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**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 10-Q**

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

For the quarterly period ended August 31, 2003

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

Commission file number 001-16111



**GLOBAL PAYMENTS INC.**

(Exact name of registrant as specified in charter)

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**Georgia**  
(State or other jurisdiction of  
incorporation or organization)

**Four Corporate Square, Atlanta, Georgia**  
(Address of principal executive offices)

**58-2567903**  
(I.R.S. Employer  
Identification No.)

**30329-2009**  
(Zip Code)

**Registrant's telephone number, including area code: 404-728-2719**

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

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

The number of shares of the issuer's common stock, no par value outstanding as of October 2, 2003 was 37,354,460.

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**GLOBAL PAYMENTS INC.**  
**FORM 10-Q**  
**For the quarterly period ended August 31, 2003**

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PART I – FINANCIAL INFORMATION

Item 1. Financial Statements

UNAUDITED CONSOLIDATED STATEMENTS OF INCOME  
GLOBAL PAYMENTS INC.

(In thousands, except per share data)

	Three Months Ended August 31,	
	2003	2002
Revenues	\$ 136,464	\$ 127,728
Operating expenses:		
Cost of service	62,162	66,886
Sales, general and administrative	45,541	35,525
Restructuring	1,580	—
	109,283	102,411
Operating income	27,181	25,317
Other income (expense):		
Interest and other income	324	270
Interest and other expense	(575)	(1,008)
Minority interest in earnings	(1,650)	(1,236)
	(1,901)	(1,974)
Income before income taxes	25,280	23,343
Provision for income taxes	9,455	8,730
Net income	\$ 15,825	\$ 14,613
Basic earnings per share	\$ 0.43	\$ 0.40
Diluted earnings per share	\$ 0.41	\$ 0.39

*See Notes to Unaudited Consolidated Financial Statements.*

**CONSOLIDATED BALANCE SHEETS**  
**GLOBAL PAYMENTS INC.**

(In thousands, except share data)

	<u>August 31,</u> <u>2003</u>	<u>May 31,</u> <u>2003</u>
	<u>(Unaudited)</u>	
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 96,120	\$ 38,010
Accounts receivable, net of allowance for doubtful accounts of \$1,374 and \$733, respectively	41,673	44,929
Claims receivable, net of allowance for losses of \$4,040 and \$3,193, respectively	789	608
Merchant processing receivable, net	3,166	34,170
Inventory	1,066	1,348
Deferred income taxes	5,096	5,096
Prepaid expenses and other current assets	4,476	4,042
	<u>152,386</u>	<u>128,203</u>
Property and equipment, net	50,271	51,785
Goodwill, net	161,216	161,216
Other intangible assets, net	135,021	137,898
Other	5,129	5,132
	<u>504,023</u>	<u>484,234</u>
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
Current liabilities:		
Obligations under capital leases	1,200	1,456
Accounts payable and accrued liabilities	57,842	58,781
Income taxes payable	9,293	2,624
	<u>68,335</u>	<u>62,861</u>
Obligations under capital leases, net of current portion	2,965	3,251
Deferred income taxes	19,344	19,344
Other long-term liabilities	9,157	9,111
	<u>99,801</u>	<u>94,567</u>
Commitments and contingencies		
Minority interest in equity of subsidiaries	22,929	23,241
Shareholders' equity:		
Preferred stock, no par value; 5,000,000 shares authorized and none issued	—	—
Common stock, no par value; 200,000,000 shares authorized; 37,199,878 and 37,132,054 shares issued and outstanding at August 31, 2003 and May 31, 2003, respectively	—	—
Paid-in capital	288,270	286,786
Retained earnings	81,920	67,582
Deferred compensation	(799)	(965)
Accumulated other comprehensive loss	11,902	13,023
	<u>381,293</u>	<u>366,426</u>
Total liabilities and shareholders' equity	<u>\$ 504,023</u>	<u>\$ 484,234</u>

*See Notes to Unaudited Consolidated Financial Statements.*

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**GLOBAL PAYMENTS INC.**

(In thousands)

	Three Months Ended	
	August 31,	
	2003	2002
Cash flows from operating activities:		
Net income	\$ 15,825	\$ 14,613
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	4,642	4,977
Amortization of acquired intangibles	2,877	2,883
Provision for operating losses and bad debts	1,288	2,580
Minority interest in earnings	1,650	1,236
Other, net	166	294
Changes in operating assets and liabilities, net of the effects of acquisitions:		
Accounts receivable, net	3,248	(4,449)
Merchant processing, net	5,570	(2,406)
Inventory	282	(33)
Prepaid expenses and other assets	(431)	(1,027)
Accounts payable and accrued liabilities	(893)	(5,345)
Income taxes payable	6,669	6,405
Net cash provided by operating activities	40,893	19,742
Cash flows from investing activities:		
Capital expenditures	(3,128)	(5,201)
Business development, net of acquired cash	—	(169)
Net cash used in investing activities	(3,128)	(5,370)
Cash flows from financing activities:		
Net payments on line of credit	—	(13,500)
Net borrowings on line of credit restricted for merchant funding	23,973	—
Principal payments under capital lease arrangements	(542)	(676)
Stock issued under employee stock plans	1,484	1,259
Dividends paid	(1,487)	(1,475)
Distributions to minority interests	(1,962)	(1,680)
Net cash provided by (used in) financing activities	21,466	(16,072)
Effect of exchange rate changes on cash	(1,121)	(154)
Increase (Decrease) in cash and cash equivalents	58,110	(1,854)
Cash and cash equivalents, beginning of period	38,010	19,194
Cash and cash equivalents, end of period	\$ 96,120	\$ 17,340

*See Notes to Unaudited Consolidated Financial Statements.*

**NOTES TO UNAUDITED CONSOLIDATED  
FINANCIAL STATEMENTS  
AUGUST 31, 2003**

**NOTE 1—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

*Business, Consolidation and Presentation*—Global Payments Inc. (“Global Payments” or the “Company”) is an integrated provider of high volume electronic transaction processing and value-added end-to-end information services and systems to merchants, multinational corporations, financial institutions, and government agencies. These services are marketed to customers within the merchant services and the funds transfer businesses through various sales channels.

The unaudited consolidated financial statements include the accounts of the Company and its majority-owned subsidiaries. These financial statements have been prepared on the historical cost basis in accordance with accounting principles generally accepted in the United States, and present the Company’s financial position, results of operations, and cash flows. Intercompany transactions have been eliminated in consolidation.

We have prepared the financial statements included herein, without audit pursuant to the rules and regulations of the United States Securities and Exchange Commission. Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States have been condensed or omitted pursuant to such rules and regulations, although the Company believes that the disclosures are adequate and the information presented is not misleading. It is suggested that these financial statements be read in conjunction with the consolidated financial statements and notes thereto included in the Company’s Form 10-K for the fiscal year ended May 31, 2003. In the opinion of management, the information furnished reflects adjustments of a normal and recurring nature and include those necessary for a fair presentation of the financial information for the interim periods reported.

*Use of estimates*—The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make certain estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements, as well as the reported amounts of revenues and expenses during the reported period. Actual results could differ from those estimates.

*Revenue*—Card information and transaction processing services revenue are primarily based on a percentage of transaction value or on a specified amount per transaction, and is recognized as such services are performed. Revenue for processing services provided directly to merchants is recorded net of interchange fees charged by credit card associations, which are not controlled by the Company.

Check guarantee services include the process of electronically verifying the check being presented to the Company’s merchant customer, through an extensive database. The Company generally guarantees the face value of the verified and guaranteed check to the merchant customer. If a verified and guaranteed check is dishonored, the Company reimburses the merchant for the check’s guaranteed value, and pursues collection from the delinquent checkwriter. The Company has the right to collect the full amount of the check from the checkwriter but has historically recovered approximately 50% to 55% of the guaranteed, dishonored checks. The Company establishes a claims receivable from the delinquent checkwriter for the full amount of the guaranteed check and a valuation allowance for this activity based on historical and projected loss experience. See *Reserve for Operating Losses* below.

Revenue for the check guarantee offering is primarily derived from a percentage of the face value of each guaranteed check. The Company recognizes revenue upon satisfaction of its guarantee obligation to the merchant customer. The check guarantee offering also earns revenue based on fees collected from delinquent checkwriters which is recognized when collected, as collectibility is not reasonably assured until that point.

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Check verification services are similar to the services provided in the check guarantee offering, except the Company does not guarantee the verified checks. Revenue for this offering is primarily derived from fees collected from delinquent checkwriters and is recognized when collected, as collectibility is not reasonably assured until that point. This offering also earns revenue based on a fixed amount each merchant pays for each check that is verified. This revenue is recognized when the transaction is processed, since the Company has no further obligations associated with the transaction.

Terminal management products and services consist of electronic transaction processing terminal sales and rentals, terminal set-up, telephone training and technical support. Revenue associated with the terminal sale, set-up and telephone training is considered a single earnings process and is recognized when the set-up and telephone training is completed, and the merchant customer can begin processing transactions. Terminal rental revenues are recognized when the service is provided. Revenue associated with technical support is considered an independent earnings process and is recognized based on either a maintenance agreement, which is recognized on a straight-line basis over the maintenance contract term, or based on time and materials when the support is completed.

*Merchant processing receivable/payable*—The merchant processing receivable/payable results from timing differences in the Company's settlement process and changes in a line of credit that is available only to pay merchants. These timing differences are primarily due to the fluctuations in volume and timing of credit and debit card sales volume funded to merchants and the settlement received from the card associations and debit networks.

*Reserve for operating losses*—The Company processes credit card transactions for direct merchants. The Company's merchant customers have the liability for any charges properly reversed by the cardholder and for any sales credits issued to cardholders. In the event, however, that the Company is not able to collect such amount from the merchants, due to merchant fraud, insolvency, bankruptcy or any other reason, the Company may be liable for any such reversed charges. The Company requires cash deposits, guarantees, letters of credit and other types of collateral by certain merchants to minimize any such contingent liability. The Company also utilizes a number of systems and procedures to manage merchant risk.

The Company recognizes revenue based on a percentage of the gross amount charged and has a potential liability for the full amount of the charge. The Company establishes valuation allowances for operational losses based primarily on historical experience and other relevant factors. Economic downturns or increases in merchant fraud may result in significant increases in credit related losses. As of August 31, 2003 and May 31, 2003, \$6.0 million and \$5.4 million, respectively, was reserved for losses associated with the Company's merchant card processing operations. The expense associated with the valuation allowance is included in cost of service in the accompanying unaudited consolidated statements of income.

The Company also has a check guarantee business. Similar to the credit card business, the Company charges its merchants a percentage of the gross amount of the check and guarantees payment of the check to the merchant in the event the check is not honored by the checkwriter's bank. The Company has the right to collect the full amount of the check from the checkwriter but has not historically recovered 100% of the guaranteed checks. The Company establishes a valuation allowance for this activity based on historical and projected loss experiences. As of August 31, 2003 and May 31, 2003, the Company had a check guarantee reserve of \$4.0 million and \$3.2 million, respectively. The expense associated with the valuation allowance is included in cost of service in the accompanying unaudited consolidated statements of income. The estimated check returns and recovery amounts are subject to the risk that actual amounts returned and recovered in the future may differ significantly from estimates used in calculating the valuation allowance.

