

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

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2021

OR

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

For the transition period from _____ to _____

Commission File No. 001-36876

BABCOCK & WILCOX ENTERPRISES, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other Jurisdiction of Incorporation or Organization)

47-2783641

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

1200 East Market Street, Suite 650

Akron, Ohio

(Address of Principal Executive Offices)

44305

(Zip Code)

Registrant's Telephone Number, Including Area Code: **(330) 753-4511**

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.01 par value	BW	New York Stock Exchange
8.125% Senior Notes due 2026	BWSN	New York Stock Exchange
6.50% Senior Notes due 2026	BWNB	New York Stock Exchange
7.75% Series A Cumulative Perpetual Preferred Stock	BW PRA	New York Stock Exchange

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities

Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Yes No

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

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

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

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

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

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes No

The aggregate market value of the registrant's common stock held by non-affiliates of the registrant on the last business day of the registrant's most recently completed second fiscal quarter (based on the closing sales price on the New York Stock Exchange on June 30, 2021) was approximately \$386.2 million.

The number of shares of the registrant's common stock outstanding at February 25, 2022 was 86,334,082.

DOCUMENTS INCORPORATED BY REFERENCE

In accordance with General Instruction G(3) of Form 10-K, certain information required by Part III hereof will either be incorporated into this Form 10-K by reference to our Definitive Proxy Statement for our Annual Meeting of Shareholders filed within 120 days of December 31, 2021 or will be included in an amendment to this Form 10-K filed within 120 days of December 31, 2021.

TABLE OF CONTENTS

	<u>PAGE</u>
<u>PART I</u>	
Item 1.	Business 5
Item 1A.	Risk Factors 13
Item 1B.	Unresolved Staff Comments 32
Item 2.	Properties 32
Item 3.	Legal Proceedings 32
Item 4.	Mine Safety Disclosures 32
<u>PART II</u>	
Item 5.	Market for Registrant's Common Equity, Related Stockholder Matter and Issuer Purchase of Equity Securities 33
Item 6.	Reserved 34
Item 7.	Management's Discussion and Analysis of Financial Condition and Results of Operation 34
	 Overview 35
	 Results of Operations - Years Ended December 31, 2021, 2020, and 2019 36
	 Liquidity and Capital Resources 45
	 Critical Accounting Policies and Estimates 48
Item 7A.	Quantitative and Qualitative Disclosures about Market Risk 50
Item 8.	Consolidated Financial Statements and Supplemental Data 50
	 Report of Independent Registered Public Accounting Firm 50
	 Consolidated Statements of Operations for the Years Ended December 31, 2021, 2020, and 2019 53
	 Consolidated Statements of Comprehensive Income (Loss) for the Years Ended December 31, 2021, 2020, and 2019 54
	 Consolidated Balance Sheets as of December 31, 2021 and 2020 55
	 Consolidated Statement of Stockholders' Equity (Deficit) for the Years Ended December 31, 2021, 2020, and 2019 56
	 Consolidated Statements of Cash Flows for the Years Ended December 31, 2021, 2020, and 2019 58
	 Notes to Consolidated Financial Statements 60
Item 9A.	Controls and Procedures 107
	 Disclosure Controls and Procedures 107
	 Management's Report on Internal Control Over Financial Reporting 106
	 Attestation Report of Independent Registered Public Accounting Firm 106
	 Changes in Internal Control Over Financial Reporting 108
	 Report of Independent Registered Public Accounting Firm 106
Item 9B.	Other Information 110
<u>PART III</u>	
Item 10.	Directors, Executive Officers, and Corporate Governance 110
Item 11.	Executive Compensation 111
Item 12.	Security Ownership of Beneficial Owners and Related Stockholder Matters 111
Item 13.	Certain Relationships and Related Transactions, and Director Independence 111
Item 14.	Principal Accountant Fees and Services 111
<u>PART IV</u>	
Item 15.	Exhibits and Financial Statement Schedules 112
Item 16.	Form 10-K Summary 120
Signatures	120

PART I

***** Cautionary Statement Concerning Forward-Looking Information *****

This Annual Report on Form 10-K, including Management's Discussion and Analysis of Financial Condition and Results of Operations, contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. All statements other than statements of historical or current fact included in this Annual Report are forward-looking statements. You should not place undue reliance on these statements. Forward-looking statements include words such as "expect," "intend," "plan," "likely," "seek," "believe," "project," "forecast," "target," "goal," "potential," "estimate," "may," "might," "will," "would," "should," "could," "can," "have," "due," "anticipate," "assume," "contemplate," "continue" and other words and terms of similar meaning in connection with any discussion of the timing or nature of future operational performance or other events.

These forward-looking statements are based on management's current expectations and involve a number of risks and uncertainties, including, among other things, the impact of COVID-19 on us and the capital markets and global economic climate generally; our ability to integrate acquired businesses and the impact of those acquired businesses on our cash flows, results of operations and financial condition, including our recent acquisitions of Fosler Construction Company Inc., VODA A/S, Fossil Power Systems, Inc., and Optimus Industries, LLC; our recognition of any asset impairments as a result of any decline in the value of our assets or our efforts to dispose of any assets in the future; our ability to obtain and maintain sufficient financing to provide liquidity to meet our business objectives, surety bonds, letters of credit and similar financing; our ability to comply with the requirements of, and to service the indebtedness under, our debt facility agreements; our ability to pay dividends on our 7.75% Series A Cumulative Perpetual Preferred Stock; our ability to make interest payments on our 8.125% senior notes due 2026 and our 6.50% notes due 2026; the highly competitive nature of our businesses and our ability to win work, including identified project opportunities in our pipeline; general economic and business conditions, including changes in interest rates and currency exchange rates; cancellations of and adjustments to backlog and the resulting impact from using backlog as an indicator of future earnings; our ability to perform contracts on time and on budget, in accordance with the schedules and terms established by the applicable contracts with customers; failure by third-party subcontractors, partners or suppliers to perform their obligations on time and as specified; our ability to successfully resolve claims by vendors for goods and services provided and claims by customers for items under warranty; our ability to realize anticipated savings and operational benefits from our restructuring plans, and other cost savings initiatives; our ability to successfully address productivity and schedule issues in our B&W Renewable, B&W Environmental and B&W Thermal segments; our ability to successfully partner with third parties to win and execute contracts within our B&W Environmental, B&W Renewable and B&W Thermal segments; changes in our effective tax rate and tax positions, including any limitation on our ability to use our net operating loss carryforwards and other tax assets; our ability to successfully manage research and development projects and costs, including our efforts to successfully develop and commercialize new technologies and products; the operating risks normally incident to our lines of business, including professional liability, product liability, warranty and other claims against us; difficulties we may encounter in obtaining regulatory or other necessary permits or approvals; changes in actuarial assumptions and market fluctuations that affect our net pension liabilities and income; our ability to successfully compete with current and future competitors; our ability to negotiate and maintain good relationships with labor unions; changes in pension and medical expenses associated with our retirement benefit programs; social, political, competitive and economic situations in foreign countries where we do business or seek new business. These factors also include the cautionary statements included in this report and the risk factors set forth under Part I, Item 1A of this Annual Report.

These forward-looking statements are made based upon detailed assumptions and reflect management's current expectations and beliefs. While we believe that these assumptions underlying the forward-looking statements are reasonable, we caution that it is very difficult to predict the impact of known factors, and it is impossible for us to anticipate all factors that could affect actual results.

The forward-looking statements included herein are made only as of the date hereof. We undertake no obligation to publicly update or revise any forward-looking statement as a result of new information, future events, or otherwise, except as required by law.

SUMMARY RISK FACTORS

Our business is subject to varying degrees of risk and uncertainty. Investors should consider the risks and uncertainties summarized below, as well as the risks and uncertainties discussed in Part I, Item 1A, "Risk Factors" of this Annual Report on Form 10-K. The summary below is provided for ease of reference, is not intended to reflect a complete explanation of

relevant risks and uncertainties and should be read together with the more detailed description of these risks and uncertainties in Part I, Item 1A, "Risk Factors" of this Annual Report on Form 10-K. Additional risks not presently known to us or that we currently deem immaterial may also affect us. If any of these risks occur, our business, financial condition, results of operations or cash flows could be materially and adversely affected, and, as a result, the trading price for our common stock could decline.

Our business is subject to the following principal risks and uncertainties:

- Our business, financial condition and results of operations, and those of our customers, suppliers and vendors, have been, and continue to be, adversely affected by COVID-19 outbreak and may be adversely affected by other similar outbreaks;
- We are subject to risks associated with contractual pricing in our industry, including the risk that, if our actual costs exceed the costs we estimate on our fixed-price contracts, our profitability will decline, and we may suffer losses;
- Disputes with customers with long-term contracts could adversely affect our financial condition;
- Our contractual performance may be affected by third parties' and subcontractors' failure to meet schedule, quality and other requirements in our contracts, which could increase our costs, scope or, technical difficulty or in extreme cases, impede our ability to meet contractual requirements;
- A material disruption at one of our manufacturing facilities or a third-party manufacturing facility that we have engaged could adversely affect our ability to generate sales and result in increased costs;
- If our co-venturers fail to perform their contractual obligations on a contract or if we fail to coordinate effectively with our co-venturers, we could be exposed to legal liability, damage to reputation, reduced profit, or liquidity challenges;
- Our growth strategy includes strategic acquisitions, which we may not be able to consummate or successfully integrate;
- Our backlog is subject to unexpected adjustments and cancellations and may not be a reliable indicator of future revenues or earnings;
- Our inability to deliver our backlog on time could affect our future sales and profitability, and our relationships with our customers;
- Our operations are subject to operating risks, which could expose us to potentially significant professional liability, product liability, warranty and other claims. Our insurance coverage may be inadequate to cover all of our significant risks, our insurers may deny coverage of material losses we incur, or we may be unable to obtain additional insurance coverage in the future, any of which could adversely affect our profitability and overall financial condition;
- We may not be able to compete successfully against current and future competitors;
- If we fail to develop new products, or customers do not accept our new products, our business could be adversely affected;
- We derive substantial revenues from electric power generating companies and other steam-using industries, including coal-fired power plants in particular. Demand for our products and services depends on spending in these historically cyclical industries. Additionally, legislative and regulatory developments relating to clean air legislation are affecting industry plans for spending on coal-fired power plants within the United States and elsewhere;
- Demand for our products and services is vulnerable to macroeconomic downturns and industry conditions;
- Supply chain issues, including shortages of adequate component supply that increase our costs or cause delays in our ability to fulfill orders, and our failure to estimate customer demand properly may result could have an adverse impact on our business and operating results and our relationships with customers;
- Our ability to maintain adequate bonding and letter of credit capacity is necessary for us to successfully complete, bid on and win various contracts;
- Our evaluation of strategic alternatives for certain businesses and non-core assets may not be successful;
- Our total assets include goodwill and other indefinite-lived intangible assets. If we determine these have become impaired, our business, financial condition and results of operations could be materially adversely affected;
- We are exposed to credit risk and may incur losses as a result of such exposure;
- The transition away from LIBOR may negative impact our operating results;
- The financial and other covenants in our debt agreements may adversely affect us;
- A disruption in, or failure of our information technology systems, including those related to cybersecurity, could adversely affect our business operations and financial performance;
- Privacy and information security laws are complex, and if we fail to comply with applicable laws, regulations and standards, or if we fail to properly maintain the integrity of our data, protect our proprietary rights to our systems or defend against cybersecurity attacks, we may be subject to government or private actions due to privacy and security

