in the section titled "Risk Factors" included elsewhere in this Annual Report on Form 10-K.

FY 2021 Highlights

Total revenue was \$5.08 billion, an increase of 37%, compared to 2020.

- Advertising revenue totaled \$4.51 billion, an increase of 40%, compared to 2020.
- Data licensing and other revenue totaled \$571.8 million, an increase of 12%, compared to 2020.
- U.S. revenue totaled \$2.84 billion, an increase of 36%, compared to 2020.
- International revenue totaled \$2.24 billion, an increase of 37%, compared to 2020.
- Total ad engagements increased 7% compared to 2020.
- Cost per engagement increased 32% compared to 2020.

Average monetizable daily active usage (mDAU) was 217 million for the three months ended December 31, 2021, an increase of 13% year over year.

Loss from operations was \$492.7 million, or 10% of total revenue, in 2021, compared to income from operations of \$26.7 million, or 1% of total revenue, in 2020. Loss from operations in 2021 includes a one-time litigation-related net charge of \$765.7 million⁽¹⁾.

Net loss was \$221.4 million in 2021, compared to net loss of \$1.14 billion in 2020, which was inclusive of a \$1.10 billion provision for income taxes related to the establishment of a valuation allowance against deferred tax assets.

Cash, cash equivalents and short-term investments in marketable securities totaled \$6.39 billion as of December 31, 2021.

⁽¹⁾ Includes a charge of \$809.5 million partially offset by the recognition of an insurance recovery of \$5.8 million in the third quarter of 2021. In addition, during the third quarter of 2021, we recorded a benefit for insurance proceeds of \$38.0 million related to the settlement of separate shareholder derivative lawsuits.

FY 2021 Overview

In 2021, we continued to make progress on our brand and direct response offerings, with updated ad formats, improved targeting, and better measurement. Our strategy is designed to help advertisers achieve their goals at every stage of the marketing funnel -- from awareness and consideration, all the way through to conversion. We are focused on improving both our suite of performance ad products and improving our tools to drive awareness and consideration.

We continue to see opportunities around personalization on Twitter as we better leverage our unique signal to improve people's experience on Twitter and show them more effective ads across both brand and direct response. The overall impact associated with Apple's App Tracking Transparency (ATT) policy to our revenue in 2021 was modest, and is likely to vary across our ad platforms given the unique mix of ad formats, signal, and remediations on each, as well as other factors. Although retooling some of our revenue products in light of Apple's privacy-related iOS changes will continue to take additional time, energy and resources, we believe that our product improvements to date have reduced the impact on Twitter -- and looking ahead, we are confident that have a roadmap in place that can allow us to continue improving our product performance and navigate future potential changes, while growing our ads business and achieving our revenue goals.

On January 1, 2022 we closed the sale of our MoPub business to AppLovin Corporation for \$1.05 billion in cash. The sale of MoPub enables us to concentrate more of our efforts on the significant opportunity for performance-based advertising, small and medium-sized business (SMB) offerings, and commerce initiatives on Twitter.

Looking ahead, there are no changes to our long-term goals for revenue or mDAU as we leverage the investments made in 2021.

In February 2022, our board of directors authorized a new \$4.0 billion share repurchase program. The program is effective immediately, and replaces the previously authorized \$2.0 billion program from 2020. As part of the new program, we entered into a \$2.0 billion accelerated share repurchase on February 10, 2022 and may repurchase the remaining \$2.0 billion over time. We will continuously evaluate efficient alternatives to using cash on hand to fund the program, including accessing the capital markets, subject to market conditions.

COVID-19 Update

The COVID-19 pandemic has had, and continues to have, a significant impact around the world and has impacted our business, operations, and financial performance in different ways. The impacts of the COVID-19 pandemic, including supply chain constraints, labor shortages, and inflation, have caused advertisers in a variety of industries to be cautious in their spending, and in 2021 had a modest negative impact on, and may negatively impact in future periods, our advertising revenue. The extent of the ongoing impact of the COVID-19 pandemic on our business and on global economic activity is uncertain and may again in the future adversely affect our business, operations and financial results. Our past results may not be indicative of our future performance, and historical trends in revenue, income (loss) from operations, net income (loss), and net income (loss) per share may differ materially. The risks related to the COVID-19 pandemic on our business are further described in Part I, Item 1A - Risk Factors of this Annual Report on Form 10-K.

Key Metrics

We review a number of metrics, including the key metrics discussed below, to evaluate our business, measure our performance, identify trends affecting our business, formulate business plans and make strategic decisions.

Monetizable Daily Active Usage or Users (mDAU). We define mDAU as people, organizations, or other accounts who logged in or were otherwise authenticated and accessed Twitter on any given day through twitter.com, Twitter applications that are able to show ads, or paid Twitter products, including subscriptions⁽²⁾.

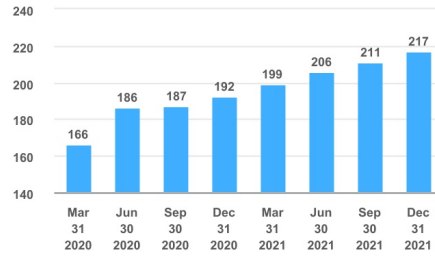
We believe that mDAU, and its related growth, is the best way to measure our success against our objectives and to show the size of our audience and engagement. Average mDAU for a period represents the number of mDAU on each day of such period divided by the number of days for such period. Changes in mDAU are a measure of changes in the size of our daily logged in or otherwise authenticated active total accounts. To calculate the year-over-year change in mDAU, we subtract the average mDAU for the three months ended in the previous year from the average mDAU for the same three months ended in the current year and divide the result by the average mDAU for the three months ended in the previous year. Additionally, our calculation of mDAU is not based on any standardized industry methodology and is not necessarily calculated in the same manner or comparable to similarly titled measures presented by other companies.

In the three months ended December 31, 2021, we had 217 million average mDAU, which represents an increase of 13% from the three months ended December 31, 2020. The increase was driven by product improvements, as well as global conversation around current events. In the three months ended December 31, 2021, we had 38 million average mDAU in the United States and 179 million average mDAU in the rest of the world, which represent increases of 2% and 15%, respectively, from the three months ended December 31, 2020.

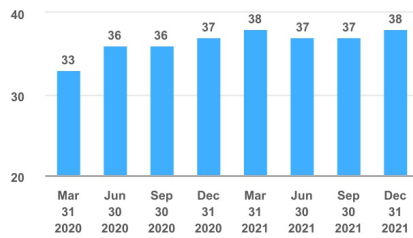
⁽²⁾ We have updated our mDAU definition in the fourth quarter of 2021 to also include "paid Twitter products, including subscriptions", so this key metric continues to accurately reflect our audience as our products evolve. This change had no material impact on the number of mDAU reported in the fourth quarter of 2021, and is unlikely to do so in the near future. This change is effective for the fourth quarter of 2021 and for future periods, and it did not affect prior periods.

For additional information on how we calculate changes in mDAU and factors that can affect this metric, see the section titled “Note Regarding Key Metrics.”

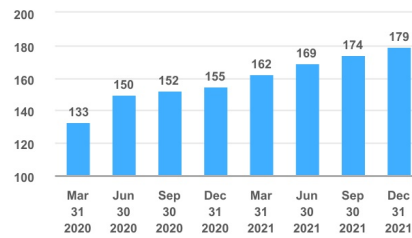
Monetizable Daily Active Usage: Worldwide
(quarterly average in millions)*



Monetizable Daily Active Usage: United States
(quarterly average in millions)



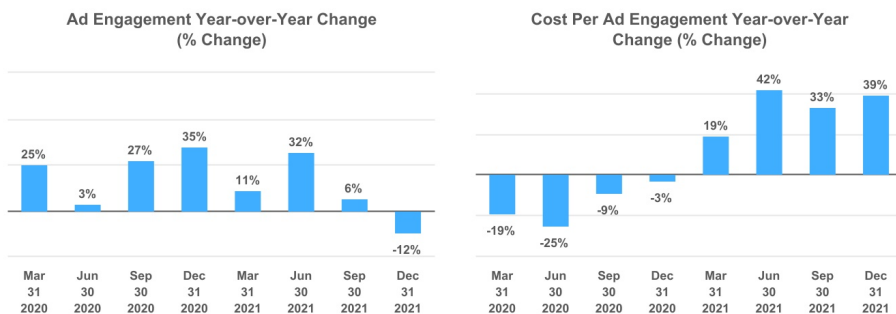
Monetizable Daily Active Usage: International
(quarterly average in millions)



* Please note the sum of average mDAU in the United States and average mDAU in the rest of the world may not equal the total average mDAU indicated due to rounding.

Changes in Ad Engagements and Changes in Cost per Ad Engagement. We define an ad engagement as an interaction with one of our pay-for-performance advertising products. Ad engagements with our advertising products are based on the completion of an objective set out by an advertiser such as expanding, Retweeting, liking or replying to a Promoted Ad (previously branded as Promoted Tweet), viewing an embedded video, downloading or engaging with a promoted mobile application, clicking on a website link, signing up for marketing emails from advertisers, following the account that Tweets a Promoted Ad, or completing a transaction on an external website. We believe changes in ad engagements is one way to measure engagement with our advertising products. Cost per ad engagement is an output of our ads auction process and will vary from one period to another based on geographic performance, auction dynamics, the strength of demand for various ad formats, and campaign objectives.

In the three months ended December 31, 2021, ad engagements decreased 12% from the three months ended December 31, 2020, driven by a mix shift toward lower funnel ad formats and 15-second video views, which, although they have higher cost per ad engagement, generally have lower engagement rates. In the three months ended December 31, 2021, cost per ad engagement increased by 39% compared to the three months ended December 31, 2020, primarily driven by like-for-like price increases across most ad formats due to the impact of COVID last year, as well as a mix shift toward lower funnel ad formats and 15-second video views.



Results of Operations

The following tables set forth our consolidated statements of operations data for each of the periods presented (in thousands):

	Year Ended December 31,	
	2021	2020
Revenue		
Advertising services	\$ 4,505,692	\$ 3,207,392
Data licensing and other	571,790	508,957
Total revenue	5,077,482	3,716,349
Costs and expenses ⁽¹⁾		
Cost of revenue	1,797,510	1,366,388
Research and development ⁽²⁾	1,246,704	873,011
Sales and marketing	1,175,970	887,860
General and administrative	584,336	562,432
Litigation settlement, net ⁽³⁾	765,701	—
Total costs and expenses	5,570,221	3,689,691
Income (loss) from operations	(492,739)	26,658
Interest expense	(51,186)	(152,878)
Interest income	35,683	88,178
Other income (expense), net	97,129	(12,897)
Income (loss) before income taxes	(411,113)	(50,939)
Provision (benefit) for income taxes ⁽⁴⁾	(189,704)	1,084,687
Net income (loss)	<u>\$ (221,409)</u>	<u>\$ (1,135,626)</u>

⁽¹⁾ Costs and expenses include stock-based compensation expense as follows (in thousands):

	Year Ended December 31,	
	2021	2020
Cost of revenue	\$ 45,203	\$ 32,020
Research and development	381,961	281,092
Sales and marketing	112,990	98,748
General and administrative	89,747	63,072
Total stock-based compensation expense	<u>\$ 629,901</u>	<u>\$ 474,932</u>

⁽²⁾ In the second quarter of 2020, we recorded \$150.0 million in general and administrative expenses in the consolidated statements of operations related to a draft complaint from the Federal Trade Commission. Refer to Note 16 of the Notes to Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K for further information.

⁽³⁾ In the third quarter of 2021, we entered into an agreement to settle a shareholder class action lawsuit and recorded a charge of \$809.5 million partially offset by the recognition of an insurance recovery of \$5.8 million. In addition, during the third quarter of 2021, we recorded a benefit for insurance proceeds of \$38.0 million related to the settlement of separate shareholder derivative lawsuits. Refer to Note 16 of the Notes to Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K for further information.

⁽⁴⁾ In 2020, we recognized a provision for income taxes of \$1.10 billion related to the establishment of a valuation allowance against deferred tax assets of a foreign subsidiary. Refer to Note 15 of the Notes to Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K for further information.

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The following table sets forth our consolidated statement of operations data for each of the periods presented as a percentage of revenue:

	Year Ended December 31,	
	2021	2020
Revenue		
Advertising services	89 %	86 %
Data licensing and other	11	14
Total revenue	100	100
Costs and expenses		
Cost of revenue	35	37
Research and development	25	23
Sales and marketing	23	24
General and administrative	12	15
Litigation settlement, net	15	—
Total costs and expenses	110	99
Income (loss) from operations	(10)	1
Interest expense	(1)	(4)
Interest income	1	2
Other income (expense), net	2	0
Income (loss) before income taxes	(8)	(1)
Provision (benefit) for income taxes	(4)	29
Net income (loss)	(4) %	(31) %

Years Ended December 31, 2021 and 2020

Revenue

We generate most of our revenue from the sale of advertising services. We also generate revenue by licensing our data to third parties and providing mobile advertising exchange services.

Advertising Services

We generate most of our advertising revenue by selling our Promoted Products. Currently, our Promoted Products consist of the following:

- *Promoted Ads and Twitter Amplify.* Promoted Ads (previously branded as Promoted Tweets), which are labeled as “promoted,” appear within a timeline, search results, profile pages, and Tweet conversations. Using our proprietary algorithms and understanding what is relevant to each account, we can deliver Promoted Ads that are intended to achieve the outcome that the advertiser is seeking. We enable our advertisers to target an audience based on many criteria. Our Promoted Ads are pay-for-performance or pay-for-impression delivered advertising that are priced through an auction. Our Promoted Ads include objective-based features that allow advertisers to optimize for the goal selected by the advertisers, such as Tweet engagements (e.g., Retweets, replies and likes), website traffic, mobile application installs or engagements, obtaining new followers, or video views.
- *Follower Ads.* Follower Ads (previously branded as Promoted Accounts), which are labeled as “promoted,” provide a way for our advertisers to build and grow an audience that is interested in their business, product or service. Our Follower Ads are pay-for-performance advertising priced through an auction.
- *Twitter Takeover.* Twitter Takeover (previously branded as Promoted Trends), which are labeled as “promoted,” appear at the top of the list of trending topics or timeline for an entire day in a particular country. We sell our Twitter Takeover on a fixed-fee-per-day basis.

While the majority of the Promoted Products we sell to our advertisers are placed on Twitter, we also generate advertising revenue by placing advertising products that we sell to advertisers on third-party publishers’ websites, applications or other offerings.

Data Licensing and Other

We generate data licensing and other revenue by (i) offering data products and data licenses that allow our data partners to access, search and analyze historical and real-time data on our platform (which consists of public Tweets and their content), and (ii) until the completion of its sale on January 1, 2022, providing mobile advertising exchange services through our MoPub exchange. Our data partners generally purchase licenses to access all or a portion of our data for a fixed period. We recognize data licensing revenue as our data partners consume and benefit from their use of the licensed data. In addition, through December 31, 2021, we operated a mobile ad exchange and received service fees from transactions completed on the exchange. Our mobile ad exchange enabled buyers and sellers to purchase and sell advertising inventory and matched buyers and sellers. We have determined we were not the principal as it relates to the purchase and sale of advertising inventory in transactions between third-party buyers and sellers on the exchange. Therefore, we report revenue related to our ad exchange services on a net basis.

	Year Ended December 31,		\$ Change	% Change
	2021	2020		
	(in thousands)			
Advertising services	\$ 4,505,692	\$ 3,207,392	\$ 1,298,300	40 %
Data licensing and other	571,790	508,957	\$ 62,833	12 %
Total revenue	<u>\$ 5,077,482</u>	<u>\$ 3,716,349</u>	\$ 1,361,133	37 %

2021 Compared to 2020. Revenue in 2021 increased by \$1.36 billion or 37% compared to 2020.

In 2021, advertising revenue increased by \$1.30 billion or 40% compared to 2020. The overall increase in advertising revenue reflects an increase in advertiser demand driven by revenue product improvements, strong sales execution, and a broad increase in advertiser demand.

The increase in advertising revenue was attributable to a 7% increase in the number of ad engagements in 2021 and a 32% increase in cost per ad engagement compared to 2020. The increase in ad engagements was due to our growing audience and increased demand for ads on a year-over-year basis, offset in part by a mix shift toward lower funnel ad formats and 15-second video views which, although they have higher cost per ad engagement, generally have lower engagement rates. The increase in cost per ad engagement was primarily driven by like-for-like price increases across most ad formats due to the impact of COVID last year, as well as a mix shift toward lower funnel ad formats and 15-second video views.

In 2021, data licensing and other revenue increased by \$62.8 million or 12% compared to 2020. The increase was attributable to growth in MoPub and to Twitter Development Platform (formerly known as Developer and Enterprise Solutions) revenue attributed to contract renewals with higher fees. In December 2021, we completed the wind down of MoPub Acquire (formerly known as CrossInstall) and on January 1, 2022, we closed the sale of MoPub. MoPub and MoPub Acquire generated approximately \$217.9 million in revenue in 2021, the significant majority of which was reflected in "Data Licensing and Other" revenue.

To better reflect our business opportunities, including the sale of MoPub and the launch of Twitter Blue in 2022, we will update the name of "Data Licensing and Other Revenue" to "Subscription and Other Revenue" starting in the first quarter of 2022. This revenue line will include subscription revenue from the Twitter Development Platform, Twitter Blue, and other subscription-related offerings.

Cost of Revenue

Cost of revenue includes infrastructure costs, revenue share expenses, amortization of acquired intangible assets, amortization of capitalized labor costs for internally developed software, allocated facilities costs, as well as traffic acquisition costs (TAC). Infrastructure costs consist primarily of data center costs related to our co-located facilities, which include lease and hosting costs, related support and maintenance costs and energy and bandwidth costs, public cloud hosting costs, as well as depreciation of servers and networking equipment; and personnel-related costs, including salaries, benefits and stock-based compensation, for our operations teams. TAC consists of costs we incur with third parties in connection with the sale to advertisers of our advertising products that we place on third-party publishers' websites, and applications or other offerings collectively resulting from acquisitions. Certain elements of our cost of revenue are fixed and cannot be quickly reduced in the near term in response to market conditions.

	Year Ended December 31,		\$ Change	% Change
	2021	2020		
	(in thousands)			
Cost of revenue	\$ 1,797,510	\$ 1,366,388	\$ 431,122	32 %
Cost of revenue as a percentage of revenue	35 %	37 %		

2021 Compared to 2020. In 2021, cost of revenue increased by \$431.1 million compared to 2020. The increase was attributable to a \$264.7 million increase primarily from a combination of revenue share expenses and personnel-related costs due to growth in employee headcount and a \$166.4 million increase in infrastructure costs.

We plan to continue to scale the capacity and enhance the capability and reliability of our infrastructure to support mDAU growth and increased activity on our platform. We expect that cost of revenue will increase in absolute dollar amounts and vary as a percentage of revenue over time.

Research and Development

Research and development expenses consist primarily of personnel-related costs, including salaries, benefits and stock-based compensation, for our engineers and other employees engaged in the research and development of our products and services. In addition, research and development expenses include amortization of acquired intangible assets, allocated facilities costs, and other supporting overhead costs.

	Year Ended December 31,		\$ Change	% Change
	2021	2020		
	(in thousands)			
Research and development	\$ 1,246,704	\$ 873,011	\$ 373,693	43 %
Research and development as a percentage of revenue	25 %	23 %		

2021 Compared to 2020. In 2021, research and development expenses increased by \$373.7 million compared to 2020. The increase was attributable to a \$432.5 million increase in personnel-related costs mainly driven by an increase in employee headcount as we continue to focus investments in engineering, product, design, and research, and a \$100.5 million increase in facilities costs and other administrative expenses, offset by a \$159.3 million increase in the capitalization of costs associated with developing software for internal use.

We plan to continue to invest in key areas of our business to ensure that we have an appropriate level of engineering, product management and design personnel and related resources to support our research and development efforts on key priorities. We expect that research and development expenses will increase in absolute dollar amounts and vary as a percentage of revenue over time.

Sales and Marketing

Sales and marketing expenses consist primarily of personnel-related costs, including salaries, commissions, benefits and stock-based compensation for our employees engaged in sales, sales support, business development and media, marketing, corporate communications and customer service functions. In addition, marketing and sales-related expenses also include advertising costs, market research, trade shows, branding, marketing, public relations costs, amortization of acquired intangible assets, allocated facilities costs, and other supporting overhead costs.

	Year Ended December 31,				\$ Change	% Change
	2021		2020			
	(in thousands)					
Sales and marketing	\$	1,175,970	\$	887,860	\$ 288,110	32 %
Sales and marketing as a percentage of revenue		23 %		24 %		

2021 Compared to 2020. In 2021, sales and marketing expenses increased by \$288.1 million compared to 2020. The increase was attributable to a \$148.9 million increase in sales related expenses due to higher revenue as well as in marketing expenses, a \$95.0 million increase in personnel-related costs mainly driven by an increase in employee headcount, and a \$44.2 million net increase in facilities costs and other administrative expenses.

We continue to evaluate key areas in our business to ensure we have an appropriate level of sales and marketing expenses to execute on our key priorities and objectives. We expect that sales and marketing expenses will increase in absolute dollar amounts and vary as a percentage of revenue over time.

General and Administrative

General and administrative expenses consist primarily of personnel-related costs, including salaries, benefits and stock-based compensation, for our executive, finance, legal, information technology, human resources and other administrative employees. In addition, general and administrative expenses include fees and costs for professional services, including consulting, third-party legal and accounting services and facilities costs and other supporting overhead costs that are not allocated to other departments.

	Year Ended December 31,				\$ Change	% Change
	2021		2020			
	(in thousands)					
General and administrative	\$	584,336	\$	562,432	\$ 21,904	4 %
General and administrative as a percentage of revenue		12 %		15 %		

2021 Compared to 2020. In 2021, general and administrative expenses increased by \$21.9 million compared to 2020. The increase was attributable to a \$205.7 million increase primarily from a combination of personnel-related costs due to growth in employee headcount and higher professional service fees, offset by the non-recurrence of a \$150.0 million expense related to an ongoing FTC matter recorded in 2020 and a net decrease of \$33.8 million in facilities costs and other administrative expenses.

We plan to continue to invest in general and administrative functions to ensure we have an appropriate level of support for our key objectives. We expect that general and administrative expenses will increase in absolute dollar amounts and vary as a percentage of revenue over time.

Litigation Settlement, Net

In September 2021, we entered into a binding agreement to settle a shareholder class action lawsuit. The proposed settlement resolves all claims asserted against us and the other named defendants in the shareholder class action lawsuit without any liability or wrongdoing attributed to them personally or to us. In the third quarter of 2021, we recorded a charge of \$809.5 million for the settlement in the consolidated statement of operations, partially offset by the recognition of an insurance recovery of \$5.8 million. In addition, in the third quarter of 2021, we recorded a benefit for insurance proceeds of \$38.0 million related to the settlement of separate shareholder derivative lawsuits. We paid the settlement amount of \$809.5 million from cash on hand in the fourth quarter of 2021.

Interest Expense

Interest expense consists primarily of interest expense incurred in connection with the \$954.0 million principal amount of 1.00% convertible senior notes due in 2021, or the 2021 Notes, which we repaid at maturity in September 2021, the \$1.15 billion principal amount of 0.25% convertible senior notes due in 2024, or the 2024 Notes, the \$1.44 billion principal amount of 0% convertible senior notes due 2026, or the 2026 Notes, the \$700.0 million principal amount of 3.875% senior notes due in 2027, or the 2027 Notes, and the \$1.0 billion principal amount of 0.375% convertible senior notes due in 2025, or the 2025 Notes, and interest expense related to finance leases and other financing facilities.

	Year Ended December 31,	
	2021	2020
	(in thousands)	
Interest expense	\$ 51,186	\$ 152,878

2021 Compared to 2020. In 2021, interest expense decreased by \$101.7 million compared to 2020 primarily due to our adoption of the accounting standard update to simplify the accounting for convertible debt on January 1, 2021. Refer to Note 1 of the Notes to Consolidated Financial Statements included in Part II, Item 8 of this Annual Report on Form 10-K for further information.

Interest Income

Interest income is generated from our cash equivalents and short-term investments net of the related amortization of premium paid on such investments.

	Year Ended December 31,	
	2021	2020
	(in thousands)	
Interest income	\$ 35,683	\$ 88,178

2021 Compared to 2020. In 2021, interest income decreased by \$52.5 million compared to 2020. The decrease was primarily attributable to lower interest rates.

Other Income (Expense), Net

Other income (expense), net, consists primarily of unrealized foreign exchange gains and losses due to re-measurement of monetary assets and liabilities denominated in non-functional currencies and realized foreign exchange gains and losses on foreign exchange transactions, and gains and losses on investments in privately-held companies. We expect our foreign exchange gains and losses will vary depending upon movements in the underlying exchange rates.

	Year Ended December 31,	
	2021	2020
	(in thousands)	
Other income (expense), net	\$ 97,129	\$ (12,897)

2021 Compared to 2020. In 2021, other income, net, was \$97.1 million compared to other expense, net, of \$12.9 million in 2020. The change was primarily attributable to gains of \$84.7 million on an investment in a privately-held company in 2021 compared to impairment charges of \$8.8 million on investments in privately-held companies in 2020.

Provision (Benefit) for Income Taxes

Our provision (benefit) for income taxes consists of federal and state income taxes in the United States and income taxes in certain foreign jurisdictions.

	Year Ended December 31,	
	2021	2020
	(in thousands)	
Provision (benefit) for income taxes	\$ (189,704)	\$ 1,084,687

2021 Compared to 2020. In 2021, our benefit from income taxes was \$189.7 million, compared to a net provision for income taxes of \$1.08 billion in 2020. The change was primarily due to a provision from income taxes related to the establishment of a valuation allowance against deferred tax assets of \$1.10 billion in 2020, and in 2021, a tax benefit from the litigation settlement described in Note 16 - Commitments and Contingencies, increased excess tax benefits from stock-based compensation, and increased research and development credits.

Our effective tax rate could be affected by our jurisdictional mix of income (loss) before taxes, including our allocation of centrally incurred costs to foreign jurisdictions, changes in tax rates and tax regulations, the impact of tax examinations, the impact of business combinations, changes in our corporate structure, changes in the geographic location of business functions or assets, tax effects of stock-based compensation, and changes in management's assessment of the ability to realize deferred tax assets. In addition, the provision is impacted by deferred income taxes reflecting the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes.

Liquidity and Capital Resources

	Year Ended December 31,	
	2021	2020
(in thousands)		
Consolidated Statements of Cash Flows Data:		
Net loss	\$ (221,409)	\$ (1,135,626)
Net cash provided by operating activities	\$ 632,689	\$ 992,870
Net cash provided by (used in) investing activities	\$ 52,623	\$ (1,560,565)
Net cash provided by (used in) financing activities	\$ (472,823)	\$ 755,310

Our principal sources of liquidity are our cash, cash equivalents, and short-term investments in marketable securities. Our cash equivalents and marketable securities are invested primarily in short-term fixed income securities, including government and investment-grade debt securities and money market funds. In March 2021, we received net proceeds of approximately \$1.42 billion from the issuance of the 2026 Notes, after deducting the debt issuance costs. In September 2021, we repaid at maturity the \$954.0 million of principal balance associated with our 2021 Notes.

In March 2020, our Board of Directors authorized a program to repurchase up to \$2.0 billion of our common stock over time. Repurchases may be made from time to time through open market purchases or through privately negotiated transactions subject to market conditions, applicable legal requirements and other relevant factors. The repurchase program does not obligate us to acquire any particular amount of our common stock and may be suspended at any time at our discretion. In the year ended December 31, 2021, we repurchased 16.9 million shares for an aggregate amount of \$930.5 million. The repurchases include 120,000 shares for \$5.3 million that were not settled as of December 31, 2021 that are presented as treasury stock on the consolidated balance sheets as of such date.

As of December 31, 2021, we had \$6.39 billion of cash, cash equivalents and short-term investments in marketable securities, of which \$279.6 million was held by our foreign subsidiaries. We do not plan to indefinitely reinvest these funds held by our foreign subsidiaries and have accrued the incremental taxes due as part of repatriation. In October 2021 we paid the \$809.5 million settlement related to the shareholder class action lawsuit discussed in Note 16 – Commitments and Contingencies.

We believe that our existing cash, cash equivalents and short-term investment balances, and our credit facility, together with cash generated from operations and continued access to capital markets, will be sufficient to meet our working capital, capital expenditure, and other cash requirements including authorized share repurchases over the next 12 months and beyond. From time to time, we may need or choose to seek additional financing through the issuance of equity, equity-linked or debt securities to operate or grow our business. Our ability to obtain additional financing, if and when required, will depend on investor and lender demand, our operating performance, the condition of the capital markets, and other factors.

Credit Facility

We have a revolving credit agreement with certain lenders which provides for a \$500.0 million revolving unsecured credit facility maturing on August 7, 2023. We are obligated to pay interest on loans under the credit facility and other customary fees for a credit facility of this size and type, including an upfront fee and an unused commitment fee. The interest rate for the credit facility is determined based on calculations using certain market rates as set forth in the credit agreement. In addition, the credit facility contains restrictions on payments including cash payments of dividends. In March 2021, we entered into an amendment to the revolving credit agreement to increase the amount of indebtedness we may incur from \$4.5 billion to \$6.0 billion and to permit the convertible note issuance and hedge transactions associated with the 2026 Notes. In February 2022, we amended our existing revolving credit agreement to permit our repurchases of our common stock in an aggregate amount not to exceed \$4.0 billion. As of December 31, 2021, no amounts had been drawn under the credit facility.

Operating Activities

Cash provided by operating activities consists of net income (loss) adjusted for certain non-cash items including depreciation and amortization, stock-based compensation, amortization of discount on our Notes, deferred income taxes, impairment of (gain on) investments in privately-held companies, non-cash restructuring charges, as well as the effect of changes in working capital and other activities. We expect that cash provided by operating activities will fluctuate in future periods as a result of a number of factors, including fluctuations in our revenue, increases in operating expenses and costs related to acquisitions. For additional discussion, see Part I, Item 1A, "Risk Factors."

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Cash provided by operating activities in 2021 was \$632.7 million, a decrease in cash inflow of \$360.2 million compared to 2020. Cash provided by operating activities was driven by net loss of \$221.4 million, as adjusted for the exclusion of non-cash expenses and other adjustments totaling \$849.1 million, including \$629.9 million of stock-based compensation expense, \$544.8 million of depreciation and amortization expense, \$228.8 million of deferred income taxes, and \$101.4 million of net gains on investments in privately-held companies. Cash provided by operating activities also reflects the effect of changes in assets and liabilities, net of assets acquired and liabilities assumed from acquisitions, including an \$809.5 million payment we made to settle a shareholder class action lawsuit in the fourth quarter of 2021, resulting in net cash inflows of \$5.0 million.

Investing Activities

Our primary investing activities consist of purchases of property and equipment, particularly purchases of servers and networking equipment, leasehold improvements for our facilities, purchases and disposal of marketable securities, strategic investments in privately-held companies, acquisitions of businesses and other activities.

Cash provided by investing activities in 2021 was \$52.6 million, compared to cash used in investing activities of \$1.56 billion in 2020. The change was due to a \$2.54 billion decrease in purchases of marketable securities, a \$79.9 million increase in proceeds from sales of marketable securities, and a \$15.3 million decrease in cash used in business combinations, offset by a \$742.5 million decrease in proceeds from maturities of marketable securities, a \$138.2 million increase in purchases of property and equipment, \$69.5 million of investments in the Finance Justice Fund, a socially responsible investment that aims to bring capital from corporate and philanthropic partners to individuals and communities in America most underestimated by mainstream finance, a \$39.0 million increase in cash used in other investing activities, a \$27.8 million increase in purchases of investments in privately-held companies, and a \$0.7 million decrease in proceeds from sales of property and equipment.

We anticipate making capital expenditures in 2022 of approximately \$900 million to \$950 million as we support our existing data centers and infrastructure needs.

Financing Activities

Our primary financing activities consist of issuances of securities, including common stock issued under our employee stock purchase plan and issuance of our Notes, repurchases of common stock under our share repurchase program, repayment of Convertible Notes, payments of finance lease obligations, and stock option exercises by employees and other service providers.

Cash used in financing activities in 2021 was \$472.8 million, compared to \$755.3 million of cash provided by financing activities in 2020. The change was due to a \$954.0 million repayment of the 2021 Notes at maturity, a \$685.2 million increase in repurchases of common stock, a \$4.4 million increase in tax payments related to net share settlements of equity awards, and a \$3.4 million decrease in proceeds from option exercises, offset by \$1.42 billion of net proceeds from the issuance of the 2026 Notes net of issuance costs, which was reduced by a net cash outflow of \$52.3 million for the purchase of convertible note hedges and sale of warrants entered into in connection with the issuance of the 2026 Notes in 2021, compared to \$985.3 million of net proceeds from the issuance of the 2025 Notes net of issuance costs in 2020, a \$22.5 million decrease in payments of finance lease obligations, and a \$13.3 million increase in proceeds from the issuance of shares of stock from the employee stock purchase plan (ESPP).

Contractual Obligations

Our principal commitments consist of obligations under the Notes (including principal and coupon interest), finance and operating leases for equipment, office space and co-located data center facilities, as well as non-cancelable contractual commitments. Refer to Note 6, Operating and Finance Leases; Note 11, Convertible Notes and Senior Notes; and Note 16, Commitments and Contingencies, of the Notes to Consolidated Financial Statements under Part II, Item 8 of this Annual Report on Form 10-K for more details.

As of December 31, 2021, we had recorded liabilities of \$39.7 million related to uncertain tax positions. Due to uncertainties in the timing of potential tax audits, the timing of the resolution of these positions is uncertain and we are unable to make a reasonably reliable estimate of the timing of payments in individual years beyond 12 months. As a result, this amount is not included in the contractual obligation table in Note 16.

Critical Accounting Policies and Estimates

We prepare our consolidated financial statements and related notes in accordance with GAAP. In doing so, we have to make estimates and assumptions that affect our reported amounts of assets, liabilities, revenue and expenses, as well as related disclosure of contingent assets and liabilities. To the extent that there are material differences between these estimates and actual results, our financial condition or operating results would be affected. We base our estimates on past experience and other assumptions that we believe are reasonable under the circumstances, and we evaluate these estimates on an ongoing basis. We refer to accounting estimates of this type as critical accounting policies and estimates, which we discuss further below.

Revenue Recognition

We generate the substantial majority of our revenue from the sale of advertising services with the remaining balance from data licensing and other arrangements.

We generate our advertising revenue primarily from the sale of our Promoted Products: (i) Promoted Ads, (ii) Follower Ads and (iii) Twitter Takeover. Promoted Ads and Follower Ads are pay-for-performance advertising products or pay-for-impressions delivered, each priced through an auction. Twitter Takeover is featured by geography and offered on a fixed-fee-per-day basis. Advertisers are obligated to pay when a person engages with a Promoted Ad, follows a Follower Ad, when an impression is delivered, or when a Twitter Takeover is displayed for an entire day in a particular country. These advertising services may be sold in combination as a bundled arrangement or separately on a stand-alone basis.

For our Promoted Product arrangements, significant judgments are (i) identifying the performance obligations in the contract, (ii) determining the basis for allocating contract consideration to performance obligations, (iii) determining whether we are the principal or the agent in arrangements where another party is involved in providing specified services to a customer, and (iv) estimating the transaction price to be allocated for contracts with tiered rebate provisions.

We may generate revenue from the sale of certain Promoted Ads through placement by Twitter of advertiser ads against third-party publisher content. We will pay the third-party publisher a revenue share fee for our right to monetize their content. In such transactions, advertisers are contracting to obtain a single integrated advertising service, the Promoted Ad combined with the third-party publisher content, and we obtain control of the third-party publisher content displayed on Twitter that we then combine with the advertiser ads within the Promoted Ad. Therefore, we report advertising revenue generated from these transactions on a gross basis and record the related third-party content monetization fees as cost of revenue.

We also generate advertising revenue by selling services in which we place ads on third-party publishers' websites, applications or other offerings. To fulfill these transactions, we purchase advertising inventory from third-party publishers' websites and applications where we have identified the advertisers' targeted audience and therefore incur traffic acquisition costs prior to transferring the advertising service to our customers. At such point, we have the sole ability to monetize the third-party publishers advertising inventory. In such transactions, we obtain control of a right to a service to be performed by the third-party publishers, which gives us the ability to direct those publishers to provide the services to our customers on our behalf. Therefore, we report advertising revenue generated from these transactions on a gross basis, and we record the related traffic acquisition costs as cost of revenue.

Fees for the advertising services above are recognized in the period when advertising is delivered as evidenced by a person engaging with a Promoted Ad or an ad on a third-party publisher website or application in a manner satisfying the types of engagement selected by the advertisers, such as Tweet engagements (e.g., Retweets, replies and likes), website clicks, mobile application installs or engagements, obtaining new followers, or video views, following a Follower Ad, delivery of impressions, or through the display of a Twitter Takeover on our platform.

We have concluded that our data licensing arrangements, which grant customers a right to our intellectual property (IP) for a defined period of time, may contain a single performance obligation satisfied at a point in time (Historical IP) or over time (Future IP), or may contain two or more performance obligations satisfied separately at a point in time (Historical IP) and over time (Future IP). In some of our data licensing arrangements, pricing is a fixed monthly fee over a specified term. In arrangements with a single performance obligation satisfied over time, data licensing revenue is recognized on a straight-line basis over the period in which we provide data as the customer consumes and benefits from the continuous data available on an ongoing basis. In arrangements with at least two performance obligations, we allocate revenue on a relative basis between the performance obligations based on standalone selling price (SSP) and recognize revenue as the performance obligations are satisfied.

In other data licensing arrangements, we charge customers based on the amount of sales they generate from downstream customers using Twitter data. Certain of those royalty-based data licensing arrangements are subject to minimum guarantees. For such arrangements with a minimum guarantee and a single Future IP performance obligation, we recognize revenue for minimum guarantees on a straight-line basis over the period in which we provide data. For such arrangements with a minimum guarantee and two or more performance obligations, we allocate revenue on a relative basis between the performance obligations based on SSP and recognize revenue as the performance obligations are satisfied. Royalties in excess of minimum guarantees, if any, are recognized as revenue over the contract term, on a straight-line, cumulative catch-up basis. This reflects the nature of the Company's performance obligation, which is a series of distinct monthly periods of providing a license of IP.

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For data licensing arrangements involving two or more performance obligations, we use directly observable standalone transactions to determine SSP of Historical IP. We use standalone transactions and consider all other reasonably available observable evidence to estimate SSP of Future IP.

Other revenue is primarily generated from service fees from transactions completed on our mobile ad exchange. Our mobile ad exchange enables buyers and sellers to purchase and sell advertising inventory by matching them in the exchange. We have determined we are not the principal in the purchase and sale of advertising inventory in transactions between third-party buyers and sellers on the exchange because we do not obtain control of the advertising inventory. We report revenue related to our ad exchange services on a net basis for the fees paid by buyers, net of costs related to acquiring the advertising inventory paid to sellers.

Arrangements involving multiple performance obligations primarily consist of combinations of our pay-for-performance products, Promoted Ads and Follower Ads, which are priced through an auction, and Twitter Takeovers, which are priced on a fixed-fee-per day, per geography basis. For arrangements that include a combination of these products, we develop an estimate of the standalone selling price for these products in order to allocate any potential discount to all performance obligations in the arrangement. The estimate of standalone selling price for pay-for-performance auction based products is determined based on the winning bid price. The estimate of standalone selling price for Twitter Takeovers is based on Twitter Takeovers sold on a standalone basis and/or separately priced in a bundled arrangement by reference to a list price by geography, which is typically updated and approved annually. For other arrangements involving multiple performance obligations where neither auction pricing nor standalone sales provide sufficient evidence of standalone selling price, we estimate standalone selling price using either an adjusted market assessment approach or an expected cost plus margin approach. We believe the use of our estimation approach and allocation of the transaction price on a relative standalone selling price basis to each performance obligation results in revenue recognition in a manner consistent with the underlying economics of the transaction and the allocation principles of the revenue recognition guidance. We have elected to exclude certain sales and indirect taxes from the determination of the transaction price.

We expense sales commissions as incurred when the amortization period is one year or less. Sales commission expenses are recorded within sales and marketing in the consolidated statements of operations.

Income Taxes

We are subject to income taxes in the United States and several foreign jurisdictions. Significant judgment is required in determining our provision (benefit) for income taxes and income tax assets and liabilities, including evaluating uncertainties in the application of accounting principles and complex tax laws.

We record a provision (benefit) for income taxes for the anticipated tax consequences of the reported results of operations using the asset and liability method. Under this method, we recognize deferred income tax assets and liabilities for the expected future tax consequences of temporary differences between the financial reporting and tax bases of assets and liabilities, as well as for loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using the tax rates that are expected to apply to taxable income for the years in which those tax assets and liabilities are expected to be realized or settled. We recognize the deferred income tax effects of a change in tax rates in the period of the enactment. We record a valuation allowance to reduce our deferred tax assets to the net amount that we believe is more likely than not to be realized.

We recognize tax benefits from uncertain tax positions if we believe that it is more likely than not that the tax position will be sustained upon examination by the taxing authorities based on the technical merits of the position. Although we believe we have adequately reserved for our uncertain tax positions (including net interest and penalties), we can provide no assurance that the final tax outcome of these matters will not be different. We make adjustments to these reserves in accordance with income tax accounting guidance when facts and circumstances change, such as the closing of a tax audit. To the extent that the final tax outcome of these matters is different from the amounts recorded, such differences may impact the provision (benefit) for income taxes in the period in which such determination is made. We record interest and penalties related to our uncertain tax positions in our provision (benefit) for income taxes.

The establishment of deferred tax assets from intra-entity transfers of intangible assets requires management to make significant estimates and assumptions to determine the fair value of such intangible assets. Critical estimates in valuing the intangible assets include, but are not limited to, internal revenue and expense forecasts, the estimated life of the intangible assets, and discount rates. The discount rates used in the income method to discount expected future cash flows to present value are adjusted to reflect the inherent risks related to the cash flow. Although we believe the assumptions and estimates we have made are reasonable and appropriate, they are based, in part, on historical experience and are inherently uncertain. Unanticipated events and circumstances may occur that could affect either the accuracy or validity of such assumptions, estimates or actual results.

Loss Contingencies

We are currently involved in, and may in the future be involved in, legal proceedings, claims, investigations, and government inquiries and investigations arising in the ordinary course of business. Certain of these matters include speculative claims for substantial or indeterminate amounts of damages. We record a liability when we believe that it is both probable that a loss has been incurred and the amount can be reasonably estimated. If we determine there is a reasonable possibility that we may incur a loss and the loss or range of loss can be estimated, we disclose the possible loss to the extent material. Significant judgment is required to determine the probability of loss and the estimated amount of loss, including when and if the probability and estimate has changed. We review these provisions on a regular basis and adjust these provisions accordingly to reflect the impact of negotiations, settlements, rulings, advice of legal counsel, and updated information.

The outcomes of the legal matters, such as whether the likelihood of loss is remote, reasonably possible, or probable, or if and when the reasonably possible range of loss is estimable, are inherently uncertain. If one or more of these matters were resolved against us for amounts above management's estimates, our financial condition and results of operations, including in a particular reporting period in which any such outcome becomes probable and estimable, could be materially adversely affected.

Business Combinations

We allocate the purchase price of the acquisition to the tangible and intangible assets acquired and liabilities assumed based on their estimated fair values at the acquisition dates. The excess of the purchase price over those fair values is recorded as goodwill. During the measurement period, which may be up to one year from the acquisition date, we may record adjustments to the assets acquired and liabilities assumed with the corresponding offset to goodwill. Upon the conclusion of the measurement period or final determination of the values of assets acquired or liabilities assumed, whichever comes first, any subsequent adjustments are recorded to the consolidated statements of operations.

Accounting for business combinations requires our management to make significant estimates and assumptions at the acquisition date, including estimated fair value of acquired intangible assets, estimated fair value of stock awards assumed from the acquirees that are included in the purchase price, estimated income tax assets and liabilities assumed from the acquirees, and determination of the fair value of contractual obligations, where applicable. The estimates of fair value require management to also make estimates of, among other things, future expected cash flows, discount rates or expected costs to reproduce an asset. Although we believe the assumptions and estimates we made at the time were reasonable and appropriate, these estimates are based on historical experience and information obtained from the management of the acquired companies and are inherently uncertain.

Impact of Recently Issued Accounting Standards

The impact of recently issued accounting standards is set forth in Note 1, Summary of Significant Accounting Policies, of the Notes to Consolidated Financial Statements under Part II, Item 8 of this Annual Report on Form 10-K.

Item 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We have operations both within the United States and internationally, and we are exposed to market risks in the ordinary course of our business. These risks include primarily interest rate and foreign exchange risks.

Interest Rate Fluctuation Risk

Our investment portfolio mainly consists of short-term fixed income securities, including government and investment-grade debt securities and money market funds. These securities are classified as available-for-sale and, consequently, are recorded on the consolidated balance sheets at fair value with unrealized gains or losses, net of tax reported as a separate component of accumulated other comprehensive loss. Our investment policy and strategy is focused on the preservation of capital and supporting our liquidity requirements. We do not enter into investments for trading or speculative purposes.

A rise in interest rates could have a material adverse impact on the fair value of our investment portfolio. Based on our investment portfolio balance as of December 31, 2021, a hypothetical increase in interest rates of 100 basis points would result in a decrease of approximately \$35.6 million in the fair value of our available-for-sale securities. We currently do not hedge these interest rate exposures.

As of December 31, 2021, we had \$3.59 billion aggregate principal amount of Convertible Notes outstanding and \$700.0 million aggregate principal amount of 2027 Notes outstanding. We carry the Notes at face value less amortized discount on the consolidated balance sheets. Since the Notes bear interest at fixed rates, we have no financial statement risk associated with changes in interest rates. However, the fair value of the Notes changes when the market price of our stock fluctuates or interest rates change.

Foreign Currency Exchange Risk***Transaction Exposure***

We transact business in various foreign currencies and have international revenue, as well as costs denominated in foreign currencies, primarily the Euro, British Pound, Singapore Dollar and Japanese Yen. This exposes us to the risk of fluctuations in foreign currency exchange rates. Accordingly, changes in exchange rates, and in particular a continuing strengthening of the U.S. dollar, would negatively affect our revenue and other operating results as expressed in U.S. dollars.

We have experienced and will continue to experience fluctuations in our net income (loss) as a result of transaction gains or losses related to revaluing and ultimately settling certain asset and liability balances that are denominated in currencies other than the functional currency of the entities in which they are recorded. Foreign currency gains and losses were immaterial for 2021 and 2020. We currently utilize foreign currency forward contracts with financial institutions to reduce the risk that our earnings may be adversely affected by the impact of exchange rate fluctuations on monetary assets or liabilities denominated in currencies other than the local currency of a subsidiary. These contracts are not designated as hedging instruments. We may in the future enter into other derivative financial instruments if it is determined that such hedging activities are appropriate to further reduce our foreign currency exchange risk. Based on our foreign currency exposures from monetary assets and liabilities net of our open hedge position, we estimated that a 10% change in exchange rates against the U.S. dollar would have resulted in a gain or loss of approximately \$11.3 million as of December 31, 2021.

Translation Exposure

We are also exposed to foreign exchange rate fluctuations as we translate the financial statements of our foreign subsidiaries into U.S. dollars in consolidation. If there is a change in foreign currency exchange rates, the translating adjustments resulting from the conversion of our foreign subsidiaries' financial statements into U.S. dollars would result in a gain or loss recorded as a component of accumulated other comprehensive loss which is part of stockholders' equity.

Item 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of Twitter, Inc.

Opinions on the Financial Statements and Internal Control over Financial Reporting

We have audited the accompanying consolidated balance sheets of Twitter, Inc. and its subsidiaries (the "Company") as of December 31, 2021 and 2020, and the related consolidated statements of operations, of comprehensive income (loss), of stockholders' equity and of cash flows for each of the three years in the period ended December 31, 2021, including the related notes and financial statement schedule listed in the index appearing under Item 15 (collectively referred to as the "consolidated financial statements"). We also have audited the Company's internal control over financial reporting as of December 31, 2021, 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 consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2021 and 2020, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2021 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2021, based on criteria established in Internal Control - Integrated Framework (2013) issued by the COSO.

Change in Accounting Principle

As discussed in Note 1 to the consolidated financial statements, the Company changed the manner in which it accounts for convertible debt in 2021.

Basis for Opinions

The Company's management is responsible for these consolidated financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in Management's Report on Internal Control over Financial Reporting appearing under Item 9A. Our responsibility is to express opinions on the Company's consolidated financial statements and on the Company's internal control over financial reporting based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (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 audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud, and whether effective internal control over financial reporting was maintained in all material respects.

Our audits of the consolidated financial statements included performing procedures to assess the risks of material misstatement of the consolidated 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 consolidated 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 consolidated financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

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 (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) 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 (iii) 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.

Critical Audit Matters

The critical audit matter communicated below is a matter arising from the current period audit of the consolidated financial statements that was communicated or required to be communicated to the audit committee and that (i) relates to accounts or disclosures that are material to the consolidated financial statements and (ii) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Revenue Recognition – identification of performance obligations

As described in Notes 1 and 2 to the consolidated financial statements, the Company generated \$4.5 billion of its revenue from the sale of advertising services, with \$0.6 billion from data licensing and other arrangements, for the year ended December 31, 2021. Significant judgments made by management are (i) identifying the performance obligations in the contract, (ii) determining the basis for allocating contract consideration to performance obligations, (iii) determining whether the Company is the principal or the agent in arrangements where another party is involved in providing specified services to a customer, and (iv) estimating the transaction price to be allocated for contracts with tiered rebate provisions.

The principal considerations for our determination that performing procedures relating to revenue recognition, specifically related to the identification of performance obligations, is a critical audit matter are the significant amount of judgment by management in identifying performance obligations. This in turn resulted in significant audit effort and a high degree of subjectivity in performing procedures and evaluating audit evidence.

Addressing the matter involved performing procedures and evaluating audit evidence in connection with forming our overall opinion on the consolidated financial statements. These procedures included testing the effectiveness of controls relating to the revenue recognition process, including controls over the identification of performance obligations. These procedures also included, among others, examining revenue arrangements on a test basis and testing management's process for (i) determining whether the criteria for revenue recognition have been met based on the terms and performance under the arrangement, and (ii) identifying performance obligations and, where applicable, determining whether the Company is the principal or agent for the performance obligation identified.

/s/ PricewaterhouseCoopers LLP

San Francisco, California

February 16, 2022

We have served as the Company's auditor since 2009.

TWITTER, INC.
CONSOLIDATED BALANCE SHEETS
(In thousands, except par value)

	December 31, 2021	December 31, 2020
Assets		
Current assets:		
Cash and cash equivalents	\$ 2,186,549	\$ 1,988,429
Short-term investments	4,207,133	5,483,873
Accounts receivable, net of allowance for doubtful accounts of \$15,278 and \$16,946	1,217,404	1,041,743
Prepaid expenses and other current assets	266,484	123,063
Assets held for sale	40,800	—
Total current assets	7,918,370	8,637,108
Property and equipment, net	2,082,160	1,493,794
Operating lease right-of-use assets	1,195,124	930,139
Intangible assets, net	69,324	58,338
Goodwill	1,301,520	1,312,346
Deferred tax assets, net	1,148,573	796,326
Other assets	344,445	151,039
Total assets	\$ 14,059,516	\$ 13,379,090
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	\$ 203,171	\$ 194,281
Accrued and other current liabilities	918,350	663,532
Convertible notes, short-term	—	917,866
Operating lease liabilities, short-term	222,346	177,147
Total current liabilities	1,343,867	1,952,826
Convertible notes, long-term	3,559,023	1,875,878
Senior notes, long-term	693,996	692,994
Operating lease liabilities, long-term	1,071,209	819,748
Deferred and other long-term tax liabilities, net	40,691	31,463
Other long-term liabilities	43,531	36,099
Total liabilities	6,752,317	5,409,008
Commitments and contingencies (Note 16)		
Stockholders' equity:		
Preferred stock, \$0.000005 par value-- 200,000 shares authorized; none issued and outstanding	—	—
Common stock, \$0.000005 par value-- 5,000,000 shares authorized; 799,384 and 796,000 shares issued and outstanding	4	4
Additional paid-in capital	8,432,112	9,167,138
Treasury stock, at cost-- 120 and 98 shares	(5,295)	(5,297)
Accumulated other comprehensive loss	(117,320)	(66,094)
Accumulated deficit	(1,002,302)	(1,125,669)
Total stockholders' equity	7,307,199	7,970,082
Total liabilities and stockholders' equity	\$ 14,059,516	\$ 13,379,090

The accompanying notes are an integral part of these consolidated financial statements.

TWITTER, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS

(In thousands, except per share data)

	Year Ended December 31,		
	2021	2020	2019
Revenue	\$ 5,077,482	\$ 3,716,349	\$ 3,459,329
Costs and expenses			
Cost of revenue	1,797,510	1,366,388	1,137,041
Research and development	1,246,704	873,011	682,281
Sales and marketing	1,175,970	887,860	913,813
General and administrative	584,336	562,432	359,821
Litigation settlement, net	765,701	—	—
Total costs and expenses	5,570,221	3,689,691	3,092,956
Income (loss) from operations	(492,739)	26,658	366,373
Interest expense	(51,186)	(152,878)	(138,180)
Interest income	35,683	88,178	157,703
Other income (expense), net	97,129	(12,897)	4,243
Income (loss) before income taxes	(411,113)	(50,939)	390,139
Provision (benefit) for income taxes	(189,704)	1,084,687	(1,075,520)
Net income (loss)	\$ (221,409)	\$ (1,135,626)	\$ 1,465,659
Net income (loss) per share:			
Basic	\$ (0.28)	\$ (1.44)	\$ 1.90
Diluted	\$ (0.28)	\$ (1.44)	\$ 1.87
Weighted-average shares used to compute net income (loss) per share:			
Basic	797,573	787,861	770,729
Diluted	797,573	787,861	785,531

The accompanying notes are an integral part of these consolidated financial statements.

TWITTER, INC.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)

(In thousands)

	Year Ended December 31,		
	2021	2020	2019
Net income (loss)	\$ (221,409)	\$ (1,135,626)	\$ 1,465,659
Other comprehensive income (loss), net of tax:			
Change in unrealized gain (loss) on investments in available-for-sale securities	(25,917)	11,318	13,785
Change in foreign currency translation adjustment	(25,309)	(6,878)	(19,008)
Net change in accumulated other comprehensive income (loss)	(51,226)	4,440	(5,223)
Comprehensive income (loss)	\$ (272,635)	\$ (1,131,186)	\$ 1,460,436

The accompanying notes are an integral part of these consolidated financial statements.