*Goodwill and Other Intangibles Assets*—On July 20, 2001, the Financial Accounting Standards Board issued Statements of Financial Accounting Standards No. 141, "Business Combinations" ("SFAS No. 141") and No. 142, "Goodwill and Other Intangible Assets" ("SFAS No. 142"). SFAS No. 141 requires that all business combinations initiated after June 30, 2001 be accounted for under the purchase method. SFAS No. 142 eliminates the amortization of goodwill and certain other intangible assets and requires that goodwill be evaluated for impairment at least annually by applying a fair value-based test. Global Payments adopted SFAS No. 142 in the first quarter of fiscal 2002. In accordance with this new standard, the Company discontinued the amortization of goodwill and certain intangible assets that were determined to have an indefinite life.

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Global Payments completed the testing for impairment of goodwill as of June 1, 2002 using the present value of expected future cash flows and determined that the fair value of the reporting unit exceeded the carrying amount of the net assets, including goodwill of the reporting unit. The Company completed its annual goodwill impairment review as of June 1, 2003 and determined that no impairment charge to goodwill was required.

Other intangible assets primarily represent customer lists and merchant contracts associated with acquisitions. Customer lists and merchant contracts are amortized using the straight-line method over their estimated useful lives of 10 to 30 years. The useful lives for customer lists/merchant contracts are determined based primarily on information concerning start/stop dates and yearly attrition. The Company evaluated the remaining useful lives for other intangible assets as of June 1, 2003 and determined them to be appropriate.

*Segment disclosure*—The Company adopted Statement of Financial Accounting Standards No. 131, “*Disclosure About Segments of an Enterprise and Related Information*” (“SFAS No. 131”). The Company’s chief operating decision making group currently operates one reportable segment—electronic transaction processing—therefore the majority of the disclosures required by SFAS No. 131 do not apply to the Company. The Company’s measure of segment profit is operating income. The Company’s results of operations and its financial condition are not significantly reliant upon any single customer. Revenues from external customers from the Company’s service offerings are as follows:

	Three Months Ended August 31,	
	2003	2002
	(in thousands)	
Merchant services	\$ 133,552	\$ 124,602
Funds transfer	2,912	3,126
	<u>\$ 136,464</u>	<u>\$ 127,728</u>

*Earnings per share*—Basic earnings per share is computed by dividing reported earnings available to common shareholders by weighted average shares outstanding during the period. Earnings available to common shareholders is the same as reported net income for all periods presented.

Diluted earnings per share is computed by dividing reported earnings available to common shareholders by weighted average shares outstanding during the period and the impact of securities that, if exercised, would have a dilutive effect on earnings per share. All options with an exercise price less than the average market share price for the period generally are assumed to have a dilutive effect on earning per share. The dilutive effect of stock options was 1.2 million shares and 0.9 million shares for the three months ended August 31, 2003 and 2002, respectively. The diluted share base for the three months ended August 31, 2003 excludes incremental shares of 0.6 million related to employee stock options. These shares were excluded due to their anti-dilutive effect as a result of their option exercise prices being greater than the market price of the common shares. No additional securities were outstanding that could potentially dilute basic earnings per share that were not included in the computation of diluted earnings per share.

The following tables set forth the computation of basic and diluted earnings per share for the three months ended August 31, 2003 and 2002:

	Three Months Ended August 31,					
	2003			2002		
	Income	Shares	Per Share	Income	Shares	Per Share
	(in thousands, except per share data)					
Basic EPS:						
Net income available to common shareholders	\$ 15,825	37,145	\$ 0.43	\$ 14,613	36,838	\$ 0.40
Diluted EPS:						
Net income available to common shareholders	\$ 15,825	38,310	\$ 0.41	\$ 14,613	37,776	\$ 0.39



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Effective March 1, 2003, Global Payments adopted Statements of Financial Accounting Standard No. 148, "Accounting for Stock-Based Compensation—Transition and Disclosure" ("SFAS No. 148"). SFAS No. 148 addresses alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation. In addition, SFAS No. 148 amends the disclosure requirements of Statements of Financial Accounting Standard No. 123, "Accounting for Stock-Based Compensation" ("SFAS No. 123") to require prominent disclosure in both annual and interim financial statements about the method of accounting for stock-based employee compensation and the effect of the method used on reported results.

At August 31, 2003, the Company has three stock-based compensation plans. These include the Global Payments Inc. 2000 Long-Term Incentive Plan, as amended and restated ("The 2000 Plan"), the Non-Employee Director Stock Option Plan and the Employee Stock Purchase Plan.

The Company accounts for options issued as stock-based compensation under the recognition and measurement principles of APB Opinion No. 25, "Accounting for Stock Issued to Employees", and related interpretations. For options issued as stock-based employee compensation, no cost is reflected in net income, as all options granted under the plans have an exercise price equal to the market value of the underlying common stock on the date of grant. Performance shares granted as restricted stock under The 2000 Plan are recorded as deferred compensation, a reduction of shareholders' equity, based on the quoted fair market value of the Company's common stock at the award date. Compensation expense on restricted stock is recognized ratably during the vesting period of the award. The following table illustrates the effect on net income and earnings per share if the Company had applied the fair value recognition provisions of SFAS No. 123, to all stock-based employee compensation.

	Three Months Ended August 31,	
	2003	2002
	(in thousands, except per share data)	
Net income:		
As reported	\$ 15,825	\$ 14,613
Total stock-based employee compensation expense determined under fair value method for all awards, net of related tax effects	(738)	(870)
Pro forma net income	<u>\$ 15,087</u>	<u>\$ 13,743</u>
Basic earnings per share		
As reported	\$ 0.43	\$ 0.40
Pro forma	\$ 0.41	\$ 0.37
Diluted earnings per share:		
As reported	\$ 0.41	\$ 0.39
Pro forma	\$ 0.39	\$ 0.36

### NOTE 2—COMPREHENSIVE INCOME

The components of comprehensive income for the three months ended August 31, 2003 and 2002 are as follows:

	Three Months Ended August 31,	
	2003	2002
	(in thousands)	
Net income	\$ 15,825	\$ 14,613
Foreign currency translation	(703)	(96)
Total comprehensive income	<u>\$ 15,122</u>	<u>\$ 14,517</u>

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**NOTE 3—RESTRUCTURING**

**Fiscal 2003 Restructuring Activities**

During the fourth quarter of fiscal 2003, the Company, consistent with its strategy to leverage infrastructure and consolidate operations, committed to a plan to close three locations and consolidate these and other functions into existing locations. The plan requires associated management and staff reductions, contract termination and other facility closure costs. The Company started executing the plan in April 2003 and expects to be completed by the fourth quarter of fiscal 2004. The Company incurred restructuring charges associated with these activities in the fourth quarter of fiscal 2003 and the first quarter of fiscal 2004 as follows:

	Total Expected Charge	Charges Incurred in Prior Period	Charges Incurred in First Quarter Fiscal 2004	Cumulative Charges Incurred as of August 31, 2003
	(in thousands)			
One-time employee termination benefits	\$ 3,900	\$ 1,657	\$ 1,536	\$ 3,193
Contract termination costs	4,000	—	40	40
Other associated costs	300	—	4	4
<b>Total</b>	<b>\$ 8,200</b>	<b>\$ 1,657</b>	<b>\$ 1,580</b>	<b>\$ 3,237</b>

The charge incurred for the quarter ended August 31, 2003 is reflected in the accompanying Unaudited Consolidated Statement of Income under the caption “Restructuring”.

As of August 31, 2003, \$2.3 million of the fiscal 2003 restructuring activities remains accrued as a current liability. The following is a reconciliation of the accrual associated with these activities.

	Liability Balance as of May 31, 2003	Costs Incurred During Fiscal 2004	Costs Paid During Fiscal 2004	Liability Balance as of August 31, 2003
	(in thousands)			
One-time employee termination benefits	\$ 1,657	\$ 1,536	\$ 857	\$ 2,336
Contract termination costs	—	40	40	—
Other associated costs	—	4	—	4
<b>Total</b>	<b>\$ 1,657</b>	<b>\$ 1,580</b>	<b>\$ 897</b>	<b>\$ 2,340</b>

**Fiscal 2002 Restructuring Activities**

During the fourth quarter of fiscal 2002 the Company completed plans for the closing of four locations including associated management and staff reductions. Total charges for the year ended May 31, 2002 were categorized as follows:

	Total	Cash	Non-cash
	(In thousands)		
Closed or planned closings of facilities	\$ 1,512	\$ 910	\$ 602
Severance and related costs	6,715	5,884	831
Other costs	2,766	—	2,766
<b>Totals</b>	<b>\$ 10,993</b>	<b>\$ 6,794</b>	<b>\$ 4,199</b>

The charges related to facilities represented locations that were either already closed or had management approved plans to be closed within twelve months of incurring the charges. These charges included future minimum lease and operating payments, commencing on the planned exit timing, for all noncancelable leases under remaining terms of the locations identified, net of current and estimated future sublease income. The charges also included

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facility exit costs and an estimate of the net book value of leasehold improvements and furniture and fixtures that will not be realizable when the facilities are vacated. Normal lease payments, operating costs and depreciation continued to be charged to operating expenses prior to actually vacating the specific facilities.

The severance and related costs arose from the Company's actions to reduce personnel in areas of redundant operations and activities. These operations are those that related to the facility consolidation, acquisitions and integration of acquisition functions. The charges reflect specifically identified employees whose employment will be terminated and were incurred by the time the charges were incurred. The non-cash costs associated with the severance and related costs reflected compensation expense due to the acceleration of the vesting of certain stock options for those employees that were terminated and had options outstanding.

The other costs incurred in the year ended May 31, 2002 related to the book value of certain current assets that were deemed to be unrecoverable after the purchase of MasterCard's remaining minority interest in Global Payment Systems, LLC.

The cash items were accrued at the time the charges were incurred. As of August 31, 2003, \$1.3 million of the cash portion of the restructuring charges from fiscal 2002 remains accrued as a current liability in the accrued liabilities section of the balance sheets as follows:

	2002 Charge		
	Original Total	Payments to Date	Remaining Liability
			(in thousands)
Closed or planned closings of facilities	\$ 910	\$ 642	\$ 268
Severance and related costs	5,884	4,804	1,080
Totals	\$6,794	\$ 5,446	\$ 1,348

## NOTE 4—COMMITMENTS AND CONTINGENCIES

The Company currently processes card transactions for Air Canada, the single largest airline in Canada, which according to its Revised Renewal Annual Information Form, dated May 15, 2003, held approximately 60% of the Canadian domestic market share and approximately 43% of the Canadian transborder market share during the first quarter of 2003. The Company's revenue from this relationship represents less than 1% of its consolidated revenue. On April 1, 2003, Air Canada filed for and obtained protection from the court under the Companies' Creditors Arrangement Act, which generally allows a company to reorganize while it continues normal operations with the assistance of a court-appointed Monitor. The court order provides for a general stay that precludes its creditors and others from taking any action against Air Canada. The purpose of the stay is to provide Air Canada with relief designed to stabilize operations and business relationships with customers, vendors, employees and creditors. The court order also provides that Air Canada shall honor all airline tickets in the usual and ordinary course of business.