- breaches, any of which could have a material adverse effect on our business, financial condition and results of operations or materially harm our reputation;
- We rely on intellectual property law and confidentiality agreements to protect our intellectual property. We also rely on intellectual property we license from third parties. Our failure to protect our intellectual property rights, or our inability to obtain or renew licenses to use intellectual property of third parties, could adversely affect our business;
- We are subject to government regulations that may adversely affect our future operations;
- Our business and our customers' businesses are required to obtain, and to comply with, national, state and local government permits and approvals;
- Our operations are subject to various environmental laws and legislation that may become more stringent in the future;
- Our operations involve the handling, transportation and disposal of hazardous materials, and environmental laws and regulations and civil liability for contamination of the environment or related personal injuries may result in increases in our operating costs and capital expenditures and decreases in our earnings and cash flows;
- Our business may be affected by new sanctions and export controls targeting Russia and other responses to Russia's invasion of Ukraine.
- We could be adversely affected by violations of the United States Foreign Corrupt Practices Act, the UK Anti-Bribery Act or other anti-bribery laws;
- Our international operations are subject to political, economic and other uncertainties not generally encountered in our domestic operations;
- International uncertainties and fluctuations in the value of foreign currencies could harm our profitability;
- Uncertainty over global tariffs, or the financial impact of tariffs, may negatively affect our results;
- The market price and trading volume of our common stock may be volatile;
- Substantial sales, or the perception of sales, of our common stock by us or certain of our existing shareholders could cause our stock price to decline and future issuances may dilute our common shareholders' ownership in the Company;
- B. Riley has significant influence over us;
- We do not currently pay regular dividends on our common stock, so holders of our common stock may not receive funds without selling their shares of our common stock;
- We may issue preferred stock that could dilute the voting power or reduce the value of our common stock;
- Provisions in our corporate documents and Delaware law could delay or prevent a change in control of the Company, even if that change may be considered beneficial by some shareholders;
- We are subject to continuing contingent liabilities of BWXT following the spin-off;
- We could be subject to changes in tax rates or tax law, adoption of new regulations, changing interpretations of existing law or exposure to additional tax liabilities in excess of accrued amounts that could adversely affect our financial position;
- Our ability to use net operating losses ("NOLs") and certain tax credits to reduce future tax payments could be further limited if we experience an additional "ownership change";
- The loss of the services of one or more of our key personnel, or our failure to attract, recruit, motivate, and retain qualified personnel in the future, could disrupt our business and harm our results of operations;
- We outsource certain business processes to third-party vendors and have certain business relationships that subject us to risks, including disruptions in business which could increase our costs;
- Negotiations with labor unions and possible work stoppages and other labor problems could divert management's attention and disrupt operations. In addition, new collective bargaining agreements or amendments to existing agreements could increase our labor costs and operating expenses;
- Pension and medical expenses associated with our retirement benefit plans may fluctuate significantly depending on a number of factors, and we may be required to contribute cash to meet underfunded pension obligations; and,
- Natural disasters or other events beyond our control, such as war, armed conflicts or terrorist attacks could adversely affect our business.

ITEM 1. Business

In this Annual Report on Form 10-K, or this "Annual Report", unless the context otherwise indicates, "B&W," "we," "us," "our" or the "Company" mean Babcock & Wilcox Enterprises, Inc. and its consolidated subsidiaries.

B&W is a growing, globally-focused renewable, environmental and thermal technologies provider with over 150 years of experience providing diversified energy and emissions control solutions to a broad range of industrial, electrical utility,

municipal and other customers. B&W's innovative products and services are organized into three market-facing segments. Our reportable segments are:

- **Babcock & Wilcox Renewable:** Cost-effective technologies for efficient and environmentally sustainable power and heat generation, including waste-to-energy, solar construction and installation, biomass energy and black liquor systems for the pulp and paper industry. B&W's leading technologies support a circular economy, diverting waste from landfills to use for power generation and replacing fossil fuels, while recovering metals and reducing emissions.
- **Babcock & Wilcox Environmental:** A full suite of best-in-class emissions control and environmental technology solutions for utility, waste to energy, biomass, carbon black, and industrial steam generation applications around the world. B&W's broad experience includes systems for cooling, ash handling, particulate control, nitrogen oxides and sulfur dioxides removal, chemical looping for carbon control, and mercury control.
- **Babcock & Wilcox Thermal:** Steam generation equipment, aftermarket parts, construction, maintenance and field services for plants in the power generation, oil and gas, and industrial sectors. B&W has an extensive global base of installed equipment for utilities and general industrial applications including refining, petrochemical, food processing, metals and others.

On September 30, 2021, we acquired a 60% controlling ownership stake in Illinois-based solar energy contractor Fosler Construction Company Inc. ("Fosler Construction") for approximately \$27.2 million in cash plus contingent consideration of up to \$10 million, valued at \$8.8 million. Fosler Construction provides commercial, industrial and utility-scale solar services and owns two community solar projects in Illinois being developed under the Illinois Solar for All program. Fosler Construction was founded in 1998 and employs approximately 120 people. It has a strong track record of successfully completing solar projects profitably with union labor and has aligned its model with a growing number of renewable project incentives in the U.S. We believe Fosler Construction is positioned to capitalize on the high-growth solar market in the U.S. and that the acquisition aligns with B&W's aggressive growth and expansion of our clean and renewable energy businesses. Fosler Construction is reported as part of our B&W Renewable segment, and operates under the name Fosler Solar, a Babcock & Wilcox company.

On November 30, 2021, we acquired 100% ownership of VODA A/S ("VODA") through our wholly-owned subsidiary, B&W PGG Luxembourg Finance SARL for approximately \$32.9 million. VODA is a Denmark-based multi-brand aftermarket parts and services provider, focusing on energy-producing incineration plants including waste-to-energy, biomass-to-energy or other fuels, providing service, engineering services, spare parts as well as general outage support and management. VODA has extensive experience in incineration technology, boiler and pressure parts, SRO, automation, and performance optimization. VODA employs approximately 65 people mainly in Denmark and Sweden. We believe VODA will solidify our platform for our renewable service business in Europe and that the acquisition aligns with B&W's aggressive growth and expansion of our clean and renewable energy businesses. VODA is reported as part of our B&W Renewable segment. We plan to form B&W Renewable Services to integrate VODA and our waste-to-energy and biomass aftermarket services businesses.

On February 1, 2022, we acquired 100% ownership of Fossil Power Systems, Inc. for approximately \$59.1 million, excluding working capital adjustments. Fossil Power Systems, Inc., is a leading designer and manufacturer of hydrogen, natural gas and renewable pulp and paper combustion equipment including ignitors, plant controls and safety systems based in Dartmouth, Nova Scotia, Canada. Fossil Power Systems, Inc. will initially be reported as part of our B&W Thermal segment.

On February 28, 2022, we acquired 100% ownership of Optimus Industries, LLC for approximately \$19 million, excluding working capital adjustments. Optimus designs and manufactures waste heat recovery products for use in power generation, petrochemical, and process industries, including package boilers, watertube and firetube waste heat boilers, economizers, superheaters, waste heat recovery equipment and sulfuric acid plants and is based in Tulsa, Oklahoma and Chanute, Kansas. Optimus Industries, LLC will be reported as part of our B&W Thermal segment.

Our business depends significantly on the capital, operations and maintenance expenditures of global electric power generating companies, including renewable and thermal powered heat generation industries and industrial facilities with environmental compliance policy requirements. Several factors may influence these expenditures, including:

- climate change initiatives promoting environmental policies including renewable energy options utilizing waste-to-energy or biomass to meet legislative requirements and clean energy portfolio standards in the United States, European, Middle East and Asian markets;
- regulations requiring environmental improvements in various global markets;
- expectations regarding future governmental requirements to further limit or reduce greenhouse gas and other emissions in the United States, Europe and other international climate change sensitive countries;
- prices for electricity, along with the cost of production and distribution including the cost of fuels within the United States, Europe, Middle East and Asian countries;
- demand for electricity and other end products of steam-generating facilities;
- level of capacity utilization at operating power plants and other industrial uses of steam production;
- maintenance and upkeep requirements at operating power plants, including to combat the accumulated effects of usage;
- overall strength of the industrial industry; and
- ability of electric power generating companies and other steam users to raise capital.

Customer demand is heavily affected by the variations in our customers' business cycles and by the overall economies and energy, environmental and noise abatement needs of the countries in which they operate.

COVID-19

In December 2019, a novel strain of coronavirus, COVID-19, was identified in Wuhan, China and subsequently spread globally. This global pandemic has disrupted business operations, including global supply chains, trade, commerce, financial and credit markets, and daily life throughout the world. Our business has been, and continues to be, adversely impacted by the measures taken and restrictions imposed in the countries in which we operate and by local governments and others to control the spread of this virus. These measures and restrictions have varied widely and have been subject to significant changes from time to time depending on changes in the severity of the virus in these countries and localities. These restrictions, including curtailment of travel and other activity, negatively impact our ability to conduct business.

Disruption to our global supply chains from COVID-19 has included impacts to the manufacturing, supply, distribution, transportation and delivery of our products. We could also see significant disruptions of the operations of our logistics, service providers, delays in shipments and negative impacts to pricing of certain of our products. Disruptions and delays in our supply chains as a result of the COVID-19 pandemic could adversely our ability to meet our customers' demands. Additionally, the prioritization of shipments of certain products as a result of the pandemic could cause delays in the shipment or delivery of our products. Such disruptions could result in reduced sales.

The volatility and variability of the virus has limited our ability to forecast the impact of the virus on our customers and our business. The ongoing impact of COVID-19, including new strains such as the delta and omicron variants, has resulted in the reimposition of certain restrictions and may lead to other restrictions being implemented in response to efforts to reduce the spread of the virus. These varying and changing events have caused many of the projects we had anticipated would begin in 2021 to be delayed into 2022 and potentially beyond. Many customers and projects require B&W's employees to travel to customer and project worksites. Certain customers and significant projects are located in areas where travel restrictions have been imposed, certain customers have closed or reduced on-site activities, and timelines for completion of certain projects have, as noted above, been extended into 2022 and beyond. Additionally, out of concern for our employees, even where restrictions permit employees to return to our offices and worksites, we incurred additional costs to protect our employees and advised those who are uncomfortable returning to worksites due to the pandemic that they are not required to do so for an indefinite period of time. The resulting uncertainty concerning, among other things, the spread and economic impact of the virus has also caused significant volatility and, at times, illiquidity in global equity and credit markets. The full extent of the impact of COVID-19 and its variants on our operational and financial performance will depend on future developments, including the ultimate duration and spread of the pandemic and related actions taken by the U.S. government, state and local government officials, and international governments to prevent outbreaks, as well as the availability, effectiveness and acceptance of COVID-19 vaccinations in the U.S. and abroad, all of which are uncertain, out of our control, and cannot be predicted.

Equity Capital Activities

On February 12, 2021, we completed a public offering of 29,487,180 shares of our common stock for net proceeds of \$163.0 million, inclusive of 3,846,154 shares issued to B. Riley Securities, Inc., a related party.

On May 7, 2021, we completed a public offering of 4,000,000 shares of our 7.75% Series A Cumulative Perpetual Preferred Stock (the "Preferred Stock") at an offering price of \$25.00 per share for net proceeds of approximately \$95.7 million after deducting underwriting discounts and commissions but before expenses.

On May 26, 2021, we completed the additional sale of 444,700 shares of our Preferred Stock, related to offering described above, at an offering price of \$25.00 per share for net proceeds of approximately \$10.7 million after deducting underwriting fees and commissions.

On June 1, 2021, the Company and B. Riley, a related party, entered into an agreement pursuant to which we (i) issued B. Riley 2,916,880 shares of our Preferred Stock, representing an exchange price of \$25.00 per share and paid \$0.4 million in cash, and (ii) paid \$0.9 million in cash to B. Riley for accrued interest due, in exchange for a deemed prepayment of \$73.3 million of our then-existing term loans with B. Riley.

On July 7, 2021, we entered into a sales agreement with B. Riley Securities, Inc., a related party, in connection with the offer and sale of our Preferred Stock with an aggregate offering price of up to \$76 million to or through B. Riley Securities, Inc. The Preferred Stock has the same terms (other than date of issuance and first dividend), has the same CUSIP number and is fungible with the Preferred Stock issued on May 7, 2021. As of December 31, 2021, we sold \$7.7 million aggregate amount of Preferred Stock for \$7.7 million net proceeds after commission and fees related to the July 7, 2021 sales agreement.

For further information, see Note 17 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report.

Debt Capital Activities

8.125% Senior Notes

On February 12, 2021, we completed a public offering of \$125.0 million aggregate principal amount of our 8.125% senior notes due 2026 (the "8.125% Senior Notes"). At the completion of the offering, we received net proceeds of approximately \$120.0 million after deducting underwriting discounts, commissions, and before expenses.

In addition to the public offering, we issued \$35.0 million of 8.125% Senior Notes to B. Riley Financial, Inc., a related party, in exchange for a deemed prepayment of our existing Last Out Term Loan Tranche A-3 in a concurrent private offering.