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TWITTER, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

(In thousands)

Year Ended December 31,

	2021		2020		2019	
	Shares	Amount	Shares	Amount	Shares	Amount
Common stock						
Balance, beginning of period	796,000	\$ 4	779,619	\$ 4	764,257	\$ 4
Issuance of common stock in connection with RSU vesting	17,423	—	16,795	—	13,519	—
Issuance of common stock in connection with acquisitions	194	—	168	—	—	—
Issuance of restricted stock in connection with acquisitions accounted for as stock-based compensation	388	—	1,509	—	471	—
Exercise of stock options	532	—	1,882	—	361	—
Issuance of common stock upon purchases under employee stock purchase plan	2,214	—	2,250	—	1,592	—
Shares withheld related to net share settlement of equity awards	(442)	—	(639)	—	(579)	—
Repurchases of common stock	(16,860)	—	(5,584)	—	—	—
Other activities	(65)	—	—	—	(2)	—
Balance, end of period	799,384	\$ 4	796,000	\$ 4	779,619	\$ 4
Additional paid-in capital						
Balance, beginning of period	—	\$ 9,167,138	—	\$ 8,763,330	—	\$ 8,324,974
Issuance of common stock in connection with acquisitions	—	12,640	—	8,311	—	—
Exercise of stock options	—	2,056	—	5,441	—	788
Issuance of common stock upon purchases under employee stock purchase plan	—	68,792	—	55,470	—	42,378
Shares withheld related to net share settlement of equity awards	—	(26,982)	—	(22,585)	—	(19,594)
Stock-based compensation	—	709,608	—	510,254	—	414,784
Equity component of the convertible note issuance, net	—	—	—	92,209	—	—
Purchase of convertible note hedge	—	(213,469)	—	—	—	—
Tax related to purchase of convertible note hedge	—	49,262	—	—	—	—
Issuance of warrants	—	161,144	—	—	—	—
Repurchases of common stock	—	(930,530)	—	(245,292)	—	—
Cumulative-effect adjustment from adoption of new accounting standard	—	(567,547)	—	—	—	—
Balance, end of period	—	\$ 8,432,112	—	\$ 9,167,138	—	\$ 8,763,330
Treasury stock						
Balance, beginning of period	—	\$ (5,297)	—	\$ —	—	\$ —
Retirement of treasury stock	—	21,183	—	—	—	—
Repurchases of common stock	—	(21,181)	—	(5,297)	—	—
Balance, end of period	—	\$ (5,295)	—	\$ (5,297)	—	\$ —
Accumulated other comprehensive loss						
Balance, beginning of period	—	\$ (66,094)	—	\$ (70,534)	—	\$ (65,311)
Other	—	—	—	—	—	—

comprehensive income (loss)	—	(51,226)	—	4,440	—	(5,223)
Balance, end of period	—	\$ (117,320)	—	\$ (66,094)	—	\$ (70,534)
Retained earnings (accumulated deficit)						
Balance, beginning of period	—	\$ (1,125,669)	—	\$ 11,586	—	\$ (1,454,073)
Cumulative-effect adjustment from adoption of new accounting standards	—	344,776	—	(1,629)	—	—
Net income (loss)	—	(221,409)	—	(1,135,626)	—	1,465,659
Balance, end of period	—	\$ (1,002,302)	—	\$ (1,125,669)	—	\$ 11,586
Total stockholders' equity	799,384	\$ 7,307,199	796,000	\$ 7,970,082	779,619	\$ 8,704,386

The accompanying notes are an integral part of these consolidated financial statements.

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TWITTER, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Year Ended December 31,		
	2021	2020	2019
Cash flows from operating activities			
Net income (loss)	\$ (221,409)	\$ (1,135,626)	\$ 1,465,659
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Depreciation and amortization expense	544,848	495,177	465,549
Stock-based compensation expense	629,901	474,932	378,025
Amortization of discount on convertible notes	—	101,733	113,298
Bad debt expense	1,560	18,775	3,083
Deferred income taxes	(228,774)	(36,978)	84,369
Deferred tax assets establishment related to intra-entity transfers of intangible assets	—	—	(1,206,880)
Deferred tax assets valuation allowance establishment	—	1,101,374	—
Impairment (gain) on investments in privately-held companies	(101,445)	8,842	1,550
Other adjustments	2,975	(10,764)	(19,989)
Changes in assets and liabilities, net of assets acquired and liabilities assumed from acquisitions:			
Accounts receivable	(189,946)	(188,039)	(67,000)
Prepaid expenses and other assets	(121,501)	6,398	(29,602)
Operating lease right-of-use assets	219,287	168,000	149,880
Accounts payable	20,869	18,232	2,946
Accrued and other liabilities	260,475	123,345	92,681
Operating lease liabilities	(184,151)	(152,531)	(130,205)
Net cash provided by operating activities	632,689	992,870	1,303,364
Cash flows from investing activities			
Purchases of property and equipment	(1,011,546)	(873,354)	(540,688)
Proceeds from sales of property and equipment	8,462	9,170	6,158
Purchases of marketable securities	(3,736,659)	(6,272,395)	(5,798,111)
Proceeds from maturities of marketable securities	3,811,768	4,554,238	4,928,097
Proceeds from sales of marketable securities	1,172,626	1,092,754	367,116
Purchases of investments in privately-held companies	(39,761)	(11,912)	(51,163)
Investments in Finance Justice Fund	(69,500)	—	—
Business combinations, net of cash acquired	(32,702)	(48,016)	(29,664)
Other investing activities	(50,065)	(11,050)	2,281
Net cash provided by (used in) investing activities	52,623	(1,560,565)	(1,115,974)
Cash flows from financing activities			
Proceeds from issuance of convertible notes	1,437,500	1,000,000	—
Proceeds from issuance of senior notes	—	—	700,000
Purchases of convertible note hedges	(213,469)	—	—
Proceeds from issuance of warrants concurrent with note hedges	161,144	—	—
Debt issuance costs	(16,769)	(14,662)	(8,070)
Repayment of convertible notes	(954,000)	—	(935,000)
Repurchases of common stock	(930,530)	(245,292)	—
Taxes paid related to net share settlement of equity awards	(26,982)	(22,587)	(19,594)
Payments of finance lease obligations	(565)	(23,062)	(66,677)
Proceeds from exercise of stock options	2,056	5,442	788
Proceeds from issuances of common stock under employee stock purchase plan	68,792	55,471	42,378
Net cash provided by (used in) financing activities	(472,823)	755,310	(286,175)
Net increase (decrease) in cash, cash equivalents and restricted cash	212,489	187,615	(98,785)
Foreign exchange effect on cash, cash equivalents and restricted cash	(13,080)	(4,005)	4,576
Cash, cash equivalents and restricted cash at beginning of period	2,011,276	1,827,666	1,921,875
Cash, cash equivalents and restricted cash at end of period	<u>\$ 2,210,685</u>	<u>\$ 2,011,276</u>	<u>\$ 1,827,666</u>
Supplemental cash flow data			
Interest paid in cash	\$ 41,754	\$ 38,510	\$ 12,236
Income taxes paid in cash	\$ 113,525	\$ 11,480	\$ 20,144
Supplemental disclosures of non-cash investing and financing activities			
Common stock issued in connection with acquisitions	\$ 12,640	\$ 8,311	\$ —
Changes in accrued property and equipment purchases	\$ (12,149)	\$ 24,882	\$ 14,985
Reconciliation of cash, cash equivalents and restricted cash as shown in the consolidated statements of cash flows			
Cash and cash equivalents	\$ 2,186,549	\$ 1,988,429	\$ 1,799,082
Restricted cash included in prepaid expenses and other current assets	8,140	2,287	1,862
Restricted cash included in other assets	15,996	20,560	26,722
Total cash, cash equivalents and restricted cash	<u>\$ 2,210,685</u>	<u>\$ 2,011,276</u>	<u>\$ 1,827,666</u>

The accompanying notes are an integral part of these consolidated financial statements.

TWITTER, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 1. Summary of Significant Accounting Policies

Principles of Consolidation

The consolidated financial statements include the accounts of Twitter, Inc. and its wholly-owned subsidiaries (collectively, "Twitter", or the "Company"). All intercompany accounts and transactions have been eliminated in consolidation.

Prior Period Reclassifications

Certain prior period amounts have been reclassified to conform to the current period presentation.

Use of Estimates

The preparation of the Company's consolidated financial statements in conformity with generally accepted accounting principles in the United States of America (GAAP) requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue and expenses, as well as related disclosure of contingent assets and liabilities. Actual results could differ materially from the Company's estimates due to risks and uncertainties, including uncertainty in the current economic environment due to the global impact of the COVID-19 pandemic. To the extent that there are material differences between these estimates and actual results, the Company's financial condition or operating results will be affected. The Company bases its estimates on past experience and other assumptions that the Company believes are reasonable under the circumstances, and the Company evaluates these estimates on an ongoing basis.

Revenue Recognition

The Company generates the substantial majority of its revenue from the sale of advertising services with the remaining balance from data licensing and other arrangements.

The Company generates its advertising revenue primarily from the sale of its Promoted Products: (i) Promoted Ads, (ii) Follower Ads and (iii) Twitter Takeover. Promoted Ads and Follower Ads are pay-for-performance advertising products or pay on impressions delivered, each priced through an auction. Twitter Takeover is featured by geography and offered on a fixed-fee-per-day basis. Advertisers are obligated to pay when a person engages with a Promoted Ad, follows a Follower Ad, when an impression is delivered, or when a Twitter Takeover is displayed for an entire day in a particular country. These advertising services may be sold in combination as a bundled arrangement or separately on a stand-alone basis.

For the Company's Promoted Product arrangements, significant judgments are (i) identifying the performance obligations in the contract, (ii) determining the basis for allocating contract consideration to performance obligations, (iii) determining whether the Company is the principal or the agent in arrangements where another party is involved in providing specified services to a customer, and (iv) estimating the transaction price to be allocated for contracts with tiered rebate provisions.

The Company may generate revenue from the sale of certain Promoted Ads through placement by Twitter of advertiser ads against third-party publisher content. The Company will pay the third-party publisher a revenue share fee for its right to monetize their content. In such transactions, advertisers are contracting to obtain a single integrated advertising service, the Promoted Ad combined with the third-party publisher content, and the Company obtains control of the third-party publisher content displayed on Twitter that it then combines with the advertiser ads within the Promoted Ad. Therefore, the Company reports advertising revenue generated from these transactions on a gross basis and records the related third-party content monetization fees as cost of revenue.

The Company also generates advertising revenue by selling services in which the Company places ads on third-party publishers' websites, applications or other offerings. To fulfill these transactions, the Company purchases advertising inventory from third-party publishers' websites and applications where the Company has identified the advertisers' targeted audience and therefore incurs traffic acquisition costs prior to transferring the advertising service to its customers. At such point, the Company has the sole ability to monetize the third-party publishers advertising inventory. In such transactions, the Company obtains control of a right to a service to be performed by the third-party publishers, which gives the Company the ability to direct those publishers to provide the services to the Company's customers on the Company's behalf. Therefore, the Company reports advertising revenue generated from these transactions on a gross basis and records the related traffic acquisition costs as cost of revenue.

Fees for the advertising services above are recognized in the period when advertising is delivered as evidenced by a person engaging with a Promoted Ad or an ad on a third-party publisher website or application in a manner satisfying the types of engagement selected by the advertisers, such as Tweet engagements (e.g., Retweets, replies and likes), website clicks, mobile application installs or engagements, obtaining new followers, or video views, following a Follower Ad, delivery of impressions, or through the display of a Twitter Takeover on the Company's platform.

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The Company has concluded that its data licensing arrangements, which grant customers a right to its intellectual property (IP) for a defined period of time, may contain a single performance obligation satisfied at a point in time (Historical IP) or over time (Future IP), or may contain two or more performance obligations satisfied separately at a point in time (Historical IP) and over time (Future IP). In some of the Company's data licensing arrangements, pricing is a fixed monthly fee over a specified term. In arrangements with a single performance obligation satisfied over time, data licensing revenue is recognized on a straight-line basis over the period in which the Company provides data as the customer consumes and benefits from the continuous data available on an ongoing basis. In arrangements with at least two performance obligations, the Company allocates revenue on a relative basis between the performance obligations based on standalone selling price (SSP) and recognizes revenue as the performance obligations are satisfied.

In other data licensing arrangements, the Company charges customers based on the amount of sales they generate from downstream customers using Twitter data. Certain of those royalty-based data licensing arrangements are subject to minimum guarantees. For such arrangements with a minimum guarantee and a single Future IP performance obligation, the Company recognizes revenue for minimum guarantees on a straight-line basis over the period in which the Company provides data. For such arrangements with a minimum guarantee and two or more performance obligations, the Company allocates revenue on a relative basis between the performance obligations based on SSP and recognizes revenue as the performance obligations are satisfied. Royalties in excess of minimum guarantees, if any, are recognized as revenue over the contract term, on a straight-line, cumulative catch-up basis. This reflects the nature of the Company's performance obligation, which is a series of distinct monthly periods of providing a license of IP.

For data licensing arrangements involving two or more performance obligations, the Company uses directly observable standalone transactions to determine SSP of Historical IP. The Company uses standalone transactions and considers all other reasonably available observable evidence to estimate SSP of Future IP.

Other revenue is primarily generated from service fees from transactions completed on the Company's mobile ad exchange. The Company's mobile ad exchange enables buyers and sellers to purchase and sell advertising inventory by matching them in the exchange. The Company has determined it is not the principal in the purchase and sale of advertising inventory in transactions between third-party buyers and sellers on the exchange because the Company does not obtain control of the advertising inventory. The Company reports revenue related to its ad exchange services on a net basis for the fees paid by buyers, net of costs related to acquiring the advertising inventory paid to sellers.

Arrangements involving multiple performance obligations primarily consist of combinations of the Company's pay-for-performance products, Promoted Ads and Follower Ads, which are priced through an auction, and Twitter Takeover, which is priced on a fixed-fee-per day, per geography basis. For arrangements that include a combination of these products, the Company develops an estimate of the standalone selling price for these products in order to allocate any potential discount to all performance obligations in the arrangement. The estimate of standalone selling price for pay-for-performance auction based products is determined based on the winning bid price. The estimate of standalone selling price for Twitter Takeover is based on Twitter Takeover sold on a standalone basis and/or separately priced in a bundled arrangement by reference to a list price by geography, which is typically updated and approved annually. For other arrangements involving multiple performance obligations where neither auction pricing nor standalone sales provide sufficient evidence of standalone selling price, the Company estimates standalone selling price using either an adjusted market assessment approach or an expected cost plus margin approach. The Company believes the use of its estimation approach and allocation of the transaction price on a relative standalone selling price basis to each performance obligation results in revenue recognition in a manner consistent with the underlying economics of the transaction and the allocation principles of the revenue recognition guidance. The Company has elected to exclude certain sales and indirect taxes from the determination of the transaction price.

The Company expenses sales commissions as incurred when the amortization period is one year or less. Sales commission expenses are recorded within sales and marketing in the consolidated statements of operations.

Cost of Revenue

Cost of revenue includes infrastructure costs, other direct costs including revenue share expenses, amortization expense of technology acquired through acquisitions and amortization of capitalized labor costs for internally developed software, allocated facilities costs, as well as traffic acquisition costs (TAC). Infrastructure costs consist primarily of data center costs related to the Company's co-located facilities, which include lease and hosting costs, related support and maintenance costs and energy and bandwidth costs, public cloud hosting costs, as well as depreciation of servers and networking equipment, and personnel-related costs, including salaries, benefits and stock-based compensation, for its operations teams. Revenue share expenses are primarily related to payments to providers from whom the Company licenses content, in order to increase engagement on the platform. The fees paid to these content providers may be based on revenues generated, or a minimum guaranteed fee. TAC consists of costs incurred with third parties in connection with the sale to advertisers of advertising products that the Company places on third-party publishers' websites, applications or other offerings collectively resulting from acquisitions.

Stock-Based Compensation Expense

The Company accounts for stock-based compensation expense under the fair value recognition and measurement provisions of GAAP. Stock-based awards granted to employees are measured based on the grant-date fair value.

For service-based restricted stock awards and performance-based restricted stock awards, the Company recognizes the compensation expense only for those awards expected to meet the performance and service vesting conditions. For service-based restricted stock awards, expense is recognized on a straight-line basis over the requisite service period. The service condition for restricted stock awards is generally satisfied over four years, but has been up to five years in certain circumstances. For performance-based restricted stock awards, expense is recognized on a graded basis over the requisite service period. For market-based restricted stock awards, the Company recognizes the compensation expense on a graded basis over the requisite service period regardless of whether the market condition is satisfied, provided that the requisite service has been provided. The requisite service period for performance-based and market-based restricted stock awards is generally up to six years. The Company accounts for forfeitures as they occur.

The Company estimates the fair value of stock options granted and stock purchase rights provided under the Company's employee stock purchase plan using the Black-Scholes option pricing model on the dates of grant. The compensation expense related to stock options and employee stock purchase rights is recognized on a straight-line basis over the requisite service period.

The fair value of market-based restricted stock awards is determined using a Monte Carlo simulation to estimate the grant date fair value.

The Company issues restricted stock subject to a lapsing right of repurchase to continuing employees of certain acquired companies. For such restricted stock issuances subject to post acquisition employment, the Company recognizes the grant-date fair value as post-acquisition stock-based compensation expense on a straight-line basis over the requisite service period.

Business Combinations

The Company allocates the purchase price of the acquisition to the tangible and intangible assets acquired and liabilities assumed based on their estimated fair values at the acquisition dates. The excess of the purchase price over those fair values is recorded as goodwill. During the measurement period, which may be up to one year from the acquisition date, the Company may record adjustments to the assets acquired and liabilities assumed with the corresponding offset to goodwill. Upon the conclusion of the measurement period or final determination of the values of assets acquired or liabilities assumed, whichever comes first, any subsequent adjustments are recorded to the consolidated statements of operations.

Investments in Privately-Held Companies

The Company makes strategic investments in privately-held companies. The Company evaluates each investee to determine if the investee is a variable interest entity and, if so, whether the Company is the primary beneficiary of the variable interest entity. The Company has determined, as of December 31, 2021, there were no variable interest entities required to be consolidated in the Company's consolidated financial statements. The Company's investments in privately-held companies are primarily non-marketable equity securities without readily determinable fair values. The Company accounts for its investments in privately-held companies either under equity method accounting or by adjusting the carrying value of its non-marketable equity securities to fair value upon observable transactions for identical or similar investments of the same issuer or upon impairment (referred to as the measurement alternative). The investments in privately-held companies are included within other assets on the consolidated balance sheets. All gains and losses on non-marketable equity securities, realized and unrealized, are recognized in other income (expense), net in the consolidated statements of operations.

The Company periodically evaluates the carrying value of the investments in privately-held companies when events and circumstances indicate that the carrying amount of the investment may not be recovered. The Company estimates the fair value of the investments to assess whether impairment losses shall be recorded using Level 3 inputs. These investments include the Company's holdings in privately-held companies that are not exchange traded and therefore not supported with observable market prices; hence, the Company may determine the fair value by reviewing equity valuation reports, current financial results, long-term plans of the privately-held companies, the amount of cash that the privately-held companies have on-hand, the ability to obtain additional financing and overall market conditions in which the privately-held companies operate or based on the price observed from the most recent completed financing.

Loss Contingencies

The Company is currently involved in, and may in the future be involved in, legal proceedings, claims, investigations, and government inquiries and investigations arising in the ordinary course of business. The Company records a liability when it believes that it is both probable that a loss has been incurred and the amount or range can be reasonably estimated. If the Company determines there is a reasonable possibility that it may incur a loss and the loss or range of loss can be estimated, it discloses the possible loss to the extent material. Significant judgment is required to determine both probability and the estimated amount. The Company reviews these provisions on a regular basis and adjusts these provisions accordingly to reflect the impact of negotiations, settlements, rulings, advice of legal counsel, and updated information.

Operating and Finance Leases

The Company has operating leases primarily for office space and data center facilities. The determination of whether an arrangement is a lease or contains a lease is made at inception by evaluating whether the arrangement conveys the right to use an identified asset and whether the Company obtains substantially all of the economic benefits from and has the ability to direct the use of the asset. Operating leases are included in operating lease right-of-use assets, operating lease liabilities, short-term, and operating lease liabilities, long-term on the Company's consolidated balance sheets.

With the exception of initial adoption of the new lease standard, where the Company's incremental borrowing rate used was the rate on the adoption date (January 1, 2019), operating lease ROU assets and operating lease liabilities are recognized based on the present value of lease payments over the lease term at the lease commencement date. To determine the incremental borrowing rate used to calculate the present value of future lease payments, the Company uses information including the Company's credit rating, interest rates of similar debt instruments of entities with comparable credit ratings, the Company's recent debt issuances, and Twitter, Inc.'s guarantee of certain leases in foreign jurisdictions, as applicable.

Certain lease agreements contain options for the Company to renew or early terminate a lease. The Company considers these options, which may be elected at the Company's sole discretion, in determining the lease term on a lease-by-lease basis. Leases with an initial term of twelve months or less are not recognized on the consolidated balance sheets. The Company recognizes lease expense for these leases on a straight-line basis over the term of the lease.

The Company also has server and networking equipment lease arrangements with original lease terms ranging from three to four years. The Company's server and networking equipment leases typically are accounted for as finance leases as they meet one or more of the five finance lease classification criteria. Assets acquired under finance leases are included in property and equipment, net, finance lease liabilities, short-term, and finance lease liabilities, long-term on the Company's consolidated balance sheets and are depreciated to operating expenses on a straight-line basis over their estimated useful lives. There were no finance lease liabilities as of December 31, 2021.

The Company's lease agreements generally do not contain any material residual value guarantees or material restrictive covenants. Certain of the Company's leases contain free or escalating rent payment terms. Additionally, certain lease agreements contain lease components (for example, fixed payments such as rent) and non-lease components such as common-area maintenance costs. For each asset class of the Company's leases—real estate offices, data centers, and equipment—the Company has elected to account for both of these provisions as a single lease component. For arrangements accounted for as a single lease component, there may be variability in future lease payments as the amount of the non-lease components is typically revised from one period to the next. These variable lease payments, which are primarily comprised of common-area maintenance, utilities, and real estate taxes that are passed on from the lessor in proportion to the space leased by the Company, are recognized in operating expenses in the period in which the obligation for those payments was incurred. The Company recognizes lease expense for its operating leases in operating expenses on a straight-line basis over the term of the lease.

The Company records a liability for the estimated cost of any asset retirement obligation (ARO) associated with its leases, which are incurred as a result of the acquisition, construction or development, and/or normal operation of a long-lived asset. In the determination of the fair value of AROs, the Company uses various assumptions and judgments, including factors such as the estimated amounts and timing of restoration costs, and discount and inflation rates. As of December 31, 2021 and 2020, the Company had AROs of \$34.2 million and \$19.9 million, respectively, in other long-term liabilities on the consolidation balance sheets.

The Company subleases certain leased office space to third parties when it determines there is excess leased capacity. Certain of these subleases contain both lease and non-lease components. The Company has elected to account for both of these provisions as a single lease component. Sublease rent income is recognized as an offset to operating expense on a straight-line basis over the lease term. In addition to sublease rent, variable non-lease costs such as common-area maintenance, utilities, and real estate taxes are charged to subtenants over the duration of the lease for their proportionate share of these costs. These variable non-lease income receipts are recognized in operating expenses as a reduction to costs incurred by the Company in relation to the head lease.

Cash, Cash Equivalents and Investments

The Company invests its excess cash primarily in short-term fixed income securities, including government and investment-grade debt securities and money market funds. The Company classifies all liquid investments with stated maturities of three months or less from date of purchase as cash equivalents. The Company classifies all marketable securities for use in current operations, even if the security matures beyond 12 months, and presents them as short-term investments on the consolidated balance sheets.

As of December 31, 2021 and 2020, the Company has restricted cash balances of \$8.1 million and \$2.3 million, respectively, within prepaid expenses and other current assets and \$16.0 million and \$20.6 million, respectively, in other assets on the consolidated balance sheets based upon the term of the remaining restrictions. These restricted cash balances are primarily cash deposits to back letters of credit related to certain property leases.

The Company determines the appropriate classification of its investments in marketable securities at the time of purchase and reevaluates such designation at each balance sheet date. The Company has classified and accounted for its marketable securities as available-for-sale. After considering the Company's capital preservation objectives, as well as its liquidity requirements, the Company may sell securities prior to their stated maturities. The Company carries its available-for-sale securities at fair value. The Company reports the unrealized gains and losses, net of taxes, as a component of stockholders' equity, except for unrealized losses determined to be credit-related, which are recorded as other income (expense), net in the consolidated statements of operations and reports an allowance for credit losses in short-term investments on the balance sheet, if any. The Company determines any realized gains or losses on the sale of marketable securities on a specific identification method and records such gains and losses as a component of other income (expense), net. Interest earned on cash, cash equivalents, and marketable securities was \$35.7 million, \$88.2 million, and \$157.7 million during the years ended December 31, 2021, 2020 and 2019, respectively. These amounts are recorded in interest income in the consolidated statements of operations.

The Company's investment policy only allows purchases of investment-grade notes and provides guidelines on concentrations to ensure minimum risk of loss. The Company evaluates whether the unrealized loss on available-for-sale debt securities is the result of the credit worthiness of the corporate notes it held, or other non-credit-related factors such as liquidity by reviewing a number of factors such as the implied yield of the corporate note based on the market price, the nature of the invested entity's business or industry, market capitalization relative to debt, changes in credit ratings, and the market prices of the corporate notes subsequent to period end. As of December 31, 2021, the gross unrealized loss on available-for-sale debt securities was immaterial and there were no expected credit losses related to the Company's available-for-sale debt securities. The Company does not intend to sell these investments and it is not more likely than not that the Company will be required to sell these investments before recovery of their amortized cost bases. As of December 31, 2021, no allowance for credit losses in short-term investments was recorded.

Concentration of Credit Risk

Financial instruments that potentially subject the Company to significant concentration of credit risk consist primarily of cash, cash equivalents, short-term investments and accounts receivable. The primary focus of the Company's investment strategy is to preserve capital and meet liquidity requirements. The Company's investment policy addresses the level of credit exposure by limiting the concentration in any one corporate issuer or sector and establishing a minimum allowable credit rating. To manage the risk exposure, the Company invests cash equivalents and short-term investments in a variety of fixed income securities, including government and investment-grade debt securities and money market funds. The Company places its cash primarily in checking and money market accounts with reputable financial institutions. Deposits held with these financial institutions may exceed the amount of insurance provided on such deposits, if any.

The Company's accounts receivable are typically unsecured and are derived from customers around the world in different industries. The Company includes terms in its contracts providing the ability to stop transferring promised goods or services, performs ongoing credit evaluations of its customers, and maintains allowances for potential credit losses. Historically, such losses have been within management's expectations. As of December 31, 2021 and 2020, no single customer accounted for more than 10% of the Company's net accounts receivable balances. No single customer accounted for more than 10% of the Company's revenue in the years ended December 31, 2021, 2020 and 2019.

The Company's note hedge transactions, entered into in connection with the Convertible Notes, as defined and further described in Note 4 – Fair Value Measurements, and its derivative financial instruments expose the Company to credit risk to the extent that its counterparties may be unable to meet the terms of the transactions. The Company mitigates this risk by limiting its counterparties to major financial institutions and using multiple financial institutions as counterparties in its hedge transactions.

Accounts Receivable, Net

The Company records accounts receivable at the invoiced amount. The Company maintains an allowance for doubtful accounts to reserve for potentially uncollectible receivable amounts. In evaluating the Company's ability to collect outstanding receivable balances, the Company considers various factors including the age of the balance, the creditworthiness of the customer, which is assessed based on ongoing credit evaluations and payment history, the customer's current financial condition, and considers macroeconomic factors to estimate expected future credit losses. In the year ended December 31, 2021, the Company recorded an immaterial increase in the allowance for doubtful accounts.

Unbilled Revenue (Contract Assets)

The Company evaluates whether its unbilled revenue is exposed to potential credit losses by considering factors such as the creditworthiness of its customers, the term over which unbilled revenue will be recognized, historical impairment of unbilled revenue, and contemplation of projected macroeconomic factors. As of December 31, 2021, the Company recorded an immaterial amount of allowance for credit losses on unbilled revenue.

Property and Equipment, Net

Property and equipment are stated at cost and depreciated using the straight-line method over the estimated useful lives of the assets. Leasehold improvements are amortized using the straight-line method over the shorter of the lease term or the estimated useful life. The estimated useful lives of property and equipment are described below:

Property and Equipment	Estimated Useful Life
Computer hardware, networking and office equipment	Three to five years
Computer software	Up to five years
Furniture and fixtures	Five years
Leasehold improvements	Lesser of estimated useful life or remaining lease term

The Company reviews the remaining estimated useful lives of its property and equipment on an ongoing basis. Management is required to use judgment in determining the estimated useful lives of such assets. Changes in circumstances such as technological advances, changes to the Company's business model, changes in the Company's business strategy, or changes in the planned use of property and equipment could result in the actual useful lives differing from the Company's current estimates. In cases where the Company determines that the estimated useful life of property and equipment should be shortened or extended, the Company would apply the new estimated useful life prospectively.

The Company reviews property and equipment for impairment when events or circumstances indicate the carrying amount may not be recoverable.

Costs of maintenance and repairs that do not improve or extend the lives of the respective assets are expensed as incurred. Upon retirement or sale, the cost and related accumulated depreciation are removed from the balance sheet and the resulting gain or loss is reflected in operating expenses.

Capitalization of Interest

Interest costs are capitalized for assets that are constructed for the Company's own internal use, including internally developed software and property and equipment, for the period of time to get them ready for their intended use. During the years ended December 31, 2021, 2020 and 2019, the Company capitalized \$1.5 million, \$3.8 million, and \$4.6 million of interest expense, respectively.

Goodwill

Goodwill represents the excess of the purchase price over the fair value of the net tangible and intangible assets acquired in a business combination. Goodwill is not amortized, but rather is tested for impairment at least annually or more frequently if events or changes in circumstances indicate that the asset may be impaired. The Company's impairment tests are based on a single operating segment and reporting unit structure. If the carrying value of the reporting unit exceeds its fair value, an impairment charge is recognized for the excess of the carrying value of the reporting unit over its fair value.

The Company conducted its annual goodwill impairment test during the fourth quarter of 2021 and determined that the fair value of the reporting unit significantly exceeded its carrying value. As such, goodwill was not impaired. No impairment charge was recorded in any of the periods presented in the consolidated financial statements.

Intangible Assets

Intangible assets are carried at cost and amortized on a straight-line basis over their estimated useful lives of up to eleven years. The Company reviews identifiable amortizable intangible assets to be held and used for impairment whenever events or changes in circumstances indicate that the carrying value of the assets may not be recoverable. Determination of recoverability is based on the lowest level of identifiable estimated undiscounted cash flows resulting from use of the asset and its eventual disposition. Measurement of any impairment loss is based on the excess of the carrying value of the asset over its fair value. There have been no impairment charges recorded in any of the periods presented in the consolidated financial statements.

Fair Value Measurements

The Company classifies and discloses assets and liabilities measured at fair value on a recurring basis, as well as fair value measurements of assets and liabilities measured on a nonrecurring basis in periods subsequent to initial measurement, in a three-tier fair value hierarchy as described below. Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. The three levels of inputs that may be used to measure fair value are as follows:

Level 1—Observable inputs, such as quoted prices in active markets for identical assets or liabilities.

Level 2—Observable inputs other than Level 1 prices, such as quoted prices for similar assets or liabilities, quoted prices in markets that are not active or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

Internal Use Software and Website Development Costs

The Company capitalizes certain costs incurred in developing software programs or websites for internal use. The Company capitalizes these costs once the preliminary project stage is complete, and it is probable that the project will be completed and the software will be used to perform the function intended. In the years ended December 31, 2021, 2020 and 2019, the Company capitalized costs totaling approximately \$265.3 million, \$109.3 million and \$127.5 million, respectively. Capitalized internal use software development costs are included in property and equipment, net. Included in the capitalized amounts above are \$79.7 million, \$34.6 million and \$37.5 million of stock-based compensation expense in the years ended December 31, 2021, 2020 and 2019, respectively.

The estimated useful life of costs capitalized is evaluated for each specific project and is up to five years. In the years ended December 31, 2021, 2020 and 2019, the amortization of capitalized costs totaled approximately \$120.5 million, \$109.6 million and \$116.0 million, respectively.

Income Taxes

The Company is subject to income taxes in the United States and several foreign jurisdictions. Significant judgment is required in determining its provision (benefit) for income taxes and income tax assets and liabilities, including evaluating uncertainties in the application of accounting principles and complex tax laws.

The Company records a provision (benefit) for income taxes for the anticipated tax consequences of the reported results of operations using the asset and liability method. Under this method, the Company recognizes deferred income tax assets and liabilities for the expected future tax consequences of temporary differences between the financial reporting and tax bases of assets and liabilities, as well as for loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using the tax rates that are expected to apply to taxable income for the years in which those tax assets and liabilities are expected to be realized or settled. The Company recognizes the deferred income tax effects of a change in tax rates in the period of the enactment. The Company records a valuation allowance to reduce its deferred tax assets to the net amount that it believes is more likely than not to be realized.

The Company recognizes tax benefits from uncertain tax positions only if it believes that it is more likely than not that the tax position will be sustained on examination by the taxing authorities based on the technical merits of the position. Although the Company believes it has adequately reserved for its uncertain tax positions (including net interest and penalties), it can provide no assurance that the final tax outcome of these matters will not be different. The Company makes adjustments to these reserves in accordance with income tax accounting guidance when facts and circumstances change, such as the closing of a tax audit. To the extent that the final tax outcome of these matters is different from the amounts recorded, such differences may impact the provision (benefit) for income taxes in the period in which such determination is made. The Company records interest and penalties related to its uncertain tax positions in the provision (benefit) for income taxes.

The establishment of deferred tax assets from intra-entity transfers of intangible assets requires management to make significant estimates and assumptions to determine the fair value of such intangible assets. Critical estimates in valuing the intangible assets include, but are not limited to, internal revenue and expense forecasts, the estimated life of the intangible assets, and discount rates. The discount rates used in the income method to discount expected future cash flows to present value are adjusted to reflect the inherent risks related to the cash flow. Although the Company believes the assumptions and estimates it has made are reasonable and appropriate, they are based, in part, on historical experience and are inherently uncertain. Unanticipated events and circumstances may occur that could affect either the accuracy or validity of such assumptions, estimates or actual results.

Foreign Currency

The functional currency of the Company's foreign subsidiaries is generally the local currency. The financial statements of these subsidiaries are translated into U.S. dollars using period-end rates of exchange for assets and liabilities, historical rates of exchange for equity, and average rates of exchange for revenue and expenses. Translation gains (losses) are recorded in accumulated other comprehensive income (loss) as a component of stockholders' equity. Unrealized foreign exchange gains and losses due to re-measurement of monetary assets and liabilities denominated in non-functional currencies as well as realized foreign exchange gains and losses on foreign exchange transactions are recorded in other income (expense), net in the consolidated statements of operations.

Advertising Costs

Advertising costs are expensed when incurred and are included in sales and marketing expense in the consolidated statements of operations. Advertising expense totaled \$167.1 million, \$56.1 million, and \$81.3 million for the years ended December 31, 2021, 2020, and 2019, respectively.

Comprehensive Income (Loss)

Comprehensive income (loss) consists of two components, net income (loss) and other comprehensive income (loss). Other comprehensive income (loss) refers to gains and losses that are recorded as an element of stockholders' equity and are excluded from net income (loss). The Company's other comprehensive income (loss) is comprised of unrealized gains or losses on available-for-sale securities, net of tax, and foreign currency translation adjustments.

Recent Accounting Pronouncements**Recently adopted accounting pronouncements**

In August 2020, the Financial Accounting Standards Board (FASB) issued a new accounting standard update to simplify the accounting for convertible debt and other equity-linked instruments. The new guidance simplifies the accounting for convertible instruments by eliminating the cash conversion and beneficial conversion feature models used to separately account for embedded conversion features as a component of equity. Instead, the entity will account for the convertible debt or convertible preferred stock securities as a single unit of account, unless the conversion feature requires bifurcation and recognition as derivatives. Additionally, the guidance requires entities to use the if-converted method for all convertible instruments in the diluted earnings per share calculation and include the effect of potential share settlement for instruments that may be settled in cash or shares. The Company early adopted this new guidance using the modified retrospective method as of January 1, 2021. The adoption of this new guidance resulted in an increase of \$254.6 million and \$34.7 million to "Convertible notes, long-term" and "Convertible notes, short-term", respectively, to reflect the full principal amount of the Convertible Notes (as defined below) outstanding, net of issuance costs, a reduction of \$567.5 million to additional paid-in capital, net of estimated income tax effects, to remove the equity component separately recorded for the conversion features associated with the Convertible Notes, an increase to deferred tax assets, net of \$66.6 million, and a cumulative-effect adjustment of \$344.8 million, net of estimated income tax effects, reducing the beginning balance of accumulated deficit as of January 1, 2021. The adoption of this new guidance reduced interest expense by \$99.5 million in the year ended December 31, 2021. In addition, the adoption requires the use of the if-converted method for all convertible notes in the diluted net income (loss) per share calculation and the inclusion of the effect of potential share settlement of the convertible notes, if the effect is more dilutive. There was no impact to the number of potentially dilutive shares in each of the periods presented.

Recently issued accounting pronouncements not yet adopted

In October 2021, the FASB issued a new accounting standard requiring contract assets and contract liabilities acquired in a business combination to be recognized and measured by the acquirer on the acquisition date in accordance with the accounting standard for revenue recognition for contracts with customers, as if it had originated the contracts. The guidance is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2022. Early adoption is permitted. The Company will adopt the guidance prospectively to business combinations after the date of adoption.

Note 2. Revenue**Revenue Recognition**

Revenue is recognized when the control of promised goods or services is transferred to customers at an amount that reflects the consideration to which the Company expects to be entitled to in exchange for those goods or services. The Company identifies its contracts with customers and all performance obligations within those contracts. The Company then determines the transaction price and allocates the transaction price to the performance obligations within the Company's contracts with customers, recognizing revenue when, or as the Company satisfies its performance obligations. While the majority of the Company's revenue transactions are based on standard business terms and conditions, the Company also enters into sales agreements with advertisers and data partners that sometimes involve multiple performance obligations and occasionally include non-standard terms or conditions.

Revenue by geography is based on the billing address of the customers. The following tables set forth revenue by services and revenue by geographic area (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Revenue by services:			
Advertising services	\$ 4,505,692	\$ 3,207,392	\$ 2,993,392
Data licensing and other	571,790	508,957	465,937
Total revenue	\$ 5,077,482	\$ 3,716,349	\$ 3,459,329

	Year Ended December 31,		
	2021	2020	2019
Revenue by geographic area:			
United States	\$ 2,835,760	\$ 2,078,836	\$ 1,944,022
Japan	675,022	547,862	537,021
Rest of World	1,566,700	1,089,651	978,286
Total revenue	\$ 5,077,482	\$ 3,716,349	\$ 3,459,329

Contract Balances

The Company enters into contracts with its customers, which may give rise to contract liabilities (deferred revenue) and contract assets (unbilled revenue). The payment terms and conditions within the Company's contracts vary by the type and location of its customer and products or services purchased, the substantial majority of which are due in less than one year. When the timing of revenue recognition differs from the timing of payments made by customers, the Company recognizes either unbilled revenue (its performance precedes the billing date) or deferred revenue (customer payment is received in advance of performance).

Unbilled Revenue (Contract Assets)

The Company presents unbilled revenue on the consolidated balance sheets within prepaid expenses and other current assets and within other assets. The Company's contracts do not contain material financing components. The Company's unbilled revenue primarily consists of amounts that have yet to be billed under contracts with escalating fee structures. Specifically, because the Company generally recognizes revenue on a straight-line basis for data licensing arrangements with escalating fee structures, revenue recognized represents amounts to which the Company is contractually entitled; however, the revenue recognized exceeds the amounts the Company has a right to bill as of the period end, thus resulting in unbilled revenue.

[Table of Contents](#)*Deferred Revenue (Contract Liabilities)*

The Company presents deferred revenue primarily within accrued and other current liabilities on the consolidated balance sheets and there is not expected to be any material non-current contract liabilities given the Company's contracting provisions. The Company's deferred revenue balance primarily consists of cash payments due in advance of satisfying its performance obligations relating to data licensing contracts and performance obligations given to customers based on their spend relating to advertising contracts, for which the Company defers, as they represent material rights. The Company recognizes deferred revenue relating to its data licensing contracts on a straight-line basis over the period in which the Company provides data. The Company recognizes deferred revenue relating to its advertising contracts based on the amount of customer spend and the relative standalone selling price of the material rights.

The following table presents contract balances (in thousands):

	December 31, 2021	December 31, 2020
Unbilled Revenue	\$ 44,880	\$ 44,063
Deferred Revenue	\$ 79,414	\$ 62,191

The amount of revenue recognized in the year ended December 31, 2021 that was included in the deferred revenue balance as of December 31, 2020 was \$61.9 million. The amount of revenue recognized in the year ended December 31, 2020 that was included in the deferred revenue balance as of December 31, 2019 was \$69.0 million. This revenue consists primarily of revenue recognized as a result of the utilization of bonus ads inventory earned by and material rights provided to customers in prior periods and the satisfaction of the Company's performance obligations relating to data licensing contracts with advance cash payments or material rights.

The amount of revenue recognized from obligations satisfied (or partially satisfied) in prior periods was not material.

The increase in the unbilled revenue balance from December 31, 2020 to December 31, 2021 was primarily attributable to differences between revenue recognized and amounts billed in the Company's data licensing arrangements with escalating fee structures due to recognizing such fees as revenue on a straight-line basis.

The increase in the deferred revenue balance from December 31, 2020 to December 31, 2021 was primarily due to bonus ads inventory offered to customers during the period for meeting certain spending targets, offset by the delivery of bonus ads inventory.

Remaining Performance Obligations

As of December 31, 2021, the aggregate amount of the transaction price allocated to remaining performance obligations in contracts with an original expected duration exceeding one year is \$587.2 million. This total amount primarily consists of long-term data licensing contracts and excludes deferred revenue related to the Company's short-term advertising service arrangements. The Company expects to recognize this amount as revenue over the following time periods (in thousands):

	Remaining Performance Obligations			
	Total	2022	2023	2024 and Thereafter
Revenue expected to be recognized on remaining performance obligations	\$ 587,198	\$ 237,036	\$ 163,645	\$ 186,517

Note 3. Cash, Cash Equivalents and Short-term Investments

Cash, cash equivalents and short-term investments consist of the following (in thousands):

	December 31, 2021	December 31, 2020
Cash and cash equivalents:		
Cash	\$ 336,958	\$ 285,002
Money market funds	1,000,671	1,158,927
Corporate notes, commercial paper and certificates of deposit	848,920	544,500
Total cash and cash equivalents	<u>\$ 2,186,549</u>	<u>\$ 1,988,429</u>
Short-term investments:		
U.S. government and agency securities	\$ 374,868	\$ 910,259
Corporate notes, commercial paper and certificates of deposit	3,829,123	4,572,394
Marketable equity securities	3,142	1,220
Total short-term investments	<u>\$ 4,207,133</u>	<u>\$ 5,483,873</u>

The contractual maturities of debt securities classified as available-for-sale as of December 31, 2021 were as follows (in thousands):

	December 31, 2021
Due within one year	\$ 2,208,362
Due after one year through five years	1,995,629
Total	<u>\$ 4,203,991</u>

The following tables summarize unrealized gains and losses related to available-for-sale debt securities classified as short-term investments on the Company's consolidated balance sheets (in thousands):

	December 31, 2021			
	Gross Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Aggregated Estimated Fair Value
U.S. government and agency securities	\$ 376,966	\$ 12	\$ (2,110)	\$ 374,868
Corporate notes, commercial paper and certificates of deposit	3,832,983	4,873	(8,733)	3,829,123
Total available-for-sale debt securities classified as short-term investments	<u>\$ 4,209,949</u>	<u>\$ 4,885</u>	<u>\$ (10,843)</u>	<u>\$ 4,203,991</u>

	December 31, 2020			
	Gross Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Aggregated Estimated Fair Value
U.S. government and agency securities	\$ 909,092	\$ 1,177	\$ (10)	\$ 910,259
Corporate notes, commercial paper and certificates of deposit	4,545,687	26,939	(232)	4,572,394
Total available-for-sale debt securities classified as short-term investments	<u>\$ 5,454,779</u>	<u>\$ 28,116</u>	<u>\$ (242)</u>	<u>\$ 5,482,653</u>

The available-for-sale debt securities classified as cash and cash equivalents on the consolidated balance sheets are not included in the tables above as the gross unrealized gains and losses were immaterial for each period. Their carrying value approximates fair value because of the short maturity period of these instruments.

The gross unrealized loss on available-for-sale debt securities in a continuous loss position for 12 months or longer was not material as of December 31, 2021 and 2020.

Note 4. Fair Value Measurements

The Company measures its cash equivalents, short-term investments and derivative financial instruments at fair value. The Company classifies its cash equivalents, short-term investments and derivative financial instruments within Level 1 or Level 2 because the Company values these investments using quoted market prices or alternative pricing sources and models utilizing market observable inputs. The fair value of the Company's Level 1 financial assets is based on quoted market prices of the identical underlying security. The fair value of the Company's Level 2 financial assets is based on inputs that are directly or indirectly observable in the market, including the readily-available pricing sources for the identical underlying security that may not be actively traded.

The following tables set forth the fair value of the Company's financial assets and liabilities measured at fair value on a recurring basis as of December 31, 2021 and 2020 based on the three-tier fair value hierarchy (in thousands):

	December 31, 2021		
	Level 1	Level 2	Total
Assets			
Cash equivalents:			
Money market funds	\$ 1,000,671	\$ —	\$ 1,000,671
Commercial paper	—	843,919	843,919
Certificates of deposit	—	5,001	5,001
Short-term investments:			
U.S. government and agency securities	—	374,868	374,868
Corporate notes	—	2,633,777	2,633,777
Commercial paper	—	953,103	953,103
Certificates of deposit	—	242,243	242,243
Marketable equity securities	3,142	—	3,142
Other current assets:			
Foreign currency contracts	—	7,849	7,849
Total	<u>\$ 1,003,813</u>	<u>\$ 5,060,760</u>	<u>\$ 6,064,573</u>
Liabilities			
Other current liabilities:			
Foreign currency contracts	\$ —	\$ 2,125	\$ 2,125
Total	<u>\$ —</u>	<u>\$ 2,125</u>	<u>\$ 2,125</u>

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	December 31, 2020		
	Level 1	Level 2	Total
Assets			
Cash equivalents:			
Money market funds	\$ 1,158,927	\$ —	\$ 1,158,927
Corporate notes	—	1,347	1,347
Commercial paper	—	543,153	543,153
Short-term investments:			
U.S. government and agency securities	—	910,259	910,259
Corporate notes	—	2,829,521	2,829,521
Commercial paper	—	1,240,670	1,240,670
Certificates of deposit	—	502,203	502,203
Marketable equity securities	1,220	—	1,220
Other current assets:			
Foreign currency contracts	—	5,529	5,529
Total	\$ 1,160,147	\$ 6,032,682	\$ 7,192,829
Liabilities			
Other current liabilities:			
Foreign currency contracts	\$ —	\$ 1,028	\$ 1,028
Total	\$ —	\$ 1,028	\$ 1,028

In 2018, we issued \$1.15 billion in aggregate principal amount of 0.25% convertible senior notes due 2024, or the 2024 Notes. In 2019, we issued \$700.0 million in aggregate principal amount of 3.875% senior notes due 2027, or the 2027 Notes. In 2020, we issued \$1.0 billion in aggregate principal amount of 0.375% convertible senior notes due 2025, or the 2025 Notes. In March 2021, we issued \$1.44 billion in aggregate principal amount of 0% convertible senior notes due 2026, or the 2026 Notes. We refer to the 2024 Notes, the 2025 Notes, and the 2026 Notes as the Convertible Notes, and we refer to the Convertible Notes and the 2027 Notes as the Notes.

The following table sets forth the estimated fair value of the Company's convertible and senior notes outstanding as of December 31, 2021 based on the three-tier fair value hierarchy (in thousands):

	December 31, 2021		
	Level 2	Level 3	Total
\$1.15 billion in aggregate principal amount of 0.25% convertible senior notes due in 2024 (the 2024 Notes)	1,244,760	—	1,244,760
\$1.0 billion in aggregate principal amount of 0.375% convertible senior notes due in 2025 (the 2025 Notes)	—	1,206,210	1,206,210
\$1.44 billion in aggregate principal amount of 0% convertible senior notes due in 2026 (the 2026 Notes)	1,297,200	—	1,297,200
\$700.0 million in aggregate principal amount of 3.875% senior notes due in 2027 (the 2027 Notes)	728,756	—	728,756
Total	3,270,716	1,206,210	4,476,926

The estimated fair value of the 2024 Notes, the 2026 Notes, and the 2027 Notes is determined based on a market approach, using the estimated or actual bids and offers of the respective notes in an over-the-counter market on the last business day of the period. The estimated fair value of the 2025 Notes is determined based on a binomial model, using inputs including risk free rate, volatility and discount yield. Refer to Note 11 – Convertible Notes and Senior Notes for further details on the Notes.

Derivative Financial Instruments

The Company enters into foreign currency forward contracts with financial institutions to reduce the risk that its earnings may be adversely affected by the impact of exchange rate fluctuations on monetary assets or liabilities denominated in currencies other than the functional currency of a subsidiary. These contracts do not subject the Company to material balance sheet risk due to exchange rate movements because gains and losses on these derivatives are intended to offset gains and losses on the hedged foreign currency denominated assets and liabilities. These foreign currency forward contracts are not designated as hedging instruments.

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The Company recognizes these derivative instruments as either assets or liabilities on the consolidated balance sheets at fair value based on a Level 2 valuation. The Company records changes in the fair value (i.e., gains or losses) of the derivatives in other income (expense), net in the consolidated statements of operations. The notional principal of foreign currency contracts outstanding was equivalent to \$910.5 million and \$729.8 million at December 31, 2021 and 2020, respectively.

The fair values of outstanding derivative instruments for the periods presented on a gross basis are as follows (in thousands):

	Balance Sheet Location	December 31, 2021	December 31, 2020
Assets			
Foreign currency contracts not designated as hedging instruments	Other current assets	\$ 7,849	\$ 5,529
Liabilities			
Foreign currency contracts not designated as hedging instruments	Other current liabilities	\$ 2,125	\$ 1,028

The Company recognized \$4.0 million of net gains on its foreign currency contracts in the year ended December 31, 2021 and \$8.1 million and \$7.2 million of net losses on its foreign currency contracts in the years ended December 31, 2020 and 2019, respectively.

Note 5. Property and Equipment, Net

The following tables set forth property and equipment, net by type and by geographic area for the periods presented (in thousands):

	December 31, 2021	December 31, 2020
Property and equipment, net		
Equipment	\$ 2,603,304	\$ 1,830,459
Furniture and leasehold improvements	470,678	362,766
Capitalized software	948,710	811,371
Construction in progress	261,267	349,935
Total	4,283,959	3,354,531
Less: Accumulated depreciation and amortization	(2,201,799)	(1,860,737)
Property and equipment, net	\$ 2,082,160	\$ 1,493,794

	December 31, 2021	December 31, 2020
Property and equipment, net:		
United States	\$ 2,038,597	\$ 1,460,163
International	43,563	33,631
Total property and equipment, net	\$ 2,082,160	\$ 1,493,794

Depreciation expense totaled \$503.6 million, \$471.6 million, and \$449.0 million for the years ended December 31, 2021, 2020, and 2019, respectively. Included in these amounts were depreciation expense for server and networking equipment acquired under finance leases in the amount of \$0.4 million, \$20.5 million, and \$63.7 million for the years ended December 31, 2021, 2020, and 2019, respectively.

Note 6. Operating and Finance Leases

The Company's leases have remaining lease terms from less than one year up to approximately ten years.

The components of lease cost for the year ended December 31, 2021 were as follows (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Operating lease cost	\$ 256,388	\$ 201,386	173,005
Finance lease cost			
Depreciation expense	435	20,527	63,674
Interest on lease liabilities	2	369	2,125
Total finance lease cost	437	20,896	65,799
Short-term lease cost	5,411	5,603	3,000
Variable lease cost	81,387	52,476	49,456
Sublease income	(9,660)	(9,626)	(22,326)
Total lease cost	\$ 333,963	\$ 270,735	268,934

Other information related to leases was as follows (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Supplemental Cash Flows Information			
Cash paid for amounts included in the measurement of lease liabilities:			
Operating cash flows from operating leases	\$ 231,643	\$ 183,033	\$ 165,093
Operating cash flows from finance leases	\$ 2	\$ 369	\$ 2,125
Financing cash flows from finance leases	\$ 565	\$ 23,062	\$ 66,677
Right-of-use assets obtained in exchange for lease obligations:			
Operating leases	\$ 491,996	\$ 398,480	\$ 110,522

	December 31, 2021	December 31, 2020
Lease Term and Discount Rate		
Weighted-average remaining lease term (years):		
Operating leases	7.2	6.8
Finance leases	—	0.1
Weighted-average discount rate:		
Operating leases	3.4 %	3.8 %
Finance leases	— %	3.9 %

Future lease payments under leases and sublease income as of December 31, 2021 were as follows (in thousands):

	Operating Leases	Sublease Income
Year Ending December 31,		
2022	\$ 277,260	\$ (4,685)
2023	235,742	(3,187)
2024	235,777	(1,725)
2025	230,193	(120)
2026	207,828	—
Thereafter	687,226	—
Total future lease payments (receipts)	1,874,026	\$ (9,717)
Less: leases not yet commenced	(409,380)	
Less: imputed interest	(171,091)	
Total lease liabilities	\$ 1,293,555	
Reconciliation of lease liabilities as shown on the consolidated balance sheets		
Operating lease liabilities, short-term	\$ 222,346	
Operating lease liabilities, long-term	1,071,209	
Total operating lease liabilities	\$ 1,293,555	

Note 7. Goodwill and Intangible Assets

The following table presents the goodwill activities for the periods presented (in thousands):

Goodwill

Balance as of December 31, 2020	\$ 1,312,346
Acquisitions	34,143
Reclassified to assets held for sale ⁽¹⁾	(40,800)
Other	(4,169)
Balance as of December 31, 2021	<u>\$ 1,301,520</u>

⁽¹⁾ On October 6, 2021, the Company announced that it entered into a definitive agreement to sell its MoPub business. The Company reclassified \$40.8 million of goodwill to assets held for sale on the consolidated balance sheet as of December 31, 2021. Refer to Note 10 - Assets Held for Sale for further details on the transaction.

For each of the periods presented, gross goodwill balance equaled the net balance since no impairment charges have been recorded.

The following table presents the detail of intangible assets for the periods presented (in thousands):

	Gross Carrying Value	Accumulated Amortization	Net Carrying Value
December 31, 2021:			
Patents and developed technologies	\$ 106,261	\$ (57,988)	\$ 48,273
Assembled workforce	23,500	(2,449)	21,051
Total	<u>\$ 129,761</u>	<u>\$ (60,437)</u>	<u>\$ 69,324</u>
December 31, 2020:			
Patents and developed technologies	\$ 110,153	\$ (53,265)	\$ 56,888
Other	1,800	(350)	1,450
Total	<u>\$ 111,953</u>	<u>\$ (53,615)</u>	<u>\$ 58,338</u>

Intangible assets are amortized over a period of up to eleven years from the respective purchase dates. The weighted-average amortization period for intangible assets acquired during the year ended December 31, 2021 is 2.7 years, with a weighted-average amortization period by asset class of 3.6 years for patents and developed technologies and 2.0 years for assembled workforce. Amortization expense associated with intangible assets for the years ended December 31, 2021, 2020, and 2019 was \$41.2 million, \$23.6 million, and \$16.5 million, respectively. During the year ended December 31, 2021, \$34.1 million in gross carrying value and accumulated amortization related to fully-amortized intangible assets was eliminated.