In the event that Air Canada's restructuring is not successful and it is liquidated, there will likely be limited assets available from which to pay creditor claims. If the restructuring is not successful and any of Air Canada's liability for deferred ticket revenues is unfunded and such charges are properly reversed by VISA and MasterCard cardholders, the Company may be liable for such reversed charges under the chargeback rules of these card associations. The Company maintains a reserve for such reversed charges, but has not made any specific adjustment to that allowance as a result of the Air Canada situation, as described under *Reserve for operating losses* in Note 1 in the Notes to Unaudited Consolidated Financial Statements. According to the Tenth Report of the Monitor dated September 24, 2003, deferred ticket revenues for Air Canada as of August 31, 2003, representing advance ticket sales collected, were approximately \$547 million (Canadian), or \$395 million (U.S.), based on then existing exchange rates. In conjunction with the acquisition of the merchant acquiring business of CIBC in March 2001, CIBC agreed to reimburse Global Payments by the amount, if any, that Air Canada's VISA chargebacks and credit losses for any 12 month period exceeds twice the level of VISA chargebacks and credit losses experienced during the one-year period ending October 31, 1999. This reimbursement obligation is scheduled to expire on March 20, 2004. Based on the affidavit of an Air Canada officer, 80% of Air Canada customers elect to pay using credit cards and, of those credit card users, 29.3% use VISA cards and 8.4% use MasterCard cards. Therefore, based on the information contained in that affidavit, the information contained in Tenth Report of the Monitor, and taking into consideration CIBC's

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reimbursement obligations for Air Canada's chargebacks and credit losses, the Company estimates that its maximum potential chargeback liability exposure relative to Air Canada as of August 31, 2003 is \$37-\$46 million (Canadian), or \$27-\$33 million (U.S.), based on then existing exchange rates.

Management of the Company is continuing to closely monitor Air Canada's restructuring. Based on information currently available, which primarily consists of publicly available information, management believes a material loss is unlikely as long as Air Canada continues to honor all airline tickets in the ordinary course of business.

**NOTE 5—SUPPLEMENTAL CASH FLOW INFORMATION**

Supplemental cash flow disclosures for the three months ended August 31, 2003 and 2002 are as follows:

	Three Months Ended August 31,	
	2003	2002
	(in thousands)	
Supplemental cash flow information:		
Income taxes paid, net of refunds	\$ 2,781	\$ 2,180
Interest paid	186	243

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

For an understanding of the significant factors that influenced our results, the following discussion should be read in conjunction with our unaudited consolidated financial statements and related notes appearing elsewhere in this report. This management's discussion and analysis should also be read in conjunction with the management's discussion and analysis and consolidated financial statements included in our Form 10-K for the fiscal year ended May 31, 2003.

#### **General**

We are a leading mid-market merchant acquirer in the United States, and the largest, publicly traded independent VISA and MasterCard acquirer in Canada. We provide a wide range of end-to-end electronic transaction processing solutions to merchants, corporations, financial institutions and government agencies. Our products and services are marketed through a variety of distinct sales channels that include a large, dedicated direct sales force, independent sales organizations, or ISOs, independent sales representatives, an internal telesales group, trade associations, alliance bank relationships and financial institutions.

We operate in one business segment, electronic transaction processing, and provide products and services through our merchant services and funds transfer offerings. Approximately 98% of our current revenue base is from merchant services offerings. The remaining 2% of our total revenue is from our funds transfer service offerings.

Merchant services include credit and debit card transaction processing, business-to-business purchase card transaction processing, check guarantee, check verification and recovery, and terminal management services. We have two basic business models. In one model, which we refer to as "direct" merchant services, we have a salaried and commissioned sales force and ISOs that sell our end-to-end services directly to merchants. In the other model, which we refer to as "indirect" merchant services, we provide unbundled products and services primarily to financial institutions that in turn resell to their merchants.

#### **Business Development**

On August 11, 2003, we entered into a definitive agreement to acquire Latin America Money Services, LLC, or LAMS, a holding company which directly owns a majority of the outstanding equity interest in DolEx Dollar Express, Inc., or DolEx, and indirectly owns a majority of the outstanding equity interest in DolEx Envios S.A. de C.V., a Mexican subsidiary of DolEx. The transaction, which is structured as a merger between a newly created subsidiary of Global Payments and LAMS, is subject to regulatory approvals. We are also acquiring the remaining minority interest in DolEx, so that following the transaction, DolEx will be a wholly-owned, indirect subsidiary of Global Payments Inc. The purchase price is \$190 million, plus a contingent payment of up to \$10 million based on the calendar year 2003 financial results of DolEx. We expect to finance approximately half of the purchase price through cash on hand and the remaining amount through our existing line of credit and notes payable. We intend to operate the business in a manner consistent with DolEx's historical operations and plan to include this business in our funds transfer offering, with a consumer-to-consumer focus. Once the transaction closes, we will re-name the funds transfer offering to money transfer.

We have made progress toward completing this transaction by recently completing our Hart-Scott-Rodino Act filing, and in each of the states where DolEx is a licensed money transmitter, we have applied for required license transfers or given notice of the transaction, depending on each state's statutory requirements. Several states have already either approved the transaction or confirmed that they have no objections, and we are working with the remaining states to obtain approval. We do not anticipate any delay in these respective filings and expect a closing of this acquisition before the end of calendar year 2003.

Founded in 1996, DolEx is a leading provider of consumer-to-consumer electronic money transfer services to the Latino community living in the U.S. and their Latin American families abroad. DolEx provides services that allow customers to send money from its network of retail branches in the U.S. to beneficiaries in Latin America. The company has its headquarters in Arlington, Texas, operates hundreds of branches across the U.S. in areas with large Latino populations, and has settlement arrangements with thousands of retail, bank and exchange house

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locations in Latin America. For the year ended December 31, 2002, DoEx and DoEx Envios reported total revenues of \$69.9 million.

### **Components of Income Statement**

We derive our revenues from three primary sources including charges based on volumes and fees for merchant services, charges based on transaction quantity, and equipment sales, leases and service fees. Revenues generated by these areas depend upon a number of factors, such as demand for and price of our services, the technological competitiveness of our product offerings, our reputation for providing timely and reliable service, competition within our industry, and general economic conditions.

Cost of service consists primarily of the cost of network telecommunications capability, transaction processing systems, depreciation and occupancy costs associated with the facilities performing these functions, and provisions for operating losses.

Sales, general and administrative expenses consist primarily of salaries, wages and related expenses paid to sales personnel, non-revenue producing customer support functions and administrative employees and management, commissions to independent contractors and ISOs, advertising costs, other selling expenses, employee training costs, and occupancy of leased space directly related to these functions.

Other income and expense primarily consists of minority interest in earnings, interest income and expense and other miscellaneous items of income and expense.

### **Results of Operations**

In the three months ending August 31, 2003, revenue increased \$8.8 million or 7% to \$136.5 million from \$127.7 million in the prior year's comparable period. The increase in revenue reflects high-teen transaction growth in our domestic direct merchant channel and continued momentum in the ISO sales channels. Revenue growth is also partially attributed to our price changes as a result of the impact of certain new interchange rates arising from the MasterCard and VISA lawsuit settlement. This growth was offset by declines in our indirect channel, which declined at a higher rate than in prior periods, primarily due to the loss of certain merchant portfolios' select authorization services and continued merchant attrition from existing bank customers.

We have continued growth in our domestic direct merchant channel by continuing to sign mid-market merchants in various vertical markets to maintain our diversification. Our domestic average ticket and spread remained stable for the quarter, which we believe is a result of our diversified, mid-market segmentation. Direct revenue includes revenue growth in our check guarantee and gaming product offerings offset by declines in check recovery revenue. Our check guarantee and gaming revenue growth is due to infrastructure investments and new products.

Our Canadian transactions for the quarter grew in the mid-single digits. However, this is down from prior quarters' growth rates primarily due to the impact of reduced consumer spending in Canadian markets attributed to the SARS threat, specifically in the travel and entertainment sector. We expect Canadian volumes to rebound by the second half of the year. However, the impact is partially offset by the improvement in the foreign exchange rate compared to the same period in the prior year. Average ticket and spread in Canada also declined primarily due to the recent mix of merchant signings, such as the addition of petroleum and grocery retailers.

Cost of service decreased by \$4.7 million or 7% from \$66.9 million in the three months ending August 31, 2002 to \$62.2 million in the three months ending August 31, 2003. As a percentage of revenue, cost of service decreased to 46% in the three months ending August 31, 2003 from 52% in the prior year's comparable period. This decrease in cost of service in expenses and as a percentage of revenue is primarily due to the integration of our acquisitions and other cost reduction initiatives.

Sales, general and administrative expenses increased \$10.0 million or 28% to \$45.5 million in the three months ending August 31, 2003 from \$35.5 million in the prior year's comparable period. As a percentage of revenue, these expenses increased to 33% for the three months ending August 31, 2003 compared to 28% for the

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three months ending August 31, 2002. The increase in sales, general and administrative expenses and as a percentage of revenue is due to growth in commission payments to ISOs as well as ongoing investments made in our direct sales channels.

During the fourth quarter of fiscal 2003, we announced the closure and consolidation of three operating facilities and their related functions into existing operating centers. We implemented the plan in April 2003 and expect to complete it by the fourth quarter of fiscal 2004. Our facility closure plan includes the following:

- closing our Cleveland merchant settlement function and consolidating it to our Baltimore facility;
- relocating our terminal deployment and related services from our Winston-Salem facility to our Baltimore and St. Louis facilities; and
- relocating our Salt Lake City check operation to our primary check operating facility in Niles, Illinois.

We anticipate total costs and expenses associated with the plan to be approximately \$8 million. One-time employee termination benefits will be approximately \$4 million and the balance relates to contract termination and other related facility closure costs and expenses. The first quarter of fiscal 2004 and the fourth quarter of fiscal 2003 included restructuring charges of \$1.6 million and \$1.7 million, respectively, related to this consolidation plan. Accordingly, we expect approximately \$5 million in charges to be incurred during the remainder of fiscal 2004.

Operating income increased \$1.9 million or 7% to \$27.2 million at August 31, 2003 from \$25.3 million at August 31, 2002. This resulted in an increase in operating margin from 19.8% for the three months ending August 31, 2002 to 19.9% for the three months ending August 31, 2003. This operating income and related margins reflect restructuring charges of \$1.6 million in the three months ending August 31, 2003. The changes in operating income and operating margins are due to the revenue and cost factors described above.

Net income increased \$1.2 million or 8% from \$14.6 million at August 31, 2002 to \$15.8 million at August 31, 2003. Diluted earnings per share increased \$0.02 or 5% from \$0.39 at August 31, 2002 to \$0.41 at August 31, 2003. This net income and diluted earnings per share reflects restructuring charges of \$1.0 million, net of tax, or \$0.03 diluted earnings per share, in the three months ending August 31, 2003.

### **Liquidity and Capital Resources**

Cash flow generated from operations provides us with a significant source of liquidity to meet our needs. At August 31, 2003, we had cash and cash equivalents totaling \$96.1 million. Net cash provided by operating activities increased \$20.2 million, or 103%, to \$39.8 million for the three months ending August 31, 2003 from \$19.6 million for the comparable period in the prior year. This increase was primarily due to the impact of a change in net merchant processing from cash used by operating activities of \$2.4 million in the three months ending August 31, 2002 to cash provided by operating activities of \$5.6 million in the three months ending August 31, 2003. This change is attributed to the transfer of \$36 million from our settlement process in Canada to our U.S. cash account in anticipation of the DoEx transaction closing. This cross-border cash transfer reduced the amount of our cash which we utilized in the Canadian merchant processing cycle. This cash previously minimized our borrowings on the CIBC credit facility. The increase in cash from operating activities was also due to changes in the timing of accounts payable and improved collections in net accounts receivable.