On March 31, 2021, we entered into a sales agreement with B. Riley Securities, Inc., a related party, in which we may sell to or through B. Riley Securities, Inc., from time to time, additional 8.125% Senior Notes up to an aggregate principal amount of \$150.0 million of 8.125% Senior Notes. The 8.125% Senior Notes have the same terms as (other than date of issuance), form a single series of debt securities with and have the same CUSIP number and be fungible with, the 8.125% Senior Notes issued February 12, 2021, as described above.

As of December 31, 2021, the Company has sold \$26.2 million aggregate principal amount of 8.125% Senior Notes under the sales agreement disclosed above for \$26.6 million of net proceeds after commissions and fees.

The 8.125% Senior Notes are senior unsecured obligations of the Company and rank equally in right of payment with all of the Company's other existing and future senior unsecured and unsubordinated indebtedness. The 8.125% Senior Notes bear interest at the rate of 8.125% per annum. Interest on the 8.125% Senior Notes is payable quarterly in arrears on January 31, April 30, July 31 and October 31 of each year, commencing on April 30, 2021. The 8.125% Senior Notes mature on February 28, 2026.

6.50% Senior Notes

On December 13, 2021, we completed an underwritten public offering of \$140 million aggregate principal amount of 6.50% senior notes due 2026 (the "6.50% Senior Notes"). On December 28, 2021, we received a notice that the Underwriters had elected to exercise their over-allotment option for an additional \$11.4 million in aggregate principal amount of the 6.50% Senior Notes. The Company closed the over-allotment option on December 30, 2021. As of the closing of the over-allotment option, a total of \$151.4 million in aggregate principal amount of the 6.50% Senior Notes have been sold. The net proceeds

from the offering, including the 6.50% Senior Notes purchased pursuant to the overallotment option, after deducting the Underwriters' discount and the estimated offering expenses payable by the Company, were approximately \$145.0 million.

The public offering of our 6.50% Senior Notes was conducted pursuant to an underwriting agreement dated December 8, 2021, between us and B. Riley Securities, Inc., an affiliate of B. Riley, a related party, as representative of several underwriters.

The 6.50% Senior Notes are senior unsecured obligations of the Company and rank equally in right of payment with all of the Company's other existing and future senior unsecured and unsubordinated indebtedness. The 6.50% Senior Notes are effectively subordinated in right of payment to all of the Company's existing and future secured indebtedness and structurally subordinated to all existing and future indebtedness of the Company's subsidiaries, including trade payables. The 6.50% Senior Notes bear interest at the rate of 6.50% per annum. Interest on the 6.50% Senior Notes is payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each year, commencing on March 31, 2022. The 6.50% Senior Notes will mature on December 31, 2026.

For further information, see Note 14 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report.

Contracts

We execute our contracts through a variety of methods, including fixed-price, cost-plus, target price cost incentive, cost-reimbursable or some combination of these methods. Contracts are usually awarded through a competitive bid process. Factors that customers may consider include price, technical capabilities of equipment and personnel, plant or equipment availability, efficiency, safety record and reputation.

Fixed-price contracts are for a fixed selling price to cover all costs and any profit element for a defined scope of work. Fixed-price contracts entail more risk to us because they require us to predetermine both the quantities of work to be performed and the costs associated with executing the work.

We have contracts that extend beyond one year. Most of our long-term contracts have provisions for progress payments. We attempt to cover anticipated increases in labor, material and service costs of our long-term contracts either through an estimate of such changes, which is reflected in the original price, or through risk-sharing mechanisms, such as escalation or price adjustments for items such as labor and commodity prices. In the event of a contract deferral or cancellation without cause, we generally would be entitled to recover costs incurred, settlement expenses and profit on work completed prior to deferral or termination. Significant or numerous cancellations could adversely affect our business, financial condition, results of operations and cash flows.

From time to time, we partner with other companies to meet the needs of our customers, which can result in project-related joint venture entities or other contractual arrangements. While we carefully select our partners in these arrangements, they can subject us to risks that we may not be able to fully control and may include joint and several liability.

We generally recognize our contract revenues and related costs over time using the cost-to-cost input method that uses costs incurred to date relative to total estimated costs at completion to measure progress toward satisfying our performance obligations. Accordingly, we review contractual sales price and cost estimates regularly as the work progresses and reflect adjustments in profit proportionate to the percentage-of-completion in the period when we revise those estimates. To the extent that these adjustments result in a reduction or an elimination of previously reported profits with respect to a contract, we would recognize a charge against current earnings, which could be material.

See further description of risks related to our contracting in *Risks Related to Our Operations* in Part I, Item 1A of this Annual Report.

Our arrangements with customers frequently require us to provide letters of credit, bid and performance bonds or guarantees to secure bids or performance under contracts, which may involve providing cash collateral or other contract security that we may not be able to provide.

Other sales, such as parts and certain aftermarket service activities, are not in the form of long-term contracts, and we recognize revenues as goods are delivered and work is performed. See further discussion in Note 5 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report.

Foreign Operations

Our operations in Denmark, including through our recent acquisition of VODA, provide comprehensive services to companies in the waste-to-energy and biomass to energy sector of the power generation market, currently primarily in Europe. Our operations in Italy provide custom-engineered comprehensive wet and dry cooling solutions and aftermarket parts and services to the power generation industry including natural gas-fired and renewable energy power plants, as well as downstream oil and gas, petrochemical and other industrial end markets in Europe, the Middle East and the Americas. Our operations in Scotland primarily provide boiler cleaning technologies and systems primarily to Europe. Our Canadian operations serve the Canadian industrial power, oil production and electric utility markets. We have manufacturing facilities in Mexico to serve global markets.

The functional currency of our foreign operating entities is not the United States dollar, and as a result, we are subject to exchange rate fluctuations that impact our financial position, results of operations and cash flows. We do not currently engage in currency hedging activities to limit the risks of currency fluctuations.

For additional information on the geographic distribution of our revenues, see Note 4 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report.

Competition

With over 150 years of experience, we have a competitive advantage in our experience and technical capability to reliably convert a wide range of fuels to steam. We have supplied highly-engineered energy and environmental equipment in more than 90 countries. Our strong, installed base around the globe also yields competitive advantages, although our markets are highly competitive and price sensitive. We compete with a number of domestic and foreign companies specializing in power generation, environmental control equipment, and cooling systems and services. Each segment's primary competitors are summarized as follows:

B&W Renewable segment	B&W Environmental segment	B&W Thermal segment
CNIM Group	Hamon	GE ⁽¹⁾
Hitachi Zosen	Enexio	MH Power Systems ⁽¹⁾
Martin	Seagull	Babcock Power ⁽¹⁾
Keppel Seghers	Paharpur	Doosan ⁽¹⁾
Valmet	Evapco	Clyde Bergemann
Andritz	SPG Dry	Enerfab
Steinmuller	Radscan AB	TEI Construction
	LAB	APComPower
		Azco, Inc.

⁽¹⁾ GE, MH Power Systems, Babcock Power & Doosan are also considered primary competitors of the B&W Environmental Segment.

Across each of our segments, we also compete with a variety of engineering and construction companies related to installation of steam generating systems and environmental control equipment; specialized industrial equipment; and other suppliers of replacement parts, repair and alteration services and other services required to retrofit and maintain existing steam generating systems. The primary bases of competition are price, technical capabilities, quality, timeliness of performance, breadth of products and services and willingness to accept contract risks.

Raw Materials and Suppliers

Our operations use raw materials such as carbon and alloy steels in various forms and components and accessories for assembly, which are available from numerous sources. We generally purchase these raw materials and components as needed for individual contracts. We do not depend on a single source of supply for any significant raw materials. Although shortages of some raw materials have existed from time to time, no serious shortage exists at the present time.

Human Capital Resources

Human Capital Management

At December 31, 2021, we had approximately 1,800 employees worldwide, of which approximately 1,750 were full-time. Approximately 400 of our hourly employees are union-affiliated, covered by four union agreements related to active facilities in Mexico, the United States, the United Kingdom, and Canada. We successfully renegotiated two union contracts in 2021 and have one that will expire in early 2023. We consider our relationships with our employees and unions to be in good standing.

Workforce Engagement

We believe an engaged global workforce is critical to our success as we work to profitably grow our business as a leading supplier of clean and sustainable energy solutions.

B&W is known for having a dedicated, long-tenured workforce and for having some of the best, most experienced employees in the industries we serve. Our ability to attract and retain this exceptional talent requires a commitment to open communication about the company's business, strategy and results with our employees and a globally diverse, inclusive and supportive workplace that provides opportunities for growth and career development. It also requires programs that enhance employees' overall work experience. We have implemented the Responsible and Flexible Workplace Program ("ReFlex") in the U.S. that provides employees with flexibility in where they work and various work-from-home policies across many of our global operations. While COVID-19 has continued to impact life throughout the world, our employees have remained diligent, customer focused and resilient, and progressive employment programs like ReFlex have provided us with an important competitive advantage. They allow us to keep our facilities running, deliver on our projects and ensure our customers' needs are met, while also safeguarding the safety and health of our employees. Through ReFlex, our employees have needed flexibility and autonomy in how they work, particularly during these unprecedented times.

Compensation and Benefits

We also believe it is important to provide competitive compensation and benefits programs for our employees. In addition to salaries, we offer the following benefits, among others, which vary by employee level and by the country where the employees are located:

- bonuses,
- stock awards,
- retirement programs (including pension and savings plans),
- health savings and flexible spending accounts,
- paid time off,
- paid parental leave,
- disability programs,
- and employee assistance programs.

Core Values

At B&W, our values of safety, ethics, quality, integrity, respect and agility are at the foundation of our business, and we are focused on efficiently ingraining new employees into that culture, whether they join through the normal recruiting and hiring process, or as we have grown our company through strategic acquisitions. We also believe in the importance of being a good corporate citizen, providing and supporting opportunities for our employees to make a positive impact in the communities where they live and work.

Our Board is actively engaged with our workforce practices and policies, and regularly receives updates and provides input on key culture topics, including employee engagement, employee development and succession planning.

Patents and Patent Licenses

We currently hold a large number of United States and foreign patents and have patent applications pending. We have acquired patents and technology licenses and granted technology licenses to others when we have considered it advantageous.

for us to do so. Although in the aggregate our patents and licenses are important to us, we do not regard any single patent or license or group of related patents or licenses as critical or essential to our business as a whole. In general, we depend on our technological capabilities and the application thereof, rather than patents and licenses, in the conduct of our various businesses.

Research and Development Activities

Our research and development activities improve our products through innovations to reduce the cost of our products to make them more competitive and through innovations to reduce performance risk of our products to better meet our customer expectations. Research and development costs are expensed as incurred.

Permits and Licenses

We are required by various governmental and quasi-governmental agencies to obtain certain permits, licenses and certificates with respect to our operations. The kinds of permits, licenses and certificates required in our operations depend upon a number of factors. We are not aware of any material noncompliance and believe our operations and certifications are currently in compliance with all relevant permits, licenses and certifications.

Environmental

We have been identified as a potentially responsible party at various cleanup sites under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”). CERCLA and other environmental laws can impose liability for the entire cost of cleanup on any of the potentially responsible parties, regardless of fault or the lawfulness of the original conduct. Generally, however, where there are multiple responsible parties, a final allocation of costs is made based on the amount and type of wastes disposed of by each party and the number of financially viable parties, although this may not be the case with respect to any particular site. We have not been determined to be a major contributor of wastes to any of these sites. On the basis of our relative contribution of waste to each site, we expect our share of the ultimate liability for the various sites will not have a material adverse effect on our consolidated financial condition, results of operations or cash flows in any given year.

Government Regulations

We are subject to a variety of laws and regulations in the United States and other countries that involve matters central to our business, including those relating to:

- the construction and manufacture of renewable, environmental and thermal products;
- clean air and other environmental protection legislation;
- taxation of domestic and foreign earnings;
- tariffs, duties, or trade sanctions and other trade barriers imposed by foreign countries that restrict or prohibit business transactions in certain markets;
- user privacy, security, data protection, content, and online-payment services;
- intellectual property;
- transactions in or with foreign countries or officials; and
- use of local employees and suppliers.

For further discussion, see Part I, Item 1A, “Risk Factors” of this Annual Report on Form 10-K.