Estimated future amortization expense as of December 31, 2021 is as follows (in thousands):

2022	\$ 31,266
2023	19,467
2024	6,673
2025	2,510
2026	2,410
Thereafter	6,998
Total	<u>\$ 69,324</u>

Note 8. Accrued and other current liabilities

The following table presents the detail of accrued and other current liabilities for the periods presented (in thousands):

	December 31, 2021	December 31, 2020
Accrued compensation	325,113	171,681
Federal Trade Commission accrual (see Note 16)	150,000	150,000
Deferred revenue	78,541	58,976
Accrued tax liabilities	47,830	40,384
Accrued publisher, content and ad network costs	45,025	42,541
Accrued professional services	41,321	27,404
Accrued other	230,520	172,546
Total	\$ 918,350	\$ 663,532

Note 9. Acquisitions and Other Investments**2021 Acquisitions**

During the year ended December 31, 2021, the Company made a number of acquisitions that were accounted for as business combinations. The total purchase price for these acquisitions was \$56.6 million, which was allocated as follows: \$13.9 million to developed technologies and other acquired intangible assets, \$8.6 million to net assets assumed based on their estimated fair value on the acquisition date, and the excess \$34.1 million of the purchase price over the fair value of net assets acquired to goodwill. The goodwill from the acquisitions is mainly attributable to expected synergies and other benefits. \$2.1 million of the goodwill is tax deductible. Developed technologies will be amortized on a straight-line basis over their estimated useful lives of up to two years.

During the year ended December 31, 2021, the Company also made a number of acquisitions that were accounted for as asset acquisitions, with a total purchase price of \$32.6 million, which was all allocated to assembled workforce intangible assets. Assembled workforce intangible assets are amortized on a straight-line basis over their estimated useful lives of up to two years.

The results of operations for these acquisitions have been included in the Company's consolidated statements of operations since the date of each respective acquisition. Actual and pro forma revenue and results of operations for these acquisitions have not been presented because they do not have a material impact on the consolidated results of operations.

2020 Acquisitions

During the year ended December 31, 2020, the Company made a number of acquisitions, which were accounted for as business combinations. The total purchase price for these acquisitions was \$69.7 million, which was allocated as follows: \$13.8 million to developed technologies and other acquired intangible assets, \$4.9 million to net assets assumed based on their estimated fair value on the acquisition date, and the excess \$51.0 million of the purchase price over the fair value of net assets acquired to goodwill. The goodwill from the acquisitions is mainly attributable to assembled workforce, expected synergies and other benefits. The goodwill is not tax deductible. Developed technologies and other acquired intangible assets will be amortized on a straight-line basis over their estimated useful lives of up to three years.

The results of operations for these acquisitions have been included in the Company's consolidated statement of operations since the date of each respective acquisition. Actual and pro forma revenue and results of operations for these acquisitions have not been presented because they do not have a material impact on the consolidated results of operations.

2019 Acquisitions

During the year ended December 31, 2019, the Company made a number of acquisitions, which were accounted for as business combinations. The total purchase price of \$34.5 million (paid in cash of \$29.9 million and indemnification holdback of \$4.6 million) for these acquisitions was allocated as follows: \$9.0 million to developed technology, \$1.9 million to net liabilities assumed based on their estimated fair value on the acquisition date, and the excess \$27.4 million of the purchase price over the fair value of net assets acquired to goodwill. The goodwill from the acquisitions are mainly attributable to assembled workforce, expected synergies and other benefits. The goodwill is not tax deductible. Developed technologies are amortized on a straight-line basis over their estimated useful lives of up to three years.

The results of operations for these acquisitions have been included in the Company's consolidated statements of operations since the date of acquisition. Actual and pro forma revenue and results of operations for these acquisitions have not been presented because they do not have a material impact on the consolidated results of operations.

Investments in Privately-Held Companies

The Company makes strategic investments in privately-held companies that primarily consist of non-marketable equity securities without readily determinable fair values. The Company's non-marketable equity securities had a combined carrying value of \$207.4 million and \$85.8 million as of December 31, 2021 and 2020, respectively. The maximum loss the Company can incur for its investments is their carrying value.

In 2021, the Company funded \$60.0 million of bridge financing in the form of convertible loans to a privately-held company in which it had an existing investment. Subsequently, the Company converted \$30.0 million of the \$60.0 million of the convertible loans into preferred stock, and sold the remaining \$30.0 million of the convertible loans at face value to an unaffiliated third party. As of December 31, 2021, the \$30.0 million of the preferred stock is included within other assets on the consolidated balance sheet. In the year ended December 31, 2021, the Company recorded upward adjustments (unrealized gain) of \$84.7 million on its investment in this privately-held company in other income (expense), net in the consolidated statements of operations. The upward adjustments represent the difference between the fair value and carrying value of the investment, resulting from observable price changes in orderly transactions for similar investments related to subsequent rounds of financing from new and existing investors completed by the privately-held company. The estimated fair value of the preferred stock is determined based on an option pricing model, which represents a Level 3 valuation. The option pricing model allocates equity value to individual securities within the investees' capital structure based on contractual rights and preferences. The inputs in the option pricing model are transaction price per share of those similar securities along with time to liquidity and volatility. In the year ended December 31, 2021, two of the Company's investments in privately-held companies completed their initial public offerings. The Company recorded upward adjustments (unrealized gains) of \$16.9 million on its investments in these companies in other income (expense), net in the consolidated statement of operations in the year ended December 31, 2021 to reflect the market value of these investments. The investments were each reclassified to marketable equity securities following the initial public offering of the respective issuer. No upward adjustments were recorded in the year ended December 31, 2020.

The Company periodically evaluates the carrying value of the investments in privately-held companies when events and circumstances indicate that the carrying amount of the investment may not be recovered. No impairment charge was recorded in the year ended December 31, 2021. In the years ended December 31, 2020 and 2019, the Company recorded \$8.8 million and \$1.6 million of impairment charges, respectively, within other income (expense), net in the consolidated statements of operations. The Company also recorded a gain of \$10.2 million from the sale of an investment in a privately-held company in the year ended December 31, 2019 within other income (expense), net in the consolidated statement of operations. No such gains were recorded in the years ended December 31, 2021 and 2020.

Note 10. Assets Held for Sale

On October 6, 2021, the Company entered into a definitive agreement to sell its MoPub business to AppLovin Corporation for \$1.05 billion in cash. The Company closed the transaction on January 1, 2022 and expects to record a pre-tax gain after closing costs of approximately \$1.0 billion as non-operating income in the consolidated statements of operations in the first quarter of 2022. The sale of MoPub enables the Company to concentrate more of its efforts on the significant opportunity for performance-based advertising, SMB offerings, and commerce initiatives on Twitter.

The Company concluded that the sale of the MoPub business meets the criteria to be classified as assets held for sale as of December 31, 2021. The held for sale assets on the consolidated balance sheet as of December 31, 2021 consist only of goodwill. No liabilities were transferred in the transaction. No impairment charges were required for the held for sale assets in the year ended December 31, 2021. The sale does not represent a strategic shift that would have a major effect on the Company's operations and financial results, and therefore does not qualify for reporting as a discontinued operation for financial statement purposes.

Note 11. Convertible Notes and Senior Notes**Convertible Notes****2026 Notes**

In March 2021, the Company issued \$1.44 billion in aggregate principal amount of 0% fixed-rate convertible senior notes due 2026 (or the 2026 Notes) in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended. The total net proceeds from this offering, after deducting debt issuance costs, were approximately \$1.42 billion.

The 2026 Notes represent senior unsecured obligations of the Company. The 2026 Notes do not bear interest except in special circumstances described below, and the principal amount of the 2026 Notes does not accrete. The 2026 Notes mature on March 15, 2026.

Each \$1,000 of principal of the notes will initially be convertible into 7.6905 shares of the Company's common stock, which is equivalent to an initial conversion price of approximately \$130.03 per share, subject to adjustment upon the occurrence of certain specified events set forth in the indenture governing the 2026 Notes. Holders of the 2026 Notes may convert their 2026 Notes at their option at any time on or after December 15, 2025 until close of business on the second scheduled trading day immediately preceding the maturity date of March 15, 2026. Further, holders of the 2026 Notes may convert all or any portion of their 2026 Notes at their option prior to the close of business on the business day immediately preceding December 15, 2025, only under the following circumstances:

- 1) during any calendar quarter commencing after June 30, 2021 (and only during such calendar quarter), if the last reported sale price of the common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day;
- 2) during the five business day period after any five consecutive trading day period (the measurement period) in which the trading price (as defined in the indenture governing the 2026 Notes) per \$1,000 principal amount of the 2026 Notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of the Company's common stock and the conversion rate on each such trading day; or
- 3) upon the occurrence of certain specified corporate events.

Upon conversion of the 2026 Notes, the Company will pay or deliver, as the case may be, cash, shares of its common stock or a combination of cash and shares of its common stock, at the Company's election. If the Company satisfies its conversion obligation solely in cash or through payment and delivery, as the case may be, of a combination of cash and shares of its common stock, the amount of cash and shares of common stock, if any, due upon conversion will be based on a daily conversion value (as set forth in the indenture governing the 2026 Notes) calculated on a proportionate basis for each trading day in a 30 trading day observation period.

The Company may not redeem the 2026 Notes prior to the maturity date and no sinking fund is provided for the 2026 Notes. If a fundamental change (as defined in the indenture governing the 2026 Notes) occurs prior to the maturity date, holders of the 2026 Notes may require the Company to repurchase all or a portion of their notes for cash at a repurchase price equal to 100% of the principal amount of the 2026 Notes, plus any accrued and unpaid interest to, but excluding, the repurchase date. In addition, if specific corporate events occur prior to the maturity date of the 2026 Notes, the Company will be required to increase the conversion rate for holders who elect to convert their 2026 Notes in connection with such corporate events.

Concurrent with the offering of the 2026 Notes, the Company entered into convertible note hedge transactions with certain bank counterparties whereby the Company has the option to purchase initially (subject to adjustment for certain specified events) a total of approximately 11.1 million shares of its common stock at a price of approximately \$130.03 per share. The total cost of such convertible note hedge transactions was \$213.5 million. In addition, the Company sold warrants to certain bank counterparties whereby the holders of the warrants have the option to purchase initially (subject to adjustment for certain specified events) a total of approximately 11.1 million shares of the Company's common stock at a price of \$163.02 per share. The Company received \$161.1 million in cash proceeds from the sale of these warrants.

Taken together, the purchase of such convertible note hedges and the sale of such warrants are intended to offset any actual dilution from the conversion of the 2026 Notes and to effectively increase the overall conversion price from \$130.03 to \$163.02 per share. As these transactions meet certain accounting criteria, such convertible note hedges and warrants are recorded in stockholders' equity and are not accounted for as derivatives. The net cost incurred in connection with such convertible note hedge and warrant transactions was recorded as a reduction to additional paid-in capital on the consolidated balance sheet as of December 31, 2021.

2021 Notes, 2024 Notes, and 2025 Notes

In 2014, the Company issued \$954.0 million in aggregate principal amount of the 1.00% convertible senior notes due 2021, or the 2021 Notes, in a private placement to qualified institutional buyers pursuant to Rule 144A of the Securities Act of 1933, as amended. The total net proceeds from this offering were approximately \$939.5 million, after deducting \$14.3 million of debt discount and \$0.2 million of debt issuance costs in connection with the issuance of the 2021 Notes. On September 15, 2021, the Company repaid at maturity the \$954.0 million of aggregate principal amount associated with its 2021 Notes.

In 2018, the Company issued \$1.15 billion aggregate principal amount of the 0.25% convertible senior notes due 2024, or the 2024 Notes, in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended. The total net proceeds from this offering were approximately \$1.14 billion, after deducting \$12.3 million of debt issuance costs in connection with the 2024 Notes.

In 2020, the Company entered into an investment agreement (the Investment Agreement) with Silver Lake Partners V DE (AIV), L.P. (Silver Lake) relating to the issuance and sale to Silver Lake of \$1.0 billion in aggregate principal amount of the Company's 0.375% convertible senior notes due 2025, or the 2025 Notes. The total net proceeds from this offering were approximately \$985.3 million, after deducting \$14.7 million of debt issuance costs in connection with the 2025 Notes.

The 2024 Notes and 2025 Notes are senior unsecured obligations of the Company. The interest rate of the 2024 Notes is fixed at 0.25% per annum and interest is payable semi-annually in arrears on June 15 and December 15 of each year. The interest rate of the 2025 Notes is fixed at 0.375% per annum and interest is payable semi-annually in arrears on March 15 and September 15 of each year. The 2024 Notes and 2025 Notes mature on June 15, 2024 and March 15, 2025, respectively.

Each \$1,000 of principal of the 2024 Notes and 2025 Notes will initially be convertible into 17.5001 and 24.0964 shares, respectively, of the Company's common stock, which is equivalent to an initial conversion price of approximately \$57.14, and \$41.50 per share, respectively, in each case, subject to adjustment upon the occurrence of specified events set forth in the indenture governing such series of Convertible Notes.

Holders of the 2024 Notes may convert their 2024 Notes at their option at any time on or after March 15, 2024 until close of business on the second scheduled trading day immediately preceding the maturity date of June 15, 2024.

Further, holders of the 2024 Notes may convert all or any portion of the notes at the option of such holder prior to March 15, 2024 only under the following circumstances:

- 1) during any calendar quarter, if the last reported sale price of the common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price for the applicable series of Convertible Notes on each applicable trading day;
- 2) during the five business day period after any five consecutive trading day period (the measurement period) in which the trading price (as defined in the indenture governing the applicable series of Convertible Notes) per \$1,000 principal amount of such series of Convertible Notes for each trading day of the applicable measurement period was less than 98% of the product of the last reported sale price of Twitter's common stock and the conversion rate for the applicable series of Convertible Notes on each such trading day; or
- 3) upon the occurrence of certain specified corporate events.

Upon conversion of the 2024 Notes and 2025 Notes, the Company will pay or deliver, as the case may be, cash, shares of its common stock or a combination of cash and shares of its common stock, at the Company's election. If the Company satisfies its conversion obligation solely in cash or through payment and delivery of a combination of cash and shares of its common stock, the amount of cash and shares of common stock, if any, due upon conversion, will be based on a daily conversion value (as defined in the indenture governing the applicable series of Convertible Notes) calculated on a proportionate basis for each trading day in the applicable 30 trading day observation period.

If a fundamental change (as defined in the indenture governing the applicable series of Convertible Notes) occurs prior to the applicable maturity date, holders of the 2024 Notes or 2025 Notes, as applicable, may require the Company to repurchase all or a portion of their notes for cash at a repurchase price equal to 100% of the principal amount of such notes, plus any accrued and unpaid interest to, but excluding, the repurchase date of such series of notes. In addition, if specific corporate events occur prior to the applicable maturity date of the 2024 Notes or 2025 Notes, the Company will be required to increase the conversion rate for holders who elect to convert their notes in connection with such corporate events.

On or after March 20, 2022, the 2025 Notes will be redeemable by the Company in the event that the closing sale price of the Company's common stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period (including the last trading day of such period) ending on, and including, the trading day immediately preceding the date on which the Company provides the redemption notice at a redemption price of 100% of the principal amount of such 2025 Notes, plus accrued and unpaid interest to, but excluding, the redemption date.

The 2025 Notes are convertible at the option of the holder at any time until the scheduled trading day prior to the maturity date, including in connection with a redemption by the Company. Pursuant to the Investment Agreement related to the 2025 Notes, and subject to certain exceptions, Silver Lake will be restricted from transferring or entering into an agreement that transfers the economic consequences of ownership of the 2025 Notes or converting the 2025 Notes prior to the earlier of (i) the two year anniversary of the original issue date of the 2025 Notes or (ii) immediately prior to the consummation of a change of control of the Company. Exceptions to such restrictions on transfer include, among others: a) transfers to affiliates of Silver Lake, b) transfers to the Company or any of its subsidiaries, c) transfers to a third party where the net proceeds of such sale are solely used to satisfy a margin call or repay a permitted loan or d) transfers in connection with certain merger and acquisition events.

Concurrent with the offering of the 2021 Notes and the 2024 Notes, the Company entered into convertible note hedge transactions with certain bank counterparties whereby the Company has the option to purchase initially (subject to adjustment for certain specified events) a total of approximately 12.3 million and 20.1 million shares, respectively, of its common stock at a price of approximately \$77.64 and \$57.14 per share. The note hedge transactions in connection with the 2021 Notes expired on September 15, 2021. The total cost of the convertible note hedge transactions associated with the 2024 Notes was \$268.0 million. In addition, the Company sold warrants to certain bank counterparties whereby the holders of the warrants have the option to purchase initially (subject to adjustment for certain specified events) a total of approximately 12.3 million and 20.1 million shares, respectively, of the Company's common stock at an initial strike price of \$105.28 and \$80.20 per share, respectively. The Company received \$172.9 million and \$186.8 million in cash proceeds from the sale of these warrants, respectively. The warrant transactions in connection with the 2021 Notes expire over a 60 trading day settlement period scheduled to end on March 11, 2022.

Taken together, the purchase of the convertible note hedges and the sale of warrants are intended to offset any actual dilution from the conversion of the 2024 Notes and to effectively increase the overall conversion price from \$57.14 to \$80.20 per share. As these transactions meet certain accounting criteria, the convertible note hedges and warrants are recorded in stockholders' equity and are not accounted for as derivatives. The net cost incurred in connection with the convertible note hedge and warrant transactions was recorded as a reduction to additional paid-in capital on the consolidated balance sheet as of December 31, 2021.

Senior Notes

2027 Notes

In 2019, the Company issued \$700.0 million aggregate principal amount of the 3.875% senior notes due 2027, or the 2027 Notes, in a private placement to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended, and outside the United States pursuant to Regulation S under the Securities Act of 1933. The total net proceeds from this offering were approximately \$691.9 million, after deducting \$8.1 million of debt issuance costs in connection with the issuance of the 2027 Notes.

The 2027 Notes represent senior unsecured obligations of the Company. The interest rate is fixed at 3.875% per annum and interest is payable semi-annually in arrears on June 15 and December 15 of each year, which commenced on June 15, 2020. The 2027 Notes mature on December 15, 2027.

The Company may redeem the 2027 Notes, in whole or in part, at any time prior to September 15, 2027 at a price equal to 100% of the principal amount of the 2027 Notes plus a "make-whole" premium and accrued and unpaid interest, if any. On and after September 15, 2027, the Company may redeem the 2027 Notes at 100% of the principal amount plus accrued and unpaid interest, if any, to, but excluding, the redemption date. If the Company experiences a change of control triggering event (as defined in the Indenture), the Company must offer to repurchase the 2027 Notes at a repurchase price equal to 101% of the principal amount of the 2027 Notes to be repurchased, plus accrued and unpaid interest, if any, to the applicable repurchase date.

Convertible Notes and Senior Notes

The Notes consisted of the following (in thousands):

	December 31, 2021			
	2024 Notes	2025 Notes	2026 Notes	2027 Notes
Principal amounts:				
Principal	\$ 1,150,000	\$ 1,000,000	\$ 1,437,500	\$ 700,000
Unamortized debt discount and issuance costs ⁽¹⁾	(5,052)	(9,399)	(14,026)	(6,004)
Net carrying amount	\$ 1,144,948	\$ 990,601	\$ 1,423,474	\$ 693,996
Carrying amount of the equity component ⁽²⁾	\$ —	\$ —	\$ —	\$ —

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	December 31, 2020			
	2021 Notes	2024 Notes	2025 Notes	2027 Notes
Principal amounts:				
Principal	\$ 954,000	\$ 1,150,000	\$ 1,000,000	\$ 700,000
Unamortized debt discount and issuance costs ⁽¹⁾	(36,134)	(160,297)	(113,825)	(7,006)
Net carrying amount	\$ 917,866	\$ 989,703	\$ 886,175	\$ 692,994
Carrying amount of the equity component ⁽²⁾	\$ 283,283	\$ 254,981	\$ 121,413	\$ —

⁽¹⁾ Included on the consolidated balance sheets within "convertible notes, short-term"; "convertible notes, long-term"; and "senior notes, long-term", and amortized over the remaining lives of the Notes. The decrease of unamortized debt discount and issuance costs balance as of December 31, 2021 compared to December 31, 2020 was mainly due to the adoption of the new convertible debt standard on January 1, 2021.

⁽²⁾ The Company adopted the new accounting standard update which simplifies the accounting for convertible debt and other equity-linked instruments on January 1, 2021 using the modified retrospective method. The adoption eliminates the cash conversion and beneficial conversion feature models used to separately account for embedded conversion features as a component of equity. As of December 31, 2020, these amounts were included on the consolidated balance sheet within additional paid-in capital.

In the year ended December 31, 2021, the effective interest rate for the 2024 Notes, 2025 Notes, and 2027 Notes was 0.25%, 0.375%, and 3.875%, respectively. The 2026 Notes do not bear regular interest. In the year ended December 31, 2020 the effective interest rate for the 2024 Notes, 2025 Notes, and 2027 Notes was 4.46%, 2.99%, and 3.875%, respectively. During the years ended December 31, 2021, 2020, and 2019, the Company recognized \$10.2 million, \$112.2 million, and \$123.6 million respectively, of interest expense related to the amortization of debt discount and issuance costs prior to capitalization of interest. The decreases in the effective interest rate and interest expense are due to the elimination of interest expense related to the conversion features of the Convertible Notes as a result of the adoption of the new accounting standard update to simplify the accounting for convertible debt on January 1, 2021. Refer to Note 1 - Summary of Significant Accounting Policies for more detail. During the years ended December 31, 2021, 2020, and 2019, the Company recognized \$40.6 million, \$42.6 million, and \$15.7 million, respectively, of coupon interest expense. Future interest payments associated with the Notes total \$183.0 million, with \$33.7 million payable within the next 12 months.

As of December 31, 2021, the remaining lives of the 2024 Notes, the 2025 Notes, the 2026 Notes, and the 2027 Notes are approximately 29 months, 38 months, 50 months, and 71 months, respectively.

The following table summarizes the aggregate future principal payments on the Company's Notes as of December 31, 2021 (in thousands):

	Convertible Notes	Senior Notes
2022	\$ —	\$ —
2023	—	—
2024	1,150,000	—
2025 ⁽¹⁾	1,000,000	—
2026	1,437,500	—
Thereafter	—	700,000
Total	\$ 3,587,500	\$ 700,000

⁽¹⁾ The 2025 Notes are convertible at the option of the holder at any time until the scheduled trading day prior to the maturity date, including in connection with a redemption by the Company.

Note 12. Net Income (Loss) per Share

Basic net income (loss) per share is computed by dividing net income (loss) by the weighted-average common shares outstanding during the period. The weighted-average common shares outstanding is adjusted for shares subject to repurchase such as unvested restricted stock granted to employees in connection with acquisitions, contingently returnable shares and escrowed shares supporting indemnification obligations that are issued in connection with acquisitions and unvested stock options exercised.

Diluted net income (loss) per share is computed by dividing net income (loss) by the weighted-average number of common shares outstanding during the period, including potential dilutive securities. When the convertible notes are dilutive, interest expense, net of tax, is added back to net income to calculate diluted net income per share.

The following table presents the calculation of basic and diluted net income (loss) per share for periods presented (in thousands, except per share data).

	Year Ended December 31,		
	2021	2020	2019
Basic net income (loss) per share:			
Numerator			
Net income (loss)	\$ (221,409)	\$ (1,135,626)	\$ 1,465,659
Denominator			
Weighted-average common shares outstanding	799,198	789,887	772,663
Weighted-average restricted stock subject to repurchase	(1,625)	(2,026)	(1,934)
Weighted-average shares used to compute basic net income (loss) per share	<u>797,573</u>	<u>787,861</u>	<u>770,729</u>
Basic net income (loss) per share	<u>\$ (0.28)</u>	<u>\$ (1.44)</u>	<u>\$ 1.90</u>
Diluted net income (loss) per share:			
Numerator			
Net income (loss)	\$ (221,409)	\$ (1,135,626)	\$ 1,465,659
Denominator			
Number of shares used in basic computation	797,573	787,861	770,729
Weighted-average effect of dilutive securities:			
RSUs	—	—	10,468
Stock options	—	—	2,496
Other	—	—	1,838
Weighted-average shares used to compute diluted net income (loss) per share	<u>797,573</u>	<u>787,861</u>	<u>785,531</u>
Diluted net income (loss) per share	<u>\$ (0.28)</u>	<u>\$ (1.44)</u>	<u>\$ 1.87</u>

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The following numbers of potential common shares at the end of each period were excluded from the calculation of diluted net income (loss) per share because their effect would have been anti-dilutive for the periods presented (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Convertible Notes	62,084	—	—
Warrants	41,010	32,412	42,246
RSUs	37,394	36,611	12,117
Shares subject to repurchase and others	7,612	5,668	1,284
Stock options	965	1,436	3

Prior to January 1, 2021, the Company used the treasury stock method for calculating any potential dilutive effect of the conversion spread on diluted net income (loss) per share, if applicable. In the year ended December 31, 2020, the Company's potential common stock instruments such as stock options, RSUs, shares to be purchased under the 2013 Employee Stock Purchase Plan, shares subject to repurchases, the Convertible Notes and the warrants were not included in the computation of diluted net loss per share as the effect of including these shares in the calculation would have been anti-dilutive. In the year ended December 31, 2019, since the average market price of the common stock was below both the conversion price of each of the Convertible Notes outstanding in the period and the exercise price of each of the warrants in the period, the Convertible Notes did not have a dilutive impact on diluted net income per share, and the warrants were anti-dilutive.

On January 1, 2021, the Company adopted the accounting standard update to simplify the accounting for convertible debt instruments. For the year ended December 31, 2021, the Company uses the if-converted method for all Convertible Notes in the diluted net income (loss) per share calculation and includes the effect of potential share settlement for the Convertible Notes, if the effect is more dilutive. In the year ended December 31, 2021, the Convertible Notes were not included in the computation of diluted net loss per share as the effect of including these shares in the calculation would have been anti-dilutive. The use of the if-converted method had no impact on the diluted net income (loss) per share amount for the year ended December 31, 2021.

If the average market price of the common stock exceeds the exercise price of the warrants, \$105.28 for the 2021 Notes, \$80.20 for the 2024 Notes, and \$163.02 for the 2026 Notes, the warrants will have a dilutive effect on the earnings per share assuming that the Company is profitable. Since the average market price of the common stock is below \$80.20 for all periods presented, the warrants are anti-dilutive.

Note 13. Preferred Stock

The Company has the authority to issue up to 200,000,000 shares of preferred stock and to determine the price, rights, preferences, privileges and restrictions, including voting rights, of those shares without any further vote or action by the stockholders. As of December 31, 2021 and 2020, there was no preferred stock outstanding.

Note 14. Common Stock and Stockholders' Equity

Common Stock

As of December 31, 2021, the Company is authorized to issue 5.0 billion shares of \$0.000005 par value common stock in accordance with the Certificate of Incorporation, as amended and restated.

Each share of common stock is entitled to one vote. The holders of common stock are also entitled to receive dividends whenever funds are legally available and when and if declared by the Board of Directors, subject to the prior rights of holders of all classes of stock outstanding. As of December 31, 2021, no dividends have been declared.

Equity Incentive Plans

The Company's 2013 Equity Incentive Plan became effective upon its initial public offering. Initially, 68.3 million shares were reserved under the 2013 Equity Incentive Plan. The number of shares of the Company's common stock available for issuance under the 2013 Equity Incentive Plan were and will be increased on the first day of each fiscal year beginning with the 2014 fiscal year, in an amount equal to the least of (i) 60,000,000 Shares, (ii) 5% of the outstanding Shares on the last day of the immediately preceding fiscal year or (iii) such number of Shares determined by the Company's Board of Directors. As of December 31, 2021, the total number of options, restricted stock units (RSUs), and performance-based restricted stock units (PRSUs) outstanding under the 2013 Equity Incentive Plan was 41.7 million shares, and 231.0 million shares were available for future issuance. In addition, a total of 6.8 million shares were reserved and are available for grants under the Company's 2016 Equity Incentive Plan. As of December 31, 2021, no shares have been issued under the 2016 Equity Incentive Plan. Options granted under the Company's Equity Incentive Plans generally expire 10 years after the grant date. The Company issues new shares to satisfy stock option exercises.

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The Company also assumed stock options of acquired entities in connection with certain acquisitions. While the respective stock plans were terminated on the closing of each acquisition, they continue to govern the terms of stock options assumed in the respective acquisition.

Share Repurchases

In March 2020, the Company's Board of Directors authorized a program to repurchase up to \$2.0 billion of the Company's common stock over time. Repurchases may be made from time to time through open market purchases or through privately negotiated transactions subject to market conditions, applicable legal requirements and other relevant factors. The repurchase program does not obligate the Company to acquire any particular amount of its common stock, and may be suspended at any time at the Company's discretion. The Company repurchased 16.9 million shares for an aggregate amount of \$930.5 million and 5.7 million shares for an aggregate amount of \$250.6 million in the years ended December 31, 2021 and 2020, respectively. The repurchases include approximately 120,000 shares for \$5.3 million and 98,000 shares for \$5.3 million that were not settled and that are presented as treasury stock on the consolidated balance sheets as of December 31, 2021 and 2020, respectively.

Restricted Common Stock

The Company has granted restricted common stock to certain continuing employees in connection with certain of its acquisitions. Vesting of this stock is dependent on the respective employee's continued employment at the Company during the requisite service period, which is generally up to four years from the issuance date, and the Company has the right to repurchase the unvested shares upon termination of employment. The fair value of the restricted common stock issued to employees that is subject to post-acquisition employment is recorded as compensation expense on a straight-line basis over the requisite service period.

The activities for the restricted common stock issued to employees for the year ended December 31, 2021 are summarized as follows (in thousands, except per share data):

	Number of Shares	Weighted-Average Grant-Date Fair Value Per Share
Unvested restricted common stock at December 31, 2020	1,998	\$ 34.00
Granted ⁽¹⁾	582	\$ 24.50
Vested	(950)	\$ 26.23
Canceled	(65)	\$ 31.86
Unvested restricted common stock at December 31, 2021	<u>1,565</u>	<u>\$ 35.28</u>

⁽¹⁾ Includes 194,000 fully vested shares issued in connection with acquisitions that are attributable to purchase consideration. No expense will be recognized for these fully vested shares.

Employee Stock Purchase Plan

The Company's 2013 Employee Stock Purchase Plan (ESPP) allows eligible employees to purchase shares of the Company's common stock at a discount through payroll deductions of up to 15% of their eligible compensation, subject to any plan limitations. The ESPP provides for twelve-month offering periods, and each offering period will include two successive six-month purchase periods, each ending with the exercise date. Employees are able to purchase shares at 85% of the lower of the fair market value of the Company's common stock on the first trading day of the offering period or on the applicable exercise date. The number of shares available for sale under the ESPP were and will be increased annually on the first day of each fiscal year, equal to the least of i) 11.3 million shares; ii) 1% of the outstanding shares of the Company's common stock as of the last day of the immediately preceding fiscal year; or iii) such other amount as determined by the Board of Directors.

During the years ended December 31, 2021 and 2020, employees purchased an aggregate of 2.2 million and 2.3 million shares, respectively, under this plan at a weighted average price of \$31.07 and \$24.65 per share, respectively.

Stock Option Activity

A summary of stock option activity for the year ended December 31, 2021 is as follows (in thousands, except years and per share data):

	Options Outstanding			
	Number of Shares	Weighted-Average Exercise Price Per Share	Weighted-Average Remaining Contractual Life (in years)	Aggregate Intrinsic Value
Outstanding at December 31, 2020	1,436	\$ 18.97	3.39	\$ 50,534
Options granted and assumed in connection with acquisitions	64	\$ 16.56		
Options exercised	(532)	\$ 3.87		
Options canceled	(3)	\$ 26.71		
Outstanding at December 31, 2021	965	\$ 27.11	4.20	\$ 15,550
Exercisable at December 31, 2021	934	\$ 27.34	4.06	\$ 14,828

The aggregate intrinsic value in the table above represents the difference between the fair value of common stock and the exercise price of outstanding, in-the-money stock options.

The total intrinsic values of stock options exercised in the years ended December 31, 2021, 2020 and 2019 were \$36.0 million, \$78.5 million and \$13.1 million, respectively.

Performance Restricted Stock Units Activity

The Company grants restricted stock units to certain of its executive officers periodically that vest based on the Company's attainment of the annual financial performance goals and the executives' continued employment through the vesting date (PRSUs). These PRSUs are granted when the annual performance targets are set and the awards are approved by the Compensation Committee of the Board of Directors, generally in the first half of each financial year. The Company granted PRSUs with a vesting period of one year prior to 2020, and three years since 2020.

The following table summarizes the activity related to the Company's PRSUs for the year ended December 31, 2021 (in thousands, except per share data):

	PRSUs Outstanding	
	Shares	Weighted-Average Grant-Date Fair Value Per Share
Unvested and outstanding at December 31, 2020	729	\$ 27.77
Granted (100% target level)	348	\$ 71.22
Unearned performance shares canceled related to 2020 grants	(365)	\$ 27.77
Vested	(137)	\$ 30.63
Forfeited or cancelled	(119)	\$ 54.97
Unvested and outstanding at December 31, 2021	456	\$ 52.89

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The PRSUs unvested and outstanding at December 31, 2021 include approximately 243,000 shares of performance-based awards for the 2021 performance period, which are expected to vest at 102% of target, or approximately 248,000 PRSUs, over three years, based on the financial results of the 2021 financial year. The remaining PRSUs unvested and outstanding primarily relate to the required service periods associated with prior grants.

The total fair value of PRSUs vested during the years ended December 31, 2021, 2020, and 2019 were \$10.0 million, \$22.7 million, and \$23.2 million, respectively.

The Company grants market-based restricted stock units to certain of its executive officers that vest based on Twitter stock price performance relative to a broad-market index or upon achievement of certain Twitter stock price targets over a performance period of up to five years and the executives' continued employment through the vesting date. The Company granted market-based RSUs with a vesting period of three to six years.

The following table summarizes the activity related to the Company's market-based restricted stock units for the year ended December 31, 2021 (in thousands, except per share data):

	Market-based RSUs Outstanding	
	Shares	Weighted-Average Grant-Date Fair Value Per Share
Unvested and outstanding at December 31, 2020	917	\$ 30.90
Granted (100% target level)	3,371	\$ 32.92
Unearned performance shares canceled related to 2019 grants	(207)	\$ 30.60
Vested	(302)	\$ 32.03
Forfeited or cancelled	(858)	\$ 35.96
Unvested and outstanding at December 31, 2021	2,921	\$ 31.64

The 2.9 million shares of market-based RSUs unvested and outstanding at December 31, 2021 represent the awards at the target level of achievement for the respective performance periods.

The total fair value of market-based RSUs vested during the years ended December 31, 2021, 2020, and 2019 was \$20.7 million, \$13.4 million, and \$3.7 million, respectively.

RSU Activity

The following table summarizes the activity related to the Company's RSUs, excluding PRSUs and market-based RSUs, for the year ended December 31, 2021. For purposes of this table, vested RSUs represent the shares for which the service condition had been fulfilled as of each respective date (in thousands, except per share data):

	RSUs Outstanding	
	Shares	Weighted-Average Grant-Date Fair Value Per Share
Unvested and outstanding at December 31, 2020	36,611	\$ 32.28
Granted	24,507	\$ 61.67
Vested	(16,984)	\$ 36.64
Canceled	(6,740)	\$ 40.16
Unvested and outstanding at December 31, 2021	37,394	\$ 48.14

The total fair value of RSUs vested during the years ended December 31, 2021, 2020, and 2019 was \$993.0 million, \$557.1 million, and \$454.5 million, respectively.

Stock-Based Compensation Expense

Stock-based compensation expense is allocated based on the cost center to which the award holder belongs. Total stock-based compensation expense by function is as follows (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Cost of revenue	\$ 45,203	\$ 32,020	\$ 22,797
Research and development	381,961	281,092	209,063
Sales and marketing	112,990	98,748	85,739
General and administrative	89,747	63,072	60,426
Total stock-based compensation expense	\$ 629,901	\$ 474,932	\$ 378,025

The amount of incremental stock-based compensation recorded in relation to the modification of stock-based awards was not material for the years ended December 31, 2021, 2020 and 2019.

The Company capitalized \$79.7 million, \$34.6 million and \$37.5 million of stock-based compensation expense associated with the cost for developing software for internal use in the years ended December 31, 2021, 2020 and 2019, respectively.

As of December 31, 2021, there was \$1.82 billion of gross unamortized stock-based compensation expense related to unvested awards which is expected to be recognized over a weighted-average period of 2.9 years. The Company accounts for forfeitures as they occur.

Note 15. Income Taxes

The domestic and foreign components of income (loss) before income taxes for the years ended December 31, 2021, 2020 and 2019 are as follows (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Domestic	\$ (341,942)	\$ (72,850)	\$ 317,135
Foreign	(69,171)	21,911	73,004
Income (loss) before income taxes	<u>\$ (411,113)</u>	<u>\$ (50,939)</u>	<u>\$ 390,139</u>

The components of the provision (benefit) for income taxes for the years ended December 31, 2021, 2020 and 2019 are as follows (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Current:			
Federal	\$ (1,382)	\$ (199)	\$ 563
State	741	677	3,375
Foreign	39,711	19,813	43,053
Total current provision for income taxes	<u>39,070</u>	<u>20,291</u>	<u>46,991</u>
Deferred:			
Federal	(185,081)	(35,651)	2,023
State	(24,405)	(2,248)	2,050
Foreign	(19,288)	1,102,295	(1,126,584)
Total deferred provision (benefit) for income taxes	<u>(228,774)</u>	<u>1,064,396</u>	<u>(1,122,511)</u>
Provision (benefit) for income taxes	<u>\$ (189,704)</u>	<u>\$ 1,084,687</u>	<u>\$ (1,075,520)</u>

The following is a reconciliation of the income tax at the federal statutory rate to the Company's provision (benefit) for income taxes for the years ended December 31, 2021, 2020 and 2019 (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Income tax at federal statutory rate	\$ (86,334)	(10,697)	\$ 81,929
State taxes, net of federal benefit	(18,694)	(1,246)	4,286
Stock-based compensation	(56,551)	(27,127)	(19,005)
Research and development credits	(71,820)	(40,707)	(33,044)
Valuation allowance	361	1,104,732	(724)
Nondeductible other expenses	6,145	7,438	12,266
Nondeductible Federal Trade Commission settlement accrual	—	31,500	—
Deferred tax asset on intra-entity transfer of intangible assets	—	—	(1,203,381)
Foreign rate differential	39,285	22,078	79,186
Other	(2,096)	(1,284)	2,967
Provision (benefit) for income taxes	<u>\$ (189,704)</u>	<u>\$ 1,084,687</u>	<u>\$ (1,075,520)</u>

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The tax effects of temporary differences and related deferred tax assets and liabilities as of December 31, 2021 and 2020 are as follows (in thousands):

	December 31,	
	2021	2020
Deferred tax assets:		
Net operating loss carryforwards	\$ 487,729	\$ 421,411
Tax credits	586,026	485,106
Fixed assets and intangible assets	1,152,360	1,280,597
Operating lease liability	299,514	230,837
Litigation Settlement	194,897	—
Other	169,278	82,596
Total deferred tax assets	2,889,804	2,500,547
Valuation allowance	(1,414,632)	(1,457,137)
Total deferred tax assets, net of valuation allowance	1,475,172	1,043,410
Deferred tax liabilities:		
Operating lease right-of-use asset	(276,855)	(215,663)
Other	(50,716)	(32,451)
Total deferred tax liabilities	(327,571)	(248,114)
Net deferred tax assets	\$ 1,147,601	\$ 795,296

The Company has a gross deferred tax asset balance of \$2.89 billion and \$2.50 billion as of December 31, 2021 and 2020, respectively. The Company has a valuation allowance of approximately \$1.41 billion and \$1.46 billion as of December 31, 2021, and 2020, respectively primarily related to deferred tax assets of a foreign subsidiary, California, and Massachusetts, and U.S. federal unrealized capital losses. The Company continues to reassess the ability to realize the valuation allowance quarterly, and if future evidence allows for a partial or full release of the valuation allowance, a tax benefit will be recorded accordingly.

At December 31, 2021, the Company had \$2.39 billion of U.S. federal, \$1.36 billion of U.S. state, \$151.5 million of Ireland, and \$55.6 million of Brazil net operating losses. The federal and state net operating losses will begin to expire in 2034 and 2024, respectively, if not utilized. The Ireland and Brazil net operating losses have no expiration date. The Company also has \$494.8 million and \$349.4 million of U.S. federal and state research credit carryforwards, respectively. The U.S. federal credit carryforward will begin to expire in 2027, if not utilized. The majority of state research tax credits have no expiration date. A small portion of state research tax credits will begin to expire in 2030, if not utilized. Additionally, the Company has California Enterprise Zone Credit carryforwards of \$16.4 million which will begin to expire in 2023, if not utilized. Utilization of the U.S. net operating loss and credit carryforwards may be subject to an annual limitation due to the ownership change limitations provided by the Internal Revenue Code of 1986, as amended (the Code), and similar state provisions. Utilization of the foreign net operating losses may be subject to limitation based on the nature of income earned. Any annual limitation may result in the expiration of net operating losses and credits before utilization.

As of December 31, 2021, the Company had \$401.4 million of unrecognized tax benefits, of which \$309.5 million could result in a reduction of the Company's effective tax rate, if recognized. The remainder of the unrecognized tax benefits would not affect the effective tax rate due to the full valuation allowance recorded for California and Massachusetts deferred tax assets.

A reconciliation of the beginning and ending amount of unrecognized tax benefit is as follows (in thousands):

	Year Ended December 31,		
	2021	2020	2019
Gross unrecognized tax benefits at the beginning of the year	\$ 354,598	\$ 419,858	\$ 332,314
Increases related to prior year tax positions	3,365	5,943	54,743
Decreases related to prior year tax positions	(5,296)	(99,540)	(2,537)
Increases related to current year tax positions	50,468	28,337	35,338
Statute of limitations expirations	(1,770)	—	—
Gross unrecognized tax benefits at the end of the year	\$ 401,365	\$ 354,598	\$ 419,858

Total unrecognized tax benefits are recorded on the Company's consolidated balance sheets as follows (in thousands):

	December 31,	
	2021	2020
Total unrecognized tax benefits balance	\$ 401,365	\$ 354,598
Amounts netted against related deferred tax assets	(369,312)	(331,339)
Unrecognized tax benefits recorded on consolidated balance sheets	\$ 32,053	\$ 23,259

The Company recognizes interest and/or penalties related to income tax matters as a component of income tax expense. During the years ended December 31, 2021, 2020, and 2019, the Company recognized immaterial amounts of interest and penalties in income tax expense. As of December 31, 2021 and 2020, the Company had \$7.6 million and \$7.2 million of interest and penalties included in uncertain tax positions, respectively.

The Company is subject to taxation in the United States and various foreign jurisdictions. Earnings from non-U.S. activities are subject to local country income tax. The material jurisdictions where the Company is subject to potential examination by tax authorities include the United States, California and Ireland. The Company believes that it has reserved adequate amounts for these jurisdictions. The Company's 2007 to 2020 tax attributes remain subject to potential examination by the United States and California, and its 2017 to 2020 tax years remain subject to potential examination in Ireland. The Company remains subject to potential examination in various other jurisdictions that are not expected to result in material tax adjustments. The Company does not believe that its unrecognized tax benefits will materially change within the next 12 months.

Note 16. Commitments and Contingencies**Credit Facility**

The Company has a revolving credit agreement with certain lenders, which provides for a \$500.0 million unsecured revolving credit facility maturing on August 7, 2023. The Company is obligated to pay interest on loans under the credit facility and other customary fees for a credit facility of this size and type, including an upfront fee and an unused commitment fee. The interest rate for the credit facility is determined based on calculations using certain market rates as set forth in the credit agreement. In addition, the credit facility contains restrictions on payments including cash payments of dividends. In March 2021, the Company entered into an amendment to the revolving credit agreement to increase the amount of indebtedness the Company may incur from \$4.5 billion to \$6.0 billion and to permit the convertible note issuance and hedge transactions associated with the 2026 Notes. As of December 31, 2021, no amounts had been drawn under the credit facility.

Unconditional Obligations

The Company's unconditional obligations are non-cancelable contractual commitments primarily related to the Company's infrastructure services and other services arrangements. The following table summarizes the Company's commitments to settle unconditional obligations in cash as of December 31, 2021:

2022	\$	213,578
2023		385,854
2024		387,446
2025		382,469
2026		197,428
Thereafter		7,985
Total	\$	<u>1,574,760</u>

Legal Proceedings

Beginning in September 2016, multiple putative class actions and derivative actions were filed in state and federal courts in the United States against the Company and the Company's directors and/or certain former officers alleging that false and misleading statements, made in 2015, are in violation of securities laws and breached fiduciary duty. The putative class actions were consolidated in the U.S. District Court for the Northern District of California.

In January 2021, the Company entered into a binding agreement to settle the shareholder derivative lawsuits. The derivative settlement resolves all claims asserted against the Company and the other named defendants in the derivative lawsuits without any liability or wrongdoing attributed to them personally or to the Company. Under the terms of the settlement, the Company's board of directors will adopt and implement certain corporate governance modifications. On July 27, 2021, the Court of Chancery of the State of Delaware approved the settlement agreement, and in the three months ended September 30, 2021, the Company received \$38.0 million of insurance proceeds to be used for general corporate purposes. The settlement does not require the Company to make any payment, aside from covering certain administrative costs related to the settlement.

The shareholder class action lawsuit was scheduled for trial on September 20, 2021. In September 2021, prior to the start of the trial, the Company negotiated and entered into a binding agreement to settle the shareholder class action lawsuit. The proposed class action settlement resolves all claims asserted against the Company and the other named defendants in the shareholder class action lawsuit without any liability or wrongdoing attributed to them personally or to the Company. Under the terms of the proposed settlement, the Company paid the settlement amount of \$809.5 million from cash on hand in the fourth quarter of 2021. The settlement amount is included in litigation settlement, net in the consolidated statement of operations for the year ended December 31, 2021. The settlement agreement is subject to final approval by the U.S. District Court for the Northern District of California. Following the agreements to settle the class action and derivative lawsuits, no other matters related to the aforementioned putative class actions and derivative actions remain outstanding.

Beginning in October 2019, putative class actions were filed in the U.S. District Court for the Northern District of California against the Company and certain of the Company's officers alleging violations of securities laws in connection with the Company's announcements that it had discovered and taken steps to remediate issues related to certain user settings designed to target advertising that were not working as expected and seeking unspecified damages. The Company disputes the claims and intends to defend the lawsuit vigorously. In December 2020, the district court dismissed the plaintiffs' claims. The case is currently on appeal to the United States Court of Appeal for the Ninth Circuit.

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From time to time the Company notifies the Irish Data Protection Commission, its designated European privacy regulator under the European Union General Data Protection Regulation, or GDPR, and other regulators, of certain personal data breaches and privacy and cybersecurity issues, and is subject to inquiries and investigations regarding various aspects of our regulatory compliance. The Company is currently the subject of inquiries by the Irish Data Protection Commission with respect to its compliance with the GDPR.

On July 28, 2020, the Company received a draft complaint from the Federal Trade Commission (FTC) alleging violations of the Company's 2011 consent order with the FTC and the Federal Trade Commission Act. The allegations relate to the Company's use of phone number and/or email address data provided for safety and security purposes for targeted advertising during periods between 2013 and 2019. The Company estimates that the range of probable loss in this matter is \$150.0 million to \$250.0 million and recorded an accrual of \$150.0 million in the three months ended June 30, 2020. The accrual is included in accrued and other current liabilities on the consolidated balance sheet as of December 31, 2021. The matter remains unresolved, and there can be no assurance as to the timing or the terms of any final outcome.

On January 15, 2021, a derivative action was filed in the Delaware Chancery Court against certain directors of the Company alleging that the directors violated their fiduciary duties in deciding to enter into the Cooperation Agreement with certain affiliates of Elliott Management Corporation, to enter into the Investment Agreement with an affiliate of Silver Lake Partners, and to authorize a program to repurchase up to \$2.0 billion of the Company's common stock. The defendants moved to dismiss the complaint on March 19, 2021 and on September 10, 2021, the court denied defendants' motion to dismiss. On November 9, 2021, the court granted a motion to stay the case for six months while a Special Litigation Committee of the Company's board of directors investigates the claims.

On February 22, 2021, a derivative action was filed in the Delaware Chancery Court against Jack Dorsey alleging that Mr. Dorsey violated his fiduciary duties relating to various alleged privacy and cybersecurity issues. The parties have agreed to a stay of this action pending the outcome of the Company's board of directors' investigation of the claims.

The Company is also currently involved in, and may in the future be involved in, legal proceedings, claims, investigations, and government inquiries and investigations arising in the ordinary course of business. These proceedings, which include both individual and class action litigation and administrative proceedings, have included, but are not limited to matters involving content on the platform or the Company's actions related there to, intellectual property, privacy, data protection, cybersecurity, consumer protection, securities, employment, and contractual rights. Legal fees and other costs associated with such actions are expensed as incurred.

The Company assesses, in conjunction with its legal counsel, the need to record a liability for litigation and contingencies. With respect to the cases, actions, and inquiries described above, the Company evaluates the associated developments on a regular basis and will accrue a liability when it believes a loss is probable and the amount can be reasonably estimated. In addition, the Company believes there is a reasonable possibility that it may incur a loss in some of these matters and the loss may be material or exceed its estimated ranges of possible loss. With respect to the matters described above that do not include an estimate of the amount of loss or range of possible loss, such losses or range of possible losses either are not material or may be material but cannot be estimated.

The outcomes of the matters described in this section, such as whether the likelihood of loss is remote, reasonably possible, or probable, or if and when the reasonably possible range of loss is estimable, are inherently uncertain. If one or more of these matters were resolved against the Company for amounts above management's estimates, the Company's financial condition and results of operations, including in a particular reporting period in which any such outcome becomes probable and estimable, could be materially adversely affected.

Non-Income Taxes

The Company is under various non-income tax audits by domestic and foreign tax authorities. These audits primarily revolve around routine inquiries, refund requests, and employee benefits. The Company accrues non-income taxes that may result from these audits when they are probable and can be reasonably estimated. Due to the complexity and uncertainty of some of these matters, however, as well as the judicial process in certain jurisdictions, the final outcome of these audits may be materially different from the Company's expectations.

Indemnification

In the ordinary course of business, the Company often includes standard indemnification provisions in its arrangements with its customers, partners, suppliers and vendors. Pursuant to these provisions, the Company may be obligated to indemnify such parties for losses or claims suffered or incurred in connection with its service, breach of representations or covenants, intellectual property infringement or other claims made against such parties. These provisions may limit the time within which an indemnification claim can be made. It is not possible to determine the maximum potential amount under these indemnification obligations due to the limited history of prior indemnification claims and the unique facts and circumstances involved in each particular agreement. The Company has never incurred significant expense defending its licensees against third-party claims, nor has it ever incurred significant expense under its standard service warranties or arrangements with its customers, partners, suppliers and vendors. Accordingly, the Company had no liabilities recorded for these provisions as of December 31, 2021 and 2020.

Note 17. Related Party Transactions

Certain of the Company's directors have affiliations with customers of the Company. The Company recognized revenue under contractual obligations from such customers of \$31.2 million for the year ended December 31, 2021 and \$22.0 million for each of the years ended December 31, 2020 and 2019. The Company had outstanding receivable balances of \$4.1 million and \$5.0 million from such customers as of December 31, 2021 and 2020, respectively.

Note 18. Employee Benefit Plan

The Company has a 401(k) Plan that qualifies as a deferred compensation arrangement under Section 401 of the Internal Revenue Code. Under the 401(k) Plan, participating employees may defer a portion of their pretax earnings not to exceed the maximum amount allowable. Matching contributions are based upon the amount of the employees' contributions subject to certain limitations. The matching contributions made by the Company were \$15.1 million, \$11.0 million, and \$8.8 million for the years ended December 31, 2021, 2020 and 2019, respectively.

Note 19. Segment Information and Operations by Geographic Area

The Company has a single operating segment and reporting unit structure. The Company's chief operating decision-maker is the Chief Executive Officer who reviews financial information presented on a consolidated basis for purposes of allocating resources and evaluating financial performance.

Revenue

See Note 2 - Revenue for further details.

Property and Equipment, net

See Note 5 - Property and Equipment, Net for further details.

Note 20. Subsequent Events

In February 2022, the Company's board of directors authorized a new \$4.0 billion share repurchase program. The program became effective immediately, and replaced the previously authorized \$2.0 billion program from 2020. As part of the new program, the Company entered into a \$2.0 billion accelerated share repurchase program and the Company intends to repurchase the remaining \$2.0 billion over time.

In February 2022, the Company amended its existing revolving credit agreement to permit repurchases by the Company of its common stock in an aggregate amount not to exceed \$4.0 billion.

Item 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

Item 9A. CONTROLS AND PROCEDURES*Evaluation of Disclosure Controls and Procedures*

Our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures as of the end of the period covered by this Annual Report on Form 10-K. The term “disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the Exchange Act), means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits 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 by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company’s management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure. Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures. The design of disclosure controls and procedures and internal control over financial reporting must reflect the fact that there are resource constraints and that management is required to apply judgment in evaluating the benefits of possible controls and procedures relative to their costs. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of December 31, 2021, our disclosure controls and procedures were effective at the reasonable assurance level.

Changes in Internal Control over Financial Reporting

There was no change in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the quarter ended December 31, 2021 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Management’s Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act). Our management conducted an assessment of the effectiveness of our internal control over financial reporting based on the criteria established in “Internal Control - Integrated Framework” (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on that assessment, our management has concluded that our internal control over financial reporting was effective as of December 31, 2021. The effectiveness of the Company’s internal control over financial reporting as of December 31, 2021 has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report which appears herein.

Item 9B. OTHER INFORMATION

On February 14, 2022, our board of directors approved our amended and restated bylaws effective immediately. The bylaws were amended and restated, among other things, to:

- include a proxy access bylaw in Section 2.15;
- include a federal forum selection bylaw related to claims under the Securities Act of 1933, as amended, in Article VIII;
- update various sections regarding directors, board committees and officers in Article III, IV and V; and
- make various updates throughout to conform to current Delaware law and make ministerial changes, clarifications, and other conforming revisions.

The foregoing description of our amended and restated bylaws is qualified in its entirety by the full text of the bylaws, a copy of which is included as Exhibit 3.2 to this Annual Report on Form 10-K.

Item 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

Not applicable.

Part III

Item 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information called for by this item will be set forth in our Proxy Statement for the Annual Meeting of Stockholders to be filed with the SEC within 120 days of the fiscal year ended December 31, 2021 and is incorporated herein by reference.

Our board of directors has adopted a code of business conduct and ethics that applies to all of our employees, officers and directors, including our Chief Executive Officer, Chief Financial Officer and other executive and senior financial officers. The full text of our code of business conduct and ethics is posted on the investor relations page on our website which is located at <http://investor.twitterinc.com>. We will post any amendments to our code of business conduct and ethics, or waivers of its requirements, on our website.

Item 11. EXECUTIVE COMPENSATION

The information called for by this item will be set forth in our Proxy Statement and is incorporated herein by reference.

Item 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information required by this item will be set forth in our Proxy Statement and is incorporated herein by reference.

Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information, if any, required by this item will be set forth in our Proxy Statement and is incorporated herein by reference.

Item 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

The information required by this item will be set forth in our Proxy Statement and is incorporated herein by reference.

PART IV**Item 15. EXHIBIT AND FINANCIAL STATEMENT SCHEDULES**

The following documents are filed as part of this Annual Report on Form 10-K:

1. Consolidated Financial Statements

Our Consolidated Financial Statements are listed in the "Index to Consolidated Financial Statements" under Part II, Item 8 of this Annual Report on Form 10-K.