Net cash used in investing activities decreased \$2.3 million to \$3.1 million for the three months ending August 31, 2003 from \$5.4 million for the comparable period in the prior year due to a decrease in capital spending. In fiscal 2004, we expect approximately \$15 million to \$20 million in total capital spending, primarily related to continued office consolidations, systems infrastructure, acquisition of Canadian merchant terminals and product development.

Net cash provided by financing activities increased \$37.6 million to \$21.5 million for the three months ending August 31, 2003 from \$16.1 million net cash used in financing activities for the comparable period in the prior year. This increase was primarily due to our net borrowings on our line of credit restricted for merchant funding on the CIBC credit facility. This reflects the net borrowings required to provide Canadian VISA merchants with same-day

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value, which is standard industry practice in Canada. This borrowing is included in our net merchant processing receivable line item. Also in fiscal 2002, we partially repaid our operating line of credit. We have not had additional borrowings on our operating line of credit in fiscal 2003 or through the first quarter of fiscal 2004.

We believe that our current level of cash and borrowing capacity under our committed lines of credit described below, together with future cash flows from operations, are sufficient to meet the needs of our existing operations and planned requirements for the foreseeable future. We currently do not have any material capital commitments, other than commitments under capital and operating leases or planned expansions. We may develop our own hardware and software facilities for the transaction processing, cash management, file transfer and related communications functions in an effort to improve productivity and reduce cost of services. If undertaken, this development would further increase our capital expenditures above historical levels.

We regularly evaluate cash requirements for current operations, commitments, development activities and acquisitions and we may elect to raise additional funds for these purposes in the future, either through the issuance of debt, equity or otherwise. Our cash flow strategy has remained unchanged and is to first pay off debt arising from the timing of working capital needs, second to continue to make capital investments in our business and third, to pursue accretive acquisitions.

### **Credit Facilities**

We have a commitment for a \$125 million revolving line of credit. It was initially used to fund the cash due to National Data Corporation, now known as NDCHealth Corporation or NDC, to reflect our share of debt incurred by NDC prior to our spin-off to establish our initial capitalization. This line of credit is also available to meet working capital needs and to finance acquisitions. This line has a variable interest rate based on market rates. The credit agreement contains certain financial and non-financial covenants and events of default customary for financings of this nature. The facility has a three-year term, expiring in January 2004. The full amount outstanding is due upon demand and, therefore, we classify any amount outstanding as a current liability. As of August 31, 2003 and May 31, 2003, there were no amounts outstanding on this credit facility.

On October 1, 2001, we obtained a commitment for a \$25 million revolving credit facility to finance working capital needs and other general corporate purposes. This line has a variable interest rate based on market rates. The credit agreement contains certain financial and non-financial covenants and events of default customary for financings of this nature. The credit facility originally had a sixteen-month term, expiring in January 2003. Prior to its expiration, we executed an amendment with the lender to extend the term of this facility for an additional twelve month period through January 2004. As of August 31, 2003 and May 31, 2003, there were no amounts outstanding on this credit facility.

We also have a credit facility from CIBC that provides a line of credit up to \$175 million (Canadian), approximately \$126 million (U.S.), with an additional overdraft facility available to cover larger advances during periods of peak usage of credit cards. This line has a variable interest rate based on market rates and it contains certain financial and non-financial covenants and events of default customary for financings of this nature. This line of credit is secured by a first priority security interest in our accounts receivable from VISA Canada/International, and has been guaranteed by our subsidiaries. This guarantee is subordinate to our primary credit facility. On December 10, 2002, we executed a third amendment to this credit facility which extended the term of the facility for an additional 364 days through December 9, 2003 and provided for the incurrence of interest costs in connection with offering merchants "same day value" for their deposits. Same day value, which has been an accepted industry practice in Canada for more than ten years, is the practice of giving merchants same day value for their sales transactions, even though their deposits are made at a later date. Essentially, the merchant's deposits are backdated to the date of the applicable sales transaction. Under the terms of the credit agreement prior to the execution of the third amendment, CIBC credited the merchants' deposit account for their sales transactions on the day of the transaction and we reimbursed CIBC when we received the corresponding funding from the card association. At August 31, 2003 and May 31, 2003, there was \$79.1 million and \$46.3 million (Canadian), or approximately \$57.1 million and \$33.9 million (U.S.), respectively, outstanding on this credit facility. These amounts are included as a component of the net merchant processing receivable on the balance sheet. The amount borrowed is restricted in use to pay merchants and will be received from the card associations on the following day.



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We are currently under separate negotiations with our lenders to extend the terms of our credit facilities and expect to complete this process prior to the facility expiration dates noted above.

### **Forward-Looking Results of Operations**

During fiscal 2004, we intend to continue to focus on growing our domestic and Canadian presence, build our ISO sales channel, increase customer satisfaction, assess opportunities for profitable acquisition growth, pursue enhanced products and services for our customers, and leverage our existing business model. Consistent with this strategy, our expectation for our full fiscal 2004 year revenue is \$542 million to \$562 million, or 5% to 9% growth, compared to \$516 million in fiscal 2003. We expect net interest and other expense to approximate fiscal 2003 levels in fiscal 2004 and minority interest will grow in fiscal 2004 at rates consistent with our overall earnings growth. Our expectation for fiscal 2004 diluted earnings per share is \$1.57 to \$1.64 or 10% to 15% growth, compared to diluted earnings per share of \$1.43 in fiscal 2003, excluding the impact of restructuring charges in both periods. The earnings per share target reflects our expectation of achieving operating margin of 19% to 19.5% in fiscal 2004, excluding the impact of restructuring charges. The forward-looking statements in this Management Discussion and Analysis does not reflect the impact of restructuring charges, potential acquisitions and the impact of the previously announced LAMS acquisition. We intend to provide revised guidance after the closing of the LAMS acquisition.

### **Special Cautionary Notice Regarding Forward-Looking Statements**

We believe that it is important to communicate our plans and expectations about the future to our shareholders and to the public. Investors are cautioned that some of the statements we use in this report, and in some of the documents we incorporate by reference in this report contain forward-looking statements and are made pursuant to the “safe-harbor” provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements involve a number of risks and uncertainties, are predictive in nature, and depend upon or refer to future events or conditions. You can sometimes identify forward looking-statements by our use of the words “believes,” “anticipates,” “expects,” “intends,” “plans” and similar expressions. Actual events or results might differ materially from those expressed or forecasted in these forward-looking statements.

Although we believe that the plans and expectations reflected in or suggested by our forward-looking statements are reasonable, those statements are based on a number of assumptions, estimates, projections or plans that are inherently subject to significant risks, uncertainties, and contingencies that are subject to change. Accordingly, we cannot guarantee you that our plans and expectations will be achieved. Our actual revenues, revenue growth and margins, other results of operation and shareholder values could differ materially from those anticipated in our forward-looking statements as a result of many known and unknown factors. These factors include, but are not limited to, the following:

- The conviction of our former independent auditors, Arthur Andersen LLP, on federal obstruction of justice charges may adversely affect Arthur Andersen LLP’s ability to satisfy any claims arising from the provision of auditing services to us and may impede our access to the capital markets.
- As a result of CIBC’s ownership of more than 25% of our common stock, certain banking regulations limit the types of business in which we can engage.
- With the acquisition of CIBC’s merchant acquiring business and National Bank’s merchant acquiring business, we are exposed to foreign currency risks. We are also subject to risks from our variable rate credit facility with CIBC that could reduce our earnings and significantly increase our cost of capital.
- In order for us to continue to grow and increase our profitability, we must continue to expand our share of the existing electronic payments market and also expand into new markets.
- In order to remain competitive and continue to increase our revenues, we must continually update our products and services, a process which could result in increased research and development costs in excess of historical levels and the loss of revenues and customers if the new products and services do not perform as intended or are not accepted in the marketplace.
- Some of our competitors are larger and have greater financial and operational resources than we do which may give them an advantage in our market in terms of the price offered to customers or the ability to develop new technologies.

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- We are dependent on NDC for the provision of critical telecommunications services, network systems and other related services for the operation of our business, and the failure of NDC to provide those services in a satisfactory manner could affect our relationships with customers and our financial performance.
- Reduced levels of consumer spending can adversely affect our revenues.
- Loss of strategic industries could reduce revenues and earnings.
- Security breaches or system failures could harm our reputation and adversely affect future profits.
- Continued consolidation in the banking and retail industries could adversely affect our growth.
- We are subject to the business cycles and credit risk of our merchant customers.
- Utility and system interruptions or processing errors could adversely affect our operations.
- Our revenues from the sale of VISA and MasterCard processing services are dependent upon our continued VISA and MasterCard certification and financial institution sponsorship.
- Increases in credit card association fees may result in the loss of customers or a reduction in our profit margin.
- Loss of key Independent Sales Organizations, or ISOs, or a reduction in the number of new merchants signed by ISOs per quarter compared to historical levels, could reduce our revenue growth.
- If we lose key personnel or are unable to attract additional qualified personnel as we grow, our business could be adversely affected.
- The credit risk of our direct merchant customers could adversely affect our revenues.
- We may become subject to additional U.S. state taxes that cannot be passed through to our merchant customers, in which case our profitability could be adversely affected.
- Anti-takeover provisions of our articles of incorporation and bylaws, our rights agreement and provisions of Georgia law could delay or prevent a change of control that you may favor.
- We may not be able or we may decide not to pay dividends at a level anticipated by shareholders on our common stock, which could reduce your return on shares you hold.

For additional information regarding these and other risk factors, please refer to Exhibit 99.1 to our Annual Report on Form 10-K for the year ended May 31, 2003, as well as those set forth in our press releases, reports and other filings made with the Securities and Exchange Commission, and those set forth from time to time in our analyst calls and discussions. These cautionary statements qualify all of our forward-looking statements and you are cautioned not to place undue reliance on these forward-looking statements.

Our forward-looking statements speak only as of the date they are made and should not be relied upon as representing our plans and expectations as of any subsequent date. While we may elect to update or revise forward-looking statements at some time in the future, we specifically disclaim any obligation to publicly release the results of any revisions to our forward-looking statements. You are advised, however, to consult any further disclosures we make in our reports filed with the Securities and Exchange Commission and in our press releases.

### **Where to Find More Information**

We file annual and quarterly reports, proxy statements and other information with the Securities and Exchange Commission or SEC. You may read and print materials that we have filed with the SEC from their website at [www.sec.gov](http://www.sec.gov). In addition, certain of our SEC filings, including our annual report on Form 10-K, our quarterly reports on Form 10-Q and current reports on Form 8-K can be viewed and printed from the investor information section of our website at [www.globalpaymentsinc.com](http://www.globalpaymentsinc.com) free of charge. Copies of our filings are also available by writing or calling us using the address or phone number on the cover of this Form 10-Q.

Our SEC filings may also be viewed and copied at the following SEC public reference room, and at the offices of The New York Stock Exchange, where our common stock is quoted under the symbol "GPN."

SEC Public Reference Room  
450 Fifth Street, N.W., Room 1200  
Washington, DC 20549  
(You may call the SEC at 1-800-SEC-0330 for further information on the public reference room.)

New York Stock Exchange Offices

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20 Broad Street  
New York, NY 10005

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

There have been no material changes related to our exposure to changes in interest rates and/or foreign currency rates from the information reported in our Form 10-K for the fiscal year ended May 31, 2003.