Available Information

Our website address is www.babcock.com. We make available through the Investor section of this website under “Financial Information,” free of charge, our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, our proxy statement, statements of beneficial ownership of securities on Forms 3, 4 and 5 and amendments to those reports as soon as reasonably practicable after we electronically file those materials with, or furnish those materials to, the Securities and Exchange Commission (the “SEC”). In addition, the SEC maintains a website at www.sec.gov that contains reports, proxy and annual reports, and other information regarding issuers that file electronically with the SEC. We have also posted on our website our: Corporate Governance Principles; Code of Business Conduct; Code of Ethics for our Chief Executive Officer and Senior Financial Officers; Related Party Transactions Policy; Management, Board Members and Independent Director Contact Information; Amended and Restated By-laws; charters for the Audit & Finance, Governance, and

Compensation Committees of our Board; and our Modern Slavery Transparency Statement. We are not including the information contained in our website as part of or incorporating it by reference into this Annual Report.

Item 1A. Risk Factors

You should carefully consider each of the following risks and all of the other information contained in this Annual Report. If any of these risks develop into actual or expected events, our business, financial condition, results of operations or cash flows could be materially and adversely affected, and, as a result, the trading price of our common stock could decline.

The risks discussed below are not the only ones facing our business but do represent those risks that we believe are material to us. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also harm our business. Please read the cautionary notice regarding forward-looking statements under the heading “Cautionary Statement Concerning Forward-Looking Information.”

Risks Related to Our Operations

Our business, financial condition and results of operations, and those of our customers, suppliers and vendors, have been, and continue to be, adversely affected by the global COVID-19 outbreak and may be adversely affected by other similar outbreaks.

When a pandemic or outbreak of an infectious disease occurs, our business, financial condition and results of operations may be adversely affected. In December 2019, a novel strain of coronavirus, COVID-19, was identified in Wuhan, China and subsequently spread globally. The ongoing impact of COVID-19, including new strains such as the delta and omicron variants, has resulted in the reimposition of certain restrictions and may lead to other restrictions being implemented in response to efforts to reduce the spread of the virus. This global pandemic has disrupted business operations, global supply chain logistics, trade, commerce, financial and credit markets, and daily life throughout the world. Our business has been, and continues to be, adversely impacted by the measures taken and restrictions imposed in the countries in which we operate and by local governments and others to control the spread of this virus. These measures and restrictions have varied widely and have been subject to significant changes from time to time depending on the changes in the severity of the virus in these countries and localities. These restrictions, including travel and curtailment of other activity, negatively impact our ability to conduct business. The volatility and variability of the virus has limited our ability to forecast the impact of the virus on our customers and our business. These varying and changing events have caused many of the projects we had anticipated would begin in 2021 to be delayed into 2022 and potentially beyond. Many customers and projects require B&W's employees to travel to customer and project worksites. Certain customers and significant projects are located in areas where travel restrictions have been imposed, certain customers have closed or reduced on-site activities, and timelines for completion of certain projects have, as noted above, been extended into 2022 and beyond. Additionally, out of concern for our employees, even where restrictions permit employees to return to our offices and worksites, we have incurred additional costs to protect our employees as well as, advising those who are uncomfortable returning to worksites due to the pandemic that they are not required to do so for an indefinite period of time. The resulting uncertainty concerning, among other things, the spread and economic impact of the virus has also caused significant volatility and, at times, illiquidity in global equity and credit markets. The full extent of the impact of COVID-19 and its variants on our operational and financial performance will depend on future developments, including the ultimate duration and spread of the pandemic and related actions taken by the U.S. government, state and local government officials, and international governments to prevent outbreaks, as well as the availability, effectiveness and acceptance of COVID-19 vaccinations in the U.S. and abroad, all of which are uncertain, out of our control, and cannot be predicted.

This outbreak, and any outbreak of a contagious disease or any other adverse public health developments in countries where we operate, could have material and adverse effects on our business, financial condition and results of operations. These effects could include, among others, delays in the construction of new projects or the delay of maintenance on existing products provided to our customers, as well as disruptions or restrictions on our employees' ability to travel to necessary worksites, including as a result of the temporary closure of our facilities or the facilities of our customers, suppliers, vendors or projects. Further, our suppliers and vendors may be adversely impacted, which may impair their ability to satisfy their contractual obligations to us and our customers. In addition, any outbreak may result in a widespread health crisis that could adversely affect the economies and financial markets of many countries, resulting in an economic downturn or recession that could affect demand for our products or our ability to obtain financing for our business or projects.

The ultimate effect of the COVID-19 outbreak or any other outbreak on our business, financial condition and operations will depend heavily on the future developments, which are highly uncertain and cannot be predicted with confidence, including the duration of the outbreak, new information that may emerge concerning the severity of the virus and the actions taken to contain the virus or treat its impact, among others. In particular, the actual and threatened spread of the virus could have a material adverse effect on the global economy and may negatively impact financial markets in the future, including the trading price of our common stock, could cause continued interest rate volatility and movements that could make obtaining financing or refinancing our debt obligations more challenging or more expensive, could continue to limit the ability of our personnel to travel to service the needs of our customers as well as limiting the ability of our suppliers and vendors to travel to service our business, and could result in any threatened areas to be subject to quarantine and shelter-in-place orders among other restrictions. Any of these developments could have a material adverse effect on our business, liquidity, capital resources and financial results and may result in our inability to continue operating as a going concern or require us to reorganize our company in its entirety, including through bankruptcy proceedings.

We are subject to risks associated with contractual pricing in our industry, including the risk that, if our actual costs exceed the costs we estimate on our fixed-price contracts, our profitability will decline, and we may suffer losses.

We are engaged in a highly competitive industry, and we have priced a number of our contracts on a fixed-price basis. Our actual costs could exceed our projections. We attempt to cover the increased costs of anticipated changes in labor, material and service costs of long-term contracts, either through estimates of cost increases, which are reflected in the original contract price, or through price escalation clauses. Despite these attempts, the cost and gross profit we realize on a fixed-price contract could vary materially from the estimated amounts because of supplier, contractor and subcontractor performance, changes in job conditions, variations in labor and equipment productivity and increases in the cost of labor and raw materials, particularly steel, over the term of the contract. These variations and the risks generally inherent in our industry may result in actual revenues or costs being different from those we originally estimated and may result in reduced profitability or losses on contracts. Some of these risks include:

- difficulties encountered on our large-scale contracts related to the procurement of materials or due to schedule disruptions, equipment performance failures, engineering and design complexity, unforeseen site conditions, rejection clauses in customer contracts or other factors that may result in additional costs to us, reductions in revenue, claims or disputes;
- our inability to obtain compensation for additional work we perform or expenses we incur as a result of our customers or subcontractors providing deficient design or engineering information or equipment or materials;
- requirements to pay liquidated damages upon our failure to meet schedule or performance requirements of our contracts; and
- difficulties in engaging third-party subcontractors, equipment manufacturers or materials suppliers or failures by third-party subcontractors, equipment manufacturers or materials suppliers to perform could result in contract delays and cause us to incur additional costs.

In prior years, we have experienced these risks with several large loss contracts in our B&W Renewable and B&W Environmental segments, which resulted in significant losses for our operations, impaired our liquidity position and had previously resulted in substantial doubt regarding whether we would be able to continue to operate as a going concern. If we were to experience these risks again in the future, our business, results of operations, financial condition and liquidity may be materially and adversely affected.

Disputes with customers with long-term contracts could adversely affect our financial condition.

We routinely enter into long-term contracts with customers. Under long-term contracts, we may incur capital expenditures or other costs at the beginning of the contract that we expect to recoup through the life of the contract. Some of these contracts provide for advance payments to assist us in covering these costs and expenses. A dispute with a customer during the life of a long-term contract could impact our ability to receive payments or otherwise recoup incurred costs and expenses.

Our contractual performance may be affected by third parties' and subcontractors' failure to meet schedule, quality and other requirements on our contracts, which could increase our costs, scope, technical difficulty or in extreme cases, our ability to meet contractual requirements.

We conduct significant portions of our business by engaging in long-term contracts related to highly complex, customized equipment or facilities for electrical generation, industrial processes, and/or environmental compliance. The complexity of

these contracts generally necessitates the participation of others, including third-party suppliers, subcontractors, equipment or part manufacturers, partner companies, other companies with whom we do not have contractual relationships, customers, financing organizations, regulators and others. Our reliance on these parties subjects us to the risk of customer dissatisfaction with the quality or performance of the products or services we sell due to supplier or subcontractor failure. Third-party supplier and subcontractor business interruptions could include but are not limited to, work stoppages, union negotiations, other labor disputes and payment disputes. Current or future economic conditions could also impact the ability of suppliers and subcontractors to access credit and, thus, impair their ability to provide us quality products, materials, or services in a timely manner, or at all.

While we endeavor to limit our liability to matters within our control, not all scenarios can be foreseen, and we may become subject to the risk of others' performance that may or may not be within our control or influence. Delays, changes or failures of others, including third-party suppliers and subcontractors, could subject us to additional costs, delays, technical specification changes, contractual penalties or other matters for which we may be unable to obtain compensation, or compensation may not be sufficient. In extreme cases, the direct or indirect effects of such matters may cause us to be unable to fulfill our contractual requirements.

A material disruption at one of our manufacturing facilities or a third-party manufacturing facility that we have engaged could adversely affect our ability to generate sales and result in increased costs.

Our financial performance could be adversely affected due to our inability to meet customer demand for our products or services in the event of a material disruption at one of our significant manufacturing or services facilities. Equipment failures, natural disasters, power outages, fires, explosions, terrorism, adverse weather conditions, labor disputes or other influences could create a material disruption. Interruptions to production could increase our cost of sales, harm our reputation and adversely affect our ability to attract or retain our customers. Our business continuity plans may not be sufficient to address disruptions attributable to such risks. Any interruption in production capability could require us to make substantial capital expenditures to remedy the situation, which could adversely affect our financial condition and results of operations.

If our co-venturers fail to perform their contractual obligations on a contract or if we fail to coordinate effectively with our co-venturers, we could be exposed to legal liability, loss of reputation, reduced profit, or liquidity challenges.

We often perform contracts jointly with third parties or execute contracts with partners through joint ventures or other contractual arrangements. For example, we enter into contracting consortia and other contractual arrangements to bid for and perform jointly on large contracts. We may not be able to control the actions of our partners in these arrangements, and influence over the actions of our partners and the contractual outcomes may be limited. Success on these joint contracts depends in part on whether our co-venturers fulfill their contractual obligations satisfactorily. If any one or more of these third parties fail to perform their contractual obligations satisfactorily, we may be required to make additional investments and provide added services in order to compensate for that failure. If we are unable to adequately address any performance issues when and if required, customers may exercise their rights to terminate a joint contract, exposing us to legal liability, damage to our reputation, reduced profit or liquidity challenges.

For example, our joint venture partner for a renewable energy plant in the United Kingdom entered into administration (similar to filing for bankruptcy in the U.S.) in late February 2018. Accordingly, we were required to take over the civil scope of the renewable energy plant project, which resulted in significant delays and materially increased our costs on the project.

Our collaborative arrangements also involve risks that participating parties may disagree on business decisions and strategies. These disagreements could result in delays, additional costs and risks of litigation. In these arrangements, we sometimes have joint and several liabilities with our partners, and we cannot be certain that our partners will be able to satisfy any potential liability that could arise. Our inability to successfully maintain existing collaborative relationships or enter into new collaborative arrangements could have a material adverse effect on our results of operations.

Our growth strategy includes strategic acquisitions, which we may not be able to consummate or successfully integrate.

We have made acquisitions to grow our business, enhance our global market position and broaden our industrial tools product offerings and intend to continue to make these acquisitions. Our ability to successfully execute acquisitions will be impacted by factors including the availability of financing on terms acceptable to us, the potential reduction of our ability or willingness to incur debt to fund acquisitions due to COVID-19 impacts on our financial results, the reluctance of target companies to sell in current markets, our ability to identify acquisition candidates that meet our valuation parameters and

increased competition for acquisitions. The process of integrating acquired businesses into our existing operations also may result in unforeseen operating difficulties and may require additional financial resources and attention from management that would otherwise be available for the ongoing development or expansion of our existing operations. Although we expect to successfully integrate any acquired businesses, we may not achieve the desired net benefit in the timeframe planned and may not realize the planned benefits from our acquisitions. Failure to effectively execute our acquisition strategy or successfully integrate the acquired businesses could have an adverse effect on our competitive position, reputation, financial condition, results of operations, cash flows and liquidity.