2. Financial Statement Schedules

SCHEDULE II**VALUATION AND QUALIFYING ACCOUNTS****FOR THE YEARS ENDED DECEMBER 31, 2021, 2020 AND 2019**

	Balance at Beginning of Year	Charged to Expenses	Charged/ Credited to Other Accounts	Balance at End of Year
(In thousands)				
Allowance for Deferred Tax				
Assets:				
Year ended December 31, 2021	\$ 1,457,137	\$ 42,328	\$ (84,833)	\$ 1,414,632
Year ended December 31, 2020	\$ 223,775	\$ 1,124,132	\$ 109,230	\$ 1,457,137
Year ended December 31, 2019	\$ 210,862	\$ 12,913	\$ —	\$ 223,775
(In thousands)				
	Balance at Beginning of Year	Additions (Reductions)	Write-off/ Adjustments	Balance at End of Year
Allowance for Doubtful Accounts:				
Year ended December 31, 2021	\$ 16,946	\$ 436	\$ (2,104)	\$ 15,278
Year ended December 31, 2020	\$ 2,401	\$ 17,190	\$ (2,645)	\$ 16,946
Year ended December 31, 2019	\$ 3,559	\$ 3,083	\$ (4,241)	\$ 2,401

All other financial statement schedules have been omitted because they are not required, not applicable, not present in amounts sufficient to require submission of the schedule, or the required information is shown in our Consolidated Financial Statements or Notes thereto.

3. Exhibits

The documents listed in the Exhibit Index of this Annual Report on Form 10-K are incorporated by reference or are filed with this Annual Report on Form 10-K, in each case as indicated therein (numbered in accordance with Item 601 of Regulation S-K).

EXHIBIT INDEX

Exhibit Number	Exhibit Description	Form	Incorporated by Reference		
			File No.	Exhibit	Filing Date
3.1	Restated Certificate of Incorporation of Twitter, Inc.	S-1/A	333-191552	3.2	October 22, 2013
3.2	Amended and Restated Bylaws of Twitter, Inc.				
4.1	Form of common stock certificate of Twitter, Inc.	S-1/A	333-191552	4.1	October 22, 2013
4.2	Indenture, dated June 11, 2018, between Twitter, Inc. and U.S. Bank National Association.	8-K	001-36164	4.1	June 11, 2018
4.3	Form of Global 0.25% Convertible Senior Note due 2024.	8-K	001-36164	4.2	June 11, 2018
4.4	Indenture, dated as of December 9, 2019, by and between Twitter, Inc. and U.S. Bank National Association, as Trustee (3.875% Senior Notes due 2027).	8-K	001-36164	4.1	December 9, 2019
4.5	Form of 3.875% Senior Note due 2027.	8-K	001-36164	4.2	December 9, 2019
4.6	Indenture, dated March 12, 2020, between Twitter, Inc. and U.S. Bank National Association, as Trustee.	8-K	001-36164	4.1	March 13, 2020
4.7	Form of 0.375% Convertible Senior Notes due 2025.	8-K	001-36164	4.2	March 13, 2020
4.8	Description of Capital Stock of Twitter, Inc.	10-K	001-36164	4.8	February 19, 2020
4.9	Indenture, dated March 4, 2021, between Twitter, Inc. and U.S. Bank National Association.	8-K	001-36164	4.1	March 4, 2021
4.10	Form of Global 0% Convertible Senior Note due 2026.	8-K	001-36164	4.2	March 4, 2021
10.1*	Form of Indemnification Agreement between Twitter, Inc. and each of its directors and executive officers.	10-Q	001-36164	10.1	August 3, 2020
10.2*	Twitter, Inc. 2013 Equity Incentive Plan and related form agreements.	S-1/A	333-191552	10.2	October 22, 2013
10.3*	Twitter, Inc. 2013 Employee Stock Purchase Plan and related form agreements.	S-8	333-192150	4.3	November 7, 2013
10.4*	Twitter, Inc. 2007 Equity Incentive Plan and related form agreements.	S-1	333-191552	10.4	October 3, 2013
10.5*	Form of Performance-Based Restricted Stock Unit Award Agreement for Executives, including Notice of Grant, under the Twitter, Inc. 2013 Equity Incentive Plan.	10-K	001-36164	10.5	February 29, 2016
10.6*	Twitter, Inc. 2016 Equity Incentive Plan and related form agreements.	S-8	333-212740	4.2	July 29, 2016
10.7*	Twitter, Inc. Executive Incentive Compensation Plan.	S-1	333-191552	10.9	October 3, 2013
10.8*	Twitter, Inc. Change of Control and Involuntary Termination Protection Policy.	10-Q	001-36164	10.1	August 11, 2014
10.9*	Twitter, Inc. Outside Director Compensation Policy	10-Q	001-36164	10.1	October 30, 2020
10.10*	Offer Letter between Twitter, Inc. and Jack Dorsey, dated as of June 11, 2015.	8-K	001-36164	10.1	June 11, 2015
10.11*	Offer Letter between Twitter, Inc. and Vijaya Gadde, dated as of October 1, 2013.	S-1/A	333-191552	10.16	October 22, 2013
10.12*	Offer Letter between Twitter, Inc. and Robert Kaiden, dated as of April 24, 2015.	8-K	001-36164	10.1	June 4, 2015
10.13*	Offer Letter between Twitter, Inc. and Ned D. Segal, dated July 11, 2017.	8-K	001-36164	10.1	July 11, 2017
10.14*	Offer Letter between Twitter, Inc. and Parag Agrawal, dated as of November 29, 2021.	8-K	001-36164	10.1	November 29, 2021
10.15	Form of Innovator's Patent Agreement.	S-1	333-191552	10.19	October 3, 2013

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10.16	Office Lease between Twitter, Inc. and SRI Nine Market Square LLC, dated as of April 20, 2011, as amended on May 16, 2011, September 30, 2011 and June 1, 2012.	S-1	333-191552	10.18	October 3, 2013
10.17	Revolving Credit Agreement, dated as of August 7, 2018, by and among Twitter, Inc., the lenders from time to time party thereto and JPMorgan Chase Bank, N.A., as administrative agent.	8-K	001-36164	10.1	August 10, 2018
10.18	Amendment No. 1, dated March 1, 2021, to the Credit Agreement, dated August 7, 2018, among Twitter, Inc., JPMorgan Chase Bank, N.A., as administrative agent, and the lenders from time to time party thereto.	8-K	001-36164	10.4	March 4, 2021
10.19	Amendment No. 2, dated as of February 9, 2022, to the Credit Agreement, dated as of August 7, 2018, among Twitter, Inc., the lenders from time to time thereto, and JPMorgan Chase Bank, N.A., as administrative agent	8-K	001-36164	1.02	February 11, 2022
10.20	Form of Convertible Note Hedge Confirmation.	8-K	001-36164	10.2	September 17, 2014
10.21	Form of Warrant Confirmation.	8-K	001-36164	10.3	September 17, 2014
10.22	Form of Convertible Note Hedge Confirmation.	8-K	001-36164	10.2	June 11, 2018
10.23	Form of Warrant Confirmation.	8-K	001-36164	10.3	June 11, 2018
10.24	Form of Convertible Note Hedge Confirmation.	8-K	001-36164	10.2	March 4, 2021
10.25	Form of Warrant Confirmation.	8-K	001-36164	10.3	March 4, 2021
10.26	Investment Agreement, dated as of March 9, 2020, among Twitter, Inc. and Silver Lake Partners V DE (AIV), L.P.	8-K	001-36164	10.1	March 9, 2020
10.27	Form of ASR Agreement.	8-K	001-36164	1.01	February 11, 2022
21.1	List of subsidiaries of Twitter, Inc.				
23.1	Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm.				
24.1	Power of Attorney (contained on signature page hereto)				
31.1	Certification of Chief Executive Officer pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				
31.2	Certification of Chief Financial Officer pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				
32.1†	Certifications of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.				

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101.INS	XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Schema Linkbase Document
101.CAL	Inline XBRL Taxonomy Definition Linkbase Document.
101.DEF	Inline XBRL Taxonomy Calculation Linkbase Document.
101.LAB	Inline XBRL Taxonomy Labels Linkbase Document.
101.PRE	Inline XBRL Taxonomy Presentation Linkbase Document.
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

* Indicates a management contract or compensatory plan or arrangement.

† The certifications attached as Exhibit 32.1 that accompany this Annual Report on Form 10-K, are deemed furnished and not filed with the Securities and Exchange Commission and are not to be incorporated by reference into any filing of Twitter, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Annual Report on Form 10-K, irrespective of any general incorporation language contained in such filing.

Item 16. FORM 10-K SUMMARY

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this annual report on Form 10-K to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: February 16, 2022

TWITTER, INC.

By: /s/ Parag Agrawal
Parag Agrawal
Chief Executive Officer

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Parag Agrawal and Ned Segal, and each of them, as his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his or her substitutes, may lawfully do or cause to be done by virtue thereof.

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 and in the capacities and on the dates indicated:

Signature	Title	Date
<u>/s/ Parag Agrawal</u> Parag Agrawal	Chief Executive Officer and Director (Principal Executive Officer)	February 16, 2022
<u>/s/ Ned Segal</u> Ned Segal	Chief Financial Officer (Principal Financial Officer)	February 16, 2022
<u>/s/ Robert Kaiden</u> Robert Kaiden	Chief Accounting Officer (Principal Accounting Officer)	February 16, 2022
<u>/s/ Mimi Alemayehou</u> Mimi Alemayehou	Director	February 16, 2022
<u>/s/ Jack Dorsey</u> Jack Dorsey	Director	February 16, 2022
<u>/s/ Egon Durban</u> Egon Durban	Director	February 16, 2022
<u>/s/ Omid Kordestani</u> Omid Kordestani	Director	February 16, 2022
<u>/s/ Martha Lane Fox</u> Martha Lane Fox	Director	February 16, 2022
<u>/s/ Fei-Fei Li</u> Fei-Fei Li	Director	February 16, 2022
<u>/s/ Patrick Pichette</u> Patrick Pichette	Director	February 16, 2022
<u>/s/ David Rosenblatt</u> David Rosenblatt	Director	February 16, 2022
<u>/s/ Bret Taylor</u> Bret Taylor	Director	February 16, 2022
<u>/s/ Robert Zoellick</u> Robert Zoellick	Director	February 16, 2022

**AMENDED AND RESTATED BYLAWS OF
TWITTER, INC.**

(as amended on February 14, 2022)

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BYLAWS OF TWITTER, INC.

ARTICLE I - CORPORATE OFFICES

1.1 REGISTERED OFFICE

The registered office of Twitter, Inc. shall be fixed in the corporation's certificate of incorporation, as the same may be amended from time to time.

1.2 OTHER OFFICES

The corporation may at any time establish other offices.

ARTICLE II - MEETINGS OF STOCKHOLDERS

2.1 PLACE OF MEETINGS

Meetings of stockholders shall be held at a place, if any, within or outside the State of Delaware, designated by the board of directors. The board of directors may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the Delaware General Corporation Law (the "**DGCL**"). In the absence of any such designation or determination, stockholders' meetings shall be held at the corporation's principal executive office.

2.2 ANNUAL MEETING

The annual meeting of stockholders shall be held on such date, at such time, and at such place (if any) within or without the State of Delaware as shall be designated from time to time by the board of directors and stated in the corporation's notice of the meeting. At the annual meeting, directors shall be elected and any other proper business, brought in accordance with Section 2.4 of these bylaws, may be transacted. The board of directors may cancel, postpone or reschedule any previously scheduled annual meeting at any time, before or after the notice for such meeting has been sent to the stockholders.

2.3 SPECIAL MEETING

(i) A special meeting of the stockholders, other than those required by statute, may be called at any time by (A) the board of directors, (B) the chairperson of the board of directors, or (C) the chief executive officer, but a special meeting may not be called by any other person or persons. The board of directors may cancel, postpone or reschedule any previously scheduled special meeting at any time, before or after the notice for such meeting has been sent to the stockholders.

(ii) The notice of a special meeting shall include the purpose for which the meeting is called. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting by or at the direction of the board of directors, chairperson of the board of directors or chief executive officer. Nothing contained in this Section 2.3(ii) shall be construed as limiting, fixing or affecting the time when a meeting of stockholders called by action of the board of directors may be held.

2.4 ADVANCE NOTICE PROCEDURES

(i) *Advance Notice of Stockholder Business.* At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be brought: (A) pursuant to the corporation's proxy materials with respect to such meeting, (B) by or at the direction of the board of directors, or (C) by a stockholder of the corporation who (1) is a stockholder of record at the time of the giving of the notice required by this Section 2.4(i) and on the record date for the determination of stockholders entitled to vote at the annual meeting and (2) has timely complied in proper written form with the notice procedures set forth in this Section 2.4(i). In addition, for business to be properly brought before an annual meeting by a stockholder, such business must be a proper matter for stockholder action pursuant to these bylaws and applicable law. For the avoidance of doubt, except for proposals properly made in accordance with Rule 14a-8 under the Securities and Exchange Act of 1934, as amended, or any successor thereto (the "**1934 Act**"), and the regulations thereunder (or any successor rule and in any case as so amended), clause (C) above shall be the exclusive means for a stockholder to bring business before an annual meeting of stockholders.

(a) To comply with clause (C) of Section 2.4(i) above, a stockholder's notice must set forth all information required under this Section 2.4(i) and must be timely received by the secretary of the corporation. To be timely, a stockholder's notice must be received by the secretary at the principal executive offices of the corporation not later than the 45th day nor earlier than the 75th day before the one-year anniversary of the date on which the corporation first mailed its proxy materials or a notice of availability of proxy materials (whichever is earlier) for the preceding year's annual meeting; *provided, however*, that in the event that no annual meeting was held in the previous year or if the date of the annual meeting is advanced by more than 30 days prior to or delayed by more than 60 days after the one-year anniversary of the date of the previous year's annual meeting, then, for notice by the stockholder to be timely, it must be so received by the secretary not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of (i) the 90th day prior to such annual meeting, or (ii) the tenth day following the day on which Public Announcement (as defined below) of the date of such annual meeting is first made. In no event shall any adjournment, rescheduling 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 in this Section 2.4(i) (a). "**Public Announcement**" shall mean disclosure made via a Tweet from a verified account operated by the corporation (e.g., @Twitter), in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act.

(b) To be in proper written form, a stockholder's notice to the secretary must set forth as to each matter of business the stockholder intends to bring before the annual meeting: (1) a brief description of the business intended to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (2) the name and address, as they appear on the corporation's books, of the stockholder proposing such business and any Stockholder Associated Person (as defined below), (3) the class and number of shares of the corporation that are held of record or are beneficially owned by the stockholder or any Stockholder Associated Person and any derivative positions held or beneficially held by the stockholder or any Stockholder Associated Person, (4) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of such stockholder or any Stockholder Associated Person with respect to any securities of the corporation, and a description of any other agreement, arrangement or understanding (including any short position or any borrowing or lending of shares), the effect or intent of which is to mitigate loss to, or to manage the risk or benefit from share price changes for, or to increase or decrease the voting power of, such stockholder or any Stockholder Associated Person with respect to any securities of the corporation, (5) any material interest of the stockholder or a Stockholder Associated Person in such business, (6) a statement as to whether such person, if elected, intends to tender, if elected, promptly following such person's election or re-election, an irrevocable resignation effective upon (a) such person's failure to receive the required vote for re-election at the next stockholder meeting at which such person would face re-election and (b) acceptance of such resignation by the board of directors, in accordance with the corporation's Corporate Governance Guidelines, and (7) a statement whether either such stockholder or any Stockholder Associated Person will deliver a proxy statement and form of proxy to holders of at least the percentage of the voting power of the corporation's voting shares required under applicable law to carry the proposal (such information provided and statements made as required by clauses (1) through (7), a "**Business Solicitation Statement**"). In addition, to be in proper written form, a stockholder's notice to the secretary must be supplemented not later than ten days following the record date for the determination of stockholders entitled to notice of the meeting to disclose the information contained in clauses (3) and (4) above as of the record date. For purposes of this Section 2.4, a "**Stockholder Associated Person**" of any stockholder shall mean (i) any person controlling, directly or indirectly, or acting in concert with, such stockholder, (ii) any beneficial owner of shares of stock of the corporation owned of record or beneficially by such stockholder and on whose behalf the proposal or nomination, as the case may be, is being made, or (iii) any person controlling, controlled by or under common control with such person referred to in the preceding clauses (i) and (ii).

(c) Without exception, no business shall be conducted at any annual meeting except in accordance with the provisions set forth in this Section 2.4(i) and, if applicable, Section 2.4(ii). In addition, business proposed to be brought by a stockholder may not be brought before the annual meeting if such stockholder or a Stockholder Associated Person, as applicable, takes action contrary to the representations made in the Business Solicitation Statement applicable to such business or if the Business Solicitation Statement applicable to such business contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading. The chairperson of the annual meeting shall, if the facts warrant, determine and declare at the annual meeting that business was not properly brought before the annual meeting and in accordance with the provisions of this Section 2.4(i), and, if the chairperson should so determine, he or she shall so declare at the annual meeting that any such business not properly brought before the annual meeting shall not be conducted.

(ii) Advance Notice of Director Nominations at Annual Meetings. Notwithstanding anything in these bylaws to the contrary, only persons who are nominated in accordance with the procedures set forth in this Section 2.4(ii) shall be eligible for election or re-election as directors at an annual meeting of stockholders. Nominations of persons for election to the board of directors of the corporation shall be made at an annual meeting of stockholders only (A) by or at the direction of the board of directors, (B) by a stockholder of the corporation who (1) was a stockholder of record at the time of the giving of the notice required by this Section 2.4(ii) and on the record date for the determination of stockholders entitled to vote at the annual meeting and (2) has complied with the notice procedures set forth in this Section 2.4(ii) or (C) in compliance with Section 2.15 below. In addition to any other applicable requirements, for a nomination to be made by a stockholder, the stockholder must have given timely notice thereof in proper written form to the secretary of the corporation.

(a) To comply with clause (B) of Section 2.4(ii) above, a nomination to be made by a stockholder must set forth all information required under this Section 2.4(ii) and must be received by the secretary of the corporation at the principal executive offices of the corporation at the time set forth in, and in accordance with, the final three sentences of Section 2.4(i)(a) above; provided additionally, however, that in the event that the number of directors to be elected to the board of directors is increased and there is no Public Announcement naming all of the nominees for director or specifying the size of the increased board made by the corporation at least ten days before the last day a stockholder may deliver a notice of nomination pursuant to the foregoing provisions, a stockholder's notice required by this Section 2.4(ii) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be received by the secretary of the corporation 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.

(b) To be in proper written form, such stockholder's notice to the secretary must set forth:

(1) as to each person (a "**nominee**") whom the stockholder proposes to nominate for election or re-election as a director: (A) the name, age, business address and residence address of the nominee, (B) the principal occupation or employment of the nominee, (C) the class and number of shares of the corporation that are held of record or are beneficially owned by the nominee and any derivative positions held or beneficially held by the nominee, (D) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of the nominee with respect to any securities of the corporation, and a description of any other agreement, arrangement or understanding (including any short position or any borrowing or lending of shares), the effect or intent of which is to mitigate loss to, or to manage the risk or benefit of share price changes for, or to increase or decrease the voting power of the nominee, (E) a description of all arrangements or understandings between or among any of the stockholder, each nominee and/or any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder or relating to the nominee's potential service on the board of directors, (F) a written statement executed by the nominee acknowledging that as a director of the corporation, the nominee will owe a fiduciary duty under Delaware law with respect to the corporation and its stockholders, and (G) any other information relating to the nominee that would be required to be disclosed about such nominee if proxies were being solicited for the election of the nominee as a director, or that is otherwise required, in each case pursuant to Regulation 14A under the 1934 Act (including without limitation the nominee's written consent to being named in the proxy statement, if any, as a nominee and to serving as a director if elected); and

(2) as to such stockholder giving notice, (A) the information required to be provided pursuant to clauses (2) through (5) of Section 2.4(i)(b) above, and the supplement referenced in the second sentence of Section 2.4(i)(b) above (except that the references to “business” in such clauses shall instead refer to nominations of directors for purposes of this paragraph), and (B) a statement whether either such stockholder or Stockholder Associated Person will deliver a proxy statement and form of proxy to holders at least the percentage of the corporation’s voting shares reasonably believed by such stockholder or Stockholder Associated Person to be necessary to elect such nominee(s) (such information provided and statements made as required by clauses (A) and (B) above, a “**Nominee Solicitation Statement**”).

(c) At the request of the board of directors, any person nominated by a stockholder for election as a director must furnish to the secretary of the corporation (1) that information required to be set forth in the stockholder’s notice of nomination of such person as a director as of a date subsequent to the date on which the notice of such person’s nomination was given and (2) 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; in the absence of the furnishing of such information if requested, such stockholder’s nomination shall not be considered in proper form pursuant to this Section 2.4(ii).

(d) Without exception, no person shall be eligible for election or re-election as a director of the corporation at an annual meeting of stockholders unless nominated in accordance with the provisions set forth in this Section 2.4(ii). In addition, a nominee shall not be eligible for election or re-election if a stockholder or Stockholder Associated Person, as applicable, takes action contrary to the representations made in the Nominee Solicitation Statement applicable to such nominee or if the Nominee Solicitation Statement applicable to such nominee contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading. The chairperson of the annual meeting shall, if the facts warrant, determine and declare at the annual meeting that a nomination was not made in accordance with the provisions prescribed by these bylaws, and if the chairperson should so determine, he or she shall so declare at the annual meeting, and the defective nomination shall be disregarded.

(iii) *Advance Notice of Director Nominations for Special Meetings.*

(a) For a special meeting of stockholders at which directors are to be elected pursuant to Section 2.3, nominations of persons for election to the board of directors shall be made only (1) by or at the direction of the board of directors or (2) by any stockholder of the corporation who (A) is a stockholder of record at the time of the giving of the notice required by this Section 2.4(iii) and on the record date for the determination of stockholders entitled to vote at the special meeting and (B) delivers a timely written notice of the nomination to the secretary of the corporation that includes the information set forth in Sections 2.4(ii)(b) and (ii)(c) above. To be timely, such notice must be received by the secretary at the principal executive offices of the corporation not later than the close of business on the later of the 90th day prior to such special meeting or 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, rescheduling or postponement of a special meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice. A person shall not be eligible for election or re-election as a director at a special meeting unless the person is nominated (i) by or at the direction of the board of directors or (ii) by a stockholder in accordance with the notice procedures set forth in this Section 2.4(iii). In addition, a nominee shall not be eligible for election or re-election if a stockholder or Stockholder Associated Person, as applicable, takes action contrary to the representations made in the Nominee Solicitation Statement applicable to such nominee or if the Nominee Solicitation Statement applicable to such nominee contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading.

(b) The chairperson of the special meeting shall, if the facts warrant, determine and declare at the meeting that a nomination or business was not made in accordance with the procedures prescribed by these bylaws, and if the chairperson should so determine, he or she shall so declare at the meeting, and the defective nomination or business shall be disregarded.

(iv) *Other Requirements and Rights.* In addition to the foregoing provisions of this Section 2.4, a stockholder must also comply with all applicable requirements of state law and of the 1934 Act and the rules and regulations thereunder with respect to the matters set forth in this Section 2.4, including, with respect to business such stockholder intends to bring before the annual meeting that involves a proposal that such stockholder requests to be included in the corporation's proxy statement, the requirements of Rule 14a-8 (or any successor provision) under the 1934 Act. Nothing in this Section 2.4 shall be deemed to affect any right of the corporation to omit a proposal from the corporation's proxy statement pursuant to Rule 14a-8 (or any successor provision) under the 1934 Act.

2.5 NOTICE OF STOCKHOLDERS' MEETINGS

Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Except as otherwise provided in the DGCL, the certificate of incorporation or these bylaws, the notice of any meeting of stockholders shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting.

2.6 QUORUM

The holders of a majority of the voting power of the stock issued and outstanding and entitled to vote, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders, unless otherwise required by law, the certificate of incorporation, these bylaws or the rules of any applicable stock exchange. Where a separate vote by a class or series or classes or series is required, a majority of the voting power of the issued and outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter, except as otherwise required by law, the certificate of incorporation, these bylaws or the rules of any applicable stock exchange.

Whether or not a quorum is present at a meeting of stockholders, the chairperson of the meeting shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the original meeting.

2.7 ADJOURNED MEETING; NOTICE

When a meeting is adjourned to another time or place, unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the board of directors shall fix a new record date for notice of such adjourned meeting in accordance with Section 213(a) of the DGCL and Section 2.11 of these bylaws, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

2.8 CONDUCT OF BUSINESS

The chairperson of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of business. The chairperson of any meeting of stockholders shall be designated by the board of directors; in the absence of such designation, the chairperson of the board, if any, the chief executive officer (in the absence of the chairperson) or the lead independent director (in the absence of the chairperson of the board and the chief executive officer), or in their absence any other executive officer of the corporation, shall serve as chairperson of the stockholder meeting.

2.9 VOTING

The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.11 of these bylaws, subject to Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the DGCL.

Except as may be otherwise provided in the certificate of incorporation, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder.

Except as otherwise required by law, the certificate of incorporation, these bylaws or the rules of any applicable stock exchange, in all matters other than the election of directors, the affirmative vote of a majority of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders. Except as otherwise required by law, the certificate of incorporation, these bylaws or the rules of any applicable stock exchange, directors shall be elected by a majority of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. For the purposes of this section, a majority of votes shall mean that the number of votes cast "for" a director's election exceeds the number of votes "against" that director's election (with "abstentions" and "broker nonvotes" not counted as votes cast "for" or "against" that director's election); provided that, if at the close of the notice period set forth in Section 2.4 of this Article II, the number of director nominees exceeds the number of directors to be elected, the directors shall be elected by a plurality of the votes cast. If the directors are to be elected by a plurality of the votes cast, the stockholders shall not be permitted to vote against a nominee. Where a separate vote by a class or series or classes or series is required, in all matters other than the election of directors, the affirmative vote of the majority of the voting power of shares of such class or series or classes or series present in person or represented by proxy at the meeting shall be the act of such class or series or classes or series, except as otherwise provided by law, the certificate of incorporation, these bylaws or the rules of any applicable stock exchange.

2.10 STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Subject to the rights of the holders of the shares of any series of Preferred Stock or any other class of stock or series thereof that have been expressly granted the right to take action by written consent, any action required or permitted to be taken by the stockholders of the corporation must be effected at a duly called annual or special meeting of stockholders of the corporation and may not be effected by any consent in writing by such stockholders.

2.11 RECORD DATES

In order that the corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors and which record date shall not be more than 60 nor less than 10 days before the date of such meeting. If the board of directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the board of directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination.

If no record date is fixed by the board of directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the board of directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the provisions of Section 213 of the DGCL and this Section 2.11 at the adjourned meeting.

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 purpose of any other lawful action, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such 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.

2.12 PROXIES

Each stockholder entitled to vote at a meeting of stockholders, or such stockholder's authorized officer, director, employee or agent may authorize another person or persons to act for such stockholder by proxy authorized by a document or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL.

2.13 LIST OF STOCKHOLDERS ENTITLED TO VOTE

The corporation shall prepare, at least 10 days before every meeting of stockholders, 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 meeting date, 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 each stockholder and the number of shares registered in the name of each stockholder. The corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network, *provided* that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the corporation's principal place of business. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Such list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

2.14 INSPECTORS OF ELECTION

Before any meeting of stockholders, the corporation shall appoint an inspector or inspectors of election to act at the meeting or its adjournment. The corporation may designate one more persons as alternate inspectors to replace any inspector who fails to appear or fails or refuses to act.

Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of his or her ability. Such inspectors shall:

- (i) ascertain the number of shares outstanding and the voting power of each;
- (ii) determine the shares represented at the meeting and the validity of proxies and ballots;
- (iii) count all votes and ballots;
- (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and;
- (v) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots.

The inspectors of election shall perform their duties impartially, in good faith, to the best of their ability and as expeditiously as is practical. If there are multiple inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all. Any report or certificate made by the inspectors of election is *prima facie* evidence of the facts stated therein.

2.15 PROXY ACCESS FOR DIRECTOR NOMINEES.

(i) *Inclusion of Stockholder Nominees in Proxy Materials.* Whenever the board of directors solicits proxies with respect to the election of directors at an annual meeting of stockholders, subject to the provisions of this Section 2.15, the corporation will include in its proxy materials for such annual meeting of stockholders, in addition to any persons nominated for election by the board of directors or a committee appointed by the board of directors, the name, together with the Required Information (as defined below), of any person properly nominated for election (a “**Stockholder Nominee**”) to the board of directors by an Eligible Stockholder (as defined below). An Eligible Stockholder must expressly elect, at the time of providing the notice required by this Section 2.15 (the “**Nomination Notice**”), to have the nominee of such Eligible Stockholder included in the corporation’s proxy materials pursuant to this Section 2.15. For the avoidance of doubt, if a Stockholder Nominee is included in the corporation’s proxy materials for an annual meeting of stockholders then the corporation will also include such Stockholder Nominee on (A) any ballot distributed at such annual meeting; (B) the corporation’s proxy card; and (C) any other format through which the corporation permits proxies to be submitted.

(ii) *Definition of Eligible Stockholder.* An “**Eligible Stockholder**” is a stockholder, or a group of no more than 20 stockholders, of the corporation that has satisfied (individually or, in the case of a group, collectively) all applicable conditions and has complied with all applicable procedures, in each case as set forth in this Section 2.15. No person may be a member of more than one group of persons constituting an Eligible Stockholder. A record holder acting on behalf of one or more beneficial owners will not be counted separately as a stockholder with respect to the shares owned by beneficial owners on whose behalf such record holder has been directed in writing to act, but each such beneficial owner will be counted separately, subject to the other provisions of this Section 2.15, for purposes of determining the number of stockholders whose holdings may be considered as part of an Eligible Stockholder’s holdings. For purposes of this Section 2.15, two or more funds or trusts will be treated as one stockholder or beneficial owner (a “**Qualifying Fund**”) if they are (i) under common management and investment control; (ii) under common management and funded primarily by the same employer; or (iii) a “group of investment companies,” as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended.

(iii) *Required Information.* For purposes of this Section 2.15, the “Required Information” that the corporation will include in its proxy materials is (i) the information concerning the Stockholder Nominee and the Eligible Stockholder that is required to be disclosed in the corporation’s proxy statement by the rules and regulations of the Securities and Exchange Commission (the “SEC”) promulgated under the Securities Exchange Act of 1934 (the “Exchange Act”); and (ii) if the Eligible Stockholder so elects, one or more Supporting Statements (as defined below).

(iv) *Delivery of Nomination Notice.* To be timely, a Nomination Notice must be delivered to, or mailed and received at, the principal executive offices of the corporation not less than 120 days nor more than 150 days prior to the first anniversary of the day on which the corporation’s proxy statement (or Notice of Internet Availability) relating to the immediately preceding annual meeting of stockholders was first mailed to stockholders. No adjournment, postponement or other delay of an annual meeting, or any public announcement thereof, will commence a new time period (or extend any time period) for the giving of a Nomination Notice.

(v) *Maximum Number of Stockholder Nominees.*

(a) *Maximum Number; Reductions.* The maximum aggregate number of Stockholder Nominees that will be included in the corporation’s proxy materials with respect to an annual meeting of stockholders will not exceed the greater of (A) two or (B) 20 percent of the number of directors in office as of the last day on which a Nomination Notice may be delivered pursuant to this Section 2.15, or if such amount is not a whole number, then the closest whole number below 20 percent. This maximum number will be reduced by (1) the number of persons serving as nominees for director who will be included in the corporation’s proxy materials as an unopposed (by the corporation) nominee pursuant to an agreement, arrangement or other understanding with a stockholder or group of stockholders (other than any such agreement, arrangement or understanding entered into in connection with an acquisition of shares of common stock of the corporation by such stockholder or group of stockholders from the corporation) (2) any Stockholder Nominee whose name was submitted by an Eligible Stockholder for inclusion in the corporation’s proxy materials pursuant to this Section 2.15 but either (a) is subsequently withdrawn, disregarded or declared invalid or ineligible; or (b) that the board of directors or a committee appointed by the board of directors decides to nominate for election; and (3) the number of incumbent directors (as of the last day on which a Nomination Notice may be delivered pursuant to this Section 2.15) who were Stockholder Nominees at any of the preceding two annual meetings (including any individual covered under clause (2) above) and whose election at the upcoming annual meeting of stockholders is being recommended by the board of directors. Notwithstanding the previous sentence, in no event will the aggregate number of Stockholder Nominees in the corporation’s proxy materials with respect to an annual meeting of stockholders be below one if a valid Nomination Notice is properly delivered pursuant to this Section 2.15. The number of Stockholder Nominees cannot exceed the number of directors to be elected at the applicable annual meeting of stockholders.

(b) *Impact of Vacancies.* If (A) one or more vacancies for any reason occurs on the board of directors after the last day on which a Nomination Notice may be delivered pursuant to this Section 2.15 but before the date of the annual meeting of stockholders and (B) the board of directors resolves to reduce the size of the board of directors in connection with such vacancy, then the maximum number of Stockholder Nominees will be calculated based on the number of directors in office as so reduced.

(c) *Ranking of Stockholder Nominees.* Any Eligible Stockholder submitting more than one Stockholder Nominee for inclusion in the corporation's proxy materials must rank its Stockholder Nominees in its Nomination Notice based on the order in which the Eligible Stockholder desires that such Stockholder Nominees be selected for inclusion in the corporation's proxy materials. If the number of Stockholder Nominees submitted by Eligible Stockholders exceeds the maximum number of nominees provided for pursuant to Section 2.15(v)(a), then the highest-ranking qualifying Stockholder Nominee of each Eligible Stockholder will be selected by the corporation for inclusion in the corporation's proxy materials until the maximum number of Stockholder Nominees is reached, going in order by the number (largest to smallest) of shares of common stock of the corporation that each Eligible Stockholder disclosed as Owned (as defined below) in its Nomination Notice. If the maximum number of Stockholder Nominees is not reached after the highest-ranking qualifying Stockholder Nominee of each Eligible Stockholder has been selected, then this process will continue with the next highest-ranked Stockholder Nominees as many times as necessary, following the same order each time, until the maximum number is reached.

(vi) *Ownership.* For purposes of this Section 2.15, an Eligible Stockholder will be deemed to "**Own**" only those outstanding shares of common stock of the corporation as to which the Eligible Stockholder possesses both (i) the full voting and investment rights pertaining to the shares; and (ii) the full economic interest in (including the opportunity for profit and risk of loss on) such shares. The number of shares calculated in accordance with the prior sentence will not include any shares (A) sold by such Eligible Stockholder or any of its affiliates in any transaction that has not been settled or closed, including any short sale; (B) borrowed by such Eligible Stockholder or any of its affiliates for any purpose; (C) purchased by such Eligible Stockholder or any of its affiliates subject to an agreement to resell; or (D) subject to any option, warrant, forward contract, swap, contract of sale, or other derivative or similar agreement entered into by such Eligible Stockholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares of common stock of the corporation, in any such case which instrument or agreement has, or is intended to have, or if exercised would have, the purpose or effect of (1) reducing in any manner, to any extent or at any time in the future, the full right to vote or direct the voting of any such shares by the Eligible Stockholder or its affiliates; or (2) hedging, offsetting or altering to any degree any gain or loss arising from the full economic ownership of such shares by such Eligible Stockholder or its affiliates. A stockholder will "Own" shares held in the name of a nominee or other intermediary so long as the stockholder 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 stockholder's Ownership of shares will be deemed to continue during any period in which the stockholder has (a) loaned such shares so long as the stockholder has the power to recall such loaned shares on no more than five business days' notice and includes with the Nomination Notice an agreement that it (i) will promptly recall such loaned shares upon being notified by the corporation that any of its Stockholder Nominees will be included in the corporation's proxy materials and (ii) will continue to hold such recalled shares through the date of the annual meeting of stockholders; or (b) 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 stockholder. The terms "Owned," "Owning," "Ownership" and other variations of the word "Own" will have correlative meanings. Whether outstanding shares of common stock of the corporation are "Owned" for purposes of this Section 2.15 will be determined by the board of directors or any of its committees, which determination will be conclusive and binding on the corporation and its stockholders. For purposes of this Section 2.15, the term "affiliate" will have the meaning given to it in Rule 405 promulgated under the Securities Act of 1933 (the "**Securities Act**").

(vi) Eligible Stockholder Requirements.

(a) *Ownership Requirement.* To make a nomination pursuant to this Section 2.15, an Eligible Stockholder must have Owned continuously for at least three years (the "**Holding Period**") a number of shares representing at least three percent of the corporation's common stock (such required number of shares, the "**Required Shares**"). For purposes of determining whether the Eligible Stockholder owned the Required Shares for the Holding Period, the number of shares of common stock will be determined by reference to the corporation's periodic filings with the SEC during the Holding Period. The Required Shares must also be Owned continuously as of (i) the date on which the Nomination Notice is delivered to, or mailed and received at, the principal executive offices of the corporation in accordance with this Section 2.15; (ii) the record date for determining stockholders entitled to vote at the annual meeting of stockholders; and (iii) the date of the annual meeting of stockholders.

(b) *Additional Requirements for Groups of Stockholders.* If a group of stockholders aggregates Ownership of shares in order to meet the requirements under this Section 2.15, then (i) all shares held by each stockholder constituting their contribution to the Required Shares must have been held by that stockholder continuously for at least the Holding Period, and must also be Owned continuously as of (A) the date on which the Nomination Notice is delivered to, or mailed and received at, the principal executive offices of the corporation in accordance with this Section 2.15; (B) the record date for determining stockholders entitled to vote at the annual meeting of stockholders; and (C) the date of the annual meeting of stockholders; (ii) each provision in this Section 2.15 that requires the Eligible Stockholder to provide any written statements, representations, undertakings, agreements or other instruments or to meet any other conditions will be deemed to require each stockholder that is a member of such group to provide such statements, representations, undertakings, agreements or other instruments and to meet such other conditions (except that the members of such group may aggregate their stockholdings in order to meet the Required Shares); and (iii) a breach of any obligation, agreement or representation under this Section 2.15 by any member of such group will be deemed a breach by the Eligible Stockholder.

(viii) *Information to be Provided by an Eligible Stockholder.* Within the time period specified for providing the Nomination Notice, an Eligible Stockholder (which, for purposes of this Section 2.15(viii), will be deemed to include any beneficial owner on whose behalf the nomination is made) making a nomination pursuant to this Section 2.15 must provide the following information in writing to the secretary of the corporation at the principal executive offices of the corporation:

(a) the name and address of the Eligible Stockholder;

(b) a statement by the Eligible Stockholder (A) setting forth and certifying as to the number of shares of common stock of the corporation that it Owns and has Owned continuously during Holding Period; (B) agreeing to continue to Own the Required Shares through the date of the annual meeting of stockholders; and (C) indicating whether it intends to continue to own the Required Shares for at least one year following the annual meeting of stockholders (it being understood that this statement will not be deemed to impose any obligation on the Eligible Stockholder to hold any of the Required Shares following the annual meeting of stockholders);

(c) in the case of a nomination by a group of stockholders that together is an Eligible Stockholder, (A) the designation by all group members of one group member that is authorized to receive communications, notices and inquiries from the corporation and to act on behalf of all such members with respect to the nomination and all related matters (including any withdrawal of the nomination); (B) the written acceptance by such group member of such designation; and (C) the address, phone number and email address of such group member,

(d) one or more written statements from each record holder of the Required Shares (and from each intermediary through which the Required Shares are or have been held during the Holding Period) verifying that, as of a date within seven calendar days prior to the date that Nomination Notice is delivered or received at the principal executive offices of the corporation, the Eligible Stockholder then Owns, and has Owned continuously for the Holding Period, the Required Shares;

(e) an undertaking by the Eligible Stockholder to provide, within seven calendar days after (A) the record date for the annual meeting of stockholders (if, prior to such record date, the corporation (1) has made disclosure of the record date in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service or in a document publicly filed by the corporation with the SEC pursuant to Section 13, Section 14 or Section 15(d) of the Exchange Act; or (2) delivered a written notice (including by email) of the record date to the Eligible Stockholder) or (B) the date on which the corporation delivered to the Eligible Stockholder written notice (including by email) of the record date (if such notice is provided after the record date), one or more written statements from each record holder of the Required Shares (and from each intermediary through which the Required Shares are or have been held during the Holding Period) verifying the Eligible Stockholder's continuous Ownership of the Required Shares through the record date;

(f) in the case of a Qualifying Fund whose share Ownership is counted for purposes of qualifying as an Eligible Stockholder, documentation reasonably satisfactory to the board of directors that demonstrates that such Qualifying Fund meets the requirements of a Qualifying Fund;

(g) the information, agreements, certifications, representations and other documents required to be set forth in or included with a stockholder's notice of a nomination pursuant to Article II, Section 2.4(ii);

(h) a copy of the Schedule 14N that has been or is concurrently being filed by such Eligible Stockholder with the SEC as required by Rule 14a-18 under the Exchange Act (or any successor rule);

(i) a representation and undertaking that (A) the Eligible Stockholder (1) did not acquire, and is not holding, securities of the corporation for the purpose or with the effect of influencing or changing control of the corporation; (2) has not nominated, and will not nominate, for election to the board of directors at the annual meeting of stockholders any person other than the Stockholder Nominees being nominated by it pursuant to this Section 2.15; (3) has not engaged, and will not engage, in a, and has not and will not be a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(*l*) under the Exchange Act (or any successor rule) in support of the election of any individual as a director at the annual meeting of stockholders (other than its Stockholder Nominees or a nominee of the board of directors); (4) has not distributed, and will not distribute, to any stockholder any form of proxy for the annual meeting of stockholders other than the form distributed by the corporation; (5) has complied, and will comply, with all laws, rules and regulations applicable to any actions taken pursuant to this Section 2.15, including the nomination of its Stockholder Nominees and any permissible solicitation in connection with the annual meeting of stockholders; and (6) consents to the public disclosure of the information provided pursuant to this Section 2.15; and (B) the facts, statements and other information in all communications with the corporation and its stockholders by the Eligible Stockholder 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;

(j) an undertaking that the Eligible Stockholder agrees to (A) assume all liability stemming from any legal or regulatory violation arising out of the Eligible Stockholder's communications with the stockholders of the corporation or out of the information that the Eligible Stockholder provides to the corporation; (B) 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 or affiliates arising out of any nomination, solicitation or other activity by the Eligible Stockholder in connection with its efforts to elect any Stockholder Nominees pursuant to this Section 2.15; (C) comply with all requirements of this Section 2.15; and (D) upon request, provide to the corporation within five business days after such request, but in any event prior to the date of the applicable annual meeting of stockholders, such additional information as is reasonably requested by the corporation (including any information reasonably necessary to verify the Eligible Stockholder's continuous Ownership of the Required Shares for the Holding Period and through the date of the annual meeting of stockholders).

(ix) Representations and Agreement of any Stockholder Nominee.

(a) *Materials Required to be Provided.* Within the time period specified in this Section 2.15 for delivering the Nomination Notice, each Stockholder Nominee must deliver to the secretary of the corporation a written representation and agreement that the Stockholder Nominee (A) other than as disclosed to the corporation, (1) is not, and will not become, a party to any agreement, arrangement or understanding with, and has not given, and will not give, any commitment or assurance to, any person or entity as to how such Stockholder Nominee, if elected as a director, will act or vote on any issue or question; and (2) 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 Stockholder Nominee or director; (B) if elected, will comply with the corporation's corporate governance guidelines, code of conduct, share ownership guidelines and insider trading policies and guidelines, and any other policies and guidelines of the corporation applicable to directors, as well as any applicable law, rule or regulation or listing requirement; (C) consents to being named in the corporation's proxy statement for the annual meeting of stockholders as a nominee of the applicable Eligible Stockholder or of the board of directors; (D) agrees to serve as a director if elected; (E) consents to the public disclosure of the information provided pursuant to this Section 2.15; and (F) represents that such Stockholder Nominee intends to serve as director of the corporation for the full term if so elected.

(b) *Additional Materials.* At the written request of the corporation, the Stockholder Nominee must promptly, but in any event within five business days of such request, submit all (A) completed and signed questionnaires required of the corporation's directors, nominees for director, and officers; and (B) additional information requested by the corporation (1) as may be reasonably necessary to permit the board of directors or any of its committees to determine if such Stockholder Nominee (a) is independent under the listing standards of the principal U.S. exchange upon which the corporation's common stock is 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 (collectively, the "**Applicable Independence Standards**"); (b) is eligible to serve as a director of the corporation; (c) has any direct or indirect relationship with the corporation; and (d) is not, and has not been, subject to any event specified in Item 401(f) of Regulation S-K promulgated under the Securities Act (or any successor rule) or any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act (or any successor rule); and (2) that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such Stockholder Nominee.

(x) *Supporting Statement.* For each of its Stockholder Nominees, the Eligible Stockholder may provide to the secretary of the corporation, within the time period specified for providing the Nomination Notice, a written statement, not to exceed 500 words, for inclusion in the corporation's proxy statement for the annual meeting of stockholders in support of the candidacy of such Stockholder Nominee (a "**Supporting Statement**"). No Supporting Statement may include any images, charts, pictures, graphic presentations or similar items.

(xi) *True, Correct and Complete Information.* If any information or communications provided by any Eligible Stockholder or Stockholder Nominee to the corporation or its stockholders is not, when provided, or thereafter ceases to be, true, correct and complete in all material respects (including omitting a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading), then such Eligible Stockholder or Stockholder Nominee, as the case may be, must promptly notify the secretary of the corporation in writing and provide the information that is required to make such information or communication true, correct, complete and not misleading. In addition, any person or entity providing any information to the corporation pursuant to this Section 2.15 must further update and supplement such information, if necessary, so that all such information is true and correct as of the record date for the annual meeting of stockholders and as of the date that is 10 business days prior to the annual meeting of stockholders or any adjournment, postponement or other delay thereof. Any update or supplement (or a written certification that no such updates or supplements are necessary and that the information previously provided remains true and correct as of the applicable date) pursuant to this Section 2.15(xi) must be delivered to, or mailed and received by, the secretary of the corporation at the principal executive offices of the corporation no later than (i) five business days after the record date for the annual meeting of stockholders (in the case of any update and supplement required to be made as of the record date); and (ii) seven business days prior to the date of the annual meeting of stockholders or any adjournment, postponement or other thereof (in the case of any update and supplement required to be made as of 10 business days prior to the annual meeting of stockholders). No notification, update or supplement provided pursuant to this Section 2.15(xi) or otherwise will be deemed to cure any defect in any previously provided information or communications or limit the remedies available to the corporation relating to any such defect (including the right to omit a Stockholder Nominee from its proxy materials).

(xii) Disqualifications and Exclusions of Stockholder Nominees.

(a) *Bases for Disqualifying or Excluding Stockholder Nominees.* Notwithstanding anything to the contrary in this Section 2.15, the corporation will not be required to include a Stockholder Nominee in its proxy materials (A) if the Eligible Stockholder who has nominated such Stockholder Nominee has engaged in or is currently engaged in, or has been or is a “participant” in another person’s, “solicitation” (within the meaning of Rule 14a-1(I) under the Exchange Act (or any successor rule)) in support of the election of any individual as a director at the annual meeting of stockholders other than its Stockholder Nominees or a nominee of the board of directors; (B) who is not independent under the Applicable Independence Standards, as determined in good faith by the board of directors or any of its committees; (C) whose election as a member of the board of directors would cause the corporation to be in violation of these bylaws, the corporation’s certificate of incorporation, the rules and listing standards of the principal exchange upon which the corporation’s shares of common stock are listed or traded, or any applicable law, rule or regulation; (D) 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; (E) 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 10 years; (F) who is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act (or any successor rule); (G) if such Stockholder Nominee dies, becomes disabled or otherwise becomes ineligible for inclusion in the corporation’s proxy materials pursuant to this Section 2.15 or otherwise becomes unavailable for election at the annual meeting of stockholders (including because such Stockholder Nominee is no longer willing to serve on the board of directors); (H) if such Stockholder Nominee or the Eligible Stockholder who has nominated such Stockholder Nominee has provided information to the corporation with respect to such nomination that was untrue in any material respect or omitted to state a material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading, as determined by the board of directors; (I) if such Stockholder Nominee or the Eligible Stockholder who has nominated such Stockholder Nominee otherwise contravenes any of the agreements or representations made by such Stockholder Nominee or Eligible Stockholder, as applicable, or fails to comply with its obligations pursuant to this Section 2.15; (J) if the Eligible Stockholder who has nominated such Stockholder Nominee ceases to be an Eligible Stockholder for any reason, including but not limited to not Owning the Required Shares through the date of the applicable annual meeting of stockholders; or (K) if such Stockholder Nominee and the Eligible Stockholder (or a representative thereof) or, in the case of a nomination by a group of stockholders, the representative designated by the group in accordance with Section 2.15(viii)(c), do not appear at the annual meeting of stockholders to, as applicable, present the Stockholder Nominee for election.

(b) *Process Following Disqualification or Exclusion.* Following any determination in accordance with Section 2.15(xii)(a), (A) the corporation will not be required to include in its proxy materials any successor or replacement nominee proposed by the applicable Eligible Stockholder or any other Eligible Stockholder; (B) to the extent feasible, the corporation may remove the information concerning a Stockholder Nominee and any related Supporting Statement (or portion thereof) from its proxy materials or otherwise communicate to its stockholders that such Stockholder Nominee will not be eligible for election at the annual meeting of stockholders; and (C) the board of directors or the person presiding at the annual meeting of stockholders will declare the nomination of such Stockholder Nominee to be invalid and such nomination will be disregarded notwithstanding that proxies in support of such Stockholder Nominee may have been received by the corporation.

(c) *Future Status of Withdrawn or Ineligible Stockholder Nominees.* Any Stockholder Nominee who is included in the corporation's proxy materials for an annual meeting of stockholders but either (A) withdraws from or becomes ineligible or unavailable for election at such annual meeting of stockholders or (B) does not receive at least 25% of the votes cast in favor of such Stockholder Nominee's election at such annual meeting of stockholders will be ineligible to be a Stockholder Nominee pursuant to this Section 2.15 for the next two annual meetings. For the avoidance of doubt, the preceding sentence will not prevent any stockholder from nominating any person to the board of directors pursuant to Article II, Section 2.4(ii).

(xiii) *No Stockholder Nominees at Contested Annual Meetings.* Notwithstanding anything to the contrary in this Section 2.15, if the corporation receives notice pursuant to Article II, Section 2.4(ii) that any stockholder intends to nominate any person for election to the board of directors at an annual meeting of stockholders, then the corporation will not include in its proxy materials any Stockholder Nominees at such annual meeting of stockholders.

(xiv) *Filing Obligation.* The Eligible Stockholder (including any person or entity who Owns shares of common stock of the corporation that constitute part of the Ownership of such Eligible Stockholder for purposes of meeting the Required Shares) must file with the SEC any solicitation of the corporation's stockholders relating to the annual meeting of stockholders at which the Stockholder Nominee will be nominated, regardless of whether any such filing is required under Regulation 14A of the Exchange Act (or any successor rule) or whether any exemption from filing is available for such solicitation under Regulation 14A of the Exchange Act.

(xv) *Omitted Disclosure by the Corporation.* Notwithstanding anything to the contrary contained in this Section 2.15, the corporation may omit from its proxy materials any information or Supporting Statement (or portion thereof) that it, in good faith, believes (i) is not true in all material respects or omits a material statement necessary to make such information or Supporting Statement (or portion thereof) not misleading; (ii) directly or indirectly impugns the character, integrity or personal reputation of, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation, with respect to, any person; or (iii) violates any applicable law, rule, regulation or listing standard.

(xvi) *No Limitation on the Corporation.* Nothing in this Section 2.15 will limit the corporation's ability to (i) solicit against any Stockholder Nominee; (ii) include in its proxy materials its own statements or other information relating to any Eligible Stockholder or Stockholder Nominee (including any information provided to the corporation pursuant to this Section 2.15); or (iii) include in its proxy materials any Stockholder Nominee as a nominee of the board of directors.

(xvii) *Board of Directors Has Exclusive Power to Interpret.* The board of directors or a committee appointed by the board of directors will have the exclusive power and authority to interpret the provisions of this Section 2.15 and make all determinations deemed necessary or advisable in connection with this Section 2.15. All interpretations and determinations by the board of directors or a committee appointed by the board of directors will be made in good faith and be final, conclusive and binding on the corporation, its stockholders and beneficial owners, and all other parties. All such actions, interpretations and determinations shall be final, conclusive and binding on the corporation, its stockholders and all other parties.

(xviii) *Exclusive Method for Proxy Access.* This Section 2.15 provides the exclusive method for a stockholder to include nominees for election to the board of directors in the corporation's proxy materials.

ARTICLE III - DIRECTORS

3.1 POWERS

The business and affairs of the corporation shall be managed by or under the direction of the board of directors, except as may be otherwise provided in the DGCL or the certificate of incorporation.

3.2 NUMBER OF DIRECTORS

The board of directors shall consist of one or more members, each of whom shall be a natural person. Unless the certificate of incorporation fixes the number of directors, the number of directors shall be determined from time to time by resolution of the board of directors. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

3.3 ELECTION, QUALIFICATION AND TERM OF OFFICE OF DIRECTORS

Except as provided in Section 3.4 of these bylaws, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until such director's successor is elected and qualified or until such director's earlier death, resignation or removal. Directors need not be stockholders unless so required by the certificate of incorporation or these bylaws. The certificate of incorporation or these bylaws may prescribe other qualifications for directors.

3.4 RESIGNATION AND VACANCIES

Any director may resign at any time upon notice given in writing or by electronic transmission to the corporation. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation which is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. Unless otherwise provided in the certificate of incorporation or these bylaws, when one or more directors resign from the board of directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective.

Unless otherwise provided in the certificate of incorporation or these bylaws, vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class shall be filled only by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. If the directors are divided into classes, a person so elected by the directors then in office to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall have been duly elected and qualified.

If at any time, by reason of death or resignation or other cause, the corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the certificate of incorporation or these bylaws, or may apply to the Delaware Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the DGCL.

If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole board of directors (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least 10% of the voting power of the voting stock at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the DGCL as far as applicable.

3.5 PLACE OF MEETINGS; MEETINGS BY TELEPHONE

The board of directors may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the board of directors, or any committee designated by the board of directors, may participate in a meeting of the board of directors, or any committee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

3.6 REGULAR MEETINGS

Regular meetings of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by the board of directors.

3.7 SPECIAL MEETINGS; NOTICE

Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairperson of the board of directors, the chief executive officer, the secretary or a majority of the authorized number of directors, at such times and places as he or she or they shall designate.

Notice of the time and place of special meetings shall be:

- (i) delivered personally by hand, by courier or by telephone;
- (ii) sent by United States first-class mail, postage prepaid;
- (iii) sent by facsimile;
- (iv) sent by electronic mail; or
- (v) otherwise given by electronic transmission (as defined in Section 232 of the DGCL),

directed to each director at that director's address, telephone number, facsimile number, electronic mail address or other contact for notice by electronic transmission, as the case may be, as shown on the corporation's records.

If the notice is (i) delivered personally by hand, by courier or by telephone, (ii) sent by facsimile (iii) sent by electronic mail or (iv) otherwise given by electronic transmission, it shall be delivered, sent or otherwise directed to each director, as applicable, at least 24 hours before the time of the holding of the meeting. If the notice is sent by United States mail, it shall be

deposited in the United States mail at least four days before the time of the holding of the meeting. Any oral notice may be communicated to the director. The notice need not specify the place of the meeting (if the meeting is to be held at the corporation's principal executive office) nor the purpose of the meeting, unless required by statute.

3.8 QUORUM; VOTING

At all meetings of the board of directors, a majority of the total authorized number of directors shall constitute a quorum for the transaction of business. If a quorum is not present at any meeting of the board of directors, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

The affirmative vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the board of directors, except as may be otherwise specifically provided by statute, the certificate of incorporation or these bylaws.

If the certificate of incorporation provides that one or more directors shall have more or less than one vote per director on any matter, every reference in these bylaws to a majority or other proportion of the directors shall refer to a majority or other proportion of the votes of the directors.

3.9 BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING

Unless otherwise restricted by the certificate of incorporation or these bylaws, 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. Any person (whether or not then a director) may provide, whether through instruction to an agent or otherwise, that a consent to action will be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made and such consent shall be deemed to have been given for purposes of this Section 3.9 at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective.