**Item 4. Controls and Procedures**

We concluded an evaluation of the effectiveness of our disclosure controls and procedures as of the quarterly period ended August 31, 2003. Our evaluation tested controls and other procedures designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Securities and Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Securities and Exchange Commission's rules and forms. Based on our evaluation, as of the quarterly period ended August 31, 2003, information required to be disclosed in our reports that we file or submit under the Exchange Act is accumulated and communicated to management, including our principal executive officer and principal financial officer as appropriate, in a manner that allows timely decisions regarding required disclosure.

There were no significant changes in our internal controls that could significantly affect these controls during the first quarter of fiscal 2004.

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**PART II – OTHER INFORMATION**

**Item 1. Legal Proceedings**

The Company is a party to a number of claims and lawsuits incidental to its business. In the opinion of management, the ultimate outcome of such matters, in the aggregate, will not have a material adverse impact on the Company's financial position, liquidity or results of operations. For additional information, refer to Note 4 of the "Notes to Unaudited Consolidated Financial Statements—Commitments and Contingencies."

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

(a) Exhibits.

- 3.1 Fourth Amended and Restated By-laws of Global Payments Inc.
- 31.1 Rule 13a-14(a)/15d-14(a) Certification of CEO
- 31.2 Rule 13a-14(a)/15d-14(a) Certification of CFO
- 32.1 CEO and CFO Certification pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002

(b) Reports on Form 8-K.

On July 17, 2003, the Company filed a Current Report on Form 8-K to disclose, pursuant to Item 7 and Item 12 on Form 8-K, the Company's results for the fourth quarter and fiscal year ended May 31, 2003.

On August 12, 2003, the Company filed a Current Report on Form 8-K to disclose, pursuant to Item 5 and Item 7 on Form 8-K, an Agreement and Plan of Merger with Latin America Money Services, LLC.

**Signatures**

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

Date: October 10, 2003

Global Payments Inc.  
(Registrant)

By: /s/ James G. Kelly

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James G. Kelly  
Chief Financial Officer  
(Principal Financial Officer and  
Chief Accounting Officer)

**FOURTH AMENDED AND RESTATED  
BYLAWS  
OF  
GLOBAL PAYMENTS INC.**

As Adopted on July 16, 2003

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## Article I. OFFICES AND AGENT

### Section 1.01 Registered Office and Agent

The corporation shall continuously maintain in the state of Georgia a registered office that may be the same as any of the corporation's places of business. In addition, the corporation shall continuously maintain a registered agent whose business office is identical with the registered office. The registered agent may be an individual who resides in the state of Georgia, a domestic corporation or nonprofit domestic corporation, or a foreign corporation or nonprofit foreign corporation authorized to transact business in the state of Georgia.

### Section 1.02 Other Offices

In addition to having a registered office, the corporation may have other offices, located in or out of the state of Georgia, as the corporation's board of directors ("Board of Directors") may designate from time to time.

## Article II. MEETINGS OF SHAREHOLDERS

### Section 2.01 Annual Meetings

The corporation shall hold a meeting of shareholders annually at a time designated by the Board of Directors for the purpose of electing directors and transacting any other business that may properly come before the shareholders. If the corporation does not hold an annual meeting as provided in this Section, any business, including the election of directors, that might properly have been acted upon at an annual meeting may be acted upon by the shareholders at a special meeting held in accordance with these bylaws or in accordance with a court order.

### Section 2.02 Special Meetings

Special meetings of shareholders may be called at any time by (i) the Board of Directors, (ii) the Chairman of the Board of Directors, (iii) the President of the corporation or (iv) the holders of two-thirds ( $\frac{2}{3}$ ) of the votes entitled to be cast on any issue proposed to be considered at such special meeting following delivery by such holders to the Secretary of the corporation of a signed and dated written request setting forth the purposes of such meeting.

### Section 2.03 Place of Meetings

The corporation may hold shareholders' meetings, both annual and special, at any place in or out of the state of Georgia except that the corporation shall hold any meeting at the place set forth in the notice of the meeting or, if the meeting is held in accordance with a waiver of notice of the meeting, at the place set forth in the waiver of notice. If no place

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is specified in the notice or the waiver of notice, the corporation shall hold the meeting at the corporation's principal office.

#### **Section 2.04 Notice of Meetings**

The corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than ten (10) nor more than sixty (60) days before the meeting date. Unless the Georgia Business Corporation Code, as amended (the "Code"), or the Articles of Incorporation require otherwise, the corporation shall notify only those shareholders entitled to vote at the meeting who have not waived, in accordance with Section 5.02, the right to receive notice. In the case of an annual meeting, the notice need not state the purposes of the meeting unless the Articles of Incorporation or the Code provide otherwise. Notice of a special meeting shall include a description of the purpose or purposes for which the meeting is called. If not otherwise fixed under Code Section 14-2-703 or 14-2-707, the record date for determining shareholders entitled to notice of and entitled to vote at an annual or special shareholders' meeting is the close of business on the day before the first notice is delivered to shareholders.

#### **Section 2.05 Shareholder Nominations and Proposals**

(a) No proposal for a shareholder vote shall be submitted by a shareholder (a "Shareholder Proposal") to the corporation's shareholders unless the shareholder submitting such proposal (the "Proponent") shall have filed a written notice setting forth with particularity (i) the names and business addresses of the Proponent and all natural persons, corporations, partnerships, trusts or any other type of legal entity or recognized ownership vehicle (collectively, "Persons") acting in concert with the Proponent; (ii) the name and address of the Proponent and the Persons identified in clause (i), as they appear on the corporation's books (if they so appear); (iii) the class and number of shares of the corporation beneficially owned by the Proponent and the Persons identified in clause (i); (iv) a description of the Shareholder Proposal containing all material information relating thereto; and (v) such other information as the Board of Directors reasonably determines is necessary or appropriate to enable the Board of Directors and shareholders of the corporation to consider the Shareholder Proposal. The presiding officer at any shareholders' meeting may determine that any Shareholder Proposal was not made in accordance with the procedures prescribed in these bylaws or is otherwise not in accordance with law, and if it is so determined, such officer shall so declare at the meeting and the Shareholder Proposal shall be disregarded.

(b) Only persons who are selected and recommended by the Board of Directors or the committee of the Board of Directors designated to make nominations, or who are nominated by shareholders in accordance with the procedures set forth in this Section 2.05, shall be eligible for election, or qualified to serve, as directors. Nominations of individuals for election to the Board of Directors of the corporation at any annual meeting or any special meeting of shareholders at which directors are to be

elected may be made by any shareholder of the corporation entitled to vote for the election of directors at that meeting by compliance with the procedures set forth in this Section 2.05. Nominations by shareholders shall be made by written notice (a "Nomination Notice"), which shall set forth (i) as to each individual nominated, (A) the name, date of birth, business address and residence address of such individual; (B) the business experience during the past five years of such nominee, including his or her principal occupations and employment during such period, the name and principal business of any corporation or other organization in which such occupations and employment were carried on, and such other information as to the nature of his or her responsibilities and level of professional competence as may be sufficient to permit assessment of his or her prior business experience; (C) whether the nominee is or has ever been at any time a director, officer or owner of 5% or more of any class of capital stock, partnership interests or other equity interest of any corporation, partnership or other entity; (D) any directorships held by such nominee in any company with a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934, as amended, or subject to the requirements of Section 15(d) of such Act or any company registered as an investment company under the Investment Company Act of 1940, as amended; and (E) whether such nominee has ever been convicted in a criminal proceeding or has ever been subject to a judgment, order, finding or decree of any federal, state or other governmental entity, concerning any violation of federal, state or other law, or any proceeding in bankruptcy, which conviction, order, finding, decree or proceeding may be material to an evaluation of the ability or integrity of the nominee; and (ii) as to the Person submitting the Nomination Notice and any Person acting in concert with such Person, (X) the name and business address of such Person, (Y) the name and address of such Person as they appear on the corporation's books (if they so appear), and (Z) the class and number of shares of the corporation that are beneficially owned by such Person. A written consent to being named in a proxy statement as a nominee, and to serve as a director if elected, signed by the nominee, shall be filed with any Nomination Notice. If the presiding officer at any shareholders' meeting determines that a nomination was not made in accordance with the procedures prescribed by these bylaws, he shall so declare to the meeting and the defective nomination shall be disregarded.

(c) Nomination Notices and Shareholder Proposals shall be delivered to the Secretary of the corporation at the principal executive office of the corporation (i) within 120 days prior to an annual meeting of shareholders or (ii) within 10 days after the date that notice of a special meeting is sent to shareholders.

#### **Section 2.06 Voting Group**

The term "voting group" means all shares of one or more classes or series that under the Code or the Articles of Incorporation are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the Code or the Articles of Incorporation to vote generally on the matter are for that purpose a single voting group.

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**Section 2.07 Quorum for Voting Groups**

Shares entitled to vote as a separate voting group may take action on a matter at a meeting of shareholders only if a quorum of those shares exists with respect to that matter. Unless the Code or the Articles of Incorporation provide otherwise, a majority of the votes (as represented by person or by proxy) entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter. Once a share is represented for any purpose at a meeting, other than solely to object to holding the meeting or to transacting business at the meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting as provided in Section 7.7.

**Section 2.08 Vote Required for Action**

If a quorum exists, action on a matter (other than the election of directors) by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the Code, the Articles of Incorporation, or the bylaws require a greater number of affirmative votes. If the Code or the Articles of Incorporation provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in this Section and in Sections 2.06 and 2.07. If the Code or the Articles of Incorporation provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in this section and in Sections 2.06 and 2.07. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

**Section 2.09 Voting for Directors**

Unless otherwise provided in the Articles of Incorporation or the Code, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present. Shareholders do not have a right to cumulate their votes for directors unless the Articles of Incorporation so provide.

**Section 2.10 Voting of Shares**

Unless the Code or the Articles of Incorporation provide otherwise, each outstanding share having voting rights is entitled to one vote on each matter voted on at a meeting of shareholders. Shareholders voting their shares shall vote their shares by voice vote or by show of hands unless (i) a qualified voting shareholder, prior to any voting on a matter, demands a vote by ballot or (ii) the presiding officer determines in his or her sole discretion to vote by ballot. If a demand occurs or the presiding officer determines to do so, shareholders shall vote by ballot. Each ballot shall state the name of the shareholder voting and the number of shares voted by the shareholder. If a ballot is cast by proxy, the ballot must also state the name of the proxy.

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shareholder voting and the number of shares voted by the shareholder. If a ballot is cast by proxy, the ballot must also state the name of the proxy.

#### **Section 2.11 Proxies**

(a) A shareholder may vote his or her shares in person or by proxy. For a shareholder to vote shares by proxy, a shareholder or his or her agent or attorney in fact shall appoint a proxy by executing a writing that authorizes another person or persons to vote or otherwise act for the shareholder by signing and dating an appointment form. An appointment of proxy is effective when the corporate agent authorized to tabulate votes receives an original or facsimile transmission of a signed appointment form. The appointment of proxy is valid for only one meeting and any adjournments, and the appointment form must specify that meeting. In any event, the appointment is not valid for longer than eleven (11) months unless the appointment form expressly provides for a longer period. The corporate secretary shall file any appointment of proxy with the records of the meeting to which the appointment relates.

(b) An appointment of proxy is revocable or irrevocable as provided in the Code.

(c) If any person questions the validity of an appointment of proxy, that person shall submit the appointment form for examination to the secretary of the shareholders' meeting or to a proxy officer or committee appointed by the person presiding at the meeting. The secretary, proxy officer, or committee, as the case may be, will determine the appointment form's validity. The secretary's reference in the meeting's minutes to the regularity of the appointment of proxy will be *prima facie* evidence of the facts stated in the minutes for establishing a quorum at the meeting and for all other purposes.