On September 30, 2021, we acquired a 60% controlling ownership stake in Illinois-based solar energy contractor Fosler Construction Company Inc. (“Fosler Construction”). On November 30, 2021, we acquired 100% ownership of VODA A/S (“VODA”). On February 1, 2022, we acquired 100% ownership of Fossil Power Systems, Inc.. On February 28, 2022, we acquired 100% ownership of Optimus Industries, LLC.. The success of these acquisitions, as well as our ability to realize their anticipated benefits, depends in large part on our ability to successfully integrate each business. This integration is complex and time consuming, and failure to successfully integrate either business may prevent us from achieving the anticipated benefits of the acquisitions. Potential difficulties we may encounter as part of the integration process include (i) the inability to successfully integrate transportation networks; (ii) complexities and unanticipated issues associated with integrating the businesses’ complex systems, technologies and operating procedures; (iii) integrating workforces while maintaining focus on achieving strategic initiatives; (iv) potential unknown liabilities and unforeseen increased or new expenses; (v) the possibility of faulty assumptions underlying expectations regarding the integration process; and (vi) the inability to improve on historical operating results.

Our backlog is subject to unexpected adjustments and cancellations and may not be a reliable indicator of future revenues or earnings.

There can be no assurance that the revenues projected in our backlog will be realized or, if realized, will result in profits. Because of contract cancellations or changes in scope and schedule, we cannot predict with certainty when or if backlog will be performed. In addition, even where a contract proceeds as scheduled, it is possible that contracted parties may default and fail to pay amounts owed to us or poor contract performance could increase the cost associated with a contract. Delays, suspensions, cancellations, payment defaults, scope changes and poor contract execution could materially reduce or eliminate the revenues and profits that we actually realize from contracts in backlog.

Reductions in our backlog due to cancellation or modification by a customer or for other reasons may adversely affect, potentially to a material extent, the revenues and earnings we actually receive from contracts included in our backlog. Many of the contracts in our backlog provide for cancellation fees in the event customers cancel contracts. These cancellation fees usually provide for reimbursement of our out-of-pocket costs, revenues for work performed prior to cancellation and a varying percentage of the profits we would have realized had the contract been completed. However, we typically have no contractual right upon cancellation to the total revenues reflected in our backlog. Contracts may remain in our backlog for extended periods of time. If we experience significant contract terminations, suspensions or scope adjustments to contracts reflected in our backlog, our financial condition, results of operations and cash flows may be adversely impacted.

Our inability to deliver our backlog on time could affect our future sales and profitability, and our relationships with our customers.

Our backlog was \$639 million at December 31, 2021 and \$535 million at December 31, 2020. Our ability to meet customer delivery schedules for our backlog is dependent on a number of factors including, but not limited to, access to the raw materials required for production, an adequately trained and capable workforce, project engineering expertise for certain large projects, sufficient internal manufacturing plant capacity, available subcontractors and appropriate planning and scheduling of manufacturing resources. Our failure to deliver in accordance with customer expectations may result in damage to existing customer relationships and result in the loss of future business. Failure to deliver backlog in accordance with expectations could negatively impact our financial performance and cause adverse changes in the market price of our common stock.

Our operations are subject to operating risks, which could expose us to potentially significant professional liability, product liability, warranty and other claims. Our insurance coverage may be inadequate to cover all of our significant risks, our insurers may deny coverage of material losses we incur, or we may be unable to obtain additional insurance coverage in the future, any of which could adversely affect our profitability and overall financial condition.

We engineer, construct and perform services in, and provide products for, large industrial facilities where accidents or system failures can have significant consequences. Risks inherent in our operations include:

- accidents resulting in injury or the loss of life or property;
- environmental or toxic tort claims, including delayed manifestation claims for personal injury or loss of life;
- pollution or other environmental mishaps;
- adverse weather conditions;
- mechanical failures;
- property losses;
- business interruption due to political action or other reasons; and
- labor stoppages.

Any accident or failure at a site where we have provided products or services could result in significant professional liability, product liability, warranty and other claims against us, regardless of whether our products or services caused the incident. We have been, and in the future, we may be, named as defendants in lawsuits asserting large claims as a result of litigation arising from events such as those listed above. Such claims may damage our reputation, regardless of whether we are ultimately deemed responsible.

We endeavor to identify and obtain in established markets insurance agreements to cover significant risks and liabilities. Insurance against some of the risks inherent in our operations is either unavailable or available only at rates or on terms that we consider uneconomical. Also, catastrophic events customarily result in decreased coverage limits, more limited coverage, additional exclusions in coverage, increased premium costs and increased deductibles and self-insured retentions. Risks that we have frequently found difficult to cost-effectively insure against include, but are not limited to, business interruption, property losses from wind, flood and earthquake events, war and confiscation or seizure of property in some areas of the world, pollution liability, liabilities related to occupational health exposures (including asbestos), the failure, misuse or unavailability of our information systems, the failure of security measures designed to protect our information systems from cybersecurity threats, and liability related to risk of loss of our work in progress and customer-owned materials in our care, custody and control. Depending on competitive conditions and other factors, we endeavor to obtain contractual protection against uninsured risks from our customers. When obtained, such contractual indemnification protection may not be as broad as we desire or may not be supported by adequate insurance maintained by the customer. Such insurance or contractual indemnity protection may not be sufficient or effective under all circumstances or against all hazards to which we may be subject. A successful claim for which we are not insured or for which we are underinsured could have a material adverse effect on us. Additionally, disputes with insurance carriers over coverage may affect the timing of cash flows and, if litigation with the carrier becomes necessary, an outcome unfavorable to us may have a material adverse effect on our results of operations. Moreover, certain accidents or failures, including accidents resulting in bodily injury or harm, could disqualify us from continuing business with customers, and any losses arising thereby may not be covered by insurance or other indemnification.

Our wholly-owned captive insurance subsidiary provides workers' compensation, employer's liability, commercial general liability, professional liability and automotive liability insurance to support our operations. We may also have business reasons in the future to have our insurance subsidiary accept other risks which we cannot or do not wish to transfer to outside insurance companies. These risks may be considerable in any given year or cumulatively. Our insurance subsidiary has not provided significant amounts of insurance to unrelated parties. Claims as a result of our operations could adversely impact the ability of our insurance subsidiary to respond to all claims presented.

Additionally, upon the February 22, 2006 effectiveness of the settlement relating to the Chapter 11 proceedings involving several of our subsidiaries, most of our subsidiaries contributed substantial insurance rights to the asbestos personal injury trust, including rights to (1) certain pre-1979 primary and excess insurance coverages and (2) certain of our 1979-1986 excess insurance coverage. These insurance rights provided coverage for, among other things, asbestos and other personal injury claims, subject to the terms and conditions of the policies. The contribution of these insurance rights was made in exchange for the agreement on the part of the representatives of the asbestos claimants, including the representative of future claimants, to the entry of a permanent injunction, pursuant to Section 524(g) of the United States Bankruptcy Code, to channel to the asbestos trust all asbestos-related claims against our subsidiaries and former subsidiaries arising out of, resulting from or attributable to their operations, and the implementation of related releases and indemnification provisions protecting those

subsidiaries and their affiliates from future liability for such claims. Although we are not aware of any significant, unresolved claims against our subsidiaries and former subsidiaries that are not subject to the channeling injunction and that relate to the periods during which such excess insurance coverage related, with the contribution of these insurance rights to the asbestos personal injury trust, it is possible that we could have underinsured or uninsured exposure for non-derivative asbestos claims or other personal injury or other claims that would have been insured under these coverages had the insurance rights not been contributed to the asbestos personal injury trust.

We may not be able to compete successfully against current and future competitors.

Some of our competitors or potential competitors have greater financial or other resources than we have and in some cases are government supported. Our operations may be adversely affected if our current competitors or new market entrants introduce new products or services with better features, performance, prices or other characteristics than those of our products and services. Furthermore, we operate in industries where capital investment is critical. We may not be able to obtain as much purchasing and borrowing leverage and access to capital for investment as other companies, which may impair our ability to compete against competitors or potential competitors.

If we fail to develop new products, or customers do not accept our new products, our business could be adversely affected.

Our ability to develop innovative new products can affect our competitive position and often requires the investment of significant resources. Difficulties or delays in research, development, production or commercialization of new products, or failure to gain market acceptance of new products and technologies, may reduce future sales and adversely affect our competitive position. There can be no assurance that we will have sufficient resources to make such investments, that we will be able to make the technological advances necessary to maintain competitive advantages or that we can recover major research and development expenses. If we fail to make innovations, launch products with quality problems, experience development cost overruns, or the market does not accept our new products, then our financial condition, results of operations, cash flows and liquidity could be adversely affected.

Risks Related to Our Industry

We derive substantial revenues from electric power generating companies and other steam-using industries, including coal-fired power plants in particular. Demand for our products and services depends on spending in these historically cyclical industries. Additionally, recent legislative and regulatory developments relating to clean air legislation are affecting industry plans for spending on coal-fired power plants within the United States and elsewhere.

The demand for power generation products and services depends primarily on the spending of electric power generating companies and other steam-using industries and expenditures by original equipment manufacturers. These expenditures are influenced by such factors including, but not limited to:

- prices for electricity, along with the cost of production and distribution;
- prices for natural resources such as coal and natural gas;
- demand for electricity and other end products of steam-generating facilities;
- availability of other sources of electricity or other end products;
- requirements of environmental legislation and regulations, including potential requirements applicable to carbon dioxide emissions;
- investments in renewable energy sources and technology;
- impact of potential regional, state, national and/or global requirements to significantly limit or reduce greenhouse gas emissions in the future;
- level of capacity utilization and associated operations and maintenance expenditures of power generating companies and other steam-using facilities;
- requirements for maintenance and upkeep at operating power plants and other steam-using facilities to combat the accumulated effects of wear and tear;
- ability of electric generating companies and other steam users to raise capital; and
- relative prices of fuels used in boilers, compared to prices for fuels used in gas turbines and other alternative forms of generation.

We estimate that 47%, 43% and 45% of our consolidated revenues in 2021, 2020 and 2019, respectively, were related to coal-fired power plants. The availability of natural gas in great supply has caused, in part, low prices for natural gas in the United

States, which has led to more demand for natural gas relative to energy derived from coal. A material decline in spending by electric power generating companies and other steam-using industries on coal-fired power plants over a sustained period of time could materially and adversely affect the demand for our power generation products and services and, therefore, our financial condition, results of operations and cash flows. Coal-fired power plants have been scrutinized by environmental groups and government regulators over the emissions of potentially harmful pollutants. This scrutiny and other economic incentives including tax advantages, have promoted the growth of nuclear, wind and solar power, among others, and a decline in cost of renewable power plant components and power storage. The recent economic environment and uncertainty concerning new environmental legislation or replacement rules or regulations in the United States and elsewhere has caused many of our major customers, principally electric utilities, to delay making substantial expenditures for new plants, and delay upgrades to existing power plants.

Demand for our products and services is vulnerable to macroeconomic downturns and industry conditions.

Demand for our products and services has been, and we expect that demand will continue to be, subject to significant fluctuations due to a variety of factors beyond our control, including macroeconomic and industry conditions. These factors include, but are not limited to, the cyclical nature of the industries we serve, inflation, geopolitical issues, the availability and cost of credit, volatile oil and natural gas prices, low business and consumer confidence, high unemployment and energy conservation measures.

Unfavorable macroeconomic conditions may lead customers to delay, curtail or cancel proposed or existing contracts, which may decrease the overall demand for our products and services and adversely affect our results of operations.

In addition, our customers may find it more difficult to raise capital in the future due to limitations on the availability of credit, increases in interest rates and other factors affecting the federal, municipal and corporate credit markets. Also, our customers may demand more favorable pricing terms and find it increasingly difficult to timely pay invoices for our products and services, which would impact our future cash flows and liquidity. Inflation or significant changes in interest rates could reduce the demand for our products and services. Any inability to timely collect our invoices may lead to an increase in our borrowing requirements, our accounts receivable and potentially to increased write-offs of uncollectible invoices. If the economy weakens, or customer spending declines, then our backlog, revenues, net income and overall financial condition could deteriorate.

Supply chain issues, including shortages of adequate component supply that increase our costs or cause delays in our ability to fulfill orders, and our failure to estimate customer demand properly may result could have an adverse impact on our business and operating results and our relationships with customers.