3.10 FEES AND COMPENSATION OF DIRECTORS

Unless otherwise restricted by the certificate of incorporation or these bylaws, the board of directors shall have the authority to fix the compensation of directors.

3.11 REMOVAL OF DIRECTORS

Any director may be removed from office by the stockholders of the corporation in the manner specified in the certificate of incorporation and applicable law.

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

ARTICLE IV - COMMITTEES

4.1 COMMITTEES OF DIRECTORS

The board of directors may designate one or more committees, each committee to consist of one or more of the directors of the corporation. The board of directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, 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 the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors or in these bylaws, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority to (i) approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopt, amend or repeal any bylaw of the corporation.

4.2 COMMITTEE MINUTES

Each committee and subcommittee shall keep regular minutes of its meetings.

4.3 MEETINGS AND ACTION OF COMMITTEES

Meetings and actions of committees and subcommittees shall be governed by, and held and taken in accordance with, the provisions of:

- (i) Section 3.5 (place of meetings and meetings by telephone);
- (ii) Section 3.6 (regular meetings);
- (iii) Section 3.7 (special meetings and notice);
- (iv) Section 3.8 (quorum; voting);
- (v) Section 7.4 (waiver of notice); and
- (vi) Section 3.9 (action without a meeting)

with such changes in the context of those bylaws as are necessary to substitute the committee or subcommittee and its members for the board of directors and its members. *However:*

(i) the time and place of regular meetings of committees or subcommittees may be determined either by resolution of the board of directors or by resolution of the committee or subcommittee;

(ii) special meetings of committees or subcommittee may also be called by resolution of the board of directors or the committee or the subcommittee; and

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

Any provision in the certificate of incorporation providing that one or more directors shall have more or less than one vote per director on any matter shall apply to voting in any committee or subcommittee, unless otherwise provided in the certificate of incorporation or these bylaws.

4.4 SUBCOMMITTEES

Unless otherwise provided in the certificate of incorporation, these bylaws or the resolutions of the board of directors designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

ARTICLE V - OFFICERS

5.1 OFFICERS

The officers of the corporation shall be a chief executive officer and/or president and a secretary. The corporation may also have, at the discretion of the board of directors, a chairperson of the board of directors, a vice chairperson of the board of directors, a chief executive officer, a chief financial officer or treasurer, one or more vice presidents, one or more assistant vice presidents, one or more assistant treasurers, one or more assistant secretaries, and any such other officers as may be appointed in accordance with the provisions of these bylaws. Any number of offices may be held by the same person.

5.2 APPOINTMENT OF OFFICERS

The board of directors shall appoint the officers of the corporation, except such officers as may be appointed in accordance with the provisions of Section 5.3 of these bylaws, subject to the rights, if any, of an officer under any contract of employment.

5.3 SUBORDINATE OFFICERS

The board of directors may appoint, or empower the chief executive officer or, in the absence of a chief executive officer, another officer, to appoint such other officers as the business of the corporation may require. Each of such officers shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the board of directors may from time to time determine.

5.4 REMOVAL AND RESIGNATION OF OFFICERS

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by the board of directors or, for the avoidance of doubt, any duly authorized committee or subcommittee thereof or by any officer upon whom such power of removal may be conferred by the board of directors.

Any officer may resign at any time by giving notice, in writing or by electronic transmission, to the corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

5.5 VACANCIES IN OFFICES

Any vacancy occurring in any office of the corporation shall be filled by the board of directors or as provided in Section 5.3.

5.6 REPRESENTATION OF SECURITIES OF OTHER ENTITIES

The chairperson of the board of directors, the chief executive officer and/or president, any vice president, the treasurer, the secretary or assistant secretary of this corporation, or any other person authorized by the board of directors or the chief executive officer and/or president or a vice president, is authorized to vote, represent, and exercise on behalf of this corporation all rights incident to any and all shares or other securities of any other entity or entities, and all rights incident to any management authority conferred on the corporation in accordance with the governing documents of any entity or entities, standing in the name of this corporation, including the right to act by written consent. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

5.7 AUTHORITY AND DUTIES OF OFFICERS

All officers of the corporation shall respectively have such authority and perform such duties in the management of the business of the corporation as may be designated from time to time by the board of directors and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the board of directors.

ARTICLE VI - STOCK

6.1 STOCK CERTIFICATES; PARTLY PAID SHARES

The shares of the corporation shall be represented by certificates, provided that the board of directors may provide by resolution or resolutions that some or all of any or all classes or series of 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 stock represented by certificates shall be entitled to have a certificate signed by, or in the name of, the corporation by any two officers of the corporation representing the number of shares registered in certificate form. Any or all of the 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 a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. The corporation shall not have power to issue a certificate in bearer form.

The corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly-paid shares, or upon the books and records of the corporation in the case of uncertificated partly-paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully-paid shares, the corporation shall declare a dividend upon partly-paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

6.2 SPECIAL DESIGNATION ON CERTIFICATES

If the corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the corporation shall issue to represent such class or series of stock; *provided, however*, that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the corporation shall issue to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the corporation shall give the registered owner thereof a notice, in writing or by electronic transmission, containing the information required to be set forth or stated on certificates pursuant to this section 6.2 or Sections 151, 156, 202(a) or 218(a) of the DGCL or with respect to this section 6.2 a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

6.3 LOST CERTIFICATES

Except as provided in this Section 6.3, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the corporation and cancelled at the same time. The corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

6.4 DIVIDENDS

The board of directors, subject to any restrictions contained in the certificate of incorporation or applicable law, may declare and pay dividends upon the shares of the corporation's capital stock.

The board of directors may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the corporation, and meeting contingencies.

6.5 TRANSFER OF STOCK

Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by an attorney duly authorized, and, subject to Section 6.3 of these bylaws, if such stock is certificated, upon the surrender of a certificate or certificates for a like number of shares, properly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer.

6.6 STOCK TRANSFER AGREEMENTS

The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

6.7 REGISTERED STOCKHOLDERS

The corporation:

(i) shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, notices and to vote as such owner;

(ii) shall be entitled to hold liable for calls and assessments the person registered on its books as the owner of shares; and

(iii) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VII - MANNER OF GIVING NOTICE AND WAIVER

7.1 NOTICE OF STOCKHOLDERS' MEETINGS

Notice of any meeting of stockholders shall be given in the manner set forth in the DGCL.

7.2 NOTICE TO STOCKHOLDERS SHARING AN ADDRESS

Except as otherwise prohibited under the DGCL, without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the corporation under the provisions of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any stockholder who fails to object in writing to the corporation, within 60 days of having been given written notice by the corporation of its intention to send the single notice, shall be deemed to have consented to receiving such single written notice. This Section 7.2 shall not apply to Sections 164, 296, 311, 312 or 324 of the DGCL.

7.3 NOTICE TO PERSON WITH WHOM COMMUNICATION IS UNLAWFUL

Whenever notice is required to be given, under the DGCL, the certificate of incorporation or these bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

7.4 WAIVER OF NOTICE

Whenever notice is required to be given under any provision of the DGCL, the certificate of incorporation or these bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the certificate of incorporation or these bylaws.

ARTICLE VIII - FORUM FOR CERTAIN ACTIONS

To the fullest extent permitted by applicable law:

(A) Unless the corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another State court in Delaware or the federal district court for the District of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by, or otherwise wrongdoing by, any director, stockholder, officer or other employee of the corporation to the corporation or the corporation's stockholders, (iii) any action arising pursuant to any provision of the DGCL or the certificate of incorporation or these bylaws (as either may be amended from time to time), (iv) any action to interpret, apply, enforce or determine the validity of the certificate of incorporation or these bylaws (as either may be amended from time to time), or (v) any action asserting a claim governed by the internal affairs doctrine, except for, as to each of (i) through (v) above, any claim as to which such court determines that there is an indispensable party not subject to the jurisdiction of such court (and the indispensable party does not consent to the personal jurisdiction of such court within ten (10) days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than such court, or for which such court does not have subject matter jurisdiction. For the avoidance of doubt, this Article VIII, Part (A) shall not apply to any action brought to enforce a duty or liability created by the Securities Act of 1933, or any successor thereto (the "**Securities Act**") or the 1934 Act.

(B) Unless the corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act.

ARTICLE IX - INDEMNIFICATION

9.1 INDEMNIFICATION OF DIRECTORS AND OFFICERS IN THIRD PARTY PROCEEDINGS

Subject to the other provisions of this Article IX, the corporation shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**Proceeding**") (other than an action by or in the right of the corporation) by reason of the fact that such person is or was a director or officer of the corporation, or is or was a director or officer of the corporation serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

9.2 INDEMNIFICATION OF DIRECTORS AND OFFICERS IN ACTIONS BY OR IN THE RIGHT OF THE CORPORATION

Subject to the other provisions of this Article IX, the corporation shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed Proceeding by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the corporation, or is or was a director or officer of the corporation serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

9.3 SUCCESSFUL DEFENSE

To the extent that a present or former director or officer (for purposes of this Section 9.3 only, as such term is defined in Section 145(c)(1) of the DGCL) of the corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described in Section 9.1 or Section 9.2, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith. The corporation may indemnify any other person who is not a present or former director or officer of the corporation against expenses (including attorneys' fees) actually and reasonably incurred by such person to the extent he or she has been successful on the merits or otherwise in defense of any suit or proceeding described in Section 9.1 or Section 9.2, or in defense of any claim, issue or matter therein.

9.4 INDEMNIFICATION OF OTHERS

Subject to the other provisions of this Article IX, the corporation shall have power to indemnify its employees and agents, or any other persons, to the extent not prohibited by the DGCL or other applicable law. The board of directors shall have the power to delegate to any person or persons identified in subsections (1) through (4) of Section 145(d) of the DGCL the determination of whether employees or agents shall be indemnified.

9.5 ADVANCE PAYMENT OF EXPENSES

Expenses (including attorneys' fees) actually and reasonably incurred by an officer or director of the corporation in defending any Proceeding shall be paid by the corporation in advance of the final disposition of such Proceeding upon receipt of a written request therefor (together with documentation reasonably evidencing such expenses) and an undertaking by or on behalf of the person to repay such amounts if it shall ultimately be determined that the person is not entitled to be indemnified under this Article IX or the DGCL. Such expenses (including attorneys' fees) actually and reasonably incurred by former directors and officers or other employees and agents of the corporation or by persons serving at the request of the corporation as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise may be so paid upon such terms and conditions, if any, as the corporation deems appropriate. The right to advancement of expenses shall not apply to any Proceeding for which indemnity is excluded pursuant to these bylaws, but shall apply to any Proceeding (or any part of any Proceeding) referenced in Section 9.6(ii) or 9.6(iii) prior to a determination that the person is not entitled to be indemnified by the corporation.

9.6 LIMITATION ON INDEMNIFICATION

Subject to the requirements in Section 9.3 and the DGCL, the corporation shall not be obligated to indemnify any person pursuant to this Article IX in connection with any Proceeding (or any part of any Proceeding):

(i) for which payment has actually been made to or on behalf of such person under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid;

(ii) for an accounting or disgorgement of profits pursuant to Section 16(b) of the 1934 Act, or similar provisions of federal, state or local statutory law or common law, if such person is held liable therefor (including pursuant to any settlement arrangements);

(iii) for any reimbursement of the corporation by such person of any bonus or other incentive-based or equity-based compensation or of any profits realized by such person from the sale of securities of the corporation, as required in each case under the 1934 Act (including any such reimbursements that arise from an accounting restatement of the corporation pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "**Sarbanes-Oxley Act**"), or the payment to the corporation of profits arising from the purchase and sale by such person of securities in violation of Section 306 of the Sarbanes-Oxley Act), if such person is held liable therefor (including pursuant to any settlement arrangements);

(iv) initiated by such person, including any Proceeding (or any part of any Proceeding) initiated by such person against the corporation or its directors, officers, employees, agents or other indemnitees, unless (a) the board of directors authorized the Proceeding (or the relevant part of the Proceeding) prior to its initiation, (b) the corporation provides the indemnification, in its sole discretion, pursuant to the powers vested in the corporation under applicable law, (c) otherwise required to be made under Section 9.7 or (d) otherwise required by applicable law; or

(v) if prohibited by applicable law; provided, however, that if any provision or provisions of this Article IX shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (1) the validity, legality and enforceability of the remaining provisions of this Article IX (including, without limitation, each portion of any paragraph or clause 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 (2) to the fullest extent possible, the provisions of this Article IX (including, without limitation, each such portion of any paragraph or clause 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.

9.7 DETERMINATION; CLAIM

If a claim for indemnification or advancement of expenses under this Article IX is not paid in full within 90 days after receipt by the corporation of the written request therefor, the claimant shall be entitled to an adjudication by a court of competent jurisdiction of his or her entitlement to such indemnification or advancement of expenses. The corporation shall indemnify such person against any and all expenses that are actually and reasonably incurred by such person in connection with any action for indemnification or advancement of expenses from the corporation under this Article IX, to the extent such person is successful in such action, and to the extent not prohibited by law. In any such suit, the corporation shall, to the fullest extent not prohibited by law, have the burden of proving that the claimant is not entitled to the requested indemnification or advancement of expenses.

9.8 NON-EXCLUSIVITY OF RIGHTS

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article IX shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the certificate of incorporation or any statute, bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advancement of expenses, to the fullest extent not prohibited by the DGCL or other applicable law.

9.9 INSURANCE

The corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under the provisions of the DGCL.

9.10 SURVIVAL

The rights to indemnification and advancement of expenses conferred by this Article IX shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

9.11 EFFECT OF REPEAL OR MODIFICATION

A right to indemnification or to advancement of expenses arising under a provision of the certificate of incorporation or a bylaw shall not be eliminated or impaired by an amendment to or repeal or elimination of the certificate of incorporation or these bylaws after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such action or omission has occurred.

9.12 CERTAIN DEFINITIONS

For purposes of this Article IX, 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, 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 the provisions of this Article IX with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. For purposes of this Article IX, references to “**other enterprises**” shall include employee benefit plans; references to “**finances**” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “**serving at the request of the corporation**” shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “**not opposed to the best interests of the corporation**” as referred to in this Article IX.

ARTICLE X - GENERAL MATTERS

10.1 EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS

Except as otherwise provided by law, the certificate of incorporation or these bylaws, the board of directors may authorize any officer or officers, or agent or agents, to enter into any contract or execute any document or instrument in the name of and on behalf of the corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the board of directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

10.2 FISCAL YEAR

The fiscal year of the corporation shall be fixed by resolution of the board of directors and may be changed by the board of directors.

10.3 SEAL

The corporation may adopt a corporate seal, which shall be adopted and which may be altered by the board of directors. The corporation may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

10.4 CONSTRUCTION; DEFINITIONS

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "**person**" includes a corporation, partnership, limited liability company, joint venture, trust or other enterprise, and a natural person. Any reference in these bylaws to a section of the DGCL shall be deemed to refer to such section as amended from time to time and any successor provisions thereto.

ARTICLE XI - AMENDMENTS

These bylaws may be adopted, amended or repealed by the stockholders entitled to vote; provided, however, that the affirmative vote of the holders of at least eighty percent (80%) of the total voting power of outstanding voting securities, voting together as a single class, shall be required for the stockholders of the corporation to alter, amend or repeal, or adopt any provision of these bylaws. The board of directors shall also have the power to adopt, amend or repeal bylaws.

A bylaw amendment adopted by stockholders which specifies the votes that shall be necessary for the election of directors shall not be further amended or repealed by the board of directors.

Exhibit 21.1**SUBSIDIARIES OF TWITTER, INC.**

Name of Subsidiary	Jurisdiction of Organization
Twitter Asia Pacific Pte. Ltd.	Singapore
Twitter Australia Holdings Pty Limited	Australia
Twitter Brasil Rede de Informacao Ltda.	Brazil
Twitter Canada ULC	Canada
Twitter Communications India Private Limited	India
Twitter France S.A.S.	France
Twitter Germany GmbH	Germany
Twitter International Unlimited Company	Ireland
Twitter Japan K.K.	Japan
Twitter Korea Ltd.	South Korea
Twitter México S.A. de C.V.	Mexico
Twitter Netherlands B.V.	Netherlands
Twitter Spain, S.L.	Spain
Twitter UK Ltd	United Kingdom

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Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 333-258198, 333-253217, 333-240303, 333-236521, 333-229779, 333-192150, 333-195743, 333-198055, 333-202443, 333-204774, 333-207597, 333-209840, 333-212740, 333-216291, 333-226447 and 333-223205) and Form S-3 (No. 333-238722) of Twitter, Inc. of our report dated February 16, 2022 relating to the financial statements, financial statement schedule and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP

San Francisco, California

February 16, 2022

**CERTIFICATION OF PERIODIC REPORT UNDER SECTION 302 OF
THE SARBANES-OXLEY ACT OF 2002**

I, Parag Agrawal, certify that:

1. I have reviewed this Annual Report on Form 10-K of Twitter, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and;

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 16, 2022

/s/ Parag Agrawal

Parag Agrawal
Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION OF PERIODIC REPORT UNDER SECTION 302 OF
THE SARBANES-OXLEY ACT OF 2002**

I, Ned Segal, certify that:

1. I have reviewed this Annual Report on Form 10-K of Twitter, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and;

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 16, 2022

/s/ Ned Segal

Ned Segal
Chief Financial Officer
(Principal Financial Officer)

**CERTIFICATIONS OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Parag Agrawal, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Annual Report on Form 10-K of Twitter, Inc. for the fiscal year ended December 31, 2021 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Annual Report on Form 10-K fairly presents, in all material respects, the financial condition and results of operations of Twitter, Inc.

Date: February 16, 2022

By: /s/ Parag Agrawal
Name: Parag Agrawal
Title: Chief Executive Officer

I, Ned Segal, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Annual Report on Form 10-K of Twitter, Inc. for the fiscal year ended December 31, 2021 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Annual Report on Form 10-K fairly presents, in all material respects, the financial condition and results of operations of Twitter, Inc.

Date: February 16, 2022

By: /s/ Ned Segal
Name: Ned Segal
Title: Chief Financial Officer

Exhibit 4



U.S. SECURITIES AND EXCHANGE COMMISSION

PDF Copy of Submission on SEC EDGAR system

This PDF document is a copy of the following submission on the SEC's EDGAR system:

Submission/Form 8-K

Filed 2022-04-05

Accession number 0001193125-22-095651

Submitted on EDGAR account of TWITTER, INC., CIK 0001418091

This copy was generated on 2025-08-20.

The submission itself is available on SEC's public EDGAR database at:

<https://www.sec.gov/Archives/edgar/data/0001418091/000119312522095651/0001193125-22-095651-index.html>.

Additional submission information is available on [SEC.gov](https://www.sec.gov), including but not limited to whether any additional reporting entities are associated with the submission.

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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d)
of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported):
April 4, 2022

Twitter, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-36164
(Commission
File Number)

20-8913779
(IRS Employer
Identification No.)

1355 Market Street, Suite 900
San Francisco, California 94103
(Address of principal executive offices, including zip code)

(415) 222-9670
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.000005 per share	TWTR	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

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.

Item 1.01. Entry into a Material Definitive Agreement.

On April 4, 2022, Twitter, Inc. (the "Company") entered into a letter agreement (the "Agreement") with Elon Musk, which provides that:

- The Company will appoint Mr. Musk to the Company's Board of Directors (the "Board") to serve as a Class II director with a term expiring at the Company's 2024 Annual Meeting of Stockholders.
- For so long as Mr. Musk is serving on the Board and for 90 days thereafter, Mr. Musk will not, either alone or as a member of a group, become the beneficial owner of more than 14.9% of the Company's common stock outstanding at such time, including for these purposes economic exposure through derivative securities, swaps, or hedging transactions.

The foregoing summary of the Agreement does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Agreement, which is filed as Exhibit 10.1 and incorporated by reference.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

(d) Election of Directors

The Board will appoint Mr. Musk to serve as a Class II director with a term expiring at the Company's 2024 Annual Meeting of Stockholders as described in Item 1.01 of this Current Report on Form 8-K, subject to and contingent upon the provision by Mr. Musk of any information that the Company reasonably requires to complete its customary onboarding procedures (including a customary background check) for members of the Board.

Other than as described in Item 1.01, there are no arrangements or understandings between Mr. Musk, on the one hand, and the Company or any other persons, on the other hand, pursuant to which Mr. Musk was selected as a director. There are no related party transactions between the Company and Mr. Musk (or any of his immediate family members) requiring disclosure under Item 404(a) of Regulation S-K. Mr. Musk does not have any family relationships with any of the Company's directors or executive officers.

Mr. Musk will participate in the director benefits arrangements applicable to non-employee directors as described in the Company's definitive proxy statement filed with the Securities and Exchange Commission on April 13, 2021. In addition, the Company will enter into its standard form of indemnification agreement with Mr. Musk.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
10.1	Letter Agreement, dated as of April 4, 2022, among Twitter, Inc. and Elon Musk
104	Cover Page Interactive Data File (formatted as Inline XBRL).

SIGNATURE

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

TWITTER, INC.

By: /s/ Ned Segal
Ned Segal
Chief Financial Officer

Date: April 5, 2022

**Twitter, Inc.
1355 Market Street
San Francisco, CA 94103**

April 4, 2022

Elon R. Musk
2110 Ranch Road 620 S. #341886
Austin, TX 78734

Dear Mr. Musk:

Twitter, Inc. (the "**Company**") and Elon Musk hereby agree as follows:

1. *Appointment of Mr. Musk as a Director.* As promptly as practicable following the execution of this letter agreement, subject to and contingent upon the provision by Mr. Musk of any information that the Company reasonably requires to complete its customary onboarding procedures (including a customary background check and completion of the Company's D&O questionnaire) for members of the Board of Directors of the Company (the "**Board**"), the Company and the Board will take all action necessary so that as Mr. Musk will be appointed to the Board as a Class II director with a term expiring at the Company's 2024 annual meeting of stockholders.
2. *Company Securities.* Mr. Musk agrees that, for so long as Mr. Musk is serving on the Board and for 90 days thereafter, Mr. Musk will not, either alone or as a member of a group, become the beneficial owner of more than 14.9% of Company's common stock outstanding at such time, including for these purposes economic exposure through derivative securities, swaps or hedging transactions.
3. *Miscellaneous.* The terms "group" and "beneficial owner" are as defined in Section 13(d) of the Securities Exchange Act of 1934 and related rules. The parties agree that specific performance will be available to the parties under this letter agreement. This letter agreement is governed by, and will be construed in accordance with, the laws of the State of Delaware.

ELON R. MUSK

/s/ Elon Musk _____

TWITTER, INC.

By: /s/ Parag Agrawal _____
Name: Parag Agrawal
Title: Chief Executive Officer

Exhibit 5



U.S. SECURITIES AND EXCHANGE COMMISSION

PDF Copy of Submission on SEC EDGAR system

This PDF document is a copy of the following submission on the SEC's EDGAR system:

Submission/Form 8-K/A

Filed 2022-04-11

Accession number 0001193125-22-101041

Submitted on EDGAR account of TWITTER, INC., CIK 0001418091

This copy was generated on 2025-08-20.

The submission itself is available on SEC's public EDGAR database at:

<https://www.sec.gov/Archives/edgar/data/0001418091/000119312522101041/0001193125-22-101041-index.html>.

Additional submission information is available on [SEC.gov](https://www.sec.gov), including but not limited to whether any additional reporting entities are associated with the submission.

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

**FORM 8-K/A
(Amendment No. 1)**

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of The Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported):
April 4, 2022**

Twitter, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-36164
(Commission
File Number)

20-8913779
(IRS Employer
Identification No.)

**1355 Market Street, Suite 900
San Francisco, California 94103**
(Address of principal executive offices, including zip code)

(415) 222-9670
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.000005 per share	TWTR	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

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.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

(d) Election of Directors

Pursuant to the April 4, 2022 letter agreement, Elon Musk was invited to serve on the board of directors (the "Board") of Twitter, Inc. (the "Company"). On April 9, 2022, Mr. Musk informed the Company that he is not joining the Board.

SIGNATURE

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

TWITTER, INC.

By: /s/ Ned Segal
Ned Segal
Chief Financial Officer

Date: April 11, 2022

Exhibit 6



U.S. SECURITIES AND EXCHANGE COMMISSION

PDF Copy of Submission on SEC EDGAR system

This PDF document is a copy of the following submission on the SEC's EDGAR system:

Submission/Form 8-K

Filed 2022-04-18

Accession number 0001193125-22-107462

Submitted on EDGAR account of TWITTER, INC., CIK 0001418091

This copy was generated on 2025-08-20.

The submission itself is available on SEC's public EDGAR database at:

<https://www.sec.gov/Archives/edgar/data/0001418091/000119312522107462/0001193125-22-107462-index.html>.

Additional submission information is available on [SEC.gov](https://www.sec.gov), including but not limited to whether any additional reporting entities are associated with the submission.

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

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of The Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported):
April 15, 2022**

Twitter, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-36164
(Commission
File Number)

20-8913779
(IRS Employer
Identification No.)

**1355 Market Street, Suite 900
San Francisco, California 94103**
(Address of principal executive offices, including zip code)

(415) 222-9670
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.000005 per share	TWTR	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

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.

Item 1.01. Entry into a Material Definitive Agreement.

On April 15, 2022, the Board of Directors (the "Board") of Twitter, Inc., a Delaware corporation (the "Company"), authorized and declared a dividend distribution of one right (each, a "Right") for each outstanding share of common stock, par value \$0.000005 per share (the "Common Stock"), of the Company to stockholders of record as of the close of business on April 25, 2022 (the "Record Date"). Each Right entitles the registered holder to purchase from the Company one one-thousandth of a share of Series A Participating Preferred Stock, par value \$0.000005 per share (the "Preferred Stock"), of the Company at an exercise price of \$210.00 (the "Exercise Price"), subject to adjustment. The complete terms of the Rights are set forth in a Preferred Stock Rights Agreement (the "Rights Agreement"), dated as of April 15, 2022, between the Company and Computershare Trust Company, N.A., as rights agent.

The Board adopted the Rights Agreement to protect stockholders from coercive or otherwise unfair takeover tactics. In general terms, it works by imposing a significant penalty upon any person or group that acquires 15 percent or more of the shares of Common Stock without the approval of the Board. As a result, the overall effect of the Rights Agreement and the issuance of the Rights may be to render more difficult or discourage a merger, tender or exchange offer or other business combination involving the Company that is not approved by the Board. However, neither the Rights Agreement nor the Rights should interfere with any merger, tender or exchange offer or other business combination approved by the Board.

The following is a summary of the terms of the Rights Agreement. The summary does not purport to be complete and is qualified in its entirety by reference to the Rights Agreement, a copy of which is attached as Exhibit 4.1 and is incorporated herein by reference.

Distribution and Transfer of Rights; Rights Certificates:

The Board has declared a dividend of one Right for each outstanding share of Common Stock. Prior to the Distribution Date referred to below:

- the Rights will be evidenced by and trade with the certificates for the Common Stock (or, with respect to any uncertificated Common Stock registered in book entry form, by notation in book entry), and no separate rights certificates will be distributed;
- new Common Stock certificates issued after the Record Date will contain a legend incorporating the Rights Agreement by reference (for uncertificated Common Stock registered in book entry form, this legend will be contained in a notation in book entry); and
- the surrender for transfer of any certificates for Common Stock (or the surrender for transfer of any uncertificated Common Stock registered in book entry form) will also constitute the transfer of the Rights associated with such Common Stock.

Rights will accompany any new shares of Common Stock that are issued after the Record Date.

Distribution Date:

Subject to certain exceptions specified in the Rights Agreement, the Rights will separate from the Common Stock and become exercisable following (1) the 10th business day (or such later date as may be determined by the Board) after the public announcement that a person or group of affiliated or associated persons (such person or group, an "Acquiring Person") has acquired beneficial ownership of 15 percent or more of the Common Stock or (2) the 10th business day (or such later date as may be determined by the Board) after a person or group announces a tender or exchange offer that would result in ownership by a person or group of 15 percent or more of the Common Stock. For purposes of the Rights Agreement, beneficial ownership is defined to include the ownership of derivative securities.

The date on which the Rights separate from the Common Stock and become exercisable is referred to as the "Distribution Date."

After the Distribution Date, the Company will mail Rights certificates to the Company's stockholders as of the close of business on the Distribution Date and the Rights will become transferable apart from the Common Stock. Thereafter, such Rights certificates alone will represent the Rights.

**Preferred Stock
Purchasable Upon
Exercise of Rights:**

After the Distribution Date, each Right will entitle the holder to purchase, for the Exercise Price, one one-thousandth of a share of Preferred Stock having economic and other terms similar to that of one share of Common Stock. This portion of a share of Preferred Stock is intended to give the stockholder approximately the same dividend, voting and liquidation rights as would one share of Common Stock, and should approximate the value of one share of Common Stock.

More specifically, each one one-thousandth of a share of Preferred Stock, if issued, will:

- not be redeemable;
- entitle holders to quarterly dividend payments of \$0.001 per one one-thousandth of a share of Preferred Stock, or an amount equal to the dividend paid on one share of Common Stock, whichever is greater;
- entitle holders upon liquidation either to receive \$1 per one one-thousandth of a share of Preferred Stock or an amount equal to the payment made on one share of Common Stock, whichever is greater;
- have the same voting power as one share of Common Stock; and
- entitle holders to a payment per one one-thousandth of a share of Preferred Stock equal to the payment made on one share of Common Stock if the Common Stock is exchanged via merger, consolidation or a similar transaction.

Flip-In Trigger:

If an Acquiring Person obtains beneficial ownership of 15 percent or more of the Common Stock, *then* each Right will entitle the holder thereof to purchase, for the Exercise Price, a number of shares of Common Stock (or, in certain circumstances, cash, property or other securities of the Company) having a then-current market value of twice the Exercise Price. However, the Rights are not exercisable following the occurrence of the foregoing event until such time as the Rights are no longer redeemable by the Company, as further described below.

Following the occurrence of an event set forth in preceding paragraph, all Rights that are or, under certain circumstances specified in the Rights Agreement, were beneficially owned by an Acquiring Person or certain of its transferees will be void.

Flip-Over Trigger:

If, after an Acquiring Person obtains 15 percent or more of the Common Stock, (1) the Company merges into another entity, (2) an acquiring entity merges into the Company or (3) the Company sells or transfers more than 50 percent of its assets, cash flow or earning power, *then* each Right (except for Rights that have previously been voided as set forth above) will entitle the holder thereof to purchase, for the Exercise Price, a number of shares of common stock of the person engaging in the transaction having a then-current market value of twice the Exercise Price.

**Redemption of the
Rights:**

The Rights will be redeemable at the Company's option for \$0.001 per Right (payable in cash, Common Stock or other consideration deemed appropriate by the Board) at any time on or prior to the 10th business day (or such later date as may be determined by the Board) after the public announcement that an Acquiring Person has acquired beneficial ownership of 15 percent or more of the Common Stock. Immediately upon the action of the Board ordering redemption, the Rights will terminate and the only right of the holders of the Rights will be to receive the \$0.001 redemption price. The redemption price will be adjusted if the Company undertakes a stock dividend or a stock split.

Exchange Provision:

At any time after the date on which an Acquiring Person beneficially owns 15 percent or more of the Common Stock and prior to the acquisition by the Acquiring Person of 50 percent of the Common Stock, the Board may exchange the Rights (except for Rights that have previously been voided as set forth above), in whole or in part, for Common Stock at an exchange ratio of one share of Common Stock per Right (subject to adjustment). In certain circumstances, the Company may elect to exchange the Rights for cash or other securities of the Company having a value approximately equal to one share of Common Stock.

**Expiration of the
Rights:**

The Rights expire on the earliest of (1) 5:00 p.m., New York City time, on April 14, 2023 (unless such date is extended) or (2) the redemption or exchange of the Rights as described above.

**Amendment of Terms
of the Rights
Agreement and Rights:**

The terms of the Rights and the Rights Agreement may be amended in any respect without the consent of the holders of the Rights on or prior to the Distribution Date. Thereafter, the terms of the Rights and the Rights Agreement may be amended without the consent of the holders of Rights in order to (1) cure any ambiguities, (2) shorten or lengthen any time period pursuant to the Rights Agreement or (3) make changes that do not adversely affect the interests of holders of the Rights.

Voting Rights; Other Stockholder Rights: The Rights will not have any voting rights. Until a Right is exercised, the holder thereof, as such, will have no separate rights as stockholder of the Company.

Anti-Dilution Provisions: The Board may adjust the Exercise Price, the number of shares of Preferred Stock issuable and the number of outstanding Rights to prevent dilution that may occur from a stock dividend, a stock split or a reclassification of the Preferred Stock or Common Stock.

With certain exceptions, no adjustments to the Exercise Price will be made until the cumulative adjustments amount to at least one percent of the Exercise Price. No fractional shares of Preferred Stock will be issued and, in lieu thereof, an adjustment in cash will be made based on the current market price of the Preferred Stock.

Taxes: The distribution of Rights should not be taxable for federal income tax purposes. However, following an event that renders the Rights exercisable or upon redemption of the Rights, stockholders may recognize taxable income.

Item 3.03. Material Modification to Rights of Security Holders.

The information included in Item 1.01 and Item 5.03 of this Current Report on Form 8-K is incorporated by reference into this Item 3.03.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

The information included in Item 1.01 is incorporated herein by reference.

In connection with the adoption of the Rights Agreement, on April 15, 2022 the Board approved a Certificate of Designation of Rights, Preferences and Privileges of Series A Participating Preferred Stock (the "Certificate of Designation") setting forth the rights, powers and preferences of the Preferred Stock. The Certificate of Designation was filed with the Secretary of State of the State of Delaware on April 18, 2022. A copy of the Certificate of Designation is attached as Exhibit 3.1 and is incorporated herein by reference.

Item 8.01. Other Events.

On April 15, 2022, the Company issued a press release announcing the adoption of the Rights Agreement and the declaration of the dividend of Rights. A copy of the press release is attached as Exhibit 99.1 and incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
3.1	Certificate of Designation of Rights, Preferences and Privileges of Series A Participating Preferred Stock.
4.1	Preferred Stock Rights Agreement, dated as of April 15, 2022, by and between Twitter, Inc. and Computershare Trust Company, N.A., as rights agent.
99.1	Press Release, dated April 15, 2022.
104	Cover Page Interactive Data File (formatted as Inline XBRL).

SIGNATURE

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

TWITTER, INC.

By: /s/ Ned Segal
Ned Segal
Chief Financial Officer

Date: April 18, 2022

**CERTIFICATE OF DESIGNATION OF RIGHTS, PREFERENCES AND PRIVILEGES
OF SERIES A PARTICIPATING PREFERRED STOCK OF
TWITTER, INC.**

Pursuant to Section 151 of the
General Corporation Law of the State of Delaware

Twitter, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "**Corporation**"), in accordance with the provisions of Section 103 thereof, certifies:

That pursuant to the authority conferred upon the Board of Directors of the Corporation (the "**Board**") by the Amended and Restated Certificate of Incorporation of the Corporation, on April 15, 2022, the Board adopted the following resolution creating a series of preferred stock, par value \$0.000005 per share ("**Preferred Stock**"), of the Corporation designated as Series A Participating Preferred Stock:

RESOLVED, that pursuant to the authority vested in the Board by the Amended and Restated Certificate of Incorporation of the Corporation (the "**Charter**"), the Board provides for the issuance of a series of Preferred Stock of the Corporation and fixes by resolution the designations, powers, preferences and rights, and the qualifications, limitations and restrictions, of such series of Preferred Stock as follows:

1. *Designation and Amount.* The shares of such series will be designated as "**Series A Participating Preferred Stock**." The Series A Participating Preferred Stock will have a par value of \$0.000005 per share, and the number of shares constituting such series will be 10,000,000. Such number of shares may be increased or decreased by resolution of the Corporation's Board of Directors (the "**Board**"), except that no decrease will reduce the number of shares of Series A Participating Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the exercise of any options, rights or warrants issuable upon conversion of any outstanding securities issued by the Corporation convertible into Series A Participating Preferred Stock.

2. *Dividends and Distributions.*

(a) Subject to the prior and superior rights of the holders of any shares of any series of Preferred Stock (or other similar stock) ranking prior and superior to the shares of Series A Participating Preferred Stock with respect to dividends, the holders of shares of Series A Participating Preferred Stock, in preference to the holders of shares of common stock, par value \$0.000005 per share (the "**Common Stock**"), of the Corporation, will be entitled to receive, when, as and if declared by the Board out of funds legally available for the purpose, quarterly dividends payable in cash on the last day of March, June, September and December in each year (each such date being referred to as a "**Quarterly Dividend Payment Date**"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A

Participating Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (i) \$1.00 and (ii) subject to any provision for adjustment in this Certificate of Designation, 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 Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the 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 share or fraction of a share of Series A Participating Preferred Stock. If the Corporation at any time after April 15, 2022 (the "**Rights Dividend Declaration Date**") (A) declares and pays any dividend on the Common Stock payable in the form of shares of Common Stock, (B) subdivides the outstanding Common Stock or (C) combines or consolidates the outstanding Common Stock into a smaller number of shares, then in each such case the amount to which holders of shares of Series A Participating Preferred Stock were entitled immediately prior to such event under clause (ii) of the preceding sentence will be adjusted by multiplying such amount by a fraction, the numerator of which will be the total number of shares of Common Stock outstanding immediately after the occurrence of such event and the denominator of which will be the total number of shares of Common Stock that were outstanding immediately prior to the occurrence of such event.

(b) The Corporation will declare a dividend or distribution on the Series A Participating Preferred Stock as provided in Section 2(a) immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock), except that if no dividend or distribution has been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, then a dividend of \$1.00 per share on the Series A Participating Preferred Stock will nevertheless be payable on such subsequent Quarterly Dividend Payment Date (it being understood that the actual payment of such dividend may be deferred if prohibited under any of the Corporation's debt instruments).

(c) Dividends will begin to accrue and be cumulative on outstanding shares of Series A Participating Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series A Participating Preferred Stock, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares will begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Participating Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends will begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends will not bear interest. Dividends paid on the shares of Series A Participating Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares will be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board may fix a record date for the determination of holders of shares of Series A Participating Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date will be no more than 60 days prior to the date fixed for the payment thereof.

3. *Voting Rights.* The holders of shares of Series A Participating Preferred Stock will have the following voting rights:

(a) Subject to the provision for adjustment hereinafter set forth, each share of Series A Participating Preferred Stock will entitle the holder thereof to 1,000 votes on all matters submitted to a vote of the stockholders of the Corporation. If the Corporation at any time after the Rights Dividend Declaration Date (i) declares any dividend on the Common Stock payable in shares of Common Stock, (ii) subdivides the outstanding Common Stock or (iii) combines or consolidates the outstanding Common Stock into a smaller number of shares, then in each such case the number of votes per share to which holders of shares of Series A Participating Preferred Stock were entitled immediately prior to such event will be adjusted by multiplying such number by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(b) Except as otherwise provided in this Certificate of Designation, in any other Certificate of Designation creating a series of Preferred Stock or any similar stock, the Charter or the Amended and Restated Bylaws of the Corporation (the "**Bylaws**"), or by law, the holders of shares of Series A Participating Preferred Stock and the holders of shares of Common Stock and any other capital stock of the Corporation having general voting rights will vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(c) Except as set forth in this Certificate of Designation or as required by law, the holders of Series A Participating Preferred Stock will have no special voting rights and their consent will not be required (except to the extent that holders of Series A Participating Preferred Stock are entitled to vote with holders of shares of Common Stock as set forth in this Certificate of Designation) for taking any corporate action.

4. *Certain Restrictions.*

(a) The Corporation will not declare any dividend on, make any distribution on, or redeem or purchase or otherwise acquire for consideration any shares of Common Stock after the first issuance of a share or fraction of a share of Series A Participating Preferred Stock unless concurrently therewith it will declare a dividend on the Series A Participating Preferred Stock as required by Section 2.

(b) Whenever quarterly dividends or other dividends or distributions payable on the Series A Participating Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Participating Preferred Stock outstanding will have been paid in full, the Corporation will not:

(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Participating Preferred Stock, other than (A) redemptions or purchases that may be deemed to occur upon the exercise of stock options, warrants or similar rights or the grant, vesting or lapse of restrictions on the grant of

any performance shares, restricted stock, restricted stock units or other equity awards to the extent that such shares represent all or a portion of (1) the exercise or purchase price of such options, warrants or similar rights or other equity awards and (2) the amount of withholding taxes owed by the recipient of such award in respect of such grant, exercise, vesting or lapse of restrictions; or (B) the repurchase, redemption, or other acquisition or retirement for value of any such shares from employees, former employees, directors, former directors, consultants or former consultants of the Corporation, or their respective estate, spouse, former spouse or family member, pursuant to the terms of the agreements pursuant to which such shares were acquired;

(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 Participating Preferred Stock, except dividends paid ratably on the Series A Participating 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) with the Series A Participating Preferred Stock, it being understood that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Participating Preferred Stock; or

(iv) redeem or purchase or otherwise acquire for consideration any shares of Series A Participating Preferred Stock, or any shares of stock ranking on a parity with the Series A Participating Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board) to all holders of such shares upon such terms as the Board, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, will determine in good faith will result in fair and equitable treatment among the respective series or classes.

(c) The Corporation will not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, pursuant to Section 4(a), purchase or otherwise acquire such shares at such time and in such manner.

5. Reacquired Shares of Preferred Stock. Any shares of Series A Participating Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever will be retired and canceled promptly after the acquisition thereof. All such shares will upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board, subject to the conditions and restrictions on issuance set forth in this Certificate of Designation, in the Charter or in any other Certificate of Designation creating a series of Preferred Stock or any similar stock or as otherwise required by law.

6. *Liquidation, Dissolution or Winding Up.*

(a) Upon any liquidation, dissolution or winding up of the Corporation, voluntary or otherwise, no distribution will be made to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Participating Preferred Stock unless, prior thereto, the holders of shares of Series A Participating Preferred Stock will have received an amount per share (the "**Series A Liquidation Preference**") equal to the greater of (i) \$1.00 plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment or (ii) the Adjustment Number multiplied by the per share amount of all cash and other property to be distributed in respect of the Common Stock upon such liquidation, dissolution or winding up of the Corporation. The "**Adjustment Number**" will initially be 1,000. If the Corporation at any time after the Rights Dividend Declaration Date (A) declares and pays any dividend on the Common Stock payable in the form of shares of Common Stock, (B) subdivides the outstanding Common Stock or (C) combines or consolidates the outstanding Common Stock into a smaller number of shares, then in each such case the Adjustment Number in effect immediately prior to such event will be adjusted by multiplying such Adjustment Number by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(b) If there are not sufficient assets available to permit payment in full of the Series A Liquidation Preference and the liquidation preferences of all other classes and series of Preferred Stock, if any, that rank on a parity with the Series A Participating Preferred Stock, then the assets available for distribution will be distributed ratably to the holders of the Series A Participating Preferred Stock and such parity shares in proportion to their respective liquidation preferences.

(c) None of the merger or consolidation of the Corporation into or with another entity or the merger or consolidation of any other entity into or with the Corporation will be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of this Section 6.

7. *Consolidation, Merger, etc.* If the Corporation enters into any consolidation, merger, combination, conversion, share exchange or other transaction in which the shares of Common Stock are exchanged for or changed into other stock, securities, cash or any other property (payable in kind), then in any such case the shares of Series A Participating Preferred Stock will at the same time be similarly exchanged or changed in an amount per share (subject to the provision for adjustment hereinafter set forth) equal to the Adjustment Number multiplied by 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 Common Stock is changed or exchanged.

8. *No Redemption.* The shares of Series A Participating Preferred Stock will not be redeemable.

9. *Ranking.* The Series A Participating Preferred Stock will rank junior to all other series of the Preferred Stock as to the payment of dividends and the distribution of assets, unless the terms of any such series will provide otherwise, and will rank senior to the Common Stock as to such matters.

10. *Amendment.* At any time when any shares of Series A Participating Preferred Stock are outstanding, neither the Charter nor this Certificate of Designation will be amended in any manner that would materially alter or change the powers, preferences or special rights of the Series A Participating Preferred Stock so as to affect them adversely without the affirmative vote of the holders of at least two-thirds of the outstanding shares of Series A Participating Preferred Stock, voting separately as a class.

11. *Fractional Shares of Preferred Stock.* Series A Participating Preferred Stock may be issued in fractions of a share that will entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series A Participating Preferred Stock.

* * *

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the 18th day of April, 2022.

TWITTER, INC.

By: /s/ Ned Segal

Name: Ned Segal

Title: Chief Financial Officer

PREFERRED STOCK RIGHTS AGREEMENT
Dated as of April 15, 2022

between

TWITTER, INC.

and

COMPUTERSHARE TRUST COMPANY, N.A.,
as Rights Agent

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EXHIBITS

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- Exhibit C Form of Summary of Rights

PREFERRED STOCK RIGHTS AGREEMENT

This Preferred Stock Rights Agreement (this "**Agreement**"), dated as of April 15, 2022, is between Twitter, Inc., a Delaware corporation (the "**Company**"), and Computershare Trust Company, N.A., a federally chartered trust company, as rights agent (the "**Rights Agent**"). Each of the Company and the Rights Agent are sometimes referred to as a "**Party**." All capitalized terms used in this Agreement have the meanings given to them in Section 1.

RECITALS

A. On April 15, 2022 (the "**Rights Dividend Declaration Date**"), the Board of Directors of the Company (the "**Board**") (i) adopted resolutions creating a series of preferred stock designated as "Series A Participating Preferred Stock," (ii) adopted this Agreement and (iii) authorized and declared a dividend of one preferred stock purchase right (a "**Right**") for each share of Common Stock outstanding as of the Close of Business on April 25, 2022 (the "**Record Date**"). Upon the terms and subject to the conditions of this Agreement, each Right initially represents the right to purchase one one-thousandth of a share of Preferred Stock (as such number may be adjusted pursuant to the provisions of this Agreement) and has the rights, preferences and privileges set forth in the form of Certificate of Designation of Rights, Preferences and Privileges of Series A Participating Preferred Stock attached as Exhibit A.

B. The Board further authorized and directed the issuance of one Right (as such number may be adjusted pursuant to the provisions of this Agreement) with respect to each share of Common Stock that becomes outstanding (whether as an original issuance or from the Company's treasury) between the Record Date and, subject to Section 22, the earlier of the Distribution Date and the Expiration Date.

AGREEMENT

The Parties therefore agree as follows:

Section 1. *Certain Definitions.* For purposes of this Agreement, the following terms have the meanings indicated:

(a) "**Acquiring Person**" means any Person who or that, together with all Affiliates and Associates of such Person, is the Beneficial Owner of the Triggering Percentage or more of the shares of Common Stock then outstanding, but will not include any Exempt Person. Notwithstanding anything in this definition of "Acquiring Person" to the contrary:

(i) no Person who Beneficially Owns, as of the time of the public announcement of this Agreement, the Triggering Percentage or more of the shares of Common Stock then outstanding will become an Acquiring Person unless such Person, after the time of the public announcement of this Agreement, becomes the Beneficial Owner of any additional shares of Common Stock (other than pursuant to a dividend or distribution paid or made by the Company on the Common Stock in the form of shares of Common Stock or pursuant to a split or subdivision of the Common Stock), unless, upon becoming the Beneficial Owner of such additional shares of Common Stock, such Person is not then the Beneficial Owner of the

Triggering Percentage or more of the shares of Common Stock then outstanding, it being understood that such Person will be considered to be an Acquiring Person upon thereafter becoming the Beneficial Owner of the Triggering Percentage or more of the shares of Common Stock then outstanding unless expressly provided to the contrary under this Agreement (it being understood that, for all purposes under this Section 1(a)(i), the modification (directly or indirectly) of any derivative instrument or transaction that on the date of this Agreement is not by its terms exchangeable or exercisable for, or convertible into, shares of Common Stock to provide for the possibility of, or the exchange or settlement of any such instrument or transaction for, the issuance or transfer of shares of Common Stock or an instrument or transaction providing for the issuance or transfer of shares of Common Stock will be deemed to be an acquisition of Beneficial Ownership of additional shares of Common Stock (regardless of whether, thereafter or as a result thereof, there is an increase, decrease or no change in the percentage of shares of Common Stock then outstanding that are Beneficially Owned by such Person));

(ii) no Person will be deemed to be an Acquiring Person as the result of an acquisition of shares of Common Stock by an Exempt Person that, by reducing the number of shares of Common Stock then outstanding, increases the proportionate number of shares of Common Stock that are Beneficially Owned by such Person to the Triggering Percentage or more of the shares of Common Stock then outstanding, it being understood that if a Person becomes the Beneficial Owner of the Triggering Percentage or more of the shares of Common Stock then outstanding solely as the result of a reduction in the number of shares of Common Stock then outstanding due to an acquisition of shares of Common Stock by an Exempt Person and, after such acquisition by such Exempt Person, becomes the Beneficial Owner of any additional shares of Common Stock (other than pursuant to a dividend or distribution paid or made by the Company on the Common Stock in the form of shares of Common Stock or pursuant to a split or subdivision of the Common Stock), then such Person will be deemed to be an Acquiring Person unless, upon becoming the Beneficial Owner of such additional shares of Common Stock, such Person does not Beneficially Own the Triggering Percentage or more of the shares of Common Stock then outstanding, it being understood that such Person will be considered to be an Acquiring Person upon thereafter becoming the Beneficial Owner of the Triggering Percentage or more of the shares of Common Stock then outstanding unless expressly provided to the contrary under this Agreement;

(iii) no Person will be deemed to be an Acquiring Person solely as a result of any unilateral grant of any security by the Company, or through the exercise of any options, warrants, rights or similar interests (including restricted stock) granted by the Company to its directors, officers and employees, it being understood that if a Person becomes the Beneficial Owner of the Triggering Percentage or more of the shares of Common Stock then outstanding by reason of a unilateral grant of a security by the Company, or through the exercise of any options, warrants, rights or similar interests (including restricted stock) granted by the Company to its directors, officers and employees, and such Person becomes the Beneficial Owner of any additional shares of Common Stock (other than (A) pursuant to a dividend or distribution paid or made by the Company on the Common Stock in shares of Common Stock or pursuant to a split or subdivision of the Common Stock; or (B) the unilateral grant of a security by the Company, or through the exercise of any options, warrants, rights or similar interest (including restricted stock) granted by the Company to its directors, officers and employees), then such Person will be deemed to be an Acquiring Person unless, upon becoming the Beneficial Owner of such additional shares of Common Stock, such Person does not Beneficially Own the Triggering Percentage or more of the shares of Common Stock then outstanding, it being understood that such Person will be considered to be an Acquiring Person upon thereafter becoming the Beneficial Owner of the Triggering Percentage or more of the shares of Common Stock then outstanding unless expressly provided to the contrary under this Agreement;

(iv) no Person will be deemed to be an Acquiring Person as the result of the acquisition of Beneficial Ownership of shares of Common Stock from an individual who, as of the time of the public announcement of this Agreement, is the Beneficial Owner of the Triggering Percentage or more of the shares of Common Stock then outstanding if such shares of Common Stock are received by such Person upon an individual's death pursuant to such individual's will or pursuant to a charitable trust created by such individual for estate planning purposes, and thereafter such Person does not otherwise become an Acquiring Person; and

(v) if the Board determines in good faith that a Person who would otherwise be an Acquiring Person has become such inadvertently (including because (A) such Person was unaware that it Beneficially Owned a percentage of the shares of Common Stock then outstanding that would otherwise cause such Person to be an Acquiring Person or (B) such Person was aware of the extent of the shares of Common Stock then outstanding that it Beneficially Owned but had no actual knowledge of the consequences of such Beneficial Ownership pursuant to this Agreement) and without any intention of changing or influencing control of the Company, and if such Person divested or divests (including by entering into an agreement with the Company, which agreement is satisfactory to the Board in its sole discretion, to divest and subsequently divests in accordance with the terms of such agreement, without exercising or retaining any power, including voting power, with respect to such shares of Common Stock) as promptly as practicable a sufficient number of shares of Common Stock so that such Person would no longer be an Acquiring Person, then such Person will not be deemed to be or to have become an Acquiring Person for any purposes of this Agreement in connection with such circumstances.

(b) "**Adjustment Shares**" has the meaning set forth in Section 11(a)(ii).

(c) "**Affiliate**" and "**Associate**" have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations promulgated under the Exchange Act, as in effect on the date of this Agreement.

(d) "**Agreement**" has the meaning set forth in the preamble.

(e) "**Appropriate Officers**" means the Company's Chairperson of the Board, Chief Executive Officer, President, Chief Financial Officer, Treasurer or Secretary, or any Vice President or Assistant Secretary.

(f) A Person will be deemed to be the "**Beneficial Owner**" of, and will be deemed to "**Beneficially Own**" and have "**Beneficial Ownership**" of, any securities:

(i) that such Person or any of such Person's Affiliates or Associates, directly or indirectly, owns or has the legal, equitable or contractual right or obligation to acquire (whether directly or indirectly and whether exercisable, or whether such obligation is required to be performed, immediately or only after the passage of time, upon compliance with regulatory requirements, upon satisfaction of one or more conditions (whether or not within the control of such Person), or otherwise) (A) pursuant to any agreement, arrangement or understanding whether or not in writing (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities); (B) upon the exercise of any conversion rights, exchange rights, rights (other than the Rights), warrants or options, or otherwise; (C) pursuant to the power to revoke a trust, discretionary account or similar arrangement; (D) pursuant to the power to terminate a repurchase or similar so-called "stock borrowing" agreement, arrangement or understanding; or (E) pursuant to the automatic termination of a trust, discretionary account or similar arrangement, except that that a Person will not be deemed pursuant to this Section 1(f)(i) to be the Beneficial Owner of, or to Beneficially Own, securities (1) tendered pursuant to a tender or exchange offer made by or on behalf of such Person or any of such Person's Affiliates or Associates until such tendered securities are accepted for purchase or exchange; (2) issuable upon the exercise of Rights at any time prior to the occurrence of a Triggering Event; (3) issuable upon the exercise of Rights from and after the occurrence of a Triggering Event if such Rights were acquired by such Person or any of such Person's Affiliates or Associates prior to the Distribution Date or pursuant to Section 3(a) or Section 22 (the "**Original Rights**") or pursuant to Section 11(h) in connection with an adjustment made with respect to any Original Rights; or (4) that a Person or any of such Person's Affiliates or Associates may be deemed to have the right to acquire, or does acquire, pursuant to any merger or other acquisition agreement between the Company and such Person (or one or more of its Affiliates or Associates), or any tender, voting or support agreement entered into by such Person (or one or more of its Affiliates or Associates) in connection with such merger or other acquisition, if in each case such agreement has been approved by the Board prior to a Section 11(a)(ii) Event occurring with respect to such Person (or one or more of its Affiliates or Associates);

(ii) that such Person or any of such Person's Affiliates or Associates, directly or indirectly, has the right to vote (including the power to vote or to direct the voting of) or dispose (or direct the disposition) of or has "beneficial ownership" of (as determined pursuant to Rule 13d-3 of the General Rules and Regulations promulgated under the Exchange Act, as in effect on the date of this Agreement), including pursuant to any agreement, arrangement or understanding whether or not in writing, except that a Person will not be deemed to be the Beneficial Owner of, or to Beneficially Own, any security pursuant to this Section 1(f)(ii) as a result of an agreement, arrangement or understanding (whether or not in writing) to vote such security if such agreement, arrangement or understanding (A) arises solely from a revocable proxy or consent given to such Person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the applicable provisions of the General Rules and Regulations promulgated under the Exchange Act; and (B) is not also then reportable by such Person on Schedule 13D;

(iii) that are Beneficially Owned, directly or indirectly, by any other Person (or any of such Person's Affiliates or Associates) with which such first Person (or any of such first Person's Affiliates or Associates) has any agreement, arrangement or understanding whether or not in writing (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities) for the purpose of acquiring, holding, voting (except pursuant to a revocable proxy to the extent contemplated by

the proviso to Section 1(f)(ii) or disposing of any securities of the Company, it being understood that no person who is an officer, director or employee of an Exempt Person will be deemed, solely by reason of such person's status or authority as such, to be a Beneficial Owner of, to have Beneficial Ownership of or to Beneficially Own any securities of the Company that are Beneficially Owned (including in a fiduciary capacity) by an Exempt Person or by any other officer, director or employee of an Exempt Person, it being further understood that any stockholder of the Company, together with any Affiliate, Associate or other person who may be deemed to be a representative of such stockholder who is then serving as a director of the Company, will not be deemed to be the Beneficial Owner of, to have Beneficial Ownership of or to Beneficially Own any securities of the Company held by any other Person as a result of (A) any Person affiliated or otherwise associated with such stockholder serving as a director of the Company or taking any action in connection therewith; (B) discussing the status of its securities with the Company or other stockholders of the Company that are similarly situated; or (C) voting or acting in a manner similar to other stockholders of the Company that are similarly situated; or

(iv) that are the subject of a derivative transaction entered into by such Person or any of such Person's Affiliates or Associates, including, for these purposes, any derivative instrument (whether or not presently exercisable) acquired by such Person, or any of such Person's Affiliates or Associates, that gives such Person, or any of such Person's Affiliates or Associates, the economic equivalent of direct or indirect ownership of, or opportunity to obtain ownership of, an amount of securities where the value of the derivative is determined in whole or in part with reference to, or derived in whole or in part from, the price or value of such securities, or that provides such Person, or any of such Person's Affiliates or Associates, an opportunity, directly or indirectly, to profit, or to share in any profit derived from, any change in the value of such securities, in any case without regard to whether (A) the derivative conveys any voting rights in such securities to such Person, or any of such Person's Affiliates or Associates; (B) the derivative is required to be, or capable of being, settled through delivery of such securities, cash or other property; or (C) such Person, or any of such Person's Affiliates or Associates, may have entered into other transactions that hedge the economic effect of the derivative (it being understood that in determining the number of shares of Common Stock that the subject Person will be deemed to Beneficially Own by virtue of the operation of this Section 1(f)(iv), the subject Person will be deemed to Beneficially Own (without duplication) the notional or other number of shares of Common Stock that, pursuant to the documentation evidencing the derivative position, may be acquired upon the exercise or settlement of the applicable right or as the basis upon which the value or settlement amount of such right, or the opportunity of the holder of such right to profit or share in any profit, is to be calculated, in whole or in part, and in any case (or if no such number of shares of Common Stock is specified in such documentation or otherwise) as determined by the Board in good faith to be the number of shares of Common Stock to which the derivative position relates).