#### **Section 2.12 Chairman of the Board**

The Chairman of the Board shall preside over every shareholders' meeting unless the shareholders elect another person to preside at a meeting. The Chairman of the Board may appoint any persons he or she deems necessary to assist with the meeting.

#### **Section 2.13 Inspectors**

The corporation shall appoint one or more inspectors to act at a shareholders' meeting and to make a written report of the inspectors' determinations. Each inspector shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of the inspector's ability. The inspector shall: ascertain the number of shares outstanding and the voting power of each; determine the shares represented at a meeting; determine the validity of proxies and ballots; count all votes; and determine the result. An inspector may be an officer or employee of the corporation.

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**Section 2.14 Adjournments**

Whether or not a quorum is present to organize a meeting, any meeting of shareholders (including an adjourned meeting) may be adjourned by the holders of a majority of the voting shares represented at the meeting to reconvene at a specific time and place, but no later than 120 days after the date fixed for the original meeting unless the requirements of the Code concerning the selection of a new record date have been met. At any reconvened meeting within that time period, any business may be transacted that could have been transacted at the meeting that was adjourned. If notice of the adjourned meeting was properly given, it shall not be necessary to give any notice of the reconvened meeting or of the business to be transacted, if the date, time and place of the reconvened meeting are announced at the meeting that was adjourned and before adjournment; provided, however, that if a new record date is or must be fixed, notice of the reconvened meeting must be given to persons who are shareholders as of the new record date.

**Section 2.15 Action by Shareholders Without a Meeting**

Action required or permitted by the Code to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all shareholders entitled to vote on the action. The action must be evidenced by one or more written consents bearing the date of signature and describing the action taken, signed by all shareholders entitled to take action without a meeting, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

**Article III. THE BOARD OF DIRECTORS****Section 3.01 General Powers**

All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation shall be managed under the direction of, the Board of Directors, subject to any limitation set forth in the Articles of Incorporation, bylaws approved by the shareholders, or agreements among the shareholders that are otherwise lawful. No limitation upon the authority of a director, whether contained in the Articles of Incorporation, bylaws, or an agreement among shareholders, shall be effective against persons, other than shareholders and directors, who do not have actual knowledge of the limitation.

**Section 3.02 Number, Election and Term of Office**

The number of directors of the corporation shall be no less than two (2) and no greater than twelve (12) and may be adjusted by resolution of the shareholders or of the Board of Directors from time to time. Any resolution of the Board of Directors

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increasing or decreasing the number of directors of the corporation shall require the affirmative vote of at least two-thirds (2/3) of the entire Board of Directors. The directors shall be divided into three classes, Class I, Class II and Class III, each consisting, as nearly equal in number as possible, of one third of the total number of directors constituting the entire Board of Directors. At the annual shareholders meeting in 2001, the terms of the initial Class I directors shall expire and a new Class I shall be elected for a term expiring at the third annual meeting of shareholders following their election and upon the election and qualification of their respective successors; at the annual shareholders meeting in 2002, the terms of the initial Class II directors shall expire and a new Class II shall be elected for a term expiring at the third annual meeting of shareholders following their election and upon the election and qualification of their respective successor; and at the annual shareholders meeting in 2003, the terms of the initial Class III directors shall expire and a new Class III shall be elected for a term expiring at the third annual meeting of shareholders following their election and upon the election and qualification of their respective successor. At each succeeding annual meeting of shareholders, successors to the class of directors whose term expires at the annual meeting of shareholders shall be elected for a three year term. Except as provided in Section 3.04, a director shall be elected by the affirmative vote of the holders of a plurality of the shares represented at the meeting of shareholders at which the director stands for election and entitled to elect such director.

The number of directors may be increased or decreased from time to time as provided herein or by amendment to these bylaws and the Articles of Incorporation of the corporation; provided, however, that any amendment to the bylaws by the Board of Directors which increases or decreases the number of directors of the corporation must be approved by the affirmative vote of at least two-thirds (2/3) of the entire Board of Directors; provided further, that the total number of directors at any time shall not be less than two (2) provided further, that no decrease in the number of directors shall have the effect of shortening the term of an incumbent director. In the event of any increase or decrease in the authorized number of directors, each director then serving shall continue as a director of the class of which he is a member until the expiration of his current term, or his earlier resignation, retirement, disqualification, removal from office or death, and the newly created or eliminated directorships resulting from such increase or decrease shall be apportioned by the Board of Directors among the three classes of directors so as to maintain such classes as nearly equal as possible; provided, however, that any such additional directors elected by the Board shall serve only for a term expiring at the next meeting of the shareholders called for the purpose of electing directors. Each director shall serve until his successor is elected and qualified or until his earlier resignation, retirement, disqualification, removal from office, or death.

### **Section 3.03 Removal**

The shareholders may remove one or more directors only for cause and only by the affirmative vote of the holders of at least two-thirds (2/3) of all votes entitled to be cast in the election of such directors. If the director was elected by a voting group of



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shareholders, only the shareholders of that voting group may participate in the vote to remove the director. The shareholders may remove a director only at a special meeting called for the purpose of removing the director, and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director. For purposes of this Section, "cause" shall mean only (i) conviction of a felony, (ii) declaration of unsound mind by an order of a court, (iii) gross dereliction of duty, (iv) commission of an action involving moral turpitude or (v) commission of an action which constitutes intentional misconduct or a knowing violation of law if such action results in an improper substantial personal benefit and a material injury to the corporation.

**Section 3.04 Vacancies**

If a vacancy occurs on the Board of Directors, the vacancy may be filled by a majority of the directors then in office, even if fewer than a quorum, or by a sole remaining director. Each director chosen in accordance with this Section shall hold office until the next election of the class for which such director shall have been chosen, and until such director's successor is elected and qualified, or until the director's earlier death. Even if the directors remaining in office constitute fewer than a quorum of the Board of Directors, the directors may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office. If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group or the remaining directors elected by that voting group are entitled to vote to fill the vacancy.

**Section 3.05 Compensation**

Unless the Articles of Incorporation provide otherwise, the Board of Directors may determine from time to time the compensation, if any, that directors may receive for their services as directors. A director may also serve the corporation in a capacity other than that of director and receive compensation determined by the Board of Directors for services rendered in such other capacity.

**Section 3.06 Committees**

The Board of Directors by resolution may create one or more committees and appoint members of the Board of Directors to serve on such committees at the discretion of the Board of Directors. Except as limited by the Code, each committee will have the authority set forth in the resolution establishing such committee.

**Article IV. MEETINGS OF THE BOARD OF DIRECTORS**

**Section 4.01 Regular Meetings**

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The Board of Directors shall hold a regular meeting immediately after an annual shareholders' meeting or a special shareholders' meeting held in lieu of an annual meeting. In addition, the Board of Directors may schedule and hold other meetings at regular intervals throughout the year.

**Section 4.02 Special Meetings**

The Board of Directors shall hold a special meeting upon the call of the Chairman of the Board, the President or any two directors.

**Section 4.03 Place of Meetings**

The Board of Directors may hold meetings, both regular and special, at any place in or out of the state of Georgia. Regular meetings shall be held at the place established from time to time for regular meetings. Special meetings shall be held at the place set forth in the notice of the meeting or, if the special meeting is held in accordance with a waiver of notice of the meeting, at the place set forth in the waiver of notice.

**Section 4.04 Notice of Meetings**

Unless Section 4.05 or the Articles of Incorporation provide otherwise, the corporation is not required to give notice of the date, time, place, or purpose of a regular meeting of the Board of Directors. Unless Section 4.05 or the Articles of Incorporation provide otherwise, the corporation shall give each member of the Board of Directors at least one (1) day's prior notice of the date, time, and place of a special meeting of the Board of Directors. Notices of special meetings shall comply with Section 5.01 and may be waived in accordance with Section 5.02.

**Section 4.05 Notice of Certain Directors Meetings**

Notwithstanding Section 4.04, the corporation shall give each member of the Board of Directors at least five (5) days prior written notice of any regular or special meeting at which any business combination transaction involving the corporation or any of its subsidiaries, including, without limitation, any merger, consolidation or sale of substantially all of its assets, is to be considered by the Board of Directors, which notice shall also state that such a transaction is to be considered and specify in reasonable detail the material terms of such transaction.

**Section 4.06 Quorum**

Unless the Code, the Articles of Incorporation, or these bylaws require a greater number, a quorum of the Board of Directors consists of a majority of the total number of directors that has been initially fixed in the Articles of Incorporation or that has been later prescribed by resolution of the shareholders or of the Board of Directors in accordance with Section 3.02.

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**Section 4.07 Vote Required for Action**

(a) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the Board of Directors unless the Code, the Articles of Incorporation, or these bylaws require the vote of a greater number of directors.

(b) A director who is present at a meeting of the Board of Directors or a committee of the Board of Directors when corporate action is taken is deemed to have assented to the action taken unless:

(i) he or she objects at the beginning of the meeting (or promptly upon his or her arrival) to holding it or transacting business at the meeting;

(ii) his or her dissent or abstention from the action taken is entered in the minutes of the meeting; or

(iii) he or she delivers written notice of his or her dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting.

The right to dissent or abstain is not available to a director who votes in favor of the action taken.

**Section 4.08 Participation by Conference Telephone**

Any or all directors may participate in a meeting of the Board of Directors or of a committee of the Board of Directors through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means shall be deemed to be present in person at the meeting.

**Section 4.09 Adjournments**

A majority of the directors present at a meeting may adjourn the meeting from time to time. This right to adjourn exists whether or not a quorum is present at the meeting and applies to regular as well as special meetings, including any meetings that are adjourned and reconvened. If a meeting of the Board of Directors is adjourned to a different date, time, or place, the corporation is not required to give notice of the new date, time, or place or of the business to be transacted, if the new date, time, or place is announced at the meeting before adjournment. At the meeting reconvened after adjournment, the Board of Directors may transact any business that could have been transacted at the meeting that was adjourned.

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**Section 4.10 Action by Directors Without a Meeting**

Any action required or permitted by the Code to be taken at any meeting of the Board of Directors (or a committee of the Board of Directors) may be taken without a meeting if the action is taken by all of the members of the Board of Directors (or the committee, as the case may be). The action must be evidenced by one or more written consents describing the action taken, signed by each of the directors (or each of the directors serving on the committee, as the case may be), and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

**Article V. MANNER OF NOTICE TO AND WAIVER OF NOTICE  
BY SHAREHOLDERS AND DIRECTORS****Section 5.01 Manner of Notice**

(a) Whenever these bylaws require notice to be given to any shareholder or director, the notice must comply with this Section 5.01 in addition to any other section of these bylaws concerning notice and any provision in the Articles of Incorporation.

(b) Notice to shareholders shall be in writing. Notice to a director may be written or oral.

(c) Except as specified in Section 4.05, notice may be communicated in person; by telephone, telegraph, teletype, facsimile, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television, or other form of public broadcast communication. Unless otherwise provided in the Code, the Articles of Incorporation, or these bylaws, notice by facsimile transmission, telegraph, or teletype shall be deemed to be notice in writing.

(d) Written notice to shareholders, if the notice is in a comprehensible form, is effective when mailed, if mailed with first-class postage prepaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.