We are reliant on our supply chain for components and raw materials to manufacture our products and provide services to our customers, and this reliance could have an adverse impact on our business and operating results. A reduction or interruption in supply, including disruptions due to the COVID-19 pandemic, a significant natural disaster, shortages in global freight capacity, significant increases in the price of critical components and raw materials, a failure to appropriately forecast or adjust our requirements for components or raw materials based on our business needs, or volatility in demand for our products could materially adversely affect our business, operating results, and financial condition and could materially damage customer relationships. Our vendors also may be unable to meet our demand, significantly increase lead times for deliveries or impose significant price increases we are unable to offset through alternate sources of supply, price increases to our customers or increased productivity in our operations.

Our operations use raw materials in various forms and components and accessories for assembly, which are available from numerous sources. We generally purchase these raw materials and components as-needed for individual contracts. We do not depend on a single source of supply for any significant raw materials. Although no serious shortage exists at the present time, growth in the global economy may exacerbate pressures on us and our suppliers, which could affect our operating and financial results.

Risks Related to Our Liquidity and Capital Resources

Maintaining adequate bonding and letter of credit capacity is necessary for us to successfully complete, bid on and win various contracts.

In line with industry practice, we are often required to post standby letters of credit and surety bonds to support contractual obligations to customers as well as other obligations. These letters of credit and bonds generally indemnify customers should we fail to perform our obligations under the applicable contracts. If a letter of credit or bond is required for a particular contract and we are unable to obtain it due to insufficient liquidity or other reasons, we will not be able to pursue that contract, or we could default on contracts that are underway or that have been awarded. We utilize bonding facilities, but, as is typically the case, the issuance of bonds under each of those facilities is at the surety's sole discretion. Moreover, due to events that affect the insurance and bonding and credit markets generally, bonding and letters of credit may be more difficult to obtain in the future or may only be available at significant additional cost. Our inability to obtain or maintain adequate letters of credit and bonding and, as a result, to bid on new work could have a material adverse effect on our business, financial condition and results of operations. The aggregate value of all such letters of credit and bank guarantees outside of our Letter of Credit Agreement as of December 31, 2021 was \$52.8 million. The aggregate value of the outstanding letters of credit provided under the Letter of Credit Agreement backstopping letters of credit or bank guarantees was \$35.5 million as of December 31, 2021. Of the outstanding letters of credit issued under the Letter of Credit Agreement, \$51.5 million are subject to foreign currency revaluation.

We have also posted surety bonds to support contractual obligations to customers relating to certain contracts. We utilize bonding facilities to support such obligations, but the issuance of bonds under those facilities is typically at the surety's discretion. These bonds generally indemnify customers should we fail to perform our obligations under the applicable contracts. We, and certain of our subsidiaries, have jointly executed general agreements of indemnity in favor of surety underwriters relating to surety bonds those underwriters issue in support of some of our contracting activity. As of December 31, 2021, bonds issued and outstanding under these arrangements in support of contracts totaled approximately \$188.3 million. The aggregate value of the letters of credit backstopping surety bonds was \$13.1 million.

Our ability to obtain and maintain sufficient capacity under our debt facilities is essential to allow us to support the issuance of letters of credit, bank guarantees and surety bonds. Without sufficient capacity, our ability to support contract security requirements in the future will be diminished.

Our evaluation of strategic alternatives for certain businesses and non-core assets may not be successful.

We continue to evaluate strategic alternatives for our business lines and assets to improve the Company's capital structure. There can be no assurance that these ongoing strategic evaluations will result in the identification or consummation of any transaction. We may incur substantial expenses associated with identifying and evaluating potential strategic alternatives. The process of exploring strategic alternatives may be time consuming and disruptive to our business operations, and if we are unable to effectively manage the process, our business, financial condition and results of operations could be adversely affected. We cannot assure that any potential transaction or other strategic alternative, if identified, evaluated and consummated, will prove to be beneficial to shareholders and that the process of identifying, evaluating and consummating any potential transaction or other strategic alternative will not adversely impact our business, financial condition or results of operations. Any potential transaction would be dependent upon a number of factors that may be beyond our control, including, among other factors, market conditions, industry trends, the interest of third parties in our business, the availability of financing to potential buyers on reasonable terms, and the consent of our lenders.

In addition, while this strategic evaluation continues, we are exposed to risks and uncertainties, including potential difficulties in retaining and attracting key employees, distraction of our management from other important business activities, and potential difficulties in establishing and maintaining relationships with customers, suppliers, lenders, sureties and other third parties, all of which could harm our business.

Our total assets include goodwill and other indefinite-lived intangible assets. If we determine these have become impaired, our business, financial condition and results of operations could be materially adversely affected.

Goodwill represents the excess of cost over the fair market value of net assets acquired in business combinations. Indefinite-lived intangibles are comprised of certain trademarks and tradenames. At December 31, 2021, goodwill and other indefinite-lived intangible assets totaled \$160.3 million. We review goodwill and other intangible assets at least annually for impairment and any excess in carrying value over the estimated fair value is charged to the Consolidated Statement of

Operations. Future impairment may result from, among other things, deterioration in the performance of an acquired business or product line, adverse market conditions and changes in the competitive landscape, adverse changes in applicable laws or regulations, including changes that restrict the activities of an acquired business or product line, and a variety of other circumstances. If the value of our business were to decline, or if we were to determine that we were unable to recognize an amount in connection with any proposed disposition in excess of the carrying value of any disposed asset, we may be required to recognize impairments for one or more of our assets that may adversely impact our business, financial condition and results of operations.

We are exposed to credit risk and may incur losses as a result of such exposure.

We conduct our business by obtaining orders that generate cash flows in the form of advances, contract progress payments and final balances in accordance with the underlying contractual terms. We are thus exposed to potential losses resulting from contractual counterparties' failure to meet their obligations. As a result, the failure by customers to meet their payment obligations, or a mere delay in making those payments, could reduce our liquidity and increase the need to resort to other sources of financing, with possible adverse effects on our business, financial condition, results of operations and cash flows. In some cases, we have joint and several liability with consortium partners in our projects and we may be subject to additional losses if our partners are unable to meet their contractual obligations.

In addition, the deterioration of macroeconomic conditions or negative trends in the global credit markets could have a negative impact on relationships with customers and our ability to collect on trade receivables, with possible adverse effects on our business, financial condition, results of operations and cash flows.

The transition away from LIBOR may negatively impact our operating results.

LIBOR, the London interbank offered rate, is the interest rate benchmark used as a reference rate on our variable rate debt. On March 5, 2021, the United Kingdom's Financial Conduct Authority, which regulates LIBOR, and administrator, ICE Benchmark Administration, announced that the publication of one-week and two-month USD LIBOR maturities and the non-USD LIBOR maturities will cease immediately after December 31, 2021, with the publication of overnight, one-, three-, six-, and 12-month USD LIBOR ceasing immediately after June 30, 2023. The United States Federal Reserve also issued a statement advising banks to stop new USD LIBOR issuances by the end of 2021.

At this time, no consensus exists as to what rate or rates will become accepted alternatives to LIBOR, although the U.S. Federal Reserve, in connection with the Alternative Reference Rates Committee, a steering committee comprised of large U.S. financial institutions, is considering replacing U.S. dollar LIBOR with the Secured Overnight Financing Rate ("SOFR"). In addition, recent New York state legislation effectively codified the use of SOFR as the alternative to LIBOR in the absence of another chosen replacement rate, which may affect contracts governed by New York state law. SOFR is calculated based on short-term repurchase agreements, backed by Treasury securities. SOFR is observed and backward looking, which stands in contrast with LIBOR under the current methodology, which is an estimated forward-looking rate and relies, to some degree, on the expert judgment of submitting panel members. Given the inherent differences between LIBOR and SOFR or any other alternative benchmark rate that may be established, there are many uncertainties regarding a transition from LIBOR, including, but not limited to, the need to amend all debt instruments with LIBOR as the referenced rate and how this will impact our cost of variable rate debt. We will also need to consider any new contracts and whether they should reference an alternative benchmark rate or include suggested fallback language, as published by the Alternative Reference Rates Committee. The consequences of these developments with respect to LIBOR cannot be entirely predicted and span multiple future periods but could result in an increase in the cost of our variable rate debt which may be detrimental to our financial position or operating results.

As of December 31, 2021, no borrowings have occurred under the Revolving Credit Agreement which are currently subject to changes in LIBOR. Our senior notes have fixed interest rates and are not subject to changes in LIBOR or other benchmarks.

The financial and other covenants in our debt agreements may adversely affect us.

Our Debt Facilities contain financial and other restrictive covenants. These covenants could limit our financial and operating flexibility as well as our ability to plan for and react to market conditions, meet our capital needs and support our strategic priorities and initiatives should we take on additional indebtedness for acquisition or other strategic objectives. Our failure to comply with these covenants also could result in events of default which, if not cured or waived, could require us to repay

indebtedness before its due date, and we may not have the financial resources or otherwise be able to arrange alternative financing to do so. Our compliance with the covenants of our Debt Facilities may be adversely affected by severe market contractions or disruptions, such as those caused by the COVID-19 pandemic, to the extent they reduce our earnings for a prolonged period and we are not able to reduce our debt levels or cost structure accordingly. Any event that requires us to repay any of our debt before it is due could require us to borrow additional amounts at unfavorable borrowing terms, cause a significant reduction in our liquidity and impair our ability to pay amounts due on our indebtedness. Moreover, if we are required to repay any of our debt before it becomes due, we may be unable to borrow additional amounts or otherwise obtain the cash necessary to repay that debt, when due, which could have a material adverse effect on our business, financial condition and liquidity.

Risks Related to Intellectual Property and Information Security

A disruption in, or failure of our information technology systems, including those related to cybersecurity, could adversely affect our business operations and financial performance.

We rely on information technology networks and systems, including the Internet, to process, transmit and store electronic sensitive and confidential information, to manage and support a variety of business processes and activities and to comply with regulatory, legal and tax requirements. While we maintain some of our critical information technology systems, we are also dependent on third parties to provide important information technology services relating to, among other things, human resources, electronic communications and certain finance functions.

We face various threats to our information technology networks and systems, including cyber threats, threats to the physical security of our facilities and infrastructure from natural or man-made incidents or disasters, and threats from terrorist acts, as well as the potential for business disruptions associated with these threats. We have been, and will likely continue to be, subject to cyber-based attacks and other attempts to threaten our information technology systems and the software we sell. A cyber-based attack could include attempts to gain unauthorized access to our proprietary information and attacks from malicious third parties using sophisticated, targeted methods to circumvent firewalls, encryption and other security defenses, including hacking, fraud, phishing scams or other forms of deception. Although we utilize a combination of tailored and industry standard security measures and technology to monitor and mitigate these threats, we cannot guarantee that these measures and technology will be sufficient to prevent current and future threats to our information technology networks and systems from materializing. Furthermore, we may have little or no oversight with respect to security measures employed by third-party service providers, which may ultimately prove to be ineffective at countering threats.

If these systems are damaged, intruded upon, attacked, shutdown or cease to function properly, whether by planned upgrades, force majeure, telecommunication failures, hardware or software beak-ins or viruses, or other cybersecurity incidents and our business continuity plans do not resolve the issues in a timely manner, the services we provide to customers, the value of our investment in research and development efforts and other intellectual property, our product sales, our ability to comply with regulations related to information contained on our information technology networks and systems, our financial condition, results of operations and stock price may be materially and adversely affected, and we could experience delays in reporting our financial results. In addition, there is a risk of business interruption, litigation with third parties, reputational damage from leakage of confidential information or the software we sell being compromised, and increased cybersecurity protection and remediation costs due to the increasing sophistication and proliferation of threats. The costs related to cyber or other security threats or disruptions may not be fully insured or indemnified by other means.

To address risks to our information technology systems, we continue to invest in our systems and training of company personnel. As required, we replace and/or upgrade financial, human resources and other information technology systems. These activities subject us to inherent costs and risks associated with replacing and updating these systems, including potential disruption of our internal control structure, substantial capital expenditures, demands on management time and other risks of delays or difficulties in transitioning to new systems or of integrating new systems into our current systems. Our systems implementations and upgrades may not result in productivity improvements at the levels anticipated, or at all. In addition, the implementation of new technology systems may cause disruptions in our business operations. Such disruption and any other information technology system disruptions, and our ability to mitigate those disruptions, if not anticipated and appropriately mitigated, could have a material adverse effect on our financial condition, results of operations and stock price.