(g) "**Board**" has the meaning set forth in the recitals at the beginning of this Agreement.

(h) "**Book Entry Shares**" has the meaning set forth in Section 3(a).

(i) "**Business Day**" means any day other than a Saturday, Sunday or a day on which banking institutions in the State of New York are authorized or obligated to close.

(j) **"Close of Business"** on any given date means 5:00 p.m., New York City time, on such date. If such date is not a Business Day, then it means 5:00 p.m., New York City time, on the next succeeding Business Day.

(k) **"Common Stock"** means, unless otherwise specified, the shares of common stock, par value \$0.000005 per share, of the Company. When used with reference to any Person other than the Company, Common Stock means the capital stock with the greatest voting power, or the equity securities or other equity interest having power to control or direct the management, of such Person or, if such Person is a Subsidiary of another Person, of the Person that ultimately controls such first Person.

(l) **"Common Stock Equivalents"** has the meaning set forth in Section 11(a)(iii).

(m) **"Company"** has the meaning set forth in the preamble, subject to the terms of Section 13(a).

(n) **"Current Per Share Market Price"** of any security (a **"Security"** for purposes of this definition), for all computations other than those made pursuant to Section 11(a)(iii), means the average of the daily closing prices per share of such Security for the 30 consecutive Trading Days immediately prior to but not including such date, and for purposes of computations made pursuant to Section 11(a)(iii), the Current Per Share Market Price of any Security on any date will be deemed to be the average of the daily closing prices per share of such Security for the 10 consecutive Trading Days immediately following but not including such date. If the Current Per Share Market Price of the Security is determined during any period following the announcement by the issuer of such Security of (i) a dividend or distribution on such Security payable in shares of such Security or securities convertible into such shares (other than the Rights) or (ii) any subdivision, combination, consolidation, reverse stock split or reclassification of such Security, and the ex-dividend date for such dividend or distribution, or the record date for such subdivision, combination, consolidation, reverse stock split or reclassification, has not occurred prior to the commencement of the requisite 30 consecutive Trading Day or 10 consecutive Trading Day period as set forth above, then, and in each such case, the Current Per Share Market Price will be appropriately adjusted to take into account ex-dividend trading. The closing price for each day will be the last sale price, regular way, reported at or prior to 4:00 p.m., New York City time, or, if no such sale takes place on such day, the average of the bid and asked prices, regular way, reported as of 4:00 p.m. New York City time, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the NYSE or, if the Security is not listed or admitted to trading on the NYSE, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Security is listed or admitted to trading or, if the Security is not listed or admitted to trading on any national securities exchange, the last quoted price reported at or prior to 4:00 p.m., New York City time, or, if on such date the Security is not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported as of 4:00 p.m., New York City time, by the NYSE or such other system then in use, or, if on any such date the Security is not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Security selected by the Board. If on any such date no

market maker is making a market in the Security, the fair value of the Security on such date as determined in good faith by the Board will be used, which determination will be described in a statement filed with the Rights Agent and will be conclusive and binding on the Rights Agent and the holders of the Rights. If the Current Per Share Market Price of the Preferred Stock cannot be determined in the manner provided above or if the shares of Preferred Stock are not publicly held or not listed or traded in a manner described above, then the Current Per Share Market Price of the Preferred Stock will be conclusively deemed to be (x) the Current Per Share Market Price of the Common Stock as determined pursuant to this Section 1(n) multiplied by (y) 1,000 (as such number may be appropriately adjusted to reflect any subdivision, combination, consolidation, reverse stock split or reclassification of Common Stock occurring after the Rights Dividend Declaration Date). If the Security (other than the Preferred Stock) is not publicly held or not so listed or traded, or if on any such date the Security is not so quoted and no such market maker is making a market in the Security, then the Current Per Share Market Price means the fair value per Security as determined in good faith by the Board, after consultation with a nationally recognized investment banking firm, whose determination will be described in a statement filed with the Rights Agent and will be conclusive and binding on the Rights Agent and the holders of the Rights.

(o) “**Current Exchange Value**” means the product of the Current Per Share Market Price of Common Stock on the date of the occurrence of an Exchange Determination (or the next Business Day, if such date is not a Business Day) multiplied by the number of shares of Common Stock for which the Right would otherwise be exchangeable (without regard to whether there were sufficient shares of Common Stock available therefor).

(p) “**Current Value**” has the meaning set forth in Section 11(a)(iii).

(q) “**Distribution Date**” means the earlier of (i) the Close of Business on the 10th Business Day (or such later date as may be determined by action of the Board, which action must be taken prior to the Distribution Date that otherwise would have occurred) after the Stock Acquisition Date (or, if the 10th Business Day after the Stock Acquisition Date occurs before the Record Date, then the Close of Business on the Record Date); or (ii) the Close of Business on the 10th Business Day (or, if such 10th Business Day occurs before the Record Date, then the Close of Business on the Record Date) (or such later date as may be determined by the Board) after the date that a tender or exchange offer by any Person (other than an Exempt Person) is first published, sent or given within the meaning of Rule 14d-2(a) of the General Rules and Regulations promulgated under the Exchange Act if, assuming the successful consummation thereof, such Person would be an Acquiring Person. If any tender or exchange offer referred to in clause (ii) of this Section 1(q) is canceled, terminated or otherwise withdrawn prior to the Distribution Date without the purchase or exchange of any shares of Common Stock pursuant thereto, then such offer will be deemed, for purposes of this Section 1(q), never to have been made.

(r) “**Equivalent Preferred Stock**” means any class or series of capital stock of the Company having the same rights, privileges and preferences as the Preferred Stock.

(s) “**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

(t) “**Exchange Determination**” has the meaning set forth in Section 24(a).

(u) “**Exchange Ratio**” has the meaning set forth in Section 24(a).

(v) “**Exempt Person**” means (i) the Company or any Subsidiary of the Company, in each case including in any fiduciary capacity; or (ii) any employee benefit plan of the Company or of any Subsidiary of the Company, or any entity or trustee holding (or acting in a fiduciary capacity in respect of) shares of capital stock of the Company for or pursuant to the terms of any such plan or for the purpose of funding any such plan or any other employee benefits for employees of the Company or any Subsidiary of the Company. No Person who is an officer, director or employee of an Exempt Person will be deemed, solely by reason of such Person’s status or authority as such, to be the Beneficial Owner of, to have Beneficial Ownership of or to Beneficially Own any securities that are Beneficially Owned (including in a fiduciary capacity) by an Exempt Person or by any other such officer, director or employee of an Exempt Person.

(w) “**Exercise Price**” is initially \$210.00 for each one one-thousandth of a share of Preferred Stock issuable pursuant to the exercise of a Right and is subject to adjustment from time to time as provided in Section 11 or Section 13.

(x) “**Expiration Date**” means the earliest to occur of (i) the Close of Business on the Final Expiration Date, (ii) the Redemption Date or (iii) the time at which the Board orders the exchange of the Rights as provided in Section 24.

(y) “**Final Expiration Date**” means April 14, 2023.

(z) “**NYSE**” means the New York Stock Exchange.

(aa) “**Original Rights**” has the meaning set forth in Section 1(f)(i).

(bb) “**Person**” means any individual, firm, corporation, partnership (general or limited), limited liability company, joint venture, business trust, trust, association, syndicate, group (as such term is used in Rule 13d-5 of the General Rules and Regulations promulgated under the Exchange Act, as in effect on the date of this Agreement) or other entity, and, in each case, will include any successor (by merger or otherwise) of any such Person.

(cc) “**Post-Event Transferee**” has the meaning set forth in Section 7(e).

(dd) “**Pre-Event Transferee**” has the meaning set forth in Section 7(e).

(ee) “**Preferred Stock**” means shares of Series A Participating Preferred Stock, par value \$0.000005 per share, of the Company and, to the extent that there are not a sufficient number of shares of Preferred Stock authorized to permit the full exercise of the Rights, any other series of preferred stock of the Company designated for such purpose containing terms substantially similar to the terms of the Preferred Stock.

(ff) "**Principal Party**" means (i) in the case of any transaction described in clause (i) or (ii) of Section 13(a), (A) the Person that is the issuer of the securities into which the Common Stock are converted in the consolidation or merger, or, if there is more than one such issuer, the issuer whose Common Stock have the greatest aggregate market value of shares outstanding; or (B) if no securities are so issued, (1) the Person that is the other party to the consolidation or merger, if such Person survives the consolidation or merger, or, if there is more than one such Person, the Person whose Common Stock has the greatest aggregate market value of shares outstanding; (2) if the Person that is the other party to the merger does not survive such consolidation or merger, the Person that does survive such consolidation or merger (including the Company if it survives); or (3) the Person resulting from the consolidation or merger; and (ii) in the case of any transaction described in clause (iii) of Section 13(a), the Person that is the party receiving the greatest portion of the assets, cash flow or earning power transferred pursuant to such transaction or transactions, or, if more than one Person that is a party to such transaction or transactions receives the same portion of the assets or earning power so transferred and each such portion would, were it not for the other equal portions, constitute the greatest portion of the assets or earning power so transferred, or if the Person receiving the greatest portion of the assets or earning power cannot be determined, whichever of such Persons is the issuer of Common Stock having the greatest aggregate market value of shares outstanding. For purposes of this definition, if the shares of Common Stock of such Person are not at such time, or have not been continuously over the preceding 12-month period, registered pursuant to Section 12 of the Exchange Act, then if such Person is (x) a direct or indirect Subsidiary of another Person whose Common Stock is and has been so registered, the term "Principal Party" will refer to such other Person, (y) a direct or indirect Subsidiary of more than one Person whose shares of Common Stock is and has been so registered, the term "Principal Party" will refer to whichever of such Persons is the issuer of Common Stock having the greatest aggregate market value of shares outstanding, or (z) if such Person is owned, directly or indirectly, by a joint venture formed by two or more Persons that are not owned, directly or indirectly, by the same Person, the rules set forth in clauses (x) and (y) above will apply to each of the owners having an interest in the venture as if the Person owned by the joint venture was a Subsidiary of both or all of such joint venturers, and the Principal Party in each such case must bear the obligations set forth in Section 13 in the same ratio as its interest in such Person bears to the total of such interests.

(gg) "**Record Date**" has the meaning set forth in the recitals at the beginning of this Agreement.

(hh) "**Redemption Date**" has the meaning set forth in Section 23(a).

(ii) "**Redemption Price**" has the meaning set forth in Section 23(a).

(jj) "**Right**" has the meaning set forth in the recitals at the beginning of this Agreement.

(kk) "**Rights Agent**" has the meaning set forth in the preamble.

(ll) "**Rights Certificate**" means a certificate substantially in the form attached as Exhibit B; provided, however, that notwithstanding anything to the contrary herein, the Company may choose to use book entry in lieu of physical certificates, in which case a "Rights Certificate" shall be deemed to mean the uncertificated book entry representing the related Rights.

(mm) “**Rights Dividend Declaration Date**” has the meaning set forth in the recitals at the beginning of this Agreement.

(nn) “**Schedule 13D**” means a statement on Schedule 13D filing pursuant to Rule 13d-1(a), 13d-1(e), Rule 13d-1(f) or 13d-1(g) of the General Rules and Regulations under the Exchange Act, and any comparable or successor report.

(oo) “**SEC**” means the United States Securities and Exchange Commission.

(pp) “**Section 11(a)(ii) Event**” has the meaning set forth in Section 11(a)(ii).

(qq) “**Section 11(a)(ii) Trigger Date**” has the meaning set forth in Section 11(a)(iii).

(rr) “**Section 13 Event**” means any event described in clause (i), (ii) or (iii) of Section 13(a).

(ss) “**Securities Act**” means the Securities Act of 1933, as amended.

(tt) “**Security**” has the meaning set forth in Section 1(n).

(uu) “**Spread**” means the excess of (i) the Current Value over (ii) the Exercise Price.

(vv) “**Stock Acquisition Date**” means (i) the first date of public announcement (which, for purposes of this definition, includes the filing or amending of a Schedule 13D) by the Company or an Acquiring Person that an Acquiring Person has become such or that discloses information that reveals the existence of an Acquiring Person or (ii) such earlier date as a majority of the Board will become aware of the existence of an Acquiring Person.

(ww) “**Subsequent Transferee**” has the meaning set forth in Section 7(e).

(xx) “**Subsidiary**” of any Person means any firm, corporation, partnership, limited liability company, joint venture, business trust, trust, association, syndicate or other entity (whether or not incorporated) of which an amount of voting securities sufficient to elect a majority of the directors or Persons having similar authority, or a majority of the equity or ownership interests, is Beneficially Owned, directly or indirectly, by such Person, or any firm, corporation, partnership, limited liability company, joint venture, business trust, trust, association, syndicate or other entity (whether or not incorporated) otherwise controlled by such Person.

(yy) “**Substitution Period**” has the meaning set forth in Section 11(a)(iii).

(zz) “**Summary of Rights**” means a summary of this Agreement substantially in the form attached as Exhibit C.

(aaa) “**Trading Day**” means a day on which the principal national securities exchange on which a referenced security is listed or admitted to trading is open for the transaction of business or, if a referenced security is not listed or admitted to trading on any national securities exchange, a Business Day.

(bbb) "**Triggering Percentage**" means 15 percent.

(ccc) "**Triggering Event**" means any Section 11(a)(ii) Event or Section 13 Event.

(ddd) "**Trust**" has the meaning set forth in Section 24(b)(ii).

(eee) "**Trust Agreement**" has the meaning set forth in Section 24(b)(ii).

Section 2. *Appointment of Rights Agent.* The Company appoints the Rights Agent to act as rights agent for the Company in accordance with the express terms and conditions hereof (and no implied terms and conditions), and the Rights Agent hereby accepts such appointment. The Company may from time to time appoint such co-Rights Agents as it may deem necessary or desirable (the term "Rights Agent" being used herein to refer, collectively, to the Rights Agent together with any such co-Rights Agents) upon 10 days prior written notice thereof to the Rights Agent. In the event the Company appoints one or more co-Rights Agents, then the respective duties of the Rights Agent and any co-Rights Agents will be as the Company reasonably determines provided that such duties are consistent with the terms and conditions of this Agreement, and that contemporaneously with such appointment, the Company shall notify, in writing, the Rights Agent (and any co-Rights Agents) of any such duties. The Rights Agent will have no duty to supervise, and will in no event be liable for the acts or omissions of, any such co-Rights Agent.

Section 3. *Issuance of Rights Certificates.*

(a) *Rights Evidenced by Certificates for Shares of Common Stock and Book Entry Shares.* Until the Distribution Date, (i) the Rights (unless earlier expired, redeemed or terminated) will be evidenced (subject to the provisions of Section 3(b) and Section 3(c)) by the certificates for shares of Common Stock registered in the names of the holders thereof or, in the case of uncertificated shares of Common Stock registered in book entry form ("**Book Entry Shares**"), by notation in book entry accounts reflecting the ownership of such shares of Common Stock (which certificates and Book Entry Shares, as applicable, will also be deemed to be Rights Certificates) and not by separate Rights Certificates; and (ii) the Rights (and the right to receive Rights Certificates) will be transferable only in connection with the transfer of the underlying shares of Common Stock (including a transfer to the Company). As soon as practicable after the Distribution Date, the Company will prepare and execute, and upon written request of the Company, the Rights Agent will countersign and the Company will send or cause to be sent (and the Rights Agent will, if so requested and provided with all necessary information and documents at the expense of the Company, send) by first-class, postage-prepaid mail, to each record holder of shares of Common Stock as of the Close of Business on the Distribution Date (other than any Acquiring Person or any of its Affiliates or Associates), at the address of such holder shown on the records of the Company or the transfer agent for the Common Stock, one or more Rights Certificates evidencing one Right for each share of Common Stock so held, subject to adjustment as provided in this Agreement. Receipt of a Rights Certificate by any Person will

not preclude a later determination that all or part of the Rights represented by such Rights Certificate are void pursuant to Section 7(e). To the extent that a Section 11(a)(ii) Event has also occurred, the Company may implement such procedures as it deems appropriate in its sole discretion to minimize the possibility that Rights are received by any Person whose Rights are null and void pursuant to Section 7(e). If an adjustment in the number of Rights per share of Common Stock has been made pursuant to Section 11, then at the time of distribution of the Rights Certificates, the Company will make the necessary and appropriate rounding adjustments (in accordance with Section 14(a)) so that Rights Certificates representing only whole numbers of Rights are distributed and cash is paid in lieu of any fractional Rights (in accordance with Section 14(a)). As of and after the Distribution Date, the Rights will be evidenced solely by the Rights Certificates and may be transferred by the transfer of the Rights Certificates as permitted by this Agreement, separately and apart from any transfer of shares of Common Stock, and the holders of such Rights Certificates as shown on the transfer books of the Company or the transfer agent for the Rights (which may be the Rights Agent) will be the record holders thereof. The Company will promptly notify the Rights Agent in writing upon the occurrence of the Distribution Date. Until such notice is provided to the Rights Agent, it may presume conclusively for all purposes that the Distribution Date has not occurred.

(b) *Summary of Rights; Outstanding Shares of Common Stock.* The Company will make available, or cause to be made available, promptly after the Record Date, a copy of the Summary of Rights to any holder of Rights who may so request from time to time prior to the Expiration Date. With respect to certificates representing shares of Common Stock and Book Entry Shares, as applicable, outstanding as of the Record Date or issued subsequent to the Record Date, until the earlier of the Distribution Date or the Expiration Date, the Rights will be evidenced by such certificates or Book Entry Shares, and the registered holders of the Common Stock will also be the registered holders of the associated Rights. Until the earlier of the Distribution Date or the Expiration Date, the surrender for transfer of any shares of Common Stock in respect of which Rights have been issued (with or without a copy of the Summary of Rights) will also constitute the transfer of the Rights associated with such shares of Common Stock. Notwithstanding anything to the contrary in this Agreement, upon the effectiveness of a redemption pursuant to Section 23 or an exchange pursuant to Section 24, the Company will not thereafter issue any additional Rights and, for the avoidance of doubt, no Rights will be attached to or will be issued with any Common Stock (including any shares of Common Stock issued pursuant to an exchange) at any time thereafter.

(c) *Legend.* Rights will be issued in respect of all shares of Common Stock that are issued (whether as an original issuance or from the Company's treasury) after the Record Date but prior to the earlier of the Distribution Date or the Expiration Date. Certificates representing such shares of Common Stock will also be deemed to be certificates for Rights, and will bear substantially the following legend if such certificates are issued after the Record Date but prior to the earlier of the Distribution Date or the Expiration Date:

This certificate also evidences and entitles the holder to certain rights as set forth in a Preferred Stock Rights Agreement, dated as of April 15, 2022, between Twitter, Inc. (the "**Company**") and Computershare Trust Company, N.A., as rights agent (or any successor rights agent), as it may be amended from time to time (the "**Rights Agreement**"), the terms of which are hereby incorporated

herein by reference and a copy of which is on file at the principal executive offices of the Company. Under certain circumstances as set forth in the Rights Agreement, the Rights (as defined in the Rights Agreement) may be redeemed, may become exercisable for securities or assets of the Company or securities of another entity, may be exchanged for shares of common stock or other securities or assets of the Company, may expire or may be evidenced by separate certificates, and may no longer be evidenced by this certificate. The Company will mail to the holder of this certificate a copy of the Rights Agreement as in effect on the date of mailing without charge after receipt of a written request therefor. **Under certain circumstances as set forth in the Rights Agreement, Rights that are beneficially owned by, transferred to or have been owned by an Acquiring Person (as defined in the Rights Agreement) or any of its Affiliates (as defined in the Rights Agreement) or Associates (as defined in the Rights Agreement) will be null and void and will no longer be transferable.**

With respect to any Book Entry Shares, a legend in substantially similar form will be included in any appropriate ownership notice provided to the holder of such Book Entry Share or in a notice to the record holder of such Book Entry Share in accordance with applicable law. With respect to such certificates representing shares of Common Stock containing the foregoing legend, or any notice of the foregoing legend delivered to record holders of Book Entry Shares, as applicable, until the earlier of the Distribution Date or the Expiration Date, (i) the Rights associated with the shares of Common Stock represented by such certificates or Book Entry Shares will be evidenced solely by such certificates or registration in book-entry form; (ii) the registered holders of the shares of Common Stock will also be the registered holders of the associated Rights; and (iii) the surrender for transfer of any such certificates or the transfer of any Book Entry Shares (with or without a copy of the Summary of Rights) will also constitute the transfer of the Rights associated with the shares of Common Stock. Notwithstanding this Section 3(c), the omission of a required legend, the inclusion of a legend that makes reference to a rights agreement other than this Agreement or the failure to provide notice thereof will not affect the enforceability of any part of this Agreement or the rights of any holder of Rights.

(d) *Acquisitions of Rights by the Company.* If the Company purchases or acquires any shares of Common Stock after the Record Date but prior to the earlier of the Distribution Date or the Expiration Date, then any Rights associated with such shares of Common Stock will be deemed to be canceled and retired so that the Company will not be entitled to exercise any Rights associated with the shares of Common Stock that are no longer outstanding.

Section 4. *Form of Rights Certificates.*

(a) *Rights Certificates.* The Rights Certificates (and the form of election to purchase and form of assignment, including the certifications therein, to be printed on the reverse thereof) will be substantially in the form of Exhibit B, and may have such marks of identification or designation and such legends, summaries or endorsements printed thereon as the Company may deem appropriate (but which do not affect the rights, duties, responsibilities or liabilities of the Rights Agent) and are not inconsistent with the provisions of this Agreement, or as may be

required to comply with any applicable law or with any rule or regulation made pursuant thereto, with any applicable rule or regulation of any applicable stock exchange or trading system on which the Rights may from time to time be listed or quoted or of the Financial Industry Regulatory Authority, or to conform to customary usage. Subject to the provisions of Section 11 and Section 22, the Rights Certificates, whenever distributed, will be dated as of the Record Date (or in the case of Rights issued with respect to shares of Common Stock issued by the Company after the Record Date, as of the date of issuance of such Common Stock) and on their face will entitle the holders thereof to purchase such number of one one-thousandths of a share of Preferred Stock as will be set forth therein at the Exercise Price, but the number and type of securities purchasable upon the exercise of each Right and the Exercise Price will be subject to adjustment as provided in this Agreement.

(b) *Certain Legends*. Any Rights Certificate issued pursuant to Section 3(a), Section 11(h) or Section 22 that represents Rights that are Beneficially Owned by an Acquiring Person, an Affiliate or Associate of an Acquiring Person, a Post-Event Transferee, a Pre-Event Transferee, a Subsequent Transferee or any nominee of any of the foregoing, and any Rights Certificate issued pursuant to Section 6 or Section 11 upon transfer, exchange, replacement or adjustment of any other Rights Certificate referred to in this sentence, will contain (to the extent that the Rights Agent has notice thereof and to the extent feasible) substantially the following legend:

The Rights represented by this Rights Certificate are or were beneficially owned by a person who was or became an Acquiring Person or an Affiliate or Associate of an Acquiring Person (as such terms are defined in the Rights Agreement). Accordingly, this Rights Certificate and the Rights may become null and void in the circumstances specified in section 7(e) of the Rights Agreement.

(c) *Uncertificated Rights*. Notwithstanding anything to the contrary in this Agreement, the Company and the Rights Agent may amend this Agreement to provide for uncertificated Rights in addition to or in place of Rights evidenced by Rights Certificates.

Section 5. *Countersignature and Registration*.

(a) *Countersignature*. The Rights Certificates will be executed on behalf of the Company by one of its Appropriate Officers, which execution will be attested to by such officers as the Board may designate, in each case by manual, facsimile or other electronic signature, and will have affixed thereto the Company's seal (if any) or a facsimile or other electronic copy thereof. The Rights Certificates will be countersigned, by manual, facsimile or other electronic signature, by an authorized signatory of the Rights Agent, but it will not be necessary for the same signatory to countersign all of the Rights Certificates. No Rights Certificate will be valid for any purpose unless countersigned by the Rights Agent. If any director or officer of the Company who has signed or attested to any of the Rights Certificates ceases to be such director or officer of the Company before countersignature by the Rights Agent and issuance and delivery by the Company, such Rights Certificates nevertheless may be countersigned by the Rights Agent and issued and delivered by the Company with the same force and effect as though the person who signed or attested to such Rights Certificates on behalf of the Company had not ceased to be a director or officer of the Company. Any Rights Certificate may be signed or attested to on behalf of the Company by any person who, as of the actual date of the execution of such Rights Certificate, is a proper director or officer of the Company to sign such Rights Certificate, although at the date of the execution of this Agreement any such person was not such a director or officer.

(b) *Transfer Books.* Following the Distribution Date, receipt by the Rights Agent of notice to that effect, and all other relevant information and documents referred to in Section 3(a), the Rights Agent will keep or cause to be kept, at its office designated for such purposes, books for registration and transfer of the Rights Certificates issued under this Agreement. Such books will show the names and addresses of the respective holders of the Rights Certificates, the number of Rights evidenced on its face by each of the Rights Certificates, the certificate number of each of the Rights Certificates and the date of each of the Rights Certificates. The Rights Agent will not register, or permit to be registered, any transfer or exchange of any Rights Certificates (or the underlying Rights) that have become null and void pursuant to Section 7(e), have been redeemed pursuant to Section 23 or have been exchanged pursuant to Section 24.

Section 6. *Transfer, Split Up, Combination and Exchange of Rights Certificates; Mutilated, Destroyed, Lost or Stolen Rights Certificates.*

(a) *Transfer, Split Up, Combination and Exchange of Rights Certificates.* Subject to the provisions of Section 4(b), Section 7(e), Section 14 and Section 24, at any time after the Close of Business on the Distribution Date, and at or prior to the Close of Business on the Expiration Date, any Rights Certificate (other than any Rights Certificate representing Rights that have become null and void pursuant to Section 7(e), that have been redeemed pursuant to Section 23 or that have been exchanged pursuant to Section 24) may be transferred, split up, combined or exchanged for another Rights Certificate entitling the registered holder to purchase a like number of one one-thousandths of a share of Preferred Stock (or, following a Triggering Event, other securities, cash or other assets, as the case may be) as the Rights Certificate surrendered then entitled such holder (or former holder in the case of a transfer) to purchase. Any registered holder desiring to transfer, split up, combine or exchange any Rights Certificate will make such request in writing delivered to the Rights Agent, and will surrender the Rights Certificate, together with any required form of assignment duly executed and properly completed, to be transferred, split up, combined or exchanged at the office or offices of the Rights Agent designated for such purpose with all signatures guaranteed from an eligible guarantor institution participating in a signature guarantee program approved by the Securities Transfer Association (a "Signature Guarantee") and such other documentation as the Rights Agent may reasonably request. The Rights Certificates are transferable only on the books and records of the Rights Agent. Notwithstanding anything in this Agreement to the contrary, neither the Rights Agent nor the Company will be obligated to take any action whatsoever with respect to the transfer of any such surrendered Rights Certificate until the registered holder has properly completed and duly executed the certificate contained in the form of assignment on the reverse side of such Rights Certificate and has provided such additional evidence of the identity of the Beneficial Owner (or former Beneficial Owner) or Affiliates or Associates thereof of the Rights represented by such Rights Certificates, in each case as the Company or the Rights Agent reasonably requests. Thereupon, subject to Section 4(b), Section 7(e), Section 14 and Section 24, the Rights Agent will countersign (by manual, facsimile or other electronic signature) and deliver

to the Person entitled thereto a Rights Certificate as so requested. The Company or the Rights Agent may require payment from the holder of a Rights Certificate of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer, split up, combination or exchange of any Rights Certificate. If and to the extent that the Company does require payment of any such tax or governmental charge, the Company will provide the Rights Agent prompt written notice thereof and the Rights Agent will not deliver any Rights Certificate unless and until the Rights Agent is satisfied that all such payments have been made, and the Rights Agent will forward any such sum collected by it to the Company or to such Person as the Company specifies by written notice. The Rights Agent will not have any duty or obligation to take any action pursuant to any Section of this Agreement related to the issuance or delivery of Rights Certificates unless and until it is satisfied that all such taxes or charges have been paid.

(b) *Mutilated, Destroyed, Lost or Stolen Rights Certificates.* Subject to the provisions of Section 7(e), Section 11(a)(ii) and Section 24, at any time after the Distribution Date and prior to the Expiration Date, upon receipt by the Company and the Rights Agent of evidence reasonably satisfactory to each of the Company and the Rights Agent of the loss, theft, destruction or mutilation of a Rights Certificate and such additional evidence of the identity of the Beneficial Owner (or former Beneficial Owner) or Affiliates or Associates thereof as the Company or the Rights Agent may request, and, in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to each of the Company and the Rights Agent, along with such other and further documentation as the Company or the Rights Agent may reasonably request, and reimbursement to the Company and the Rights Agent of all reasonable expenses incidental thereto, and upon surrender to the Rights Agent and cancellation of the Rights Certificate if mutilated, the Company will issue, execute and deliver a new Rights Certificate of like tenor to the Rights Agent for countersignature and delivery to the registered holder in lieu of the Rights Certificate so lost, stolen, destroyed or mutilated. Every new Rights Certificate issued pursuant to this Section 6(b) in lieu of any lost, stolen, destroyed or mutilated Rights Certificate will evidence a contractual obligation of the Company, whether or not the lost, stolen, destroyed or mutilated Rights Certificate will be at any time enforceable by anyone, and, subject to Section 7(e), will be entitled to all the benefits of this Agreement equally and proportionately with any and all other Rights duly issued under this Agreement.

Section 7. Exercise of Rights; Exercise Price; Prohibited Issuances.

(a) *Exercise of Rights.* Subject to Section 7(e), Section 23(b) and Section 24(a), the registered holder of any Rights Certificate may exercise the Rights evidenced thereby (except as otherwise provided in this Agreement) in whole or in part on any Business Day at or after the Distribution Date and prior to the Close of Business on the Expiration Date by surrender of the Rights Certificate, with the form of election to purchase and certificate on the reverse side thereof properly completed and duly executed, to the Rights Agent at the office or offices of the Rights Agent designated for such purpose, accompanied by a Signature Guarantee and such other documentation as the Rights Agent may reasonably request, together with payment of the Exercise Price for each one one-thousandth of a share of Preferred Stock (or, following a Triggering Event, other securities, cash or other assets, as the case may be) as to which the Rights are exercised.

(b) *Exercise Price.* The Exercise Price is payable in accordance with Section 7(c).

(c) *Payment.* Except as otherwise provided in this Agreement, upon receipt of a Rights Certificate representing exercisable Rights, with the form of election to purchase and certificate properly completed and duly executed, accompanied by payment of the aggregate Exercise Price for the total number of one one-thousandths of a share of Preferred Stock (or, following a Triggering Event, other securities, cash or other assets, as the case may be) to be purchased and an amount equal to any applicable transfer tax or governmental charge required to be paid by the holder of such Rights Certificate in accordance with Section 9(e), the Rights Agent will, subject to Section 7(f) and Section 20(k), thereupon promptly (i) (A) requisition from any transfer agent of the Preferred Stock (or make available, if the Rights Agent is the transfer agent for the Preferred Stock) a certificate for the total number of one one-thousandths of a share of Preferred Stock (or, following a Triggering Event, other securities, cash or other assets, as the case may be) to be purchased (or, in the case of uncertificated shares or other securities, requisition from the transfer agent a notice setting forth such number of shares or other securities to be purchased for which registration will be made on the transfer books of the Company), and the Company irrevocably authorizes its transfer agent to comply with all such requests; or (B) if the Company has elected to deposit the total number of one one-thousandths of a share of Preferred Stock (or, following a Triggering Event, other securities, cash or other assets, as the case may be) issuable upon exercise of the Rights with a depository agent, requisition from such depository agent depository receipts representing interests in such number of one one-thousandths of a share of Preferred Stock (or, following a Triggering Event, other securities, cash or other assets, as the case may be) as are to be purchased (in which case certificates representing shares of the Preferred Stock (or, following a Triggering Event, other securities, cash or other assets, as the case may be) represented by such receipts will be deposited by the transfer agent with such depository agent) and the Company irrevocably directs such depository agent to comply with such request; (ii) when necessary to comply with the terms of this Agreement, requisition from the Company the amount of cash, if any, to be paid in lieu of the issuance of fractional shares in accordance with Section 14; (iii) after receipt of such certificates, notices, or depository receipts, cause the same to be delivered to or upon the order of the registered holder of such Rights Certificate, registered in such name or names as may be designated by such holder; and (iv) when necessary to comply with the terms of this Agreement, after receipt thereof, deliver such cash to or upon the order of the registered holder of such Rights Certificate. The payment of the Exercise Price (as such amount may be reduced (including to zero) pursuant to Section 11(a)(iii)), and an amount equal to any applicable transfer tax or governmental charge required to be paid by the holder of such Rights Certificate in accordance with Section 9(e), may be made by certified bank check, money order, cashier's check or bank draft payable to the order of the Company. If the Company is obligated to issue securities of the Company other than Preferred Stock, pay cash or distribute other property pursuant to Section 11(a), then the Company will make all arrangements necessary so that such other securities, cash or other property are available for distribution by the Rights Agent, if and when necessary to comply with the terms of this Agreement. Notwithstanding anything to the contrary in this Agreement, the Company reserves the right to require that prior to the occurrence of a Triggering Event, upon any exercise of Rights, a number of Rights be exercised so that only whole shares of Preferred Stock would be issued.

(d) *Partial Exercise*. If the registered holder of any Rights Certificate properly exercises less than all the Rights evidenced thereby, then a new Rights Certificate evidencing Rights equivalent to the Rights remaining unexercised will be issued by the Rights Agent and delivered to or upon the order of the registered holder of such Rights Certificate, registered in such name as may be designated by such holder, subject to the provisions of Section 14.

(e) *Prohibited Issuances*. Notwithstanding anything to the contrary in this Agreement, from and after the first occurrence of a Triggering Event, any Rights that are or were acquired or Beneficially Owned by (i) an Acquiring Person or an Affiliate or Associate of an Acquiring Person, (ii) a transferee of an Acquiring Person (or an Affiliate or Associate of an Acquiring Person) who becomes a transferee after the Acquiring Person becomes such (a "**Post-Event Transferee**"), (iii) a transferee of an Acquiring Person (or an Affiliate or Associate of an Acquiring Person) who becomes a transferee prior to or concurrently with the Acquiring Person becoming such and receives such Rights pursuant to either (A) a transfer (whether or not for consideration) from the Acquiring Person (or an Affiliate or Associate of the Acquiring Person) to holders of equity interests in such Acquiring Person (or an Affiliate or Associate of such Acquiring Person) or to any Person with whom the Acquiring Person (or an Affiliate or Associate of the Acquiring Person) has any continuing agreement, arrangement or understanding whether or not in writing regarding the transferred Rights or (B) a transfer that the Board has determined is part of a plan, arrangement or understanding that has as a primary purpose or effect the avoidance of this Section 7(e) (a "**Pre-Event Transferee**"), (iv) any subsequent transferee receiving transferred Rights from a Post-Event Transferee or a Pre-Event Transferee, either directly or through one or more intermediate transferees (a "**Subsequent Transferee**"), or (v) any nominee of any of the foregoing will, in each case, become null and void without any further action, and no holder (whether or not such holder is an Acquiring Person or an Affiliate or Associate of an Acquiring Person) of such Rights will have any rights whatsoever (including the right to exercise) with respect to such Rights or any Rights Certificates that formerly evidenced such Rights, whether pursuant to any provision of this Agreement or otherwise. From and after the first occurrence of a Triggering Event, no Rights Certificate will be issued pursuant to this Agreement (including to an Acquiring Person, an Affiliate or Associate of an Acquiring Person, a Post-Event Transferee, a Pre-Event Transferee, a Subsequent Transferee or any nominee of any of the foregoing) that represents one or more Rights that are or have become null and void pursuant to this Section 7(e) or with respect to any Common Stock otherwise deemed to be Beneficially Owned by any of the foregoing, and any Rights Certificate delivered to the Rights Agent that represents Rights that are or have become null and void pursuant to this Section 7(e) will be canceled. The Company will use all reasonable efforts to ensure that the provisions of this Section 7(e) and Section 4(b) are complied with, but neither the Company nor the Rights Agent will have any liability to any holder of Rights Certificates or to any other Person as a result of the Company's failure to make any determinations with respect to an Acquiring Person, an Affiliate or Associate of an Acquiring Person, a Post-Event Transferee, a Pre-Event Transferee, a Subsequent Transferee or any nominee of any of the foregoing. The Company will provide the Rights Agent with written notice of the identity of any such Acquiring Person, Affiliate or Associate of an Acquiring Person, Post-Event Transferee, Pre-Event Transferee, Subsequent Transferee or any nominee of any of the foregoing, and the Rights Agent may rely on such notice in carrying out its duties pursuant to this Agreement and will be deemed not to have any knowledge of the identity of any such Person unless and until it has received such notice.

(f) *Information Concerning Ownership.* Notwithstanding anything to the contrary in this Agreement or any Rights Certificate, neither the Rights Agent nor the Company is obligated to undertake any action with respect to a registered holder of Rights upon the occurrence of any purported exercise or transfer of Rights as set forth in this Section 7 unless such registered holder, in addition to having complied with the requirements of Section 7(a), has (i) properly completed and duly executed the certificate contained in the form of election to purchase or form of assignment, as applicable, set forth on the reverse side of the Rights Certificate surrendered for such exercise or assignment; and (ii) provided such additional evidence (including the identity of the Beneficial Owner (or former Beneficial Owner) thereof and of the Rights evidenced thereby, and the Affiliates or Associates of such Beneficial Owner or former Beneficial Owner) as the Company or the Rights Agent may reasonably request. If such registered holder does not comply with the foregoing requirements, then the Company will be entitled to conclusively deem such Rights to be Beneficially Owned by an Acquiring Person (or an Affiliate or Associate of an Acquiring Person, a Post-Event Transferee, a Pre-Event Transferee, a Subsequent Transferee or any nominee of any of the foregoing, as applicable) and, accordingly, such Rights will be null and void and not exercisable or transferable.

Section 8. *Cancellation and Destruction of Rights Certificates.* All Rights Certificates surrendered for the purpose of exercise, transfer, split up, combination, redemption or exchange will, if surrendered to the Company or to any of its agents, be delivered to the Rights Agent for cancellation or in canceled form, or, if surrendered to the Rights Agent, will be canceled by it, and no Rights Certificates will be issued in lieu thereof except as expressly permitted by any of the provisions of this Agreement. The Company will deliver to the Rights Agent for cancellation and retirement, and the Rights Agent will so cancel and retire, any Rights Certificate purchased or acquired by the Company otherwise than upon the exercise thereof. Subject to applicable law, the Rights Agent will maintain electronic or physical records of all Rights Certificates that have been canceled or destroyed by the Rights Agent. The Rights Agent must maintain such electronic or physical records for the time period required by applicable law, regulation, and the Rights Agent's records management policy. The Rights Agent must deliver all canceled Rights Certificates to the Company, or will, at the written request of the Company, destroy, or cause to be destroyed, such canceled Rights Certificates, and in such case must promptly deliver a certificate evidencing the destruction thereof to the Company (or, at the Company's option, appropriate copies of the electronic or physical records relating to Rights Certificates so canceled or destroyed by the Rights Agent).

Section 9. *Reservation and Availability of Shares of Capital Stock.*

(a) *Reservation.* The Company covenants and agrees that it will use its best efforts to cause to be reserved and kept available out of its authorized and unissued Preferred Stock not reserved for another purpose (and, following the occurrence of a Triggering Event, out of its authorized and unissued Common Stock or other securities, or out of its authorized and issued shares held in treasury), the number of shares of Preferred Stock (and, following the occurrence of a Triggering Event, shares of Common Stock or other securities) that will be sufficient to permit the exercise in full of all outstanding Rights.

(b) *Listing*. So long as the Preferred Stock (and, following the occurrence of a Triggering Event, Common Stock or other securities) issuable and deliverable upon the exercise of the Rights may be listed on any national securities exchange, the Company must use all reasonable efforts to cause, from and after such time as the Rights become exercisable (but only to the extent that it is reasonably likely that the Rights will be exercised), all shares reserved for such issuance to be listed on such exchange upon official notice of issuance upon such exercise.

(c) *Registration*. The Company must use all reasonable efforts to (i) file, as soon as practicable following the earliest date after the first occurrence of a Section 11(a)(ii) Event in which the consideration to be delivered by the Company upon exercise of the Rights is described in Section 11(a)(ii) or Section 11(a)(iii), or as soon as is required by law following the Distribution Date, as the case may be, a registration statement pursuant to the Securities Act with respect to the securities purchasable upon exercise of the Rights on an appropriate form; (ii) cause such registration statement to become effective as soon as practicable after such filing; and (iii) cause such registration statement to remain effective (with a prospectus at all times meeting the requirements of the Securities Act) until the earlier of (A) the date as of which the Rights are no longer exercisable for such securities and (B) the Expiration Date. The Company may temporarily suspend (with prompt written notice of any suspension provided to the Rights Agent), from time to time for a period not to exceed 120 days after the date set forth in clause (i) of the first sentence of this Section 9(c), the exercisability of the Rights in order to prepare and file such registration statement and permit it to become effective or in order to prepare and file any supplement or amendment to such registration statement that the Board determines to be necessary pursuant to applicable law. Upon any such suspension, the Company will issue a public announcement stating, and promptly notify the Rights Agent in writing, that the exercisability of the Rights has been temporarily suspended, as well as issue a public announcement, and promptly notify the Rights Agent in writing, at such time as the suspension is no longer in effect. In addition, if the Company determines that a registration statement is required following the Distribution Date, then the Company may temporarily suspend the exercisability of the Rights until such time as such registration statement has been declared effective. The Company will also take such action as may be appropriate under, or to ensure compliance with, the securities or "blue sky" laws of the various states in connection with the exercisability of the Rights, as well as any other applicable law, rule or regulation. Notwithstanding anything to the contrary in this Agreement, the Rights will not be exercisable in any jurisdiction unless the requisite qualification in such jurisdiction has been obtained (and the exercise thereof is permitted pursuant to applicable law, rule or regulation), or an exemption therefrom is available, and until a registration statement in respect thereof has been declared and remains effective.

(d) *Valid Issuance*. The Company covenants and agrees that it will take all such action as may be necessary to ensure that all Preferred Stock (and, following the occurrence of a Triggering Event, Common Stock or other securities of the Company) delivered upon exercise of Rights will, at the time of delivery of the certificates for such securities (or registration on the transfer books of the Company or the transfer agent for such securities) (subject to payment of the Exercise Price, if any), be duly and validly authorized and issued and fully paid and nonassessable.

(e) *Transfer Taxes and Governmental Charges.* The Company further covenants and agrees that it will pay when due and payable any and all transfer taxes and governmental charges that may be payable in respect of the original issuance or delivery of Rights Certificates (or any Preferred Stock, Common Stock or other security of the Company, as the case may be) upon the exercise or exchange of Rights. Notwithstanding the foregoing, the Company is not required to (i) pay any transfer tax or governmental charge that may be payable in respect of any transfer or delivery of Rights Certificates (or certificates or depositary receipts for Preferred Stock, Common Stock or other securities of the Company, as the case may be) in a name other than, or the issuance or delivery of certificates or depositary receipts for Preferred Stock, Common Stock or other securities of the Company, as the case may be, in a name other than, that of the registered holder of the Rights Certificate evidencing Rights surrendered for exercise or exchange; or (ii) issue or deliver any certificates or depositary receipts for Preferred Stock, Common Stock or other securities of the Company, as the case may be, upon the exercise or exchange of any Rights until any such transfer tax or charge has been paid (any such transfer tax or charge being payable by the registered holder of such Rights Certificate at the time of surrender or exchange) or it has been established to the Company's satisfaction that no such tax or charge is due. The foregoing will also apply to any transfer taxes and governmental charges that may be payable in respect of any uncertificated Rights Certificates, shares or other securities.

Section 10. *Record Date for Securities Issued.* Each Person in whose name any certificate for a number of one one-thousandths of a share of Preferred Stock (or any other security of the Company, including Common Stock) is issued (or registration on the transfer books of the Company or the applicable transfer agent is effected) upon the exercise or exchange of Rights will for all purposes be deemed to have become the holder of record of such fractional shares of Preferred Stock (or other security of the Company) represented thereby on, and such certificate will be dated (or registration on the transfer books of the Company or the applicable transfer agent effected), the date on which the Rights Certificate evidencing such Rights was duly surrendered and payment of the applicable Exercise Price, if any, together with any applicable transfer tax or governmental charge required to be paid by the holder of such Rights Certificate in accordance with Section 9(e), was made. However, if the date of such surrender and payment is a date upon which the transfer books of the Company (or the applicable transfer agent) are closed, then such Person will be deemed to have become the record holder of such fractional shares of Preferred Stock (or other securities of the Company) on, and such certificate will be dated (or registration on the transfer books of the Company or the applicable transfer agent effected), the next succeeding Business Day on which the transfer books of the Company (or the applicable transfer agent) are open. Prior to the exercise of the Rights evidenced thereby, the holder of a Rights Certificate is not entitled to any rights of a holder of Preferred Stock (or any other security of the Company) for which the Rights are exercisable, including the right to vote, to receive dividends or other distributions, or to exercise any preemptive rights, and is not entitled to receive any notice of any proceedings of the Company, except as provided in this Agreement.

Section 11. *Adjustment of Exercise Price, Number and Kind of Shares or Number of Rights.* The Exercise Price, the number and kind of shares or other property covered by each Right and the number of Rights outstanding are subject to adjustment from time to time as provided in this Section 11.

(a) *Certain Events.*

(i) *Certain Adjustments to Preferred Stock.* Notwithstanding anything to the contrary in this Agreement, if the Company at any time after the Rights Dividend Declaration Date (A) declares a dividend on the Preferred Stock payable in Preferred Stock, (B) subdivides or splits the outstanding Preferred Stock, (C) combines or consolidates the outstanding Preferred Stock (by reverse stock split or otherwise) into a smaller number of shares of Preferred Stock or (D) issues any shares of its capital stock in a reclassification of the Preferred Stock (including any such reclassification in connection with a share exchange, consolidation or merger in which the Company is the continuing or surviving corporation), then, in each such event, except as otherwise provided in this Section 11(a)(i) and Section 7(e), (1) the Exercise Price in effect at the time of the record date for such dividend or of the effective date of such subdivision, split, combination, consolidation or reclassification, and the number and kind of Preferred Stock or capital stock of the Company, as the case may be, issuable on such date, will be proportionately adjusted so that the holder of any Right exercised after such time will be entitled to receive, upon payment of the Exercise Price then in effect, the aggregate number and kind of Preferred Stock or securities of the Company, as the case may be, that, if such Right had been exercised immediately prior to such date (and at a time when the Preferred Stock transfer books of the Company were open), such holder would have owned upon such exercise and been entitled to receive by virtue of such dividend, subdivision, split, combination, consolidation or reclassification, it being understood that in no event will the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock of the Company issuable upon the exercise of one Right. If an event occurs that would require an adjustment pursuant to both this Section 11(a)(i) and Section 11(a)(ii), then the adjustment provided for in this Section 11(a)(i) will be in addition to, and will be made prior to, any adjustment required pursuant to Section 11(a)(ii).

(ii) *Exercise of Rights Following Certain Events.* Subject to Section 23 and Section 24, in the event that any Person, at any time after the Rights Dividend Declaration Date, becomes an Acquiring Person (the first occurrence of such event being referred to as the "**Section 11(a)(ii) Event**"), unless the event causing such Person to become an Acquiring Person is a transaction set forth in Section 13(a), then promptly following the occurrence of such event each holder of a Right, except as provided below and in Section 7(e), will thereafter have the right to receive for each Right, upon exercise thereof in accordance with the terms of this Agreement and payment of the Exercise Price in effect immediately prior to the occurrence of such event, in lieu of a number of one one-thousandths of a share of Preferred Stock, such number of shares of Common Stock as equals the quotient obtained by dividing (A) the product obtained by multiplying (1) the Exercise Price in effect immediately prior to the first occurrence of such event by (2) the number of one one-thousandths of a share of Preferred Stock for which a Right was exercisable (or would have been exercisable if the Distribution Date had occurred) immediately prior to the first occurrence of such event by (B) 50 percent of the Current Per Share Market Price for Common Stock on the date of such first occurrence of such event (such number of shares, the "**Adjustment Shares**"). Notwithstanding the foregoing, the Exercise Price and the number of shares of Common Stock so receivable upon the exercise of a Right will be subject to further adjustment as appropriate in accordance with Section 11(e). If a Section 11(a)(ii) Event has occurred and the Rights are outstanding, then, subject to Section 27, the Company may not take any action that would eliminate or diminish the benefits intended to be afforded by the Rights. The Company will promptly notify the Rights Agent in writing when this Section 11(a)(ii) applies.

(iii) *Insufficient Shares of Common Stock*. If the number of shares of Common Stock that are authorized by the Company's Amended and Restated Certificate of Incorporation but not outstanding or reserved for issuance for purposes other than upon exercise of the Rights are not sufficient to permit the exercise in full of the Rights in accordance with Section 11(a)(ii), or if any necessary regulatory or stockholder approval for such issuance has not been obtained by the Company, then, in the event that the Rights become exercisable, the Company will (A) determine the value of the Adjustment Shares issuable upon the exercise of a Right (the "**Current Value**") and (B) with respect to each Right (subject to Section 7(e)), make adequate provision to substitute for the Adjustment Shares issuable pursuant thereto, upon the exercise of a Right and the payment of the applicable Exercise Price, (1) cash, (2) a reduction in the Exercise Price, (3) Preferred Stock, (4) other equity securities of the Company (including shares or units of shares of any series of preferred stock that, by virtue of having dividend, voting and liquidation rights substantially comparable to those of the Common Stock, the Board has deemed in good faith to have substantially the same value or economic rights as the Common Stock (such shares or units of shares of preferred stock, "**Common Stock Equivalents**")), (5) debt securities of the Company, (6) other assets or (7) any combination of the foregoing, in each case having an aggregate value equal to the Current Value (less the amount of any reduction in the Exercise Price), where such aggregate value has been determined by the Board based upon the advice of a nationally recognized investment banking firm selected by the Board, which determination will be described in a written statement filed with the Rights Agent and will be binding on the Rights Agent and the holders of the Rights. If the Company has not made adequate provision to deliver value pursuant to clause (B) above within 30 days following the later of (x) the first occurrence of a Section 11(a)(ii) Event and (y) the date on which the Company's right of redemption pursuant to Section 23(a) expires (the later of (x) or (y), the "**Section 11(a)(ii) Trigger Date**"), then the Company will be obligated to deliver, upon the surrender for exercise of a Right and without requiring payment of the Exercise Price, Common Stock (to the extent available and except to the extent that the Company has not obtained any necessary stockholder or regulatory approval for such issuance) and such number or fractions of Preferred Stock and then, if necessary, cash, which shares or cash have an aggregate value equal to the Spread. If the Board determines in good faith that it is likely that sufficient additional shares of Common Stock could be authorized for issuance upon exercise in full of the Rights or that any necessary stockholder or regulatory approval for such issuance could be obtained, the 30 day period set forth above may be extended and re-extended to the extent necessary (with prompt written notice of any such extension provided to the Rights Agent) from time to time, but not more than 120 days after the Section 11(a)(ii) Trigger Date, so that the Company may seek stockholder approval for the authorization of such additional shares of Common Stock or take such action necessary to obtain such regulatory approval (such period, as it may be extended, the "**Substitution Period**"). To the extent that the Company determines that some action need be taken pursuant to the first or second sentences of this Section 11(a)(iii), the Company (a) will provide, subject to Section 7(e), that such action applies uniformly to all outstanding Rights and (b) may suspend the exercisability of the Rights until the expiration of the Substitution Period in order to seek such stockholder approval, to take any action necessary to obtain such regulatory approval or to decide the appropriate form of distribution to be made pursuant to such first sentence and to determine the value thereof. In the event of any such suspension, the Company

will issue a public announcement (and promptly provide written notice to the Rights Agent) stating that the exercisability of the Rights has been temporarily suspended, as well as issue a public announcement (and promptly provide written notice to the Rights Agent) at such time as the suspension is no longer in effect. For purposes of this Section 11(a)(iii), the per share value of the Common Stock will be the Current Per Share Market Price of the Common Stock on the Section 11(a)(ii) Trigger Date and any Common Stock Equivalent will be deemed to have the same value as the value of the Common Stock on such date. The Board may, but will not be required to, establish procedures to allocate the right to receive Common Stock upon the exercise of the Rights among holders of Rights pursuant to this Section 11(a)(iii).