(e) Except as provided in subsection 5.01(d), written notice, if in a comprehensible form, is effective at the earliest of the following:

(i) when received, or when delivered, properly addressed, to the addressee's last known principal place of business or residence;

(ii) five (5) days after its deposit in the mail, as evidenced by the postmark, or such longer period as provided in the Articles of Incorporation or these bylaws, if mailed with first-class postage prepaid and correctly addressed; or

(iii) on the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(f) Oral notice is effective when communicated if communicated in a comprehensible manner.

(g) In calculating time periods for notice, when a period of time measured in days, weeks, months, years, or other measurement of time is prescribed for the exercise of any privilege or the discharge of any duty, the first day shall not be counted but the last day shall be counted.

#### **Section 5.02 Waiver of Notice**

(a) A shareholder may waive any notice before or after the date and time stated in the notice. Except as provided in subsection 5.02(b), the waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A shareholder's attendance at a meeting:

(i) waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(ii) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

(c) A shareholder's waiver of notice is not required to specify the business transacted or the purpose of the meeting unless required by the Code or these bylaws.

(d) A director may waive any notice before or after the date and time stated in the notice. Except as provided in paragraph (e) of this Section 5.02, the waiver must be in writing, signed by the director entitled to the notice, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(e) A director's attendance at or participation in a meeting waives any required notice to him or her of the meeting unless the director at the beginning of the meeting (or promptly upon his or her arrival) objects to holding the meeting or transacting

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business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

## **Article VI. OFFICERS**

### **Section 6.01 Duties**

The officers of the corporation may include a Chairman of the Board, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, President and Secretary and any other officers as may be appointed by the Board of Directors, as it determines, in its sole discretion, to be necessary or desirable. The officers will have the authority and will perform the duties as set forth in these bylaws. The other officers that are appointed will have the authority and will perform the duties as established by the Board of Directors from time to time.

### **Section 6.02 Appointment and Term**

The Board of Directors appoints the individuals who will serve as officers of the corporation. An individual may simultaneously hold more than one office. Any officer appointed in accordance with this Article VI may appoint one or more officers or assistant officers. All officers serve at the pleasure of the Board of Directors. The Board of Directors may remove with or without cause any officer.

### **Section 6.03 Compensation**

The Board of Directors or a committee thereof will fix the compensation, if any, of all corporate officers.

### **Section 6.04 Chairman of the Board**

The Chairman of the Board shall preside at all meetings of shareholders and the Board of Directors. The Chairman of the Board shall have such other powers and duties as may be delegated to him or her from time to time by the Board of Directors.

### **Section 6.05 Chief Executive Officer**

The Chief Executive Officer shall be primarily responsible for the general management of the business affairs of the Corporation and for implementing policies and directives of the board of directors. The Chief Executive Officer shall also preside at all meetings of shareholders and the Board of Directors during the absence or disability of the Chairman of the Board. Unless the Articles of Incorporation, these bylaws, or a resolution of the Board of Directors provides otherwise, the Chief Executive Officer may execute and deliver on behalf of the corporation any contract, conveyance, or similar document not requiring approval by the Board of Directors or shareholders as provided in

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the Code. The Chief Executive Officer shall have any other authority and will perform any other duties that the Board of Directors may delegate to him or her from time to time.

**Section 6.06 President**

In the absence of the Chairman of the Board and the Chief Executive Officer, or if there is none, the President shall preside at meetings of the shareholders and Board of Directors. The president shall assume and perform the duties of the Chairman of the Board in the absence or disability of the Chairman of the Board and the Chief Executive Officer or whenever the offices of the Chairman of the Board and the Chief Executive Officer are vacant. The President will have any other authority and will perform any other duties that the Board of Directors may delegate to him or her from time to time.

**Section 6.07 Chief Operating Officer**

The Chief Operating Officer shall have responsibility for the day-to-day operations of the corporation and the development of the corporation's products and services. The Chief Operating Officer, in the absence or disability or at the direction of the President, shall perform all duties and exercise all powers of the President of the corporation. The Chief Financial Officer will have any other authority and will perform any other duties that the Board of Directors may delegate to him or her from time to time

**Section 6.08 Chief Financial Officer**

The Chief Financial Officer shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors, Chief Executive Officer or the President. The Chief Financial Officer will have responsibility for the custody of all funds and securities belonging to the corporation and for the receipt, deposit, or disbursement of funds and securities under the direction of the Board of Directors. The Chief Financial Officer will cause to be maintained true accounts of all receipts and disbursements and will make reports of these to the Board of Directors, upon its request, and to the President, upon his or her request. The Chief Financial Officer will have any other authority and will perform any other duties that the Board of Directors may delegate to him or her from time to time.

**Section 6.09 Secretary**

The Secretary will have responsibility for preparing minutes of the acts and proceedings of all meetings of the shareholders, of the Board of Directors, and of any committees of the Board of Directors. The Secretary will have authority to give all notices required by the Code, other applicable law, or these bylaws. The Secretary will have responsibility for the custody of the corporate books, records, contracts, and other corporate documents. The Secretary will have authority to affix the corporate seal to any lawfully executed document and will sign any instruments that require his or her signature. The Secretary will authenticate records of the corporation. The Secretary will

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have any other authority and will perform any other duties that the Board of Directors may delegate to him or her from time to time. In the case of absence or disability of the Secretary, or at the direction of the President, any assistant secretary has the authority and may perform the duties of the Secretary.

**Section 6.10 Bonds**

The Board of Directors by resolution may require any or all of the officers, agents, or employees of the corporation to give bonds to the corporation, with sufficient surety or sureties, conditioned on the faithful performance of the duties of their respective offices or positions, and to comply with any other conditions that from time to time may be required by the Board of Directors.

**Article VII. SHARES**

**Section 7.01 Authorization and Issuance of Shares**

The Board of Directors may authorize shares of any class or series provided for in the Articles of Incorporation to be issued for consideration deemed valid under the provisions of the Code. In addition, before the corporation issues the shares authorized by the Board of Directors, the Board of Directors must determine that the consideration received or to be received for shares to be issued is adequate. To the extent provided in the Articles of Incorporation, the Board of Directors will determine the preferences, limitations, and relative rights of such shares before their issuance.

**Section 7.02 Share Certificates**

The interest of each shareholder may be represented by a certificate or certificates representing shares of the corporation which shall be in such form as Board of Directors may from time to time adopt. Share certificates, if any, shall be numbered consecutively, shall be in registered form shall indicate the date of issuance, the name of the corporation and that it is organized under the laws of the State of Georgia, the name of the shareholder, and the number and class of shares and the designation of the series, if any, represented by the certificate. Each certificate shall be signed by any one of the Chairman of the Board, the Chief Executive Officer, the President, a Vice President, the Secretary or the Treasurer. The corporate seal need not be affixed.

**Section 7.03 Registered Owner**

The corporation may treat the registered owner of any share of stock of the corporation as the person exclusively entitled to vote that share and to receive any dividend or other distribution with respect to that share and as the exclusive owner of that share for all other purposes. Accordingly, the corporation is not required to recognize any other person's equitable, or other, claim to or interest in that share, whether or not the



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corporation has express or other notice of the claim or interest, except as provided otherwise by law.

**Section 7.04 Transfers of Shares**

The Board of Directors will designate a transfer agent to transfer shares on the transfer books of the corporation when the agent is properly directed to do so. The transfer agent will keep these books at his or her office. Only the person named on a certificate, or his or her attorney-in-fact lawfully constituted by a writing, may direct the transfer agent to transfer the share represented by that certificate. Before the corporation issues a new certificate to the new owner of the share, the old certificate must be surrendered to the corporation for cancellation. In the case of a certificate claimed to have been lost, stolen, or destroyed, the person making the claim must comply with Section 7.06.

**Section 7.05 Duty of Corporation to Register Transfer**

Notwithstanding any provision in Section 7.04, the corporation is not under a duty to register the transfer of a share unless:

- (a) the certificate representing that share is endorsed by the appropriate person or persons;
- (b) reasonable assurance is given that the endorsement or affidavit (in the case of a lost, stolen, or destroyed certificate) is genuine and effective;
- (c) the corporation either has no duty to inquire into adverse claims or has discharged that duty;
- (d) the requirements of any applicable law relating to the collection of taxes for the proposed transfer have been met; and
- (e) the transfer is in fact rightful or is to a bona fide purchaser.

**Section 7.06 Lost, Stolen, or Destroyed Certificates**

Any person claiming a share certificate has been lost, stolen, or destroyed must make an affidavit or affirmation of that fact in the manner prescribed by the Board of Directors. In addition, if the Board of Directors requires, the person must give the corporation a bond of indemnity in a form and amount, and with one or more sureties, satisfactory to the Board of Directors. Once the person has satisfactorily completed these steps, the corporation will issue an appropriate new certificate to replace the certificate alleged to have been lost, stolen, or destroyed.

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**Section 7.07 Record Date with Regard to Shareholder Action**

The Board of Directors may fix a future date as the record date in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action (except an action provided for in Section 8.02). Any future date fixed as a record date may not be more than seventy (70) days before the date on which the meeting is to be held or the action requiring a determination of shareholders is to be taken. A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the Board of Directors fixes a new record date, which it must do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting. If the Board of Directors does not fix a future date as a record date, the corporation will determine the record date in accordance with the Code.

**Article VIII. DISTRIBUTIONS****Section 8.01 Authorization or Declaration**

Subject to any restriction in the Articles of Incorporation, the Board of Directors from time to time in its discretion may authorize or declare and the corporation may make distributions to the shareholders in accordance with the Code.

**Section 8.02 Record Date With Regard to Distributions**

The Board of Directors may fix a future date as the record date in order to determine shareholders entitled to a distribution (other than one involving a purchase, redemption, or other reacquisition of the corporation's shares). If the Board of Directors does not fix a future date as the record date, the corporation will determine the record date in accordance with the Code.

**Article IX. INDEMNIFICATION****Section 9.01 Definitions**

As used in this Article, the term:

(a) "corporation" includes any domestic or foreign predecessor entity of the corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(b) "director" or "officer" means an individual who is or was a director or board-elected officer, respectively, of the corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director,

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officer, partner, trustee, employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity. A director or officer is considered to be serving an employee benefit plan at the corporation's request if his or her duties to the corporation also impose duties on, or otherwise involve services by, the director or officer to the plan or to participants in or beneficiaries of the plan. "Director" or "officer" includes, unless the context otherwise requires, the estate or personal representative of a director or officer.

(c) "disinterested director" or "disinterested officer" means a director or officer, respectively who at the time of an evaluation referred to in subsection 9.05(b) is not:

(i) A party to the proceeding; or

(ii) An individual having a familial, financial, professional, or employment relationship with the person whose advance for expenses is the subject of the decision being made with respect to the proceeding, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director's or officer's judgment when voting on the decision being made.

(d) "expenses" includes counsel fees.

(e) "liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

(f) "party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(g) "proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitral or investigative and whether formal or informal.

(h) "reviewing party" shall mean the person or persons making the determination as to reasonableness of expenses pursuant to Section 9.05 of this Article, and shall not include a court making any determination under this Article or otherwise.

#### **Section 9.02 Basic Indemnification Arrangement**

(a) The corporation shall indemnify an individual who is a party to a proceeding because he or she is or was a director or officer against liability incurred in the proceeding; provided, however that the corporation shall not indemnify a director or officer under this Article for any liability incurred in a proceeding in which the director or officer is adjudged liable to the corporation or is subjected to injunctive relief in favor of the corporation:

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- (i) For any appropriation, in violation of his or her duties, of any business opportunity of the corporation;
  - (ii) For acts or omissions which involve intentional misconduct or a knowing violation of law;
  - (iii) For the types of liability set forth in Section 14-2-832 of the Code; or
  - (iv) For any transaction from which he or she received an improper personal benefit.