Privacy and information security laws are complex, and if we fail to comply with applicable laws, regulations and standards, or if we fail to properly maintain the integrity of our data, protect our proprietary rights to our systems or defend against cybersecurity attacks, we may be subject to government or private actions due to privacy and security breaches, any of which could have a material adverse effect on our business, financial condition and results of operations or materially harm our reputation.

We are subject to a variety of laws and regulations in the United States and other countries that involve matters central to our business, including user privacy, security, rights of publicity, data protection, content, intellectual property, distribution, electronic contracts and other communications, competition, protection of minors, consumer protection, taxation, and online-payment services. These laws can be particularly restrictive in countries outside the United States. Both in the United States and abroad, these laws and regulations constantly evolve and remain subject to significant change. In addition, the application and interpretation of these laws and regulations are often uncertain, particularly in the new and rapidly evolving industry in which we operate. Because we store, process, and use data, some of which contains personal information, we are subject to complex and evolving federal, state, and foreign laws and regulations regarding privacy, data protection, content, and other matters. Many of these laws and regulations are subject to change and uncertain interpretation, and could result in investigations, claims, changes to our business practices, increased cost of operations, and declines in user growth, retention, or engagement, any of which could seriously harm our business.

Several proposals have been adopted or are currently pending before federal, state, and foreign legislative and regulatory bodies that could significantly affect our business. The General Data Protection Regulation, or GDPR, in the European Union, which went into effect on May 25, 2018, placed new data protection obligations and restrictions on organizations. If we are not compliant with GDPR requirements, we may be subject to significant fines and our business may be seriously harmed. In addition, the California Consumer Privacy Act went into effect in January 2020, with a lookback to January 2019, and placed additional requirements on the handling of personal data.

We rely on intellectual property law and confidentiality agreements to protect our intellectual property. We also rely on intellectual property we license from third parties. Our failure to protect our intellectual property rights, or our inability to obtain or renew licenses to use intellectual property of third parties, could adversely affect our business.

Our success depends, in part, on our ability to protect our proprietary information and other intellectual property. Our intellectual property could be stolen, challenged, invalidated, circumvented or rendered unenforceable. In addition, effective intellectual property protection may be limited or unavailable in some foreign countries where we operate.

Our failure to protect our intellectual property rights may result in the loss of valuable technologies or adversely affect our competitive business position. We rely significantly on proprietary technology, information, processes and know-how that are not subject to patent or copyright protection. We seek to protect this information through trade secret or confidentiality agreements with our employees, consultants, subcontractors or other parties, as well as through other security measures. These agreements and security measures may be inadequate to deter or prevent misappropriation of our confidential information. In the event of an infringement of our intellectual property rights, a breach of a confidentiality agreement or divulgence of proprietary information, we may not have adequate legal remedies to protect our intellectual property. Litigation to determine the scope of intellectual property rights, even if ultimately successful, could be costly and could divert management's attention away from other aspects of our business. In addition, our trade secrets may otherwise become known or be independently developed by competitors.

In some instances, we have augmented our technology base by licensing the proprietary intellectual property of third parties. In the future, we may not be able to obtain necessary licenses on commercially reasonable terms, which could have a material adverse effect on our operations.

Risks Related to Government Regulation

We are subject to government regulations that may adversely affect our future operations.

Many aspects of our operations and properties are affected by political developments and are subject to both domestic and foreign governmental regulations, including those relating to:

- the construction and manufacture of renewable, environmental and thermal products;
- clean air and other environmental protection legislation;
- taxation of domestic and foreign earnings;

- tariffs, duties, or trade sanctions and other trade barriers imposed by foreign countries that restrict or prohibit business transactions in certain markets;
- user privacy, security, data protection, content, and online-payment services;
- intellectual property;
- transactions in or with foreign countries or officials; and
- use of local employees and suppliers.

In addition, a substantial portion of the demand for our products and services is from electric power generating companies and other steam-using customers. The demand for power generation products and services can be influenced by governmental legislation setting requirements for utilities related to operations, emissions and environmental impacts. The legislative process is unpredictable and includes a platform that continuously seeks to increase the restrictions on power producers. Potential legislation limiting emissions from power plants, including carbon dioxide, could affect our markets and the demand for our products and services related to power generation.

We cannot determine the extent to which our future operations and earnings may be affected by new legislation, new regulations or changes in existing regulations.

Our business and our customers' businesses are required to obtain, and to comply with, national, state and local government permits and approvals.

Our business and our customers' businesses are required to obtain, and to comply with, national, state and local government permits and approvals. Any of these permits or approvals may be subject to denial, revocation or modification under various circumstances. Failure to obtain or comply with the conditions of permits or approvals may adversely affect our operations by temporarily suspending our activities or curtailing our work and may subject us to penalties and other sanctions. Although existing licenses are routinely renewed by various regulators, renewal could be denied or jeopardized by various factors, including, but not limited to:

- failure to comply with environmental and safety laws and regulations or permit conditions;
- local community, political or other opposition;
- executive action; and
- legislative action.

In addition, if new environmental legislation or regulations are enacted or implemented, or existing laws or regulations are amended or are interpreted or enforced differently, we or our customers may be required to obtain additional operating permits or approvals. Our inability or our customers' inability to obtain, and to comply with, the permits and approvals required for our business could have a material adverse effect on us.

Risks Related to Environmental Regulation

Our operations are subject to various environmental laws and legislation that may become more stringent in the future.

Our operations and properties are subject to a wide variety of increasingly complex and stringent foreign, federal, state and local environmental laws and regulations, including those governing discharges into the air and water, the handling and disposal of solid and hazardous wastes, the remediation of soil and groundwater contaminated by hazardous substances and the health and safety of employees. Sanctions for noncompliance may include revocation of permits, corrective action orders, administrative or civil penalties and criminal prosecution. Some environmental laws provide for strict, joint and several liability for remediation of spills and other releases of hazardous substances, as well as damage to natural resources. In addition, companies may be subject to claims alleging personal injury or property damage as a result of alleged exposure to hazardous substances. Such laws and regulations may also expose us to liability for the conduct of or conditions caused by others or for our acts that were in compliance with all applicable laws at the time such acts were performed.

We cannot predict all of the environmental requirements or circumstances that will exist in the future but anticipate that environmental control and protection standards will become increasingly stringent and costly. Based on our experience to date, we do not currently anticipate any material adverse effect on our business or financial condition as a result of future compliance with existing environmental laws and regulations. However, future events, such as changes in existing laws and regulations or their interpretation, more vigorous enforcement policies of regulatory agencies or stricter or different interpretations of existing laws and regulations, may require additional expenditures by us, which may be material. Accordingly, we can provide no assurance that we will not incur significant environmental compliance costs in the future.

Our operations involve the handling, transportation and disposal of hazardous materials, and environmental laws and regulations and civil liability for contamination of the environment or related personal injuries may result in increases in our operating costs and capital expenditures and decreases in our earnings and cash flows.

Our operations involve the handling, transportation and disposal of hazardous materials. Failure to properly handle these materials could pose a health risk to humans or wildlife and could cause personal injury and property damage (including environmental contamination). If an accident were to occur, its severity could be significantly affected by the volume of the materials and the speed of corrective action taken by emergency response personnel, as well as other factors beyond our control, such as weather and wind conditions. Actions taken in response to an accident could result in significant costs.

Governmental requirements relating to the protection of the environment, including solid waste management, air quality, water quality and cleanup of contaminated sites, have in the past had a substantial impact on our operations. These requirements are complex and subject to frequent change. In some cases, they can impose liability for the entire cost of cleanup on any responsible party without regard to negligence or fault and impose liability on us for the conduct of others or conditions others have caused, or for our acts that complied with all applicable requirements when we performed them. Our compliance with amended, new or more stringent requirements, stricter interpretations of existing requirements or the future discovery of contamination may require us to make material expenditures or subject us to liabilities that we currently do not anticipate. Such expenditures and liabilities may adversely affect our business, financial condition, results of operations and cash flows. In addition, some of our operations and the operations of predecessor owners of some of our properties have exposed us to civil claims by third parties for liability resulting from alleged contamination of the environment or personal injuries caused by releases of hazardous substances into the environment.

In our contracts, we seek to protect ourselves from liability associated with accidents, but there can be no assurance that such contractual limitations on liability will be effective in all cases or that our or our customers' insurance will cover all the liabilities we have assumed under those contracts. The costs of defending against a claim arising out of a contamination incident or precautionary evacuation, and any damages awarded as a result of such a claim, could adversely affect our results of operations and financial condition.

We maintain insurance coverage as part of our overall risk management strategy and due to requirements to maintain specific coverage in our financing agreements and in many of our contracts. These policies do not protect us against all liabilities associated with accidents or for unrelated claims. In addition, comparable insurance may not continue to be available to us in the future at acceptable prices, or at all.

Risks Related to Our International Operations

Our business may also be affected by new sanctions and export controls targeting Russia and other responses to Russia's invasion of Ukraine.

As a result of Russia's invasion of Ukraine, the United States, the United Kingdom and the European Union governments, among others, have developed coordinated sanctions and export-control measure packages.

Based on the public statements to date, these packages may include:

- comprehensive financial sanctions against Russian banks (including SWIFT cut off);
- additional designations of Russian individuals with significant business interests and government connections;
- designations of individuals and entities involved in Russian military activities;
- enhanced export controls and trade sanctions targeting Russia's import of certain goods;
- closure of airspace to Russian aircraft.

Moreover, as the invasion of Ukraine continues, there can be no certainty regarding whether such governments or other governments will impose additional sanctions, export-controls or other economic or military measures against Russia.

We do not currently have contracts directly with Russian entities or businesses and we currently do not do business in Russia directly. We believe the Company's only involvement with Russia or Russian-entities, involves sales of our products by a wholly-owned Italian subsidiary of the Company to non-Russian counterparties who may resell our products to Russian entities or perform services in Russia using our products. The economic sanctions and export-control measures and the

ongoing invasion of Ukraine could impact our subsidiary's rights and responsibilities under the contracts and could result in potential losses to the Company.

The impact the invasion of Ukraine, including economic sanctions and export controls or additional war or military conflict, as well as potential responses to them by Russia, is currently unknown and they could adversely affect our business, supply chain, partners or customers. In addition, the continuation of the invasion of Ukraine by Russia could lead to other disruptions, instability and volatility in global markets and industries that could negatively impact our operations.

We could be adversely affected by violations of the United States Foreign Corrupt Practices Act, the UK Anti-Bribery Act or other anti-bribery laws.

The United States Foreign Corrupt Practices Act (the "FCPA") generally prohibits companies and their intermediaries from making improper payments to non-United States government officials. Our training program, audit process and policies mandate compliance with the FCPA, the UK Anti-Bribery Act (the "UK Act") and other anti-bribery laws. We operate in some parts of the world that have experienced governmental corruption to some degree, and, in some circumstances, strict compliance with anti-bribery laws may conflict with local customs and practices. If we are found to be liable for violations of the FCPA, the UK Act or other anti-bribery laws (either due to our own acts or our inadvertence, or due to the acts or inadvertence of others, including agents, promoters or employees of our joint ventures), we could suffer from civil and criminal penalties or other sanctions.

Our international operations are subject to political, economic and other uncertainties not generally encountered in our domestic operations.

We derive a substantial portion of our revenues from international operations, and we intend to continue to expand our international presence and customer base as part of our growth strategy. Our revenues from sales to customers located outside of the United States represented approximately 40%, 45% and 46% of total revenues for the years ended December 31, 2021, 2020 and 2019, respectively. Operating in international markets requires significant resources and management attention and subjects us to political, economic and regulatory risks that are not generally encountered in our United States operations. These include, but are not limited to:

- risks of war, terrorism and civil unrest;
- expropriation, confiscation or nationalization of our assets;
- renegotiation or nullification of our existing contracts;
- changing political conditions and changing laws and policies affecting trade and investment;
- overlap of different tax structures;
- risk of changes in foreign currency exchange rates; and
- tariffs, price controls and trade agreements and disputes.

Various foreign jurisdictions have laws limiting the right and ability of foreign subsidiaries and joint ventures to pay dividends and remit earnings to affiliated companies. Our international operations sometimes face the additional risks of fluctuating currency values, hard currency shortages and controls of foreign currency exchange. If we continue to expand our business globally, our success will depend, in part, on our ability to anticipate and effectively manage these and other risks. These and other factors may have a material impact on our international operations or our business as a whole.

International uncertainties and fluctuations in the value of foreign currencies could harm our profitability.

We have international operations primarily in Europe, Canada, and Mexico. For the year ended December 31, 2021, international operations accounted for approximately 40% of our total revenues. Our significant international subsidiaries may have sales and cost of sales in different currencies as well as other transactions that are denominated in currencies other than their functional currency. We do not currently engage in currency hedging activities to limit the risks of currency fluctuations. Consequently, fluctuations in foreign currencies could have a negative impact on the profitability of our global operations, which would harm our financial results and cash flows.

Uncertainty over global tariffs, or the financial impact of tariffs, may negatively affect our results.

Changes in U.S. domestic and global tariff frameworks have increased our costs of producing goods and resulted in additional risks to our supply chain. We have developed and implemented strategies to mitigate previously implemented and, in some cases, proposed tariff increases, but there is no assurance we will be able to continue to mitigate prolonged tariffs.

Further, uncertainties about future tariff changes could result in mitigation actions that prove to be ineffective or detrimental to our business.

Risks Related to Ownership of Our Common Stock

The market price and trading volume of our common stock may be volatile.

The market price of our common stock could fluctuate significantly in future periods due to a number of factors, many of which are beyond our control, including, but not limited to:

- fluctuations in our quarterly or annual earnings or those of other companies in our industry;
- failures of our operating results to meet the estimates of securities analysts or the expectations of our shareholders or changes by securities analysts in their estimates of our future earnings;
- announcements by us or our customers, suppliers or competitors;
- the depth and liquidity of the market for our common stock;
- changes in laws or regulations that adversely affect our industry or us;
- changes in accounting standards, policies, guidance, interpretations or principles;
- general economic, industry and stock market conditions;
- future sales of our common stock by our shareholders;
- the concentration of ownership of our common stock;
- future issuances of our common stock by us;
- our ability to pay dividends in the future; and
- the other risk factors set forth under Part I, Item 1A and other parts of this Annual Report.

Substantial sales, or the perception of sales, of our common stock by us or certain of our existing shareholders could cause our stock price to decline and future issuances may dilute our common shareholders' ownership in the Company.

Sales of a substantial number of shares of our common stock in the public market, or the perception that these sales might occur, could depress the market price of our common stock and could impair our ability to raise capital through the sale of additional equity securities. As of December 31, 2021, we had an aggregate of approximately 86.3 million shares of common stock outstanding, approximately 25.1 million shares of which were held by B. Riley not including approximately 1.5 million shares of our common stock issuable upon exercise of the warrants held by B. Riley. We entered into a registration rights agreement with B. Riley and other shareholder on April 30, 2019, pursuant to which B. Riley has customary demand and piggyback registration rights for all shares of our common stock they beneficially own. We filed a resale shelf registration statement on behalf of the shareholders party to the registration rights agreement permitting the resale of approximately 25.6 million shares of our common stock that were issued to B. Riley and the other shareholders party thereto. We are also required to register for resale any additional shares of our common stock that B. Riley may acquire in the future.

Any sales of substantial amounts of our common stock, or the perception that these sales might occur, could lower the market price of our common stock and impede our ability to raise capital through the issuance of equity securities. Any sales, or perception of sales, by our existing shareholders could also impact the perception of shareholder support for us, which could in turn negatively affect our customer and supplier relationships. Further, if we were to issue additional equity securities (or securities convertible into or exchangeable or exercisable for equity securities) to raise additional capital, our shareholders' ownership interests in the Company will be diluted and the value of our common stock may be reduced.

B. Riley has significant influence over us.

As of December 31, 2021 B. Riley controls approximately 30.3% of the voting power represented by our common stock. B. Riley has the right to nominate three members of our board of directors pursuant to the investor rights agreement we entered into with them on April 30, 2019. The investor rights agreement also provides pre-emptive rights to B. Riley with respect to certain future issuances of our equity securities. The services of our Chief Executive Officer are provided to us by B. Riley pursuant to a consulting agreement. As a result of these arrangements, B. Riley has significant influence over our management and policies and over all matters requiring shareholder approval, including the election of directors, amendment of our certificate of incorporation and approval of significant corporate transactions. Further, if B. Riley were to act together with other shareholders on any matter presented for shareholder approval, they could have the ability to control the outcome of that matter. B. Riley can take actions that have the effect of delaying or preventing a change of control of us or discouraging others from making tender offers for our shares, which could prevent shareholders from receiving a premium for their shares. These actions may be taken even if other shareholders oppose them. In addition, the concentration of voting

power with B. Riley may have an adverse effect on the price of our common stock, and the interests of B. Riley may not be consistent with the interests of our other shareholders.

We do not currently pay regular dividends on our common stock, so holders of our common stock may not receive funds without selling their shares of our common stock.

We have no current intent to pay a regular dividend on our common stock. Our board of directors will determine the payment of future dividends on our common stock, if any, and the amount of any dividends in light of applicable law, contractual restrictions limiting our ability to pay dividends, our earnings and cash flows, our capital requirements, our financial condition, and other factors our board of directors deems relevant. Accordingly, our shareholders may have to sell some or all of their shares of our common stock in order to generate cash flow from their investment.

We may issue preferred stock that could dilute the voting power or reduce the value of our common stock.

Our certificate of incorporation authorizes us to issue, without the approval of our shareholders, one or more classes or series of preferred stock having such designation, powers, preferences and relative, participating, optional and other special rights, including preferences over our common stock respecting dividends and distributions, as our board of directors generally may determine. The terms of one or more classes or series of preferred stock could dilute the voting power or reduce the value of our common stock. For example, we could grant holders of preferred stock the right to elect some number of our directors in all events or on the happening of specified events or the right to veto specified transactions. Similarly, the repurchase or redemption rights or liquidation preferences we could assign to holders of preferred stock could affect the residual value of the common stock.

In the year ending December 31, 2021, we issued 7.7 million shares of our 7.75% Series A Cumulative Perpetual Preferred Stock.

Provisions in our corporate documents and Delaware law could delay or prevent a change in control of the Company, even if that change may be considered beneficial by some shareholders.

The existence of some provisions of our certificate of incorporation and bylaws and Delaware law could discourage, delay or prevent a change in control of the Company that a shareholder may consider favorable.

In addition, we are subject to Section 203 of the Delaware General Corporation Law, which may have an anti-takeover effect with respect to transactions not approved in advance by our board of directors, including discouraging takeover attempts that might result in a premium over the market price for shares of our common stock.

We believe these provisions protect our shareholders from coercive or otherwise unfair takeover tactics by requiring potential acquirors to negotiate with our board of directors and by providing our board of directors with more time to assess any acquisition proposal and are not intended to make the Company immune from takeovers. However, these provisions apply even if the offer may be considered beneficial by some shareholders and could delay or prevent an acquisition that our board of directors determines is in the best interests of the Company and our shareholders.

Risks Relating to our 2015 Spin-Off from our Former Parent

We are subject to continuing contingent liabilities of BWXT following the spin-off.

We completed a spin-off from The Babcock & Wilcox Company (now known as BWX Technologies, Inc., or "BWXT"), on June 30, 2015 to become a separate publicly traded company, and BWXT did not retain any ownership interest in the Company. As a result of the spin-off, there are several significant areas where the liabilities of BWXT may become our obligations. For example, under the Internal Revenue Code ("Code") and the related rules and regulations, each corporation that was a member of BWXT consolidated tax reporting group during any taxable period or portion of any taxable period ending on or before the completion of the spin-off is jointly and severally liable for the federal income tax liability of the entire consolidated tax reporting group for that taxable period. We entered into a tax sharing agreement with BWXT in connection with the spin-off that allocates the responsibility for prior period taxes of BWXT consolidated tax reporting group between us and BWXT and its subsidiaries. However, if BWXT were unable to pay, we could be required to pay the entire amount of such taxes. Other provisions of law establish similar liability for other matters, including laws governing tax-qualified pension plans as well as other contingent liabilities. The other contingent liabilities include personal injury claims or

environmental liabilities related to BWXT's historical nuclear operations. For example, BWXT has agreed to indemnify us for personal injury claims and environmental liabilities associated with radioactive materials related to the operation, remediation, and/or decommissioning of two former nuclear fuel processing facilities located in the Borough of Apollo and Parks Township, Pennsylvania. To the extent insurance providers and third-party indemnitors do not cover those liabilities, and BWXT was unable to pay, we could be required to pay for them.

The spin-off could result in substantial tax liability.

The spin-off was conditioned on BWXT's receipt of an opinion of counsel, in form and substance satisfactory to BWXT, substantially to the effect that, for United States federal income tax purposes, the spin-off qualifies under Section 355 of the Code, and certain transactions related to the spin-off qualify under Sections 355 and/or 368 of the Code. The opinion relied on, among other things, various assumptions and representations as to factual matters made by BWXT and us which, if inaccurate or incomplete in any material respect, would jeopardize the conclusions reached by such counsel in its opinion. The opinion is not binding on the IRS or the courts, and there can be no assurance that the IRS or the courts will not challenge the conclusions stated in the opinion or that any such challenge would not prevail.

We are not aware of any facts or circumstances that would cause the assumptions or representations that were relied on in the opinion to be inaccurate or incomplete in any material respect. If, notwithstanding receipt of the opinion, the spin-off was determined not to qualify under Section 355 of the Code, each United States holder of BWXT common stock who received shares of our common stock in the spin-off would generally be treated as receiving a taxable distribution of property in an amount equal to the fair market value of the shares of our common stock received. In addition, if certain related preparatory transactions were to fail to qualify for tax-free treatment, they would be treated as taxable asset sales and/or distributions.

Under the terms of the tax sharing agreement we entered into in connection with the spin-off, we are generally responsible for all taxes attributable to us or any of our subsidiaries, whether accruing before, on or after the date of the spin-off. We and BWXT generally share responsibility for all taxes imposed on us or BWXT and its subsidiaries in the event the spin-off and/or certain related preparatory transactions were to fail to qualify for tax-free treatment. However, if the spin-off and/or certain related preparatory transactions were to fail to qualify for tax-free treatment because of actions or failures to act by us or BWXT, we or BWXT, respectively would be responsible for all such taxes. Our liabilities under the tax sharing agreement could have a material adverse effect on us. At this time, we cannot precisely quantify the amount of liabilities we may have under the tax sharing agreement and there can be no assurances as to their final amounts.

Under some circumstances, we could be liable for any resulting adverse tax consequences from engaging in certain significant strategic or capital raising transactions.

Even if the spin-off otherwise qualifies as a tax-free distribution under Section 355 of the Code, the spin-off and certain related transactions may result in significant United States federal income tax liabilities to us under Section 355(e) and other applicable provisions of the Code if 50% or more of BWXT's stock or our stock (in each case, by vote or value) is treated as having been acquired, directly or indirectly, by one or more persons as part of a plan (or series of related transactions) that includes the spin-off. The process for determining whether an acquisition triggering those provisions has occurred is complex, inherently factual and subject to interpretation of the facts and circumstances of a particular case.

Under the terms of the tax sharing agreement we entered into in connection with the spin-off, BWXT generally is liable for any such tax liabilities. However, we are required to indemnify BWXT against any such tax liabilities that result from actions taken or failures to act by us. As a result of these rules and contractual provisions, we may be unable to engage in certain strategic or capital raising transactions that our shareholders might consider favorable, or to structure potential transactions in the manner most favorable to us, without certain adverse tax consequences.

Potential indemnification liabilities to BWXT pursuant to the master separation agreement could materially adversely affect the Company.

The master separation agreement with BWXT provides for, among other things, the principal corporate transactions required to effect the spin-off, certain conditions to the spin-off and provisions governing the relationship between us and BWXT with respect to and resulting from the spin-off. Among other things, the master separation agreement provides for indemnification obligations designed to make us financially responsible for substantially all liabilities that may exist relating to our business activities, whether incurred prior to or after the spin-off, as well as those obligations of BWXT assumed by us pursuant to the

master separation agreement. If we are required to indemnify BWXT under the circumstances set forth in the master separation agreement, we may be subject to substantial liabilities.

In connection with our separation from BWXT, BWXT has agreed to indemnify us for certain liabilities. However, there can be no assurance that the indemnity will be sufficient to insure us against the full amount of such liabilities, or that BWXT's ability to satisfy its indemnification obligation will not be impaired in the future.

Pursuant to the master separation agreement, BWXT has agreed to indemnify us for certain liabilities