(b) *Dilutive Rights Offering.* If the Company, at any time after the Rights Dividend Declaration Date, fixes a record date for the issuance of rights, options or warrants to all holders of shares of Preferred Stock entitling such holders (for a period expiring within 45 days after such record date) to subscribe for or purchase shares of Preferred Stock or Equivalent Preferred Stock, or securities convertible into Preferred Stock or Equivalent Preferred Stock, at a price per share (or having a conversion or exercise price per share, if a security that is convertible into or exercisable for Preferred Stock or Equivalent Preferred Stock) less than the Current Per Share Market Price of the Preferred Stock on such record date, then, in each such case, the Exercise Price to be in effect after such record date will be determined by multiplying the Exercise Price in effect immediately prior to such record date by a fraction, the numerator of which will be the number of shares of Preferred Stock and Equivalent Preferred Stock (if any) outstanding on such record date, plus the number of shares of Preferred Stock or Equivalent Preferred Stock, as the case may be, that the aggregate offering price of the total number of shares Preferred Stock or Equivalent Preferred Stock, as the case may be, to be offered or issued (or the aggregate initial conversion price of the convertible securities to be offered or issued) would purchase at such Current Per Share Market Price, and the denominator of which will be the number of shares of Preferred Stock and Equivalent Preferred Stock (if any) outstanding on such record date, plus the number of additional shares of Preferred Stock or Equivalent Preferred Stock, as the case may be, to be offered for subscription or purchase (or into which the convertible securities so to be offered are initially convertible), it being understood that in no event will the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock of the Company issuable upon the exercise of one Right. If such subscription price may be paid in a consideration part or all of which is in a form other than cash, then the value of such consideration will be as determined in good faith by the Board, whose determination will be described in a statement filed with the Rights Agent and will be binding on the Rights Agent and the holders of the Rights. Shares of Preferred Stock and Equivalent Preferred Stock owned by or held for the account of the Company will not be deemed outstanding for the purpose of any such computation. Such adjustment will be made successively whenever such a record date is fixed, and if such rights, options or warrants are not so issued, then the Exercise Price will be adjusted to be the Exercise Price that would then be in effect if such record date had not been fixed.

(c) *Distributions.* If the Company, at any time after the Rights Dividend Declaration Date, fixes a record date for the making of a distribution to all holders of shares of Preferred Stock (including any such distribution made in connection with a share exchange, consolidation or merger in which the Company is the continuing or surviving corporation) of cash (other than a periodic cash dividend out of the earnings or retained earnings of the

Company), assets (other than a dividend payable in shares of Preferred Stock, but including any dividend payable in stock other than Preferred Stock), evidences of indebtedness, subscription rights, options or warrants (excluding those referred to in Section 11(b)), then, in each such case, the Exercise Price to be in effect after such record date will be determined by multiplying the Exercise Price in effect immediately prior to such record date by a fraction, the numerator of which will be the Current Per Share Market Price of a share of Preferred Stock on such record date, less the fair market value per share of Preferred Stock (as determined in good faith by the Board, whose determination will be described in a statement filed with the Rights Agent and will be conclusive and binding on the Rights Agent and the holders of the Rights) of the portion of the cash, assets or evidences of indebtedness to be so distributed or of such subscription rights, options or warrants applicable to one share of Preferred Stock, and the denominator of which will be the Current Per Share Market Price of a share of Preferred Stock on such record date, it being understood that in no event will the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock of the Company issuable upon the exercise of one Right. Such adjustment will be made successively whenever such a record date is fixed, and if such distribution is not so made, then the Exercise Price will be adjusted to be the Exercise Price that would have been in effect if such record date had not been fixed.

(d) *Insignificant Changes.* Notwithstanding anything to the contrary in this Agreement, no adjustment in the Exercise Price is required unless such adjustment would require an increase or decrease of at least one percent of the Exercise Price, except that any adjustments that by reason of this Section 11(d) are not required to be made will be carried forward and taken into account in any subsequent adjustment. All calculations pursuant to this Section 11 must be made to the nearest cent or to the nearest ten-millionth of a share of Preferred Stock or ten-thousandth of any other share or security, as the case may be. Notwithstanding the first sentence of this Section 11(d), any adjustment required by this Section 11 must be made no later than the earlier of (i) three years from the date of the transaction that requires such adjustment or (ii) the Expiration Date.

(e) *Stock Other Than Preferred Stock.* If as a result of an adjustment made pursuant to Section 11(a) or Section 13(a), the holder of any Right thereafter exercised will become entitled to receive any shares of capital stock other than Preferred Stock, then thereafter the number of such other shares so receivable upon exercise of any Right and, if required, the Exercise Price thereof, will be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the Preferred Stock contained in Section 11(a), Section 11(b), Section 11(c), Section 11(d), Section 11(g), Section 11(h), Section 11(i), Section 11(j), Section 11(k) and Section 11(l), and the provisions of Section 7, Section 9, Section 10 and Section 13 with respect to the Preferred Stock will apply on like terms to any such other shares.

(f) *Rights Issued Subsequent to Adjustment.* All Rights originally issued by the Company subsequent to any adjustment made to the Exercise Price will evidence the right to purchase, at the adjusted Exercise Price, the number of one one-thousandths of a share of Preferred Stock (and other shares of other capital stock or other securities, assets or cash of the Company, if any) purchasable from time to time upon exercise of the Rights, all subject to further adjustment as provided in this Agreement.

(g) *Effect of Adjustments on Existing Rights.* Unless the Company has exercised its election as provided in Section 11(h), upon each adjustment of the Exercise Price as a result of the calculations made in Section 11(b) and Section 11(c), each Right outstanding immediately prior to the making of such adjustment will thereafter evidence the right to purchase, at the adjusted Exercise Price, that number of shares of Preferred Stock (calculated to the nearest ten-millionth of a share of Preferred Stock) obtained by (i) multiplying (A) the number of one one-thousandths of a share of Preferred Stock covered by a Right immediately prior to this adjustment by (B) the Exercise Price in effect immediately prior to such adjustment of the Exercise Price; and (ii) dividing the product so obtained by the Exercise Price in effect immediately after such adjustment of the Exercise Price.

(h) *Adjustment in Number of Rights.* The Company may elect, on or after the date of any adjustment of the Exercise Price, to adjust the number of Rights in substitution for any adjustment in the number of one one-thousandths of a share of Preferred Stock purchasable upon the exercise of a Right. Each of the Rights outstanding after such adjustment will be exercisable for the number of one one-thousandths of a share of Preferred Stock for which a Right was exercisable immediately prior to such adjustment. Each Right held of record prior to such adjustment will become that number of Rights (calculated to the nearest ten-thousandth) obtained by dividing the Exercise Price in effect immediately prior to adjustment of the Exercise Price by the Exercise Price in effect immediately after adjustment of the Exercise Price. The Company will make a public announcement (and promptly provide written notice to the Rights Agent) of its election to adjust the number of Rights, indicating the record date for the adjustment and, if known at the time, the amount of the adjustment to be made. This record date may be the date on which the Exercise Price is adjusted or any day thereafter, but, if any Rights Certificates have been issued, will be at least 10 days later than the date of the public announcement. If any Rights Certificates have been issued, upon each adjustment of the number of Rights pursuant to this Section 11(h), the Company will, as promptly as practicable, distribute or cause to be distributed to holders of record of Rights Certificates on such record date Rights Certificates evidencing, subject to Section 14, the additional Rights to which such holders will be entitled as a result of such adjustment, or, at the option of the Company, will distribute or cause to be distributed to such holders of record in substitution and replacement for the Rights Certificates held by such holders prior to the date of adjustment, and upon surrender thereof, if required by the Company, new Rights Certificates evidencing all the Rights to which such holders will be entitled after such adjustment. Rights Certificates to be so distributed will be issued, executed and delivered by the Company, and countersigned and delivered by the Rights Agent, in the manner provided in this Agreement (and may bear, at the option of the Company, the adjusted Exercise Price), and will be registered in the names of the holders of record of Rights Certificates on the record date specified in the public announcement.

(i) *Rights Certificates Unchanged.* Irrespective of any adjustment or change in the Exercise Price or the number of one one-thousandths of a share of Preferred Stock issuable upon the exercise of the Rights, the Rights Certificates previously and subsequently issued may continue to express the Exercise Price per one one-thousandth of a share of Preferred Stock and the number of one one-thousandths of a share of Preferred Stock that were expressed in the initial Rights Certificates.

(j) *Par Value Limitations*. Before taking any action that would cause an adjustment reducing the Exercise Price below the par or stated value, if any, of the number of one one-thousandths of a share of Preferred Stock issuable upon exercise of the Rights, the Company will take any corporate action that may, in the opinion of its counsel, be necessary in order that the Company may duly and validly issue as fully paid and nonassessable shares such number of one one-thousandths of a share of Preferred Stock at such adjusted Exercise Price.

(k) *Deferred Issuance*. In any case in which this Section 11 requires that an adjustment in the Exercise Price be made effective as of a record date for a specified event, the Company may elect to defer (with prompt written notice to the Rights Agent) until the occurrence of such event the issuance to the holder of any Right exercised after such record date of the number of one one-thousandths of a share of Preferred Stock and other capital stock or securities, assets or cash of the Company, if any, issuable upon such exercise over and above the number of one one-thousandths of a share of Preferred Stock and other capital stock or securities, assets or cash of the Company, if any, issuable upon such exercise on the basis of the Exercise Price in effect prior to such adjustment. The Company must deliver to such holder a due bill or other appropriate instrument evidencing such holder's right to receive such additional shares (fractional or otherwise) or securities upon the occurrence of the event requiring such adjustment.

(l) *Reduction in Exercise Price*. Notwithstanding anything to the contrary in this Section 11, the Company is entitled to make such reductions in the Exercise Price, in addition to those adjustments expressly required by this Section 11, as and to the extent that it, in its sole discretion, determines to be advisable in order that any (i) consolidation or subdivision of the Preferred Stock or Common Stock, (ii) issuance wholly for cash of any Preferred Stock or Common Stock at less than the applicable Current Per Share Market Price, (iii) issuance wholly for cash of any Preferred Stock or Common Stock or securities that by their terms are convertible into or exchangeable for Preferred Stock or Common Stock, (iv) stock dividend or (v) issuance of rights, options or warrants referred to in this Section 11 made by the Company to holders of shares of Preferred Stock or Common Stock is not taxable to such stockholders.

(m) *No Diminishment of Benefit of Rights*. The Company covenants and agrees that, after the Distribution Date and so long as the Rights are outstanding, it will not, except as permitted by Section 23, Section 24 or Section 27, take (or permit to be taken) any action if at the time that such action is taken it is reasonably foreseeable that such action will diminish substantially or otherwise eliminate the benefits intended to be afforded by the Rights.

(n) *Certain Adjustments to Common Stock*. Notwithstanding anything to the contrary in this Agreement, if the Company, at any time after the Rights Dividend Declaration Date and prior to the Distribution Date, (i) declares or pays a dividend on the Common Stock payable in shares of Common Stock, (ii) subdivides or splits the shares of outstanding Common Stock (other than by the payment of dividends payable in shares of Common Stock), (iii) combines or consolidates the outstanding Common Stock (by reverse stock split or otherwise) into a lesser number of shares of Common Stock or (iv) issues any shares of its capital stock in a reclassification of the Common Stock (including any such reclassification in connection with a share exchange, consolidation or merger in which the Company is the continuing or surviving corporation), then, in each such event, except as otherwise provided in

this Section 11 or Section 7(e): (A) each share of Common Stock (or shares of capital stock issued in such reclassification of the Common Stock) outstanding immediately following such time will have associated with it the number of Rights as were associated with one share of Common Stock immediately prior to the occurrence of such event; (B) the Exercise Price in effect at the time of the record date for such dividend or of the effective date of such subdivision, split, combination, consolidation or reclassification will be adjusted so that the Exercise Price thereafter equals the result obtained by multiplying the Exercise Price in effect immediately prior to such time by a fraction, the numerator of which will be the total number of shares of Common Stock outstanding immediately prior to such event and the denominator of which will be the total number of shares of Common Stock outstanding immediately after such event, it being understood that in no event will the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of capital stock of the Company issuable upon the exercise of such Right; and (C) the number of one one-thousandths of a share of Preferred Stock (or shares of such other capital stock) issuable upon the exercise of each Right outstanding after such event equals the number of one one-thousandths of a share of Preferred Stock (or shares of such other capital stock) as were issuable with respect to one Right immediately prior to such event. Each share of Common Stock that becomes outstanding after an adjustment has been made pursuant to this Section 11(n) will have issued with it that number of Rights, exercisable at the Exercise Price and for the number of one one-thousandths of a share of Preferred Stock (or shares of such other capital stock), as one share of Common Stock has associated with it immediately following the adjustment made pursuant to this Section 11(n). If an event occurs that would require an adjustment pursuant to both this Section 11(n) and Section 11(a)(ii), then the adjustment provided for in this Section 11(n) will be in addition to, and will be made prior to, any adjustment required pursuant to Section 11(a)(ii). The adjustments provided for in this Section 11(n) will be made successively whenever such a dividend is declared or paid or such a subdivision, split, combination, consolidation or reclassification is effected.

(o) *Adjustment of Rights Associated with Certain Distributions.* Other than in connection with a transaction contemplated by Section 11(n), if the Company, at any time after the Rights Dividend Declaration Date and prior to the Distribution Date, issues or distributes any securities or assets in respect of shares of Common Stock (other than (A) a distribution or dividend of its capital stock and (B) pursuant to any non-extraordinary periodic cash dividend), then the Company will make such adjustments, if any, in the Exercise Price or the number of Rights or securities or other property purchasable upon exercise of Rights as the Board, in its sole discretion, may deem to be appropriate under the circumstances in order to adequately protect the interests of the holders of the Rights generally, and the Company and the Rights Agent will amend this Agreement as necessary to provide for such adjustments.

Section 12. *Certificate of Adjusted Exercise Price or Number of Shares.* Whenever an adjustment is made, or any event affecting the Rights or their exercisability (including an event that causes the Rights to become null and void) occurs as provided in Section 11 or Section 13, the Company must promptly (a) prepare a certificate setting forth such adjustment or describing such event and providing a reasonably detailed statement of the facts, computations and methodology accounting for such adjustment or event; (b) provide the Rights Agent and each transfer agent for the Common Stock or Preferred Stock a copy of such certificate; and (c) if a Distribution Date has occurred, mail a brief summary of such adjustment or event to each holder of a Rights Certificate in accordance with Section 25. Notwithstanding the foregoing, the failure of the Company to make or provide such certification or notice will not affect the validity of such adjustment or the force or effect of the requirement for such adjustment. The Rights Agent will (i) be fully protected in relying on any such certificate and on any adjustment or statement contained therein; (ii) have no duty or liability with respect thereto; and (iii) not be deemed to have knowledge of any such adjustment or event unless and until it has received such certificate.

Section 13. *Consolidation, Merger or Sale or Transfer of Assets, Cash Flow or Earning Power.*

(a) *Certain Transactions.* If, following a Stock Acquisition Date, directly or indirectly, (i) the Company consolidates with, or merges with and into, any other Person (other than a wholly owned Subsidiary of the Company in a transaction that complies with Section 11(m)) and the Company is not the continuing or surviving corporation of such consolidation or merger; (ii) any Person (other than a wholly owned Subsidiary of the Company in a transaction that complies with Section 11(m)) consolidates with, or merges with and into, the Company, and the Company is the continuing or surviving corporation of such consolidation or merger and, in connection with such consolidation or merger, all or part of the Common Stock are changed into or exchanged for stock or other securities of any other Person or the Company, or cash or any other property; or (iii) the Company sells, exchanges, mortgages or otherwise transfers (or one or more of its Subsidiaries sells, exchanges, mortgages or otherwise transfers), in one transaction or a series of related transactions, assets, cash flow or earning power aggregating to 50 percent or more of the assets, cash flow or earning power of the Company and its Subsidiaries (taken as a whole) to any other Person or Persons (other than the Company or one or more of its wholly owned Subsidiaries in one or more transactions, each of which individually (and together) complies with Section 11(m)), then, concurrent with and in each such case, proper provision must be made so that (A) each holder of a Right (except as provided in Section 7(e)) thereafter has the right to receive, upon the exercise thereof at a price per Right equal to the Exercise Price multiplied by the number of one one-thousandths of a share of Preferred Stock for which a Right was exercisable immediately prior to the occurrence of such Section 13 Event in accordance with the terms of this Agreement, and in lieu of Preferred Stock, such number of duly and validly authorized and issued and fully paid and nonassessable and freely tradable shares of Common Stock of the Principal Party, free of any liens, encumbrances, rights of first refusal or other adverse claims, equal to the result obtained by (1) multiplying the then current Exercise Price by the number of one one-thousandths of a share of Preferred Stock for which a Right is exercisable immediately prior to the first occurrence of a Section 13 Event (or, if a Section 11(a)(ii) Event has occurred prior to the first occurrence of a Section 13 Event, multiplying the number of such one one-thousandths of a share of Preferred Stock for which a Right was exercisable immediately prior to the first occurrence of a Section 11(a)(ii) Event by the Exercise Price in effect immediately prior to such first occurrence of a Section 11(a)(ii) Event); and (2) dividing that product (which, following the first occurrence of a Section 13 Event, will be referred to as the "Exercise Price" for each Right and for all purposes of this Agreement) by 50 percent of the Current Per Share Market Price of the Common Stock of such Principal Party on the date of consummation of such Section 13 Event, it being understood that the price per Right so payable and the number of shares of Common Stock of such Principal Party so receivable upon exercise of a Right will be subject to further adjustment as appropriate in accordance with Section 11(e) to reflect any events covered thereby occurring in respect of the Common Stock of such Principal Party after the occurrence of such Section 13 Event; (B) such

Principal Party will thereafter be liable for, and must assume, by virtue of such Section 13 Event, all the obligations and duties of the Company pursuant to this Agreement; (C) the term "Company" will thereafter be deemed to refer to such Principal Party, it being specifically intended that the provisions of Section 11 will apply only to such Principal Party following the first occurrence of a Section 13 Event; (D) such Principal Party must take such steps (including the reservation of a sufficient number of shares of its Common Stock) in connection with the consummation of any such transaction as may be necessary to ensure that the provisions hereof will thereafter be applicable, as nearly as reasonably may be, in relation to its Common Stock thereafter deliverable upon the exercise of the Rights; (E) the provisions of Section 11(a)(ii) will be of no effect following the first occurrence of any Section 13 Event; and (F) upon the subsequent occurrence of any consolidation, merger, sale, exchange, mortgage, transfer or other extraordinary transaction in respect of such Principal Party, each holder of a Right will thereupon be entitled to receive, upon exercise of a Right and payment of the Exercise Price as provided in this Section 13(a), such cash, shares, rights, warrants and other property that such holder would have been entitled to receive had such holder, at the time of such transaction, owned the Common Stock of the Principal Party receivable upon the exercise of a Right pursuant to this Section 13(a), and such Principal Party must take such steps (including reservation of a sufficient number of shares of its capital stock) as may be necessary to permit the subsequent exercise of the Rights in accordance with the terms hereof for such cash, shares, rights, warrants and other property. For purposes hereof, the "earning power" of the Company and its Subsidiaries will be determined in good faith by the Board on the basis of the operating income of each business operated by the Company and its Subsidiaries during the three fiscal years preceding the date of such determination (or, in the case of any business not operated by the Company or any of its Subsidiaries during the three fiscal years preceding such date, during the period that such business was operated by the Company or any of its Subsidiaries).

(b) *Certain Arrangements.* The Company will not consummate or permit to occur any Section 13 Event unless (A) the Principal Party has a sufficient number of authorized, unissued and unreserved shares of Common Stock to permit the exercise in full of the Rights in accordance with this Section 13 and (B) prior thereto the Company and the Principal Party have executed and delivered to the Rights Agent a supplemental agreement confirming that (1) the requirements of this Section 13 will be promptly performed in accordance with their terms, (2) the Principal Party will, upon consummation of such Section 13 Event, assume this Agreement in accordance with Section 13(a), (3) such Section 13 Event will not result in a default by the Principal Party pursuant to this Agreement (as it has been assumed by the Principal Party) and (4) the Principal Party, as soon as practicable after the date of such Section 13 Event and at its own expense, will:

(i) prepare and file a registration statement pursuant to the Securities Act with respect to the Rights and the securities purchasable upon exercise of the Rights on an appropriate form, and use its best efforts to cause such registration statement to (x) become effective as soon as practicable after such filing and (y) remain effective (with a prospectus at all times meeting the requirements of the Securities Act) until the Expiration Date, and similarly comply with applicable state securities laws;

(ii) use its best efforts to list (or continue the listing of) the Rights and the securities purchasable upon exercise of the Rights on a national securities exchange or to meet the eligibility requirements for quotation on a national securities exchange and to list (and continue the listing of) the Rights and the securities purchasable upon exercise of the Rights on a national securities exchange;

(iii) deliver to holders of the Rights historical financial statements for the Principal Party and its Affiliates that comply in all respects with the requirements for registration on Form 10 (or any successor form) promulgated under the Exchange Act; and

(iv) take all other action as may be necessary to allow the Principal Party to issue the securities purchasable upon exercise of the Rights.

(c) *Prohibited Transactions.*

(i) Notwithstanding anything to the contrary in this Agreement, if the Principal Party has a provision in any of its authorized securities or in its organizational documents that would have the effect of (i) causing the Principal Party to issue (other than to holders of Rights pursuant to Section 13), in connection with, or as a consequence of, the consummation of a Section 13 Event, Common Stock or common stock equivalents of the Principal Party at less than the then Current Per Share Market Price thereof or securities exercisable for, or convertible into, Common Stock or common stock equivalents of the Principal Party at less than such Current Per Share Market Price; or (ii) providing for any special payment, tax, charge or similar provision in connection with the issuance of the Common Stock of the Principal Party pursuant to the provisions of this Section 13, then the Company agrees with each holder of Rights that it will not consummate any such Section 13 Event unless prior thereto the Company and such Principal Party have executed and delivered to the Rights Agent a supplemental agreement providing that such provision has been canceled, waived, amended or rescinded, or that such authorized securities will be redeemed, so that such provision will have no effect in connection with, or as a consequence of, the consummation of such Section 13 Event.

(ii) Notwithstanding anything to the contrary in this Agreement, the Company agrees with each holder of Rights that it will not consummate or permit to occur any Section 13 Event if (A) at the time or immediately after such Section 13 Event there are any rights, warrants, instruments or securities outstanding, or any agreements or arrangements, that, as a result of the consummation of such Section 13 Event, would eliminate or diminish in any material respect the benefits intended to be afforded by the Rights; (B) all rights of first refusal or preemptive rights in respect of the issuance of Common Stock or common stock equivalents of the Principal Party upon exercise of outstanding Rights have not been irrevocably waived or rendered inapplicable; (C) prior to, simultaneously with or immediately after such Section 13 Event, the stockholders of the Person who constitutes, or would constitute, the Principal Party have received a distribution of Rights previously owned by such Person or any of its Affiliates or Associates; or (D) the form or nature of organization of the Principal Party would preclude or limit the exercisability of the Rights.

(d) *Continued Applicability.* The provisions of this Section 13 will similarly apply to successive mergers, consolidations, sales, exchanges, mortgages, transfers or other extraordinary transactions. If a Section 13 Event occurs at any time after the occurrence of a Section 11(a)(ii) Event, then the Rights that have not previously been exercised will thereafter become exercisable in the manner described in Section 13(a) (without taking into account any prior adjustment required by Section 11(a)(ii)).

Section 14. *Fractional Rights and Fractional Shares.*

(a) *Cash in Lieu of Fractional Rights.* The Company will not be required to issue fractions of Rights (except prior to the Distribution Date as provided in Section 11(n)) or to distribute Rights Certificates that evidence fractional Rights. In lieu of such fractional Rights, the Company will pay to the registered holders of the Rights Certificates with regard to which such fractional Rights would otherwise be issuable an amount in cash equal to the same fraction of the Current Per Share Market Price of a whole Right, calculated as of the Trading Day immediately prior to the date on which such fractional Rights would have been otherwise issuable.

(b) *Cash in Lieu of Fractional Shares of Preferred Stock.* The Company will not be required to issue fractions of shares of Preferred Stock (other than fractions that are integral multiples of one one-thousandth of a share of Preferred Stock) upon exercise or exchange of the Rights or to distribute certificates that evidence fractional shares of Preferred Stock (other than fractions that are integral multiples of one one-thousandth of a share of Preferred Stock). Interests in fractions of shares of Preferred Stock in integral multiples of one one-thousandth of a share of Preferred Stock may, at the election of the Company, be evidenced by depositary receipts pursuant to an appropriate agreement between the Company and a depositary selected by the Company but only if such agreement provides that the holders of such depositary receipts have all of the rights, privileges and preferences to which they are entitled as Beneficial Owners of the Preferred Stock represented by such depositary receipts. In lieu of fractional shares of Preferred Stock that are not integral multiples of one one-thousandth of a share of Preferred Stock, the Company may pay to the registered holders of Rights Certificates at the time that such Rights are exercised or exchanged as provided in this Agreement an amount in cash equal to the same fraction of the current market value of one one-thousandth of a share of Preferred Stock. For purposes of this Section 14(b), the current market value of one one-thousandth of a share of Preferred Stock will be one one-thousandth of the Current Per Share Market Price of a share of Preferred Stock, calculated as of the Trading Day immediately prior to the date of such exercise or exchange.

(c) *Cash in Lieu of Fractional Shares of Common Stock.* The Company is not required to issue fractions of shares of Common Stock or to distribute certificates that evidence fractional shares of Common Stock upon the exercise or exchange of Rights. In lieu of such fractional shares of Common Stock, the Company may pay to the registered holders of Rights Certificates at the time such Rights are exercised or exchanged as provided in this Agreement an amount in cash equal to the same fraction of the current market value of a share of Common Stock. For purposes of this Section 14(c), the current market value of a share of Common Stock will be the Current Per Share Market Price of a share of Common Stock, calculated as of the Trading Day immediately prior to the date of such exercise or exchange.

(d) *Waiver of Fractional Rights.* Except as permitted by this Section 14, the holder of a Right, by the acceptance of such Right, expressly waives such holder's right to receive any fractional Rights or any fractional shares of any security upon the exercise or exchange of a Right.

(e) *Procedure for Payment.* Whenever a payment for fractional Rights, Preferred Stock or Common Stock is to be made by the Rights Agent pursuant to this Agreement, the Company will (i) promptly prepare and deliver to the Rights Agent a certificate setting forth in reasonable detail the facts related to such payment and the prices or formulas utilized in calculating such payments; and (ii) provide sufficient monies to the Rights Agent to make such payments. The Rights Agent will be fully protected in relying upon such certificate and will have no duty with respect thereto, and will not be deemed to have knowledge of any payment for fractional Rights, Preferred Stock or Common Stock pursuant to this Agreement unless and until the Rights Agent has received such certificate and sufficient monies.

Section 15. *Rights of Action.* All rights of action in respect of this Agreement, except those rights of action given to the Rights Agent pursuant to this Agreement, are vested in the respective registered holders of the Rights Certificates (and, prior to the Distribution Date, the registered holders of shares of Common Stock). Any registered holder of any Rights Certificate (or, prior to the Distribution Date, any registered holder of Common Stock), without the consent of the Rights Agent or of the holder of any other Rights Certificate (or, prior to the Distribution Date, any other holder of Common Stock), may, on such holder's own behalf and for such holder's own benefit and the benefit of other holders of Rights, enforce, and may institute and maintain any suit, action or proceeding against the Company to enforce, this Agreement or otherwise act in respect of such holder's right to exercise such holder's Rights evidenced by such Rights Certificate in the manner provided in such Rights Certificate and in this Agreement. Without limiting the foregoing or any remedies available to the holders of Rights, it is specifically acknowledged that the holders of Rights would not have an adequate remedy at law for any breach of this Agreement and will be entitled to specific performance of the obligations of any Person (including the Company) subject to this Agreement, and injunctive relief against actual or threatened breaches or violations of this Agreement by any Person (including the Company), in each case without having to post a bond.

Section 16. *Agreement of Rights Holders.* Every holder of a Right, by accepting the Right, consents and agrees with the Company and the Rights Agent and with every other holder of a Right that:

(a) prior to the Distribution Date, the Rights will not be evidenced by a Rights Certificate and will be transferable only in connection with the transfer of shares of Common Stock;

(b) after the Distribution Date, the Rights Certificates are transferable only on the transfer books of the Rights Agent if surrendered at the office of the Rights Agent designated for such purpose, duly endorsed or accompanied by a proper instrument of transfer and with the appropriate forms and certificates fully completed;

(c) subject to Section 6(a) and Section 7(f), the Company and the Rights Agent may deem and treat the Person in whose name the Rights Certificate (or, prior to the Distribution Date, the associated certificate representing shares of Common Stock or Book Entry Shares, as applicable) is registered as the absolute owner thereof and of the Rights evidenced thereby (notwithstanding any notations of ownership or writing on the Rights Certificates or the associated certificate representing shares of Common Stock or Book Entry Shares, as applicable, made by anyone other than the Company or the Rights Agent) for all purposes whatsoever, and neither the Company nor the Rights Agent (subject to Section 7(e)) will be affected by any notice to the contrary;

(d) notwithstanding anything to the contrary in this Agreement, neither the Company nor the Rights Agent will have any liability to any holder of a Right (or a beneficial interest in a Right) or other Person as a result of the inability of the Company or the Rights Agent to perform any of their respective obligations pursuant to this Agreement by reason of any preliminary or permanent injunction or other order, judgment, decree or ruling (whether interlocutory or final) issued by a court of competent jurisdiction or by a governmental, regulatory, self-regulatory or administrative agency or commission, or any statute, rule, regulation or executive order promulgated or enacted by any governmental authority, prohibiting or otherwise restraining performance of such obligation, it being understood that the Company will use all reasonable efforts to have any such injunction, order, judgment, decree or ruling lifted or otherwise overturned as promptly as practicable;

(e) Rights that are Beneficially Owned by certain Persons will, under the circumstances set forth in Section 7(e), become null and void; and

(f) this Agreement may be supplemented or amended from time to time in accordance with Section 27.

Section 17. *Holder of Rights Certificate Not Deemed to be a Stockholder.* No holder, as such, of any Rights Certificate will be entitled to vote or receive dividends or be deemed for any purpose to be the holder of the number of one one-thousandths of a share of Preferred Stock or any other securities of the Company that may at any time be issuable on the exercise or exchange of the Rights represented thereby, nor will anything contained herein or in any Rights Certificate be construed to confer upon the holder of any Rights Certificate, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action, or to receive notice of meetings or other actions affecting stockholders (except as specifically provided in Section 25), or to receive dividends or subscription rights, or otherwise, until the Rights evidenced by such Rights Certificate have been exercised or exchanged in accordance with the provisions hereof.

Section 18. *Concerning the Rights Agent.*

(a) *Compensation; Reimbursement; Indemnification.* The Company agrees to pay to the Rights Agent reasonable compensation for all services rendered by it under this Agreement in accordance with a fee schedule to be mutually agreed upon and, from time to time, on demand by the Rights Agent, the reasonable and documented out-of-pocket expenses and counsel fees and other disbursements incurred by the Rights Agent in connection with the preparation, negotiation, delivery, execution, amendment and administration of this Agreement and the exercise and performance of its duties under this Agreement, including any taxes or

governmental charges imposed on it as a result of any action taken by it pursuant to this Agreement (other than taxes and governmental charges on the fees payable to it). The Company also agrees to indemnify the Rights Agent for, and to hold it harmless against, any loss, liability, damage, judgment, fine, penalty, claim, demand, settlement, cost or expense (including the reasonable and documented expenses and fees of its outside counsel) incurred without gross negligence, bad faith or willful misconduct on the part of the Rights Agent (which gross negligence, bad faith or willful misconduct must be determined by a final, non-appealable judgment of a court of competent jurisdiction) for any action taken, suffered or omitted to be taken by the Rights Agent in connection with the execution, acceptance, administration, exercise and performance of its duties pursuant to this Agreement, including the costs and expenses of defending against any claim of liability. The provisions of this Section 18 and Section 20 will survive the termination of this Agreement, the exercise, exchange or expiration of the Rights and the resignation, replacement or removal of the Rights Agent.

(b) *Reliance by the Rights Agent.* The Rights Agent is authorized to rely conclusively on, and will be protected and incur no liability for, or in respect of, any action taken, suffered or omitted to be taken by it in connection with its acceptance and administration of this Agreement, and the exercise and performance of its duties pursuant to this Agreement, in reliance upon any (i) Rights Certificate; (ii) certificate (or registration on the transfer books of the Company, including, in the case of uncertificated shares, by notation in book entry accounts reflecting ownership) for Preferred Stock, Common Stock or other securities of the Company issuable upon exercise of Rights; or (iii) instrument of assignment or transfer, power of attorney, endorsement, affidavit, letter, notice, direction, consent, certificate, statement or other paper or document reasonably believed by it, in the absence of gross negligence, bad faith or willful misconduct (which gross negligence, bad faith or willful misconduct must be determined by a final, non-appealable judgment of a court of competent jurisdiction), to be genuine and to be duly executed and, where necessary, verified or acknowledged, by the proper Person, or otherwise upon the advice of counsel as set forth in Section 20. The Rights Agent will not be required to take notice, or be deemed to have any knowledge, of any fact, event or determination of which it was supposed to receive notice under this Agreement (including any dates or events defined in this Agreement or the designation of any Person as an Acquiring Person or an Affiliate or Associate of an Acquiring Person), and the Rights Agent will be fully protected and will incur no liability for failing to take action in connection therewith, unless and until it has received such notice in writing.

Section 19. *Merger, Consolidation or Change of Name of Rights Agent.*

(a) *Merger or Consolidation of Rights Agent.* Any Person into which the Rights Agent or any successor Rights Agent may be merged or with which it may effect a share exchange or be consolidated, or any Person resulting from any merger, share exchange or consolidation to which the Rights Agent or any successor Rights Agent is a party, or any Person succeeding to the corporate trust, stock transfer or stockholder services business of the Rights Agent or any successor Rights Agent, will be the successor to the Rights Agent pursuant to this Agreement without the execution or filing of any paper or any further act on the part of any of the Parties so long as such Person is eligible for appointment as a successor Rights Agent pursuant to the provisions of Section 21. The purchase of all or substantially all of the Rights Agent's assets employed in the performance of this Agreement, or transfer or rights agent

services generally, will be deemed to be a merger, share exchange or consolidation for purposes of this Section 19. If at the time that such successor Rights Agent succeeds to the agency created by this Agreement any of the Rights Certificates have been countersigned but not delivered, then any such successor Rights Agent may adopt the countersignature of any predecessor Rights Agent and deliver such Rights Certificates so countersigned, and if at that time any of the Rights Certificates have not been countersigned, then any successor Rights Agent may countersign such Rights Certificates either in the name of the predecessor Rights Agent or in the name of the successor Rights Agent. In all such cases, such Rights Certificates will have the full force and effect provided in the Rights Certificates and in this Agreement.

(b) *Change of Name of Rights Agent.* If at any time the name of the Rights Agent is changed and at such time any of the Rights Certificates have been countersigned but not delivered, then the Rights Agent may adopt the countersignature under its prior name and deliver such Rights Certificates so countersigned, and if at any time any of the Rights Certificates have not have been countersigned, then the Rights Agent may countersign such Rights Certificates either in its prior name or in its changed name. In all such cases, such Rights Certificates will have the full force and effect provided in the Rights Certificates and in this Agreement.

Section 20. *Duties of Rights Agent.* The Rights Agent undertakes to perform only the duties and obligations expressly imposed by this Agreement (and no implied duties or obligations) upon the following terms and conditions, all of which the Company and the holders of Rights Certificates, by their acceptance thereof, will be bound:

(a) *Consultation with Counsel.* Before the Rights Agent acts or refrains from acting, the Rights Agent may consult with legal counsel that it selects (who may be legal counsel for the Company or an employee of the Rights Agent), and the advice or opinion of such counsel will be full and complete authorization and protection to the Rights Agent, and the Rights Agent will incur no liability for or in respect of, any action taken, suffered or omitted to be taken by it in the absence of gross negligence, bad faith or willful misconduct (which gross negligence, bad faith or willful misconduct must be determined by a final, non-appealable judgment of a court of competent jurisdiction) in accordance with such advice or opinion.

(b) *Reliance on Certificate of the Company.* Whenever in the performance of its duties pursuant to this Agreement the Rights Agent deems it necessary or desirable that any fact or matter (including the identity of any Acquiring Person and the determination of the Current Per Share Market Price of any security) be proved or established by the Company prior to taking, suffering or omitting to take any action, such fact or matter (unless other evidence in respect thereof is specifically prescribed in this Agreement) may be deemed to be conclusively proved and established by a certificate signed by any one of the Appropriate Officers and delivered to the Rights Agent, and such certificate will be full and complete authorization and protection to the Rights Agent, and the Rights Agent will incur no liability for or in respect of any action taken, suffered or omitted to be taken in the absence of gross negligence, bad faith or willful misconduct (which gross negligence, bad faith or willful misconduct must be determined by a final, non-appealable judgment of a court of competent jurisdiction) by it pursuant to the provisions of this Agreement in reliance upon such certificate. The Rights Agent shall have no duty to act without such certificate.

(c) *General Limitation of Liability.* The Rights Agent will be liable under this Agreement to the Company and any other Person only for its and its directors', officers', employees', Affiliates', agents', advisors' and representatives' own gross negligence, bad faith or willful misconduct (which gross negligence, bad faith or willful misconduct must be determined by a final, non-appealable judgment of a court of competent jurisdiction). In no event will the Rights Agent be liable for special, punitive, indirect, incidental or consequential loss or damage of any kind whatsoever (including lost profits), even if the Rights Agent has been advised of the possibility or likelihood of such loss or damage. Notwithstanding anything to the contrary herein, any liability of the Rights Agent under this Agreement will be limited to 2 times the amount of annual fees (but not including any reimbursed costs) paid by the Company to the Rights Agent paid by the Company to the Rights Agent during the twelve (12) months immediately preceding the event for which recovery from the Rights Agent is being sought.

(d) *No Liability for Certain Matters.* The Rights Agent will not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement, the Rights Certificates or any certificate (or registration on the transfer books of the Company, including, in the case of uncertificated shares, by notation in book entry accounts reflecting ownership) for Preferred Stock, Common Stock or other securities of the Company issuable upon exercise of Rights, or be required to verify the same (except, in each case, its countersignature thereof, if applicable), and all such statements and recitals are and will be deemed to have been made by the Company only.

(e) *No Responsibility for Certain Matters.* The Rights Agent will not (i) have any liability for or be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof (except the due authorization, execution and delivery hereof by the Rights Agent) or in respect of the validity or execution of any Rights Certificate (except its countersignature thereof) or any certificate (or registration on the transfer books of the Company, including, in the case of uncertificated shares, by notation in book entry accounts reflecting ownership) for Preferred Stock, Common Stock or other securities of the Company issuable upon exercise of Rights (except, in each case, its countersignature thereof, if applicable); (ii) be liable or responsible for any change in the exercisability or exchangeability of Rights (including certain Rights becoming null and void pursuant to Section 7(e)), except with respect to the exercise of Rights evidenced by Rights Certificates after notice of such change has been provided by the Company; (iii) be liable or responsible for any breach by the Company of any covenant or failure by the Company to satisfy any condition contained in this Agreement or any Rights Certificate; (iv) be liable or responsible for (A) any adjustment or change required pursuant to Section 3, Section 11, Section 13, Section 23 or Section 24; (B) the manner, method or amount of any such adjustment or change; or (C) ascertaining the existence of facts that would require any such adjustment or change (except with respect to the exercise of Rights evidenced by Rights Certificates after receipt by the Rights Agent of a certificate furnished pursuant to Section 12 describing such adjustment or change); (v) be liable or responsible for any determination by the Board of the Current Per Share Market Price of any security pursuant to this Agreement; or (vi) by any act be deemed to make any representation or warranty as to the authorization or reservation of any securities to be issued pursuant to this Agreement or any Rights Certificate or as to whether any such securities will, when issued, be duly and validly authorized and issued and fully paid and nonassessable.

(f) *Further Assurances.* The Company agrees that it will perform, execute, acknowledge and deliver, or cause to be performed, executed, acknowledged and delivered, all such further and other acts, instruments and assurances as may reasonably be required by the Rights Agent for the carrying out or performing by the Rights Agent of its duties pursuant to this Agreement.

(g) *Acceptance of Instructions.* The Rights Agent is authorized and directed to accept written instructions with respect to the performance of its duties under this Agreement from any person reasonably believed by the Rights Agent to be one of the Appropriate Officers, and it is authorized to apply to any such director or officer for advice or instructions in connection with its duties pursuant to this Agreement. Such advice and instructions will be full and complete authorization and protection to the Rights Agent, and the Rights Agent will not be liable for or in respect of any action taken, suffered or omitted to be taken by it in accordance with the written advice or instructions of any such director or officer or for any delay in acting while waiting for those instructions, in each case in the absence of its own gross negligence, bad faith or willful misconduct (which gross negligence, bad faith or willful misconduct must be determined by a final, non-appealable judgment of a court of competent jurisdiction). The Rights Agent will be fully and completely authorized and protected in relying on the latest-dated instructions received from any such director or officer. Any application by the Rights Agent for written instructions from the Company may, at the option of the Rights Agent, set forth in writing any action proposed to be taken, suffered or omitted to be taken by the Rights Agent pursuant to this Agreement and the date on or after which such action will be taken, suffered or omitted to be taken. The Rights Agent will not be liable for any action taken or suffered by, or omission of, the Rights Agent in accordance with a proposal included in any such application on or after (but not including) the date specified in such application (which date must not be less than 3 Business Days after, but not including, the date on which any such director or officer of the Company actually receives such application, unless any such director or officer has consented in writing to an earlier date) unless, prior to taking or suffering any such action (or the effective date in the case of an omission), the Rights Agent has received, in response to such application, written instructions with respect to the proposed action or omission specifying a different action to be taken, suffered or omitted to be taken.

(h) *Dealing in Securities of the Company.* The Rights Agent and any member, stockholder, director, officer, employee or Affiliate of the Rights Agent (in each case, other than an Acquiring Person) may buy, sell or deal in any of the Rights or other securities of the Company or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though it were not the Rights Agent pursuant to this Agreement. Nothing herein will preclude the Rights Agent or any such member, stockholder, director, officer, employee or Affiliate from acting in any other capacity for the Company or for any other Person.

(i) *Use of Agents.* The Rights Agent may execute and exercise any of the rights or powers vested in it by this Agreement or perform any duty under this Agreement either itself (including through its directors, officers and employees) or by or through its attorneys or agents, and the Rights Agent will not be answerable or accountable for any act, omission, default, neglect or misconduct of any such attorneys or agents or for any loss to the Company, to the holders of Rights or to any other Person resulting from any such act, omission, default, neglect or misconduct in the absence of gross negligence, bad faith or willful misconduct in the selection and continued employment thereof (which gross negligence, bad faith or willful misconduct must be determined by a final, non-appealable judgment of a court of competent jurisdiction).

(j) *No Risk of Funds.* No provision of this Agreement requires the Rights Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties under this Agreement (other than costs and expenses incurred by the Rights Agent in providing services to the Company in the ordinary course of its business as the Rights Agent) or in the exercise of its rights if it reasonably believes, after consultation with counsel, that repayment of such funds or adequate indemnification against such risk or liability is not reasonably assured to it.

(k) *No Action with Respect to Certain Rights Certificates.* If, with respect to any Rights Certificate surrendered to the Rights Agent for exercise or transfer, the certificate contained in the form of election to purchase or form of assignment, as the case may be, has either (i) not been properly completed or (ii) indicates an affirmative response to clause (1) or clause (2) thereof, then the Rights Agent will not take any further action with respect to such requested exercise or transfer without first consulting with the Company.

(l) *Delivery of Rights Holder List.* From time to time after the Distribution Date, upon the written request of the Company, the Rights Agent will promptly deliver to the Company a list, as of the most recent practicable date (or as of such earlier date as may be specified by the Company), of the record holders of Rights and Rights Certificates.

(m) *Responsibility for Information.* The Rights Agent will not be required to take notice or be deemed to have notice of any fact, event or determination (including any dates or events defined in this Agreement or the designation of any Person as an Acquiring Person or an Affiliate or Associate of an Acquiring Person) pursuant to this Agreement unless and until the Rights Agent is specifically notified in writing of such fact, event or determination by the Company or by receipt of a properly completed and duly executed Rights Certificate (and form of election to purchase or form of assignment).

Section 21. *Change of Rights Agent.* The Rights Agent or any successor Rights Agent may resign and be discharged from its duties pursuant to this Agreement upon no less than 30 days' written notice to the Company (or such lesser notice as is acceptable to the Company) and to each transfer agent of the Preferred Stock and the Common Stock (in the event that the Rights Agent or one of its Affiliates is not also such transfer agent), delivered to the Company in accordance with Section 26. If any transfer agency relationship in effect between the Company and the Rights Agent or any of its Affiliates terminates, then the Rights Agent will be deemed to have automatically resigned, and be discharged from its duties pursuant to this Agreement, on the effective date of such termination, and the Company will be responsible for sending any required notices. The Company may remove the Rights Agent or any successor Rights Agent, with or without cause, upon 30 days' notice in writing to the Rights Agent or any successor Rights Agent, as the case may be, and to each transfer agent of the Preferred Stock and the Common Stock (in the event that the Rights Agent or one of its Affiliates is not also such transfer agent), delivered to the Rights Agent in accordance with Section 26. If the Rights Agent resigns or is

removed or otherwise becomes incapable of acting, then the resigning, removed or incapacitated Rights Agent must remit to the Company, or to any successor Rights Agent, all books, records, funds, certificates or other documents or instruments of any kind then in its possession that were acquired by such resigning, removed or incapacitated Rights Agent in connection with its services as the Rights Agent. Following such removal, resignation or incapacity, the Company will appoint a successor to the Rights Agent. If the Company fails to make such appointment within a period of 30 days after giving written notice of such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Rights Agent or by the registered holder of a Rights Certificate (who must, together with such notice, submit such registered holder's Rights Certificate for inspection by the Company), then such registered holder or the incumbent Rights Agent may apply, at the Company's expense, to a court of competent jurisdiction for the appointment of a new Rights Agent. Any successor Rights Agent, whether appointed by the Company or by such court, must be either (a) a Person organized, in good standing and doing business pursuant to the laws of the United States or any state of the United States that is authorized pursuant to such laws to exercise corporate trust, stock transfer or stockholder services, is subject to supervision or examination by federal or state authorities and has, along with its Affiliates, at the time of its appointment as Rights Agent a combined capital and surplus of at least \$50,000,000 or (b) an Affiliate or direct or indirect wholly owned Subsidiary of such Person. After appointment, the successor Rights Agent will be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Rights Agent without further act or deed, and the predecessor Rights Agent must deliver and transfer to the successor Rights Agent any property at the time held by it, and execute and deliver any further assurance, conveyance, act or deed necessary for such purpose, but such predecessor Rights Agent shall not be required to make any additional expenditure or assume any additional liability in connection with the foregoing; and, except as the context herein otherwise requires, such successor Rights Agent shall be deemed to be the "Rights Agent" for all purposes of this Agreement. Not later than the effective date of any such appointment, the Company will file notice thereof in writing with the predecessor Rights Agent and each transfer agent of the Preferred Stock and the Common Stock (in the event that the Rights Agent or one of its Affiliates is not also such transfer agent), and deliver such notice to the holders of Rights Certificates in accordance with Section 26. Notwithstanding anything to the contrary in this Agreement, failure to give any notice provided for in this Section 21, or any defect therein, will not affect the legality or validity of the resignation or removal of the Rights Agent or the appointment of the successor Rights Agent, as the case may be.

Section 22. *Issuance of New Rights Certificates.* Notwithstanding anything to the contrary in this Agreement or the Rights, the Company may, at its option, issue new Rights Certificates evidencing Rights in such form as may be approved by the Board to reflect any adjustment or change in the Exercise Price and the number or kind or class of shares or other securities or property purchasable pursuant to the Rights Certificates made in accordance with the provisions of this Agreement. In addition, in connection with the issuance or sale of shares of Common Stock following the Distribution Date and prior to the Expiration Date, the Company will, with respect to shares of Common Stock so issued or sold (whether pursuant to the exercise of stock options or pursuant to any employee benefit plan or arrangement or upon the exercise, conversion or exchange of other securities of the Company outstanding as of the Rights Dividend Declaration Date or upon the exercise, conversion or exchange of securities issued by the Company after the Rights Dividend Declaration Date (except, in each case, as may otherwise be

provided in the instruments governing such securities)), and may, in any other case, if deemed necessary or appropriate by the Board, issue Rights Certificates representing the appropriate number of Rights in connection with such issuance or sale. However, (a) no such Rights Certificate will be issued if, and to the extent that, the Company is advised by counsel that such issuance would create a significant risk of or result in material adverse tax consequences to the Company or the Person to whom such Rights Certificate would be issued or would create a significant risk of or result in such options or employee plans or arrangements failing to qualify for otherwise available special tax treatment; (b) no such Rights Certificate will be issued if, and to the extent that, appropriate adjustment will otherwise have been made in lieu of the issuance thereof; and (c) the Company will have no obligation to distribute Rights Certificates to any Acquiring Person, Affiliate or Associate of an Acquiring Person, Post-Event Transferee, Pre-Event Transferee, Subsequent Transferee or any nominee of any of the foregoing.

Section 23. *Redemption.*

(a) *Right to Redeem.* The Board may, at its option, at any time prior to the earlier of (i) the Distribution Date or (ii) the Close of Business on the Final Expiration Date, redeem all, but not less than all, of the then-outstanding Rights at a redemption price of \$0.001 per Right, as such amount may be appropriately adjusted to reflect any stock split, stock dividend, recapitalization or similar transaction occurring after the Rights Dividend Declaration Date (such redemption price, the “**Redemption Price**”). Notwithstanding anything to the contrary in this Agreement, the Rights will not be exercisable after the first occurrence of a Section 11(a)(ii) Event until such time as the Company’s right of redemption pursuant to this Section 23 has expired. The Company may, at its option, pay the Redemption Price in shares of Common Stock (based on the Current Per Share Market Price of the Common Stock at the time of redemption), cash or any other form of consideration deemed appropriate by the Board, in its sole discretion, to be at least equivalent to the Redemption Price. Such redemption of the Rights by the Board may be made effective at such time, on such basis and with such conditions as the Board in its sole discretion may establish. The date on which the Board elects to make the redemption effective is referred to as the “**Redemption Date.**”

(b) *General Redemption Procedures.* Immediately upon the action of the Board ordering the redemption of the Rights (or at such later time as the Board may establish for the effectiveness of such redemption), evidence of which will have been filed with the Rights Agent, and without any further action and without any notice, the right to exercise the Rights will terminate and the only right thereafter of the holders of Rights will be to receive the Redemption Price for each Right so held. The Company will promptly give public notice of any such redemption (with prompt written notice thereof also provided to the Rights Agent). Promptly after the action of the Board ordering the redemption of the Rights, the Company will give, or cause to be given, notice of such redemption to the holders of Rights Certificates in accordance with Section 26, with any notice that is so provided deemed to be given whether or not the holder receives the notice. Each such notice of redemption must state the method by which the payment of the Redemption Price is to be made. The failure to give, or any defect in, any notice required by this Section 23 will not affect the legality or validity of the action taken by the Board or of the redemption.

(c) *Discharge of Obligations.* Notwithstanding anything to the contrary in this Agreement, in the event of a redemption pursuant to Section 23(a), the Company may, at its option, discharge all of its obligations with respect to the Rights by (i) issuing a press release or making a publicly available filing with the SEC announcing the manner of redemption of the Rights and (ii) mailing payment of the Redemption Price to the holders of Rights at the addresses of such holders as shown on the transfer books of the Rights Agent or, prior to the Distribution Date, on the transfer books of the Company or the transfer agent for the Common Stock, and upon such action, all outstanding Rights Certificates will be null and void without any further action by the Company.

(d) *Prohibited Purchases.* Notwithstanding anything to the contrary in this Agreement, neither the Company nor any of its Affiliates or Associates may redeem, acquire or purchase for value any Rights at any time in any manner other than as specifically set forth in this Section 23 or in Section 24, or other than in connection with the purchase or repurchase of shares of Common Stock prior to the Distribution Date.

Section 24. *Exchange.*

(a) *Exchange of Common Stock for Rights.* The Board may, at its option, at any time after any Person becomes an Acquiring Person, exchange all or part of the then outstanding and exercisable Rights (which will not include Rights that have become null and void pursuant to the provisions of Section 7(e)) for shares of Common Stock at an exchange ratio of one share of Common Stock per Right, appropriately adjusted to reflect any stock split, stock dividend, recapitalization or similar transaction occurring in respect of the Common Stock after the Rights Dividend Declaration Date (such exchange ratio, the “**Exchange Ratio**,” and such determination by the Board to effect such exchange, an “**Exchange Determination**”). Notwithstanding the foregoing, the Board will not be empowered to effect an Exchange Determination at any time after any Person (other than any Exempt Person), together with all Affiliates and Associates of such Person, becomes the Beneficial Owner of 50 percent or more of the shares of Common Stock then outstanding. Notwithstanding the foregoing, from and after the occurrence of a Section 13 Event, any Rights that have not previously been exchanged pursuant to this Section 24(a) will thereafter be exercisable only in accordance with Section 13 and may not be exchanged (and will not be eligible for exchange) pursuant to this Section 24(a).

(b) *Exchange Procedures.*

(i) *Manner of Effecting Exchange.* Immediately following an Exchange Determination and without any further action or notice, the right to exercise the then-outstanding Rights (other than Rights that have become null and void pursuant to the provisions of Section 7(e)) will terminate and the only right thereafter of a holder of such Rights is to receive that number of shares equal to the number of such Rights held by such holder multiplied by the Exchange Ratio. The Company will promptly give public notice of any such exchange (with prompt written notice thereof also provided to the Rights Agent), and thereafter will promptly give, or cause to be given, notice of such exchange to the holders of the then-outstanding Rights (other than Rights that have become null and void pursuant to the provisions of Section 7(e)) by mailing such notice, in accordance with Section 26, with any notice that is so provided deemed to be given whether or not the holder receives the notice. Each such notice of

exchange must state the method by which the exchange of shares of Common Stock for Rights is to be effected (including the actions that must be taken by the holders of Rights to receive shares of Common Stock in exchange for Rights) and, in the event of any partial exchange, the number of Rights that are to be exchanged. Any partial exchange will be effected pro rata based on the number of Rights (other than Rights that have become null and void pursuant to the provisions of Section 7(e)) held by each holder of Rights. Following an Exchange Determination, the Company may implement such procedures as it deems appropriate, in its sole discretion, to minimize the possibility that any shares of Common Stock (or other consideration) issuable pursuant to this Section 24 are received by Persons whose Rights are null and void pursuant to Section 7(e). Prior to effecting any exchange, the Company may require, or cause the trustee of the Trust to require, as a condition thereof, that any registered holder of Rights provide such evidence (including the identity of the Beneficial Owner (or former Beneficial Owner) thereof and the Affiliates or Associates of such Beneficial Owner or former Beneficial Owner) as the Company may reasonably request in order to determine if such Rights are null and void pursuant to Section 7(e). If such registered holder does not comply with the foregoing requirements, then the Company will be entitled to conclusively deem such Rights to be Beneficially Owned by an Acquiring Person (or an Affiliate or Associate of an Acquiring Person, a Post-Event Transferee, a Pre-Event Transferee, a Subsequent Transferee or any nominee of any of the foregoing) and, accordingly, such Rights will be null and void and not exchangeable in connection herewith. Any shares of Common Stock (or other securities) issued at the direction of the Board in connection with an Exchange Determination will be duly and validly authorized and issued and fully paid and nonassessable, and the Company will be deemed to have received as consideration for such issuance a benefit having a value that is at least equal to the aggregate par value of the Common Stock (or other securities) so issued. The failure to give, or any defect in, any notice required by this Section 24 will not affect the legality or validity of the action taken by the Board or of such exchange.

(ii) *Use of Trust.* The exchange of the Rights pursuant to Section 24(a) may be made effective at such time, on such basis and with such conditions as the Board, in its sole discretion, may establish. Without limiting the foregoing, prior to effecting an exchange pursuant to Section 24(a), the Board may direct the Company to enter into a trust agreement in such form and with such terms as the Board approves (the “**Trust Agreement**”). If the Board so directs, then the Company must enter into the Trust Agreement and must issue to the trust created by such agreement (the “**Trust**”) all of the Common Stock (or other consideration) issuable pursuant to the exchange (or any portion thereof that has not previously been issued in connection with the exchange). From and after the time at which such Common Stock (or other consideration) are issued to the Trust, all stockholders then entitled to receive Common Stock (or other consideration) pursuant to the exchange will be entitled to receive such shares or consideration (and any dividends or distributions made thereon after the date on which such shares or consideration are deposited into the Trust) only from the Trust and solely upon compliance with the relevant terms and provisions of the Trust Agreement.

(c) *Insufficient Shares.* If there are not sufficient shares of Common Stock issued but not outstanding or authorized but unissued to permit any exchange of Rights as contemplated in accordance with Section 24(a), then the Company will either take such action as may be necessary to authorize additional shares of Common Stock for issuance upon exchange of the Rights or alternatively, at the option of the Board, with respect to each Right (i) pay cash

in an amount equal to the Current Exchange Value in lieu of issuing shares of Common Stock in exchange therefor; (ii) issue debt or equity securities (or a combination thereof) having a value equal to the Current Exchange Value in lieu of issuing shares of Common Stock in exchange for each such Right, where the value of such securities will be determined by the Board based upon the advice of a nationally recognized investment banking firm selected by the Board, which determination will be described in a written statement filed with the Rights Agent and will be binding on the Rights Agent and the holders of Rights; or (iii) deliver any combination of cash, property, Common Stock, Preferred Stock, Equivalent Preferred Stock or other securities having a value equal to the Current Exchange Value in exchange for each Right. To the extent that the Company determines that some action need be taken pursuant to this Section 24(c), then the Board may temporarily suspend the exercisability of the Rights for a period of up to 120 days following the date on which the Exchange Determination has occurred in order to seek any authorization of additional shares of Common Stock or to decide the appropriate form of distribution to be made pursuant to the above provision and to determine the value thereof. Upon any such suspension, the Company will issue a public announcement stating, and notify the Rights Agent in writing, that the exercisability of the Rights has been temporarily suspended, as well as issue a public announcement, and notify the Rights Agent in writing, at such time as the suspension is no longer in effect.

(d) *Cash in Lieu of Fractional Shares of Common Stock.* In connection with an Exchange Determination, the Company will not be required to issue fractions of shares of Common Stock or to distribute certificates that evidence fractional shares of Common Stock. In lieu of such fractional shares of Common Stock, the Company may pay to the registered holders of Rights Certificates with regard to which such fractional shares of Common Stock would otherwise be issuable an amount in cash equal to the same fraction of the Current Per Share Market Price of a share of Common Stock, calculated as of the Trading Day immediately prior to the date of the Exchange Determination.

Section 25. *Notice of Certain Events.*

(a) *Certain Distributions.* If the Company proposes, at any time after the Distribution Date, to (i) declare or pay any dividend payable in stock of any class to the holders of shares of Preferred Stock or to make any other distribution to the holders of shares of Preferred Stock (other than a regular quarterly or periodic cash dividend out of earnings or retained earnings of the Company); (ii) offer to the holders of shares of Preferred Stock rights or warrants to subscribe for or to purchase any additional Preferred Stock or shares of stock of any class or any other securities, rights or options; (iii) effect any reclassification of the Preferred Stock (other than a reclassification involving only the subdivision of outstanding Preferred Stock); (iv) effect any share exchange, consolidation or merger into or with any other Person (other than a wholly owned Subsidiary of the Company in a transaction that complies with Section 11(m)); (v) effect any sale or other transfer (or permit one or more of its Subsidiaries to effect any sale or other transfer), in one transaction or a series of related transactions, of more than 50 percent of the assets, cash flow or earning power of the Company and its Subsidiaries (taken as a whole) to any other Person; (vi) effect the liquidation, dissolution or winding up of the Company; (vii) declare or pay any dividend on the Common Stock payable in shares of Common Stock; or (viii) effect a subdivision, combination or consolidation of the Common Stock (by reclassification or otherwise than by payment of dividends in shares of Common

Stock), then, in each such case, the Company will give written notice of such proposed action to the Rights Agent and the holders of Rights Certificates in accordance with Section 26, which notice must specify the record date for the purposes of such stock dividend, distribution of rights or warrants, or the date on which such subdivision, combination, reclassification, share exchange, consolidation, merger, sale, transfer, liquidation, dissolution or winding up is to take place and the date of participation therein by the holders of shares of Preferred Stock or Common Stock, if any such date is to be fixed, and such notice must be so given in the case of any action covered by clause (i) or (ii) above at least 10 Business Days prior to but not including the record date for determining holders of shares of Preferred Stock for purposes of such action, and in the case of any such other action, at least 10 Business Days prior to but not including the date of the taking of such proposed action or the date of participation therein by the holders of shares of Preferred Stock or Common Stock, whichever is earlier.

(b) *Certain Events*. If a Triggering Event has occurred, then (i) the Company will as soon as practicable thereafter give, or cause to be given, to the Rights Agent and each holder of Rights Certificates a notice in accordance with Section 26 of the occurrence of such Triggering Event, which notice must specify the event and the consequences of the event to holders of Rights pursuant to Section 11(a)(ii) or Section 13, as applicable; and (ii) all references in this Section 25 to Preferred Stock will thereafter be deemed to be references to Common Stock or, if appropriate, other securities.

Section 26. *Notices*. Notices or demands authorized by this Agreement to be given or made by the Rights Agent or by the holder of any Rights Certificate (or, prior to the Distribution Date, of any share of Common Stock) to or on the Company will be sufficiently given or made if in writing and sent by a recognized national overnight delivery service, by first-class mail, postage prepaid, or by email (except that notice given by email will not be effective unless either (a) a duplicate copy of such email notice is promptly given by one of the other methods described in this Section 26 or (b) the receiving party delivers a written confirmation of receipt of such notice either by email or any other method described in this Section 26 (excluding "out of office" or other automated replies)), addressed (in each case, until another address is filed in writing with the Rights Agent by the Company) as follows:

Twitter, Inc.
1355 Market Street
Suite 900
San Francisco, CA 94103
Attn: Chief Legal Officer
Email: ***

Subject to the provisions of Section 21, any notice or demand authorized by this Agreement to be given or made by the Company or by the holder of any Rights Certificate (or, prior to the Distribution Date, of any Common Stock) to or on the Rights Agent will be sufficiently given or made if in writing and sent by a recognized national overnight delivery service, by first-class mail, postage prepaid, or by email (except that notice given by email will not be effective unless either (a) a duplicate copy of such email notice is promptly given by one of the other methods described in this Section 26 or (b) the receiving party delivers a written confirmation of receipt of such notice either by email or any other method described in this Section 26 (excluding "out of office" or other automated replies)), addressed (in each case, until another address is filed in writing with the Company by the Rights Agent) as follows:

Computershare Trust Company, N.A.
150 Royall Street
Canton, MA 02021
Attn: Client Services
Email: ***

Notices or demands authorized by this Agreement to be given or made by the Company or the Rights Agent to the holders of Rights or Rights Certificates (or, if prior to the Distribution Date, to the holders of shares of Common Stock) will be sufficiently given or made if in writing and sent by a recognized national overnight delivery service, trackable mail, or first-class mail, postage prepaid, addressed to such holder at the address of such holder as shown on the transfer books of the Rights Agent or the Company or the transfer agent for the Common Stock. Any notice that is sent or mailed in the manner provided in this Section 26 will be deemed given whether or not the holder receives the notice. Notwithstanding anything to the contrary in this Agreement, prior to the Distribution Date, the issuance of a press release or the making of a publicly available filing by the Company with the SEC will constitute sufficient notice by the Rights Agent or the Company to the holders of securities of the Company, including the Rights, for all purposes of this Agreement and no other notice need be given.

Section 27. Supplements and Amendments. For so long as the Rights are redeemable, the Company may in its sole discretion supplement or amend this Agreement in any respect without the approval of any holders of Rights Certificates, Preferred Stock or Common Stock, and the Rights Agent must, if the Company so directs, execute such supplement or amendment. At any time when the Rights are not redeemable, the Company and the Rights Agent may from time to time supplement or amend this Agreement without the approval of any holders of Rights Certificates in order to (i) cure any ambiguity; (ii) correct or supplement any provision contained herein that may be defective or inconsistent with any other provisions herein or otherwise defective, including any change in order to satisfy any applicable law, rule or regulation; (iii) shorten or lengthen any time period; or (iv) change or supplement the provisions of this Agreement in any manner that the Company may deem necessary or desirable and that does not adversely affect the interests of the Rights Agent or the holders of Rights (other than an Acquiring Person, an Affiliate or Associate of an Acquiring Person, a Post-Event Transferee, a Pre-Event Transferee, a Subsequent Transferee or any nominee of any of the foregoing), including extending the Final Expiration Date. However, this Agreement may not be supplemented or amended to lengthen, pursuant to clause (iii) of the previous sentence, a time period relating to when the Rights may be redeemed at a time when the Rights are not then redeemable, it being understood that that the right of the Board to extend the Distribution Date does not require any amendment or supplement. Upon the delivery of a certificate from an Appropriate Officer that states that the proposed supplement or amendment is in compliance with the terms of this Section 27, the Rights Agent must execute such supplement or amendment, with time being of the essence; provided that the failure of the Rights Agent to execute such supplement or amendment on a timely basis or at all shall not limit the validity or effectiveness of any action or determination of the Company or the Board that does not require the consent, approval or agreement of the Rights Agent pursuant to the terms of this Agreement.

Notwithstanding anything to the contrary in this Agreement, the Rights Agent may, but will not be required to, execute any supplement or amendment that adversely affects its rights, duties, obligations or immunities pursuant to this Agreement. Prior to the Distribution Date, the interests of the holders of Rights and Rights Certificates will be deemed to be coincident with the interests of the holders of shares of Common Stock.

Section 28. *Successors.* All the covenants and provisions of this Agreement by or for the benefit of the Company or the Rights Agent will bind and inure to the benefit of their respective successors and assigns.

Section 29. *Determinations and Actions by the Board.* The Board (or an authorized committee thereof) has the exclusive power and authority to administer this Agreement and to exercise all rights and powers specifically granted to the Board or the Company pursuant to this Agreement, or as may be necessary or advisable in the administration of this Agreement, including the right and power to (a) interpret the provisions of this Agreement and (b) make all determinations deemed necessary or advisable for the administration of this Agreement (including a determination as to whether to redeem the Rights or to amend or supplement this Agreement). All such actions, calculations, interpretations and determinations (including, for purposes of clause (ii) below, all omissions with respect to the foregoing) that are done or made by the Board (or an authorized committee thereof) in good faith will (i) be final, conclusive and binding on the Company, the Rights Agent, the holders of Rights Certificates and all other Persons; and (ii) not subject the Board (or an authorized committee thereof) or any of the directors serving on the Board to any liability to any Person, including the Rights Agent and the holders of Rights Certificates. In administering this Agreement and exercising the rights and powers specifically granted to the Board and to the Company, and in interpreting this Agreement and making any determination under this Agreement, the Board (or an authorized committee thereof) may consider any and all facts, circumstances or information that it deems to be necessary, useful or appropriate. The Rights Agent is always entitled to assume that the Board acted in good faith and will be fully protected and incur no liability in reliance thereon.

Section 30. *Benefits of this Agreement.* Nothing in this Agreement may be construed to give to any Person other than the Company, the Rights Agent and the registered holders of Rights Certificates (and, prior to the Distribution Date, the registered holders of shares of Common Stock) any legal or equitable right, remedy or claim pursuant to this Agreement. This Agreement is for the sole and exclusive benefit of the Company, the Rights Agent and the registered holders of Rights Certificates (and, prior to the Distribution Date, the registered holders of shares of Common Stock).

Section 31. *Severability.* If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement will remain in full force and effect and will in no way be affected, impaired or invalidated; provided, however, that if any such excluded term, provision, covenant or restriction shall adversely affect the rights, immunities, duties or obligations of the Rights Agent, the Rights Agent shall be entitled to resign immediately. Notwithstanding anything to the contrary in this Agreement, if any such term, provision, covenant or restriction is held by such court or authority to be invalid, void or unenforceable and the Board determines in its good faith judgment that severing the invalid language from this Agreement would adversely affect the purpose or effect of this Agreement, then the right of redemption set forth in Section 23 will be reinstated and will not expire until the Close of Business on the 10th Business Day following the date of such determination by the Board.

Section 32. *Governing Law; Exclusive Jurisdiction; Waiver of Jury Trial.*

(a) *Governing Law.* This Agreement, each Right and each Rights Certificate, and all claims or causes of action (whether in contract or in tort or otherwise, or whether at law (including at common law or by statute) or in equity) that may be based on, arise out of or relate to this Agreement, each Right and each Rights Certificate, or the negotiation, execution, performance or subject matter of this Agreement, will be governed by and construed in accordance with the laws of the State of Delaware.

(b) *Exclusive Jurisdiction.*

(i) The Company, the Rights Agent and the registered holders of Rights Certificates (and, prior to the Distribution Date, the registered holders of shares of Common Stock) each irrevocably submits to the exclusive jurisdiction of the Court of Chancery of the State of Delaware, or, if such court lacks subject matter jurisdiction, the United States District Court for the District of Delaware, over any suit, action or proceeding arising out of or relating to or concerning this Agreement. The Company, the Rights Agent and the registered holders of Rights Certificates (and, prior to the Distribution Date, the registered holders of shares of Common Stock) each acknowledge that the forum designated by this Section 32(b)(i) has a reasonable relation to this Agreement and to such Persons' relationship with one another.

(ii) The Company, the Rights Agent and the registered holders of Rights Certificates (and, prior to the Distribution Date, the registered holders of shares of Common Stock) each waive, to the fullest extent permitted by applicable law, any objection that they now or may in the future have to personal jurisdiction or to the laying of venue of any such suit, action or proceeding brought in any court referred to in Section 32(b)(i) (or the appellate courts thereof). The Company, the Rights Agent and the registered holders of Rights Certificates (and, prior to the Distribution Date, the registered holders of shares of Common Stock) each undertake not to commence any action subject to this Agreement in any forum other than the forum described in Section 32(b)(i). The Company, the Rights Agent and the registered holders of Rights Certificates (and, prior to the Distribution Date, the registered holders of shares of Common Stock) each agree that, to the fullest extent permitted by applicable law, a final and non-appealable judgment in any such suit, action or proceeding brought in any such court will be conclusive and binding upon such Persons.

(c) *Waiver of Jury Trial.* THE COMPANY, THE RIGHTS AGENT AND THE REGISTERED HOLDERS OF RIGHTS CERTIFICATES (AND, PRIOR TO THE DISTRIBUTION DATE, THE REGISTERED HOLDERS OF SHARES OF COMMON STOCK) EACH IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF THIS AGREEMENT.

Section 33. *Counterparts*. This Agreement and any supplements or amendments to this Agreement may be executed in any number of counterparts and each such counterpart will for all purposes be deemed to be an original, and all such counterparts will together constitute one and the same instrument, it being understood that all parties need not sign the same counterpart. A signature to this Agreement transmitted electronically (including by fax and .pdf) will have the same authority, effect and enforceability as an original signature. No Party may raise the use of such electronic transmission to deliver a signature, or the fact that any signature or agreement or instrument was transmitted or communicated through such electronic transmission, as a defense to the formation of a contract, and each Party forever waives any such defense, except to the extent such defense relates to lack of authenticity.

Section 34. *Interpretation*.

(a) *References to this Agreement*. Unless the context of this Agreement otherwise requires, (i) when a reference is made in this Agreement to an Article, Section, Schedule or Exhibit, that reference is to an Article, Section, Schedule or Exhibit to this Agreement, as applicable, and (ii) references to “paragraphs” or “clauses” are to separate paragraphs or clauses of the Section or subsection in which the reference occurs. All Exhibits attached to this Agreement or referred to in this Agreement are incorporated in and made a part of this Agreement.

(b) *Hereof, Including, etc*. When used in this Agreement, (i) the words “hereof,” “herein” and “herewith” and words of similar import will, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement; and (ii) the words “include,” “includes” and “including” will be deemed in each case to be followed by the words “without limitation.”

(c) *Neither, etc. Not Exclusive*. Unless the context of this Agreement otherwise requires, “neither,” “nor,” “any,” “either” and “or” are not exclusive.

(d) *Extent*. The word “extent” in the phrase “to the extent” means the degree to which a subject or other thing extends, and does not simply mean “if.”

(e) *Dollars*. When used in this Agreement, references to “\$” or “Dollars” are references to U.S. dollars.

(f) *Gender and Number*. The meaning assigned to each capitalized term defined and used in this Agreement is equally applicable to both the singular and the plural forms of such term, and words denoting any gender include all genders. Where a word or phrase is defined in this Agreement, each of its other grammatical forms has a corresponding meaning. All terms defined in this Agreement will have the defined meanings when used in any certificate or other document made or delivered pursuant to this Agreement unless otherwise defined in such certificate or document.

(g) *References to Parties*. References to any Person include references to such Person’s successors and permitted assigns, and, in the case of any governmental authority, to any Person succeeding to its functions and capacities.

(h) *References to Writings*. References to “writing” mean the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether in electronic form or otherwise. “Written” will be construed in the same manner.

(i) *Legislation*. A reference to any specific legislation or to any provision of any legislation includes any amendment to, and any modification, re-enactment or successor thereof, any legislative provision substituted therefor and all rules, regulations and statutory instruments issued thereunder or pursuant thereto.

(j) *Headings*. The table of contents and headings set forth in this Agreement are for convenience of reference purposes only and will not affect or be deemed to affect in any way the meaning or interpretation of this Agreement or any term or provision of this Agreement.

(k) *Calculation of Time Periods*. Unless otherwise indicated, (i) when calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period will be excluded; (ii) the measure of a period of one month or year for purposes of this Agreement will be the day of the following month or year corresponding to the starting date; and (iii) if no corresponding date exists, then the end date of such period being measured will be the next actual day of the following month or year (for example, one month following February 18 is March 18 and one month following March 31 is May 1). References to “from” or “through” any date mean, unless otherwise specified, from and including or through and including such date, respectively.

(l) *Nature of Days and Months*. Whenever this Agreement refers to a number of days, that number will refer to calendar days unless Business Days are specified. Any reference to a “month” means a calendar month.

(m) *Summaries*. No summary of this Agreement or any Exhibit, Schedule or other document delivered with this Agreement will affect the meaning or interpretation of this Agreement or such Exhibit, Schedule or document.

(n) *Calculation of Outstanding Shares*. For all purposes of this Agreement, any calculation of the number of shares of Common Stock outstanding at any particular time, including for purposes of determining the particular percentage of the outstanding shares of Common Stock of which any Person is the Beneficial Owner, will include the number of shares of Common Stock not outstanding at the time of such calculation that such Person is otherwise deemed to Beneficially Own for purposes of this Agreement, but the number of shares of Common Stock not outstanding that such Person, together with all Affiliates and Associates of such Person, is otherwise deemed to Beneficially Own for purposes of this Agreement will not be deemed to be outstanding for the purpose of computing the percentage of outstanding shares of Common Stock that are Beneficially Owned by any other Person (unless such other Person is also otherwise deemed to Beneficially Own for purposes of this Agreement such shares of Common Stock not outstanding).

Section 35. *Costs of Enforcement.* The Company agrees with each registered holder of Rights Certificates (and, prior to the Distribution Date, the registered holders of shares of Common Stock) that if the Company or any other Person the securities of which are purchasable upon exercise of the Rights fails to fulfill any of its obligations pursuant to this Agreement, then the Company or such Person must reimburse any registered holder of Rights Certificates for the costs and expenses (including legal fees) incurred by such holder in any action to enforce such holder's rights pursuant to any Right or this Agreement.

Section 36. *Force Majeure.* Notwithstanding anything to the contrary in this Agreement, the Rights Agent will not be liable for any delays or failures in performance resulting from acts beyond its reasonable control, including provision of any present or future law or regulation or government authority, terrorist acts, epidemics, pandemics, fires, floods, natural disasters, acts of God, terrorist acts, shortage of supply, legal restrictions, breakdowns or malfunctions, interruptions or malfunction of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties, war or civil unrest.

Section 37. *USA PATRIOT Act.* The Company acknowledges that the Rights Agent is subject to the customer identification program requirements pursuant to the USA PATRIOT Act and its implementing regulations, and that the Rights Agent must obtain, verify and record information that allows the Rights Agent to identify the Company. Accordingly, prior to accepting an appointment, the Rights Agent has received information from the Company that will help the Rights Agent to identify the Company, including the Company's physical address, tax identification number, organizational documents, certificate of good standing, license to do business or such other information that the Rights Agent deems necessary and, pending verification of such received information, the Rights Agent may request additional such information. The Company agrees to provide all reasonably requested information necessary for the Rights Agent to verify the Company's identity in accordance with such customer identification program requirements.

[Signature page follows.]

The parties are signing this Agreement on the date stated in the introductory clause.

TWITTER, INC.

By: /s/ Ned Segal
Name: Ned Segal
Title: Chief Financial Officer

COMPUTERSHARE TRUST COMPANY, N.A.

By: /s/ David L. Adamson
Name: David L. Adamson
Title: Senior Vice President

[Signature Page to Rights Agreement]

**FORM OF
CERTIFICATE OF DESIGNATION OF RIGHTS, PREFERENCES AND PRIVILEGES
OF SERIES A PARTICIPATING PREFERRED STOCK OF
TWITTER, INC.**

Pursuant to Section 151 of the
General Corporation Law of the State of Delaware

Twitter, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "**Corporation**"), in accordance with the provisions of Section 103 thereof, certifies:

That pursuant to the authority conferred upon the Board of Directors of the Corporation (the "**Board**") by the Amended and Restated Certificate of Incorporation of the Corporation, on April 15, 2022, the Board adopted the following resolution creating a series of preferred stock, par value \$0.000005 per share ("**Preferred Stock**"), of the Corporation designated as Series A Participating Preferred Stock:

RESOLVED, that pursuant to the authority vested in the Board by the Amended and Restated Certificate of Incorporation of the Corporation (the "**Charter**"), the Board provides for the issuance of a series of Preferred Stock of the Corporation and fixes by resolution the designations, powers, preferences and rights, and the qualifications, limitations and restrictions, of such series of Preferred Stock as follows:

Section 1. *Designation and Amount.* The shares of such series will be designated as "**Series A Participating Preferred Stock.**" The Series A Participating Preferred Stock will have a par value of \$0.000005 per share, and the number of shares constituting such series will be 10,000,000. Such number of shares may be increased or decreased by resolution of the Corporation's Board of Directors (the "**Board**"), except that no decrease will reduce the number of shares of Series A Participating Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the exercise of any options, rights or warrants issuable upon conversion of any outstanding securities issued by the Corporation convertible into Series A Participating Preferred Stock.

Section 2. *Dividends and Distributions.*

(a) Subject to the prior and superior rights of the holders of any shares of any series of Preferred Stock (or other similar stock) ranking prior and superior to the shares of Series A Participating Preferred Stock with respect to dividends, the holders of shares of Series A Participating Preferred Stock, in preference to the holders of shares of common stock, par value \$0.000005 per share (the "**Common Stock**"), of the Corporation, will be entitled to receive, when, as and if declared by the Board out of funds legally available for the purpose, quarterly dividends payable in cash on the last day of March, June, September and December in each year (each such date being referred to as a "**Quarterly Dividend Payment Date**"), commencing on

the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Participating Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (i) \$1.00 and (ii) subject to any provision for adjustment in this Certificate of Designation, 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 Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the 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 share or fraction of a share of Series A Participating Preferred Stock. If the Corporation at any time after April 15, 2022 (the "**Rights Dividend Declaration Date**") (A) declares and pays any dividend on the Common Stock payable in the form of shares of Common Stock, (B) subdivides the outstanding Common Stock or (C) combines or consolidates the outstanding Common Stock into a smaller number of shares, then in each such case the amount to which holders of shares of Series A Participating Preferred Stock were entitled immediately prior to such event under clause (ii) of the preceding sentence will be adjusted by multiplying such amount by a fraction, the numerator of which will be the total number of shares of Common Stock outstanding immediately after the occurrence of such event and the denominator of which will be the total number of shares of Common Stock that were outstanding immediately prior to the occurrence of such event.

(b) The Corporation will declare a dividend or distribution on the Series A Participating Preferred Stock as provided in Section 2(a) immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock), except that if no dividend or distribution has been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, then a dividend of \$1.00 per share on the Series A Participating Preferred Stock will nevertheless be payable on such subsequent Quarterly Dividend Payment Date (it being understood that the actual payment of such dividend may be deferred if prohibited under any of the Corporation's debt instruments).

(c) Dividends will begin to accrue and be cumulative on outstanding shares of Series A Participating Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series A Participating Preferred Stock, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares will begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Participating Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends will begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends will not bear interest. Dividends paid on the shares of Series A Participating Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares will be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board may fix a record date for the determination of holders of shares of Series A Participating Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date will be no more than 60 days prior to the date fixed for the payment thereof.

Section 3. *Voting Rights.* The holders of shares of Series A Participating Preferred Stock will have the following voting rights:

(a) Subject to the provision for adjustment hereinafter set forth, each share of Series A Participating Preferred Stock will entitle the holder thereof to 1,000 votes on all matters submitted to a vote of the stockholders of the Corporation. If the Corporation at any time after the Rights Dividend Declaration Date (i) declares any dividend on the Common Stock payable in shares of Common Stock, (ii) subdivides the outstanding Common Stock or (iii) combines or consolidates the outstanding Common Stock into a smaller number of shares, then in each such case the number of votes per share to which holders of shares of Series A Participating Preferred Stock were entitled immediately prior to such event will be adjusted by multiplying such number by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(b) Except as otherwise provided in this Certificate of Designation, in any other Certificate of Designation creating a series of Preferred Stock or any similar stock, the Charter or the Amended and Restated Bylaws of the Corporation (the "**Bylaws**"), or by law, the holders of shares of Series A Participating Preferred Stock and the holders of shares of Common Stock and any other capital stock of the Corporation having general voting rights will vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(c) Except as set forth in this Certificate of Designation or as required by law, the holders of Series A Participating Preferred Stock will have no special voting rights and their consent will not be required (except to the extent that holders of Series A Participating Preferred Stock are entitled to vote with holders of shares of Common Stock as set forth in this Certificate of Designation) for taking any corporate action.

Section 4. *Certain Restrictions.*

(a) The Corporation will not declare any dividend on, make any distribution on, or redeem or purchase or otherwise acquire for consideration any shares of Common Stock after the first issuance of a share or fraction of a share of Series A Participating Preferred Stock unless concurrently therewith it will declare a dividend on the Series A Participating Preferred Stock as required by Section 2.

(b) Whenever quarterly dividends or other dividends or distributions payable on the Series A Participating Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Participating Preferred Stock outstanding will have been paid in full, the Corporation will not:

(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Participating Preferred Stock, other than (A) redemptions or purchases that may be deemed to occur upon the exercise of stock options, warrants or similar rights or the grant, vesting or lapse

of restrictions on the grant of any performance shares, restricted stock, restricted stock units or other equity awards to the extent that such shares represent all or a portion of (1) the exercise or purchase price of such options, warrants or similar rights or other equity awards and (2) the amount of withholding taxes owed by the recipient of such award in respect of such grant, exercise, vesting or lapse of restrictions; or (B) the repurchase, redemption, or other acquisition or retirement for value of any such shares from employees, former employees, directors, former directors, consultants or former consultants of the Corporation, or their respective estate, spouse, former spouse or family member, pursuant to the terms of the agreements pursuant to which such shares were acquired;

(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 Participating Preferred Stock, except dividends paid ratably on the Series A Participating 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) with the Series A Participating Preferred Stock, it being understood that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Participating Preferred Stock; or

(iv) redeem or purchase or otherwise acquire for consideration any shares of Series A Participating Preferred Stock, or any shares of stock ranking on a parity with the Series A Participating Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board) to all holders of such shares upon such terms as the Board, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, will determine in good faith will result in fair and equitable treatment among the respective series or classes.

(c) The Corporation will not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, pursuant to Section 4(a), purchase or otherwise acquire such shares at such time and in such manner.

Section 5. *Reacquired Shares of Preferred Stock.* Any shares of Series A Participating Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever will be retired and canceled promptly after the acquisition thereof. All such shares will upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board, subject to the conditions and restrictions on issuance set forth in this Certificate of Designation, in the Charter or in any other Certificate of Designation creating a series of Preferred Stock or any similar stock or as otherwise required by law.

Section 6. *Liquidation, Dissolution or Winding Up.*

(a) Upon any liquidation, dissolution or winding up of the Corporation, voluntary or otherwise, no distribution will be made to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Participating Preferred Stock unless, prior thereto, the holders of shares of Series A Participating Preferred Stock will have received an amount per share (the "**Series A Liquidation Preference**") equal to the greater of (i) \$1.00 plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment or (ii) the Adjustment Number multiplied by the per share amount of all cash and other property to be distributed in respect of the Common Stock upon such liquidation, dissolution or winding up of the Corporation. The "**Adjustment Number**" will initially be 1,000. If the Corporation at any time after the Rights Dividend Declaration Date (A) declares and pays any dividend on the Common Stock payable in the form of shares of Common Stock, (B) subdivides the outstanding Common Stock or (C) combines or consolidates the outstanding Common Stock into a smaller number of shares, then in each such case the Adjustment Number in effect immediately prior to such event will be adjusted by multiplying such Adjustment Number by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(b) If there are not sufficient assets available to permit payment in full of the Series A Liquidation Preference and the liquidation preferences of all other classes and series of Preferred Stock, if any, that rank on a parity with the Series A Participating Preferred Stock, then the assets available for distribution will be distributed ratably to the holders of the Series A Participating Preferred Stock and such parity shares in proportion to their respective liquidation preferences.

(c) None of the merger or consolidation of the Corporation into or with another entity or the merger or consolidation of any other entity into or with the Corporation will be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of this Section 6.

Section 7. *Consolidation, Merger, etc.* If the Corporation enters into any consolidation, merger, combination, conversion, share exchange or other transaction in which the shares of Common Stock are exchanged for or changed into other stock, securities, cash or any other property (payable in kind), then in any such case the shares of Series A Participating Preferred Stock will at the same time be similarly exchanged or changed in an amount per share (subject to the provision for adjustment hereinafter set forth) equal to the Adjustment Number multiplied by 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 Common Stock is changed or exchanged.

Section 8. *No Redemption.* The shares of Series A Participating Preferred Stock will not be redeemable.

Section 9. *Ranking.* The Series A Participating Preferred Stock will rank junior to all other series of the Preferred Stock as to the payment of dividends and the distribution of assets, unless the terms of any such series will provide otherwise, and will rank senior to the Common Stock as to such matters.

Section 10. *Amendment.* At any time when any shares of Series A Participating Preferred Stock are outstanding, neither the Charter nor this Certificate of Designation will be amended in any manner that would materially alter or change the powers, preferences or special rights of the Series A Participating Preferred Stock so as to affect them adversely without the affirmative vote of the holders of at least two-thirds of the outstanding shares of Series A Participating Preferred Stock, voting separately as a class.

Section 11. *Fractional Shares of Preferred Stock.* Series A Participating Preferred Stock may be issued in fractions of a share that will entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series A Participating Preferred Stock.

* * *

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IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the [•] day of April, 2022.

TWITTER, INC.

By: _____
Name:
Title:

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**FORM OF
RIGHTS CERTIFICATE**

Certificate No. R-[•]

[•] Rights

NOT EXERCISABLE AFTER APRIL 14, 2023 OR SUCH EARLIER DATE AS THE RIGHTS ARE REDEEMED, EXCHANGED OR TERMINATED. THE RIGHTS ARE SUBJECT TO REDEMPTION, AT THE OPTION OF THE COMPANY (AS DEFINED BELOW), AT \$0.001 PER RIGHT, AND EXCHANGE, IN EACH CASE PURSUANT TO THE TERMS SET FORTH IN THE RIGHTS AGREEMENT (AS DEFINED BELOW). UNDER CERTAIN CIRCUMSTANCES, RIGHTS BENEFICIALLY OWNED BY AN ACQUIRING PERSON OR AN AFFILIATE OR ASSOCIATE OF AN ACQUIRING PERSON (AS SUCH TERMS ARE DEFINED IN THE RIGHTS AGREEMENT) AND ANY SUBSEQUENT HOLDER OF SUCH RIGHTS MAY BECOME NULL AND VOID. [THE RIGHTS REPRESENTED BY THIS RIGHTS CERTIFICATE ARE OR WERE BENEFICIALLY OWNED BY A PERSON WHO WAS OR BECAME AN ACQUIRING PERSON OR AN AFFILIATE OR ASSOCIATE OF AN ACQUIRING PERSON. ACCORDINGLY, THIS RIGHTS CERTIFICATE AND THE RIGHTS THAT IT REPRESENTS MAY BECOME NULL AND VOID IN THE CIRCUMSTANCES SPECIFIED IN SECTION 7(e) OF THE RIGHTS AGREEMENT.]¹

RIGHTS CERTIFICATE**TWITTER, INC.**

This certifies that _____, or registered assigns, is the registered owner of the number of Rights set forth above, each of which entitles the owner thereof, subject to the terms, provisions and conditions of the Rights Agreement, dated as of April 15, 2022 (the "**Rights Agreement**"), between Twitter, Inc., a Delaware corporation (the "**Company**"), and Computershare Trust Company, N.A., a federally chartered trust company (the "**Rights Agent**," which term will include any successor Rights Agent pursuant to the Rights Agreement), to purchase from the Company at any time after the Distribution Date (as such term is defined in the Rights Agreement) and prior to the Expiration Date (as such term is defined in the Rights Agreement) at the office of the Rights Agent designated for such purpose, or at the office of its successor as Rights Agent, one one-thousandth of a fully paid and nonassessable share of Series A Participating Preferred Stock, par value \$0.000005 per share (the "**Preferred Stock**"), of the Company, at an exercise price of \$210.00 per one one-thousandth of a share of Preferred Stock (the "**Exercise Price**"), upon presentation and surrender of this Rights Certificate with the Form of Election to Purchase and related Certificate duly executed. The number of Rights evidenced by this Rights Certificate (and the number of one one-thousandths of a share of Preferred Stock that may be purchased upon exercise hereof) set forth above, and

¹ The portion of the legend in brackets is to be inserted only if applicable and will replace the preceding sentence.

the Exercise Price per share set forth above, are the number and Exercise Price as of April 15, 2022 based on the Preferred Stock as constituted at such date. As provided in the Rights Agreement, the Exercise Price and the number and kind of Preferred Stock or other securities that may be purchased upon the exercise of the Rights evidenced by this Rights Certificate are subject to modification and adjustment upon the occurrence of certain events. The Company reserves the right to require prior to the occurrence of a Triggering Event (as such term is defined in the Rights Agreement) that a number of Rights be exercised so that only whole shares of Preferred Stock will be issued. Capitalized terms used in this Rights Certificate without definition will have the meanings ascribed to them in the Rights Agreement.

Upon the occurrence of a Section 11(a)(ii) Event, if the Rights evidenced by this Rights Certificate are beneficially owned by an Acquiring Person, an Affiliate or Associate of an Acquiring Person, a Post-Event Transferee, a Pre-Event Transferee, a Subsequent Transferee or any nominee of any of the foregoing, such Rights will become null and void and no holder hereof will have any right with respect to such Rights from and after the occurrence of such Section 11(a)(ii) Event.

This Rights Certificate is subject to all of the terms, provisions and conditions of the Rights Agreement, which terms, provisions and conditions are incorporated by reference and made a part of this Rights Certificate and to which reference is made for a full description of the rights, limitations of rights, obligations, duties and immunities of the Rights Agent, the Company and the holders of the Rights Certificates, which limitations of rights include the temporary suspension of the exercisability of such Rights under the specific circumstances set forth in the Rights Agreement. Copies of the Rights Agreement are on file at the principal executive offices of the Company and the above-mentioned office of the Rights Agent and are available without cost upon written request.

Subject to the provisions of the Rights Agreement, the Rights evidenced by this Rights Certificate may be redeemed by the Company, at its option, at a redemption price of \$0.001 per Right at any time prior to the earlier of (i) the Distribution Date or (ii) the Close of Business on the Final Expiration Date. In addition, under certain circumstances after any Person becomes an Acquiring Person, the Rights may be exchanged, in whole or in part, for Common Stock, or cash or other securities of the Company having essentially the same value or economic rights as such shares. Immediately upon the action of the Board authorizing any such exchange, and without any further action or any notice, the Rights (other than Rights that are not subject to such exchange) will terminate and the Rights will only enable holders to receive the Common Stock (or cash or other securities or assets of the Company) issuable upon such exchange.

This Rights Certificate, with or without other Rights Certificates, upon surrender at the office of the Rights Agent designated for such purpose, may be exchanged for another Rights Certificate or Rights Certificates of like tenor and date evidencing Rights entitling the holder to purchase a like number of one one-thousandths of a share of Preferred Stock as the Rights evidenced by the Rights Certificate or Rights Certificates surrendered will have entitled such holder to purchase. If this Rights Certificate is exercised in part, then the holder will be entitled to receive upon surrender hereof another Rights Certificate or Rights Certificates for the number of whole Rights not exercised.

No fractions of shares of Preferred Stock (other than fractions that are integral multiples of one one-thousandth of a share of Preferred Stock, which may, at the election of the Company, be evidenced by depositary receipts) will be issued upon the exercise of any Right. In lieu thereof, a cash payment will be made as provided in the Rights Agreement. The Company, at its election, may require that a number of Rights be exercised so that only whole shares of Preferred Stock would be issued.

No holder of this Rights Certificate, as such, will be entitled to vote or receive dividends or be deemed for any purpose the holder of the number of one one-thousandths of a share of Preferred Stock or any other securities of the Company that may at any time be issuable on the exercise or exchange hereof, nor will anything contained in herein or in the Rights Agreement be construed to confer upon the holder hereof, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action, or to receive notice of meetings or other actions affecting stockholders (except as specifically provided in the Rights Agreement), or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by this Rights Certificate will have been exercised or exchange in accordance with the Rights Agreement.

This Rights Certificate will not be valid or obligatory for any purpose until it has been countersigned by the Rights Agent.

WITNESS the signature of the proper officers of the Company and its corporate seal.

Dated as of _____, 202[•].

ATTEST:

TWITTER, INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

Countersigned:

COMPUTERSHARE TRUST COMPANY, N.A.,
as Rights Agent

By: _____
Name:
Title:

[Form of Reverse Side of Rights Certificate]

FORM OF ASSIGNMENT

(To be executed by the registered holder if such holder desires to transfer the Rights Certificate.)

FOR VALUE RECEIVED _____ sells, assigns and transfers unto

(Please print name and address of transferee)

this Rights Certificate, together with all right, title and interest therein, and irrevocably constitutes and appoints _____ as attorney-in-fact to transfer this Rights Certificate on the books of the Company, with full power of substitution.

Dated: _____

Signature

Signature Medallion Guaranteed:

Signatures must be guaranteed by a member or participant in the Medallion Signature Guarantee Program at a guarantee level acceptable to the Company's transfer agent. Guarantees by a notary public are not acceptable.

CERTIFICATE

The undersigned certifies, for the benefit of the Company and all holders of Rights and Common Stock, by checking the appropriate boxes that:

- (1) the Right(s) evidenced by this Rights Certificate are not Beneficially Owned and

- are
 are not

being sold, assigned and transferred by or on behalf of a Person who is or was an Acquiring Person, an Affiliate or Associate of an Acquiring Person, a Post-Event Transferee, a Pre-Event Transferee, a Subsequent Transferee or any nominee of any of the foregoing; and

- (2) after due inquiry and to the best knowledge of the undersigned, it

- did
 did not

acquire the Rights evidenced by this Rights Certificate from any Person who is, was or subsequently became an Acquiring Person, an Affiliate or Associate of an Acquiring Person, a Post-Event Transferee, a Pre-Event Transferee, a Subsequent Transferee or any nominee of any of the foregoing.

Dated: _____.

Signature

Signature Medallion Guaranteed:

Signatures must be guaranteed by a member or participant in the Medallion Signature Guarantee Program at a guarantee level acceptable to the Company's transfer agent. Guarantees by a notary public are not acceptable.

[Form of Reverse Side of Rights Certificate - continued]

FORM OF ELECTION TO PURCHASE

(To be executed if holder desires to exercise Rights represented by the Rights Certificate.)

To: Twitter, Inc. (the "Company")

The undersigned irrevocably elects to exercise _____ Rights represented by this Rights Certificate to purchase the number of one one-thousandths of a share of Preferred Stock (or such other securities of the Company or of any other Person that may be issuable upon the exercise of the Rights) issuable upon the exercise of such Rights and requests that certificates for such shares be issued in the name of and delivered to:

Please insert social security or other identifying number: _____

(Please print name and address)

If such number of Rights is not all of the Rights evidenced by this Rights Certificate, a new Rights Certificate for the balance remaining of such Rights will be registered in the name of, and delivered to:

Please insert social security or other identifying number: _____

(Please print name and address)

Dated: _____

Signature

Signature Medallion Guaranteed:

Signatures must be guaranteed by a member or participant in the Medallion Signature Guarantee Program at a guarantee level acceptable to the Company's transfer agent. Guarantees by a notary public are not acceptable.

CERTIFICATE

The undersigned certifies, for the benefit of the Company and all holders of Rights and Common Stock, by checking the appropriate boxes that:

- (1) the Right(s) evidenced by this Rights Certificate are not Beneficially Owned and

are

are not

being sold, assigned and transferred by or on behalf of a Person who is or was an Acquiring Person, an Affiliate or Associate of an Acquiring Person, a Post-Event Transferee, a Pre-Event Transferee, a Subsequent Transferee or any nominee of any of the foregoing; and

- (2) after due inquiry and to the best knowledge of the undersigned, it

did

did not

acquire the Rights evidenced by this Rights Certificate from any Person who is, was or subsequently became an Acquiring Person, an Affiliate or Associate of an Acquiring Person, a Post-Event Transferee, a Pre-Event Transferee, a Subsequent Transferee or any nominee of any of the foregoing.

Dated:_____.

Signature

Signature Medallion Guaranteed:

Signatures must be guaranteed by a member or participant in the Medallion Signature Guarantee Program at a guarantee level acceptable to the Company's transfer agent. Guarantees by a notary public are not acceptable.

[Form of Reverse Side of Rights Certificate - continued]

NOTICE

The signature in the foregoing Forms of Assignment and Election to Purchase, as the case may be, must conform to the name as written upon the face of this Rights Certificate in every particular, without alteration or enlargement or any change whatsoever.

IF THE CERTIFICATIONS SET FORTH IN THE FOREGOING FORMS OF ASSIGNMENT AND ELECTION TO PURCHASE, AS THE CASE MAY BE, ARE NOT COMPLETED, THEN THE COMPANY AND THE RIGHTS AGENT WILL DEEM THE BENEFICIAL OWNER OF THE RIGHTS EVIDENCED BY THIS RIGHT CERTIFICATE TO BE AN ACQUIRING PERSON, AN AFFILIATE OR ASSOCIATE OF AN ACQUIRING PERSON, A POST-EVENT TRANSFEREE, A PRE-EVENT TRANSFEREE, A SUBSEQUENT TRANSFEREE OR ANY NOMINEE OF ANY OF THE FOREGOING, AS THE CASE MAY BE, AND SUCH ASSIGNMENT OR ELECTION TO PURCHASE WILL NOT BE HONORED AND THE RIGHTS EVIDENCED BY THIS RIGHTS CERTIFICATE WILL BE DEEMED TO BE NULL AND VOID.

**FORM OF
SUMMARY OF RIGHTS

SUMMARY OF
PREFERRED STOCK RIGHTS AGREEMENT
OF
TWITTER, INC.**

On April 15, 2022, the Board of Directors (the "**Board**") of Twitter, Inc. (the "**Company**") authorized and declared a dividend distribution of one right (a "**Right**") for each outstanding share of common stock, par value \$0.000005 per share (the "**Common Stock**"), of the Company to stockholders of record as of the close of business on April 25, 2022 (the "**Record Date**"). Each Right entitles the registered holder to purchase from the Company one one-thousandth of a share of Series A Participating Preferred Stock, par value \$0.000005 per share (the "**Preferred Stock**"), of the Company at an exercise price of \$210.00 (the "**Exercise Price**"), subject to adjustment. The complete terms of the Rights are set forth in a Preferred Stock Rights Agreement (the "**Rights Agreement**"), dated as of April 15, 2022, between the Company and Computershare Trust Company, N.A., as rights agent.

The Board adopted the Rights Agreement to protect stockholders from coercive or otherwise unfair takeover tactics. In general terms, it works by imposing a significant penalty upon any person or group that acquires 15 percent or more of the shares of Common Stock without the approval of the Board. As a result, the overall effect of the Rights Agreement and the issuance of the Rights may be to render more difficult or discourage a merger, tender or exchange offer or other business combination involving the Company that is not approved by the Board. However, neither the Rights Agreement nor the Rights should interfere with any merger, tender or exchange offer or other business combination approved by the Board.

For those interested in the specific terms of the Rights Agreement, the following is a summary description. Please note, however, that this description is only a summary and is not complete, and should be read together with the entire Rights Agreement, which has been filed by the Company with the United States Securities and Exchange Commission as an exhibit to a Registration Statement on Form 8-A and a Current Report on Form 8-K. A copy of the Rights Agreement is available free of charge from the Company.

Distribution and Transfer of Rights; The Board has declared a dividend of one Right for each outstanding share of Common Stock. Prior to the Distribution Date referred to below:

Rights

Certificates:

- the Rights will be evidenced by and trade with the certificates for the Common Stock (or, with respect to any uncertificated Common Stock registered in book entry form, by notation in book entry), and no separate rights certificates will be distributed;
- new Common Stock certificates issued after the Record Date will contain a legend incorporating the Rights Agreement by reference (for uncertificated Common Stock registered in book entry form, this legend will be contained in a notation in book entry); and

- the surrender for transfer of any certificates for Common Stock (or the surrender for transfer of any uncertificated Common Stock registered in book entry form) will also constitute the transfer of the Rights associated with such Common Stock.

Rights will accompany any new shares of Common Stock that are issued after the Record Date.

Distribution Date: Subject to certain exceptions specified in the Rights Agreement, the Rights will separate from the Common Stock and become exercisable following (1) the 10th business day (or such later date as may be determined by the Board) after the public announcement that a person or group of affiliated or associated persons (such person or group, an **"Acquiring Person"**) has acquired beneficial ownership of 15 percent or more of the Common Stock or (2) the 10th business day (or such later date as may be determined by the Board) after a person or group announces a tender or exchange offer that would result in ownership by a person or group of 15 percent or more of the Common Stock. For purposes of the Rights Agreement, beneficial ownership is defined to include the ownership of derivative securities.

The date on which the Rights separate from the Common Stock and become exercisable is referred to as the **"Distribution Date."**

After the Distribution Date, the Company will mail Rights certificates to the Company's stockholders as of the close of business on the Distribution Date and the Rights will become transferable apart from the Common Stock. Thereafter, such Rights certificates alone will represent the Rights.

Preferred Stock Purchasable Upon Exercise of Rights: After the Distribution Date, each Right will entitle the holder to purchase, for the Exercise Price, one one-thousandth of a share of Preferred Stock having economic and other terms similar to that of one share of Common Stock. This portion of a share of Preferred Stock is intended to give the stockholder approximately the same dividend, voting and liquidation rights as would one share of Common Stock, and should approximate the value of one share of Common Stock.

More specifically, each one one-thousandth of a share of Preferred Stock, if issued, will:

- not be redeemable;
- entitle holders to quarterly dividend payments of \$0.001 per one one-thousandth of a share of Preferred Stock, or an amount equal to the dividend paid on one share of Common Stock, whichever is greater;
- entitle holders upon liquidation either to receive \$1 per one one-thousandth of a share of Preferred Stock or an amount equal to the payment made on one share of Common Stock, whichever is greater;
- have the same voting power as one share of Common Stock; and
- entitle holders to a payment per one one-thousandth of a share of Preferred Stock equal to the payment made on one share of Common Stock if the Common Stock is exchanged via merger, consolidation or a similar transaction.

Flip-In Trigger: If an Acquiring Person obtains beneficial ownership of 15 percent or more of the Common Stock, *then* each Right will entitle the holder thereof to purchase, for the Exercise Price, a number of shares of Common Stock (or, in certain circumstances, cash, property or other securities of the Company) having a then-current market value of twice the Exercise Price. However, the Rights are not exercisable following the occurrence of the foregoing event until such time as the Rights are no longer redeemable by the Company, as further described below.

Following the occurrence of an event set forth in preceding paragraph, all Rights that are or, under certain circumstances specified in the Rights Agreement, were beneficially owned by an Acquiring Person or certain of its transferees will be void.

Flip-Over Trigger: If, after an Acquiring Person obtains 15 percent or more of the Common Stock, (1) the Company merges into another entity, (2) an acquiring entity merges into the Company or (3) the Company sells or transfers more than 50 percent of its assets, cash flow or earning power, *then* each Right (except for Rights that have previously been voided as set forth above) will entitle the holder thereof to purchase, for the Exercise Price, a number of shares of common stock of the person engaging in the transaction having a then-current market value of twice the Exercise Price.

Redemption of the Rights: The Rights will be redeemable at the Company's option for \$0.001 per Right (payable in cash, Common Stock or other consideration deemed appropriate by the Board) at any time on or prior to the 10th business day (or such later date as may be determined by the Board) after the public announcement that an Acquiring Person has acquired

beneficial ownership of 15 percent or more of the Common Stock. Immediately upon the action of the Board ordering redemption, the Rights will terminate and the only right of the holders of the Rights will be to receive the \$0.001 redemption price. The redemption price will be adjusted if the Company undertakes a stock dividend or a stock split.

Exchange Provision:

At any time after the date on which an Acquiring Person beneficially owns 15 percent or more of the Common Stock and prior to the acquisition by the Acquiring Person of 50 percent of the Common Stock, the Board may exchange the Rights (except for Rights that have previously been voided as set forth above), in whole or in part, for Common Stock at an exchange ratio of one share of Common Stock per Right (subject to adjustment). In certain circumstances, the Company may elect to exchange the Rights for cash or other securities of the Company having a value approximately equal to one share of Common Stock.

Expiration of the Rights:

The Rights expire on the earliest of (1) 5:00 p.m., New York City time, on April 14, 2023 (unless such date is extended) or (2) the redemption or exchange of the Rights as described above.

Amendment of Terms of the Rights Agreement and Rights:

The terms of the Rights and the Rights Agreement may be amended in any respect without the consent of the holders of the Rights on or prior to the Distribution Date. Thereafter, the terms of the Rights and the Rights Agreement may be amended without the consent of the holders of Rights in order to (1) cure any ambiguities, (2) shorten or lengthen any time period pursuant to the Rights Agreement or (3) make changes that do not adversely affect the interests of holders of the Rights.

Voting Rights; Other Stockholder Rights:

The Rights will not have any voting rights. Until a Right is exercised, the holder thereof, as such, will have no separate rights as stockholder of the Company.

Anti-Dilution Provisions:

The Board may adjust the Exercise Price, the number of shares of Preferred Stock issuable and the number of outstanding Rights to prevent dilution that may occur from a stock dividend, a stock split or a reclassification of the Preferred Stock or Common Stock.

With certain exceptions, no adjustments to the Exercise Price will be made until the cumulative adjustments amount to at least one percent of the Exercise Price. No fractional shares of Preferred Stock will be issued and, in lieu thereof, an adjustment in cash will be made based on the current market price of the Preferred Stock.

Taxes:

The distribution of Rights should not be taxable for federal income tax purposes. However, following an event that renders the Rights exercisable or upon redemption of the Rights, stockholders may recognize taxable income.

**Twitter Adopts Limited Duration Shareholder Rights Plan,
Enabling All Shareholders to Realize Full Value of Company**

SAN FRANCISCO, April 15, 2022 – Twitter, Inc. (NYSE: TWTR) today announced that its Board of Directors has unanimously adopted a limited duration shareholder rights plan (the “Rights Plan”). The Board adopted the Rights Plan following an unsolicited, non-binding proposal to acquire Twitter.

The Rights Plan is intended to enable all shareholders to realize the full value of their investment in Twitter. The Rights Plan will reduce the likelihood that any entity, person or group gains control of Twitter through open market accumulation without paying all shareholders an appropriate control premium or without providing the Board sufficient time to make informed judgments and take actions that are in the best interests of shareholders.

The Rights Plan does not prevent the Board from engaging with parties or accepting an acquisition proposal if the Board believes that it is in the best interests of Twitter and its shareholders.

The Rights Plan is similar to other plans adopted by publicly held companies in comparable circumstances. Under the Rights Plan, the rights will become exercisable if an entity, person or group acquires beneficial ownership of 15% or more of Twitter’s outstanding common stock in a transaction not approved by the Board. In the event that the rights become exercisable due to the triggering ownership threshold being crossed, each right will entitle its holder (other than the person, entity or group triggering the Rights Plan, whose rights will become void and will not be exercisable) to purchase, at the then-current exercise price, additional shares of common stock having a then-current market value of twice the exercise price of the right.

The Rights Plan will expire on April 14, 2023.

Additional information regarding the Rights Plan will be contained in a Form 8-K to be filed by Twitter with the U.S. Securities and Exchange Commission.

About Twitter, Inc. (NYSE: TWTR)

Twitter is what’s happening and what people are talking about right now. To learn more, visit about.twitter.com and follow @Twitter. Let’s talk.

Contacts

Investors:

ir@twitter.com

Press

press@twitter.com

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

ELON MUSK,

Defendant.

Case No. 25-cv-000105-SLS

**[PROPOSED] ORDER GRANTING
PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S
MOTION FOR SUMMARY JUDGMENT AS TO LIABILITY**

Plaintiff Securities and Exchange Commission (“SEC”) moved pursuant to Rule 56 of the Federal Rules of Civil Procedure for summary judgment as to liability on its claim that Defendant Elon Musk violated Section 13(d) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 13d-1 thereunder. The Court finds that “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

This Court has jurisdiction over this claim and venue is proper. There is no genuine dispute that during the relevant time period, shares of Twitter, Inc.’s (“Twitter”) common stock were voting-class equity securities registered with the SEC pursuant to Section 12 of the Exchange Act. There is also no genuine dispute that by March 14, 2022, Musk had acquired beneficial ownership of more than five percent of the outstanding shares of Twitter common stock. Under Section 13(d) of

the Exchange Act and the Rule 13d-1 thereunder that was in effect during the relevant time, Musk was required to file a statement with the information required by Schedule 13D (or if eligible, Schedule 13G) within ten days—or by March 24, 2022. There is no genuine dispute that Musk did not make the required filing by the deadline and thus violated Section 13(d) of the Exchange Act and Rule 13d-1 thereunder.

For these reasons, the Court GRANTS the SEC's motion, GRANTS summary judgment as to liability and FINDS that Defendant Elon Musk violated Section 13(d) of the Exchange Act and Rule 13d-1 thereunder. The Court will set a schedule for remedies briefing and further proceedings by separate order.

Dated: _____

SPARKLE L. SOOKNANAN
UNITED STATES DISTRICT JUDGE

APPENDIX OF PERSONS TO BE SERVED PURSUANT TO LCvR 7(k)

Melissa J. Armstrong
Zachary A. Avallone
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
202.551.4479 (Avallone)
avallonez@sec.gov
202.551.4724 (Armstrong)
armstrongm@sec.gov

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Counsel for Defendant Elon Musk