(b) If any person is entitled under any provision of this Article to indemnification by the corporation for some portion of liability incurred by him or her, but not the total amount thereof, the corporation shall indemnify such person for the portion of such liability to which he or she is entitled.

**Section 9.03 Advances for Expenses**

(a) The corporation shall, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred by a director or officer who is a party to a proceeding because he or she is a director or officer if he or she delivers to the corporation:

(i) A written affirmation of his or her good faith belief that his or her conduct does not constitute behavior of the kind described in subsection 9.02(a) above; and

(ii) His or her written undertaking (meeting the qualifications set forth below in subsection 9.03(b)) to repay any funds advanced if it is ultimately determined that he or she is not entitled to indemnification under this Article or the Code.

(b) The undertaking required by subsection 9.03(a)(2) above must be an unlimited general obligation of the proposed indemnitee but need not be secured and shall be accepted without reference to the financial ability of the proposed indemnitee to make repayment. If a director or officer seeks to enforce his or her rights to indemnification in a court pursuant to Section 9.04 below, such undertaking to repay shall not be applicable or enforceable unless and until there is a final court determination that he or she is not entitled to indemnification, as to which all rights of appeal have been exhausted or have expired.

**Section 9.04 Court-Ordered Indemnification and Advances for Expenses**

(a) A director or officer who is a party to a proceeding because he or she is a director or officer may apply for indemnification or advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. For purposes of this Article, the corporation hereby consents to personal jurisdiction and venue in any court in which is pending a proceeding to which a director or officer is a party. Regardless of any determination by the Reviewing Party as to the reasonableness of expenses, and regardless of any failure by the Reviewing Party to make a determination as to the reasonableness of expenses, such court's review shall be a *de novo* review. After receipt of an application and after giving any notice it considers necessary, the court shall:

(i) Order indemnification or advance for expenses if it determines that the director or officer is entitled to indemnification or advance for expenses; or

(ii) Order indemnification or advance for expenses if it determines, in view of all the relevant circumstances, that it is fair and reasonable to indemnify the director or officer, or to advance expenses to the director or officer, even if the director or officer failed to comply with the requirements for advance of expenses, or was adjudged liable in a proceeding referred to in subsection 9.02(a)(4) above.

(b) If the court determines that the director or officer is entitled to indemnification or advance for expenses, the corporation shall pay the director's or officer's reasonable expenses to obtain court-ordered indemnification or advance for expenses.

#### **Section 9.05 Determination of Reasonableness of Expenses**

(a) The corporation acknowledges that indemnification of a director or officer under Section 9.02 has been pre-authorized by the corporation as permitted by Section 14-2-859(a) of the Code, and that pursuant authority exercised under Section 14-2-856 of the Code, no determination need be made for a specific proceeding that indemnification of the director or officer is permissible in the circumstances because he or she has met a particular standard of conduct. Nevertheless, except as set forth in subsection 9.05(b) below, evaluation as to reasonableness of expenses of a director or officer for a specific proceeding shall be made as follows:

(i) If there are two or more disinterested directors, by the board of directors of the corporation by a majority vote of all disinterested directors (a majority of whom shall for such purpose constitute a quorum) or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote; or

(ii) If there are fewer than two disinterested directors, by the board of directors (in which determination directors who do not qualify as disinterested directors may participate); or

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(iii) By the shareholders, but shares owned by or voted under the control of a director or officer who at the time does not qualify as a disinterested director or disinterested officer may not be voted on the determination.

(b) Notwithstanding the requirement under subsection 9.05(a) that the Reviewing Party evaluate the reasonableness of expenses claimed by the proposed indemnitee, any expenses claimed by the proposed indemnitee shall be deemed reasonable if the Reviewing Party fails to make the evaluation required by subsection 9.05(a) within sixty (60) days following the proposed indemnitee's written request for indemnification or advance for expenses.

**Section 9.06 Indemnification of Employees and Agents**

The corporation may indemnify and advance expenses under this Article to an employee or agent of the corporation who is not a director or officer to the same extent and subject to the same conditions that a Georgia corporation could, without shareholder approval under Section 14-2-856 of the Code, indemnify and advance expenses to a director, or to any lesser extent (or greater extent if permitted by law) determined by the board of directors, in each case consistent with public policy.

**Section 9.07 Liability Insurance**

The corporation may purchase and maintain insurance on behalf of an individual who is a director, officer, employee or agent of the corporation or who, while a director, officer, employee or agent of the corporation, serves at the corporation's request as a director, officer, partner, trustee, employee or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity against liability asserted against or incurred by him or her in that capacity or arising from his or her status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify or advance expenses to him or her against the same liability under this Article or the Code.

**Section 9.08 Witness Fees**

Nothing in this Article shall limit the corporation's power to pay or reimburse expenses incurred by a person in connection with his or her appearance as a witness in a proceeding at a time when he or she is not a party.

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**Section 9.09 Report to Shareholders**

To the extent and in the manner required by the Code from time to time, if the corporation indemnifies or advances expenses to a director or officer in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance to the shareholders.

**Section 9.10 Security for Indemnification Obligations**

The corporation may at any time and in any manner, at the discretion of the board of directors, secure the corporation's obligations to indemnify or advance expenses to a person pursuant to this Article.

**Section 9.11 No Duplication of Payments**

The corporation shall not be liable under this Article to make any payment to a person hereunder to the extent such person has otherwise actually received payment (under any insurance policy, agreement or otherwise) of the amounts otherwise payable hereunder.

**Section 9.12 Subrogation**

In the event of payment under this Article, the corporation shall be subrogated to the extent of such payment to all of the rights of recovery of the indemnitee, who shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the corporation effectively to bring suit to enforce such rights.

**Section 9.13 Contract Rights.**

The right to indemnification and advancement of expenses conferred hereunder to directors and officers shall be a contract right and shall not be affected adversely to any director or officer by any amendment of these bylaws with respect to any action or inaction occurring prior to such amendment; provided, however, that this provision shall not confer upon any indemnitee or potential indemnitee (in his or her capacity as such) the right to consent or object to any subsequent amendment of these bylaws.

**Section 9.14 Specific Performance**

In any proceeding brought by or on behalf of an officer or director to specifically enforce the provisions of this Article, the corporation hereby waives the claim or defense therein that the plaintiff or claimant has an adequate remedy at law, and the corporation shall not urge in any such proceeding the claim or defense that such remedy at law exists. The provisions of this Section 9.15, however, shall not prevent the officer or director

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from seeking a remedy at law in connection with any breach of the provisions of this Article.

**Section 9.15 Non-exclusivity, Etc.**

The rights of a director or officer hereunder shall be in addition to any other rights with respect to indemnification, advancement of expenses or otherwise that he or she may have under contract or the Georgia Business Corporation Code or otherwise.

**Section 9.16 Amendments**

It is the intent of the corporation to indemnify and advance expenses to its directors and officers to the full extent permitted by the Georgia Business Corporation Code, as amended from time to time. To the extent that the Georgia Business Corporation Code is hereafter amended to permit a Georgia business corporation to provide to its directors greater rights to indemnification or advancement of expenses than those specifically set forth hereinabove, this Article shall be deemed amended to require such greater indemnification or more liberal advancement of expenses to the corporation's directors and officers, in each case consistent with the Georgia Business Corporation Code as so amended from time to time. No amendment, modification or rescission of this Article, or any provision hereof, the effect of which would diminish the rights to indemnification or advancement of expenses as set forth herein shall be effective as to any person with respect to any action taken or omitted by such person prior to such amendment, modification or rescission.

**Section 9.17 Severability**

To the extent that the provisions of this Article are held to be inconsistent with the provisions of Part 5 of Article 8 of the Georgia Business Corporation Code, such provisions of such Code shall govern. In the event that any of the provisions of this Article (including any provision within a single section, subsection, division or sentence) is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions of this Article shall remain enforceable to the fullest extent permitted by law.

**Article X. MISCELLANEOUS**

**Section 10.01 Inspection of Records**

The Board of Directors may determine what corporate records, other than those specifically required by the Code to be made open to inspection, will be made open to the right of inspection by the shareholders. In addition, the Board of Directors may fix reasonable rules not in conflict with the Code regarding the inspection of corporate records that are required by the Code or are permitted by determination of the Board of



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Directors to be made open to inspection. The right of inspection granted in Section 14-2-1602(c) of the Code is not available to any shareholder owning two percent (2%) or less of the shares outstanding, unless the Board of Directors in its discretion grants prior approval for the inspection to the shareholder.

**Section 10.02 Fiscal Year**

The Board of Directors may determine the fiscal year of the corporation and may change the fiscal year from time to time as the Board of Directors deems appropriate.

**Section 10.03 Corporate Seal**

If the Board of Directors determines that the corporation should have a corporate seal for the corporation, the corporate seal will be in the form the Board of Directors from time to time determines.

**Section 10.04 Financial Statements**

In accordance with the Code, the corporation shall prepare and provide to the shareholders such financial statements as may be required by the Code.

**Section 10.05 Conflict with Articles of Incorporation**

In the event that any provision of these bylaws conflicts with any provision of the Articles of Incorporation, the provision in the Articles of Incorporation will govern.

**Article XI. AMENDMENTS**

**Section 11.01 Power to Amend Bylaws.**

Except as otherwise explicitly provided in this Section 11.01, the Bylaws may be altered, amended or repealed, and new Bylaws may be adopted, by (a) the affirmative vote of the holders of two-thirds (2/3) of the shares of stock then outstanding and entitled to vote in the election of directors, or (b) the Board of Directors of the Corporation, but any Bylaw adopted by the Board of Directors may be altered, amended, or replaced, or new Bylaws may be adopted, by the affirmative vote of the holders of two-thirds (2/3) of the shares of stock entitled to vote in the election of directors. The shareholders may prescribe, by so expressing in the action they take in amending or adopting any Bylaw or Bylaws, that the Bylaw or Bylaws so amended or adopted by them shall not be altered, amended or repealed by the Board of Directors. Notwithstanding the foregoing, Section 4.05 may not be modified, amended or repealed except by the affirmative vote of the holders of a majority of the shares of stock then outstanding and entitled to vote in the election of directors.

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**Article XII. CERTAIN PROVISIONS OF GEORGIA LAW**

**Section 12.01 Business Combinations.**

All of the requirements of Article 11, Part 3, of the Code, included in Sections 14-2-1131 through 1133 (and any successor provisions thereto), shall be applicable to the corporation in connection with any business combination, as defined therein, with any interested shareholder, as defined therein.





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

In connection with the Quarterly Report of the Global Payments Inc. on Form 10-Q for the period ended August 31, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, Paul R. Garcia, Chief Executive Officer of Global Payments Inc. (the "Company"), and James G. Kelly, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

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

/s/ PAUL R. GARCIA

/s/ JAMES G. KELLY

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**Paul R. Garcia, Chief Executive Officer  
Global Payments Inc., October 10, 2003**

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**James G. Kelly, Chief Financial Officer  
Global Payments Inc., October 10, 2003**

A signed original of this written statement required by Section 906 has been provided to Global Payments Inc. and will be retained by Global Payments Inc. and furnished to the Securities and Exchange Commission upon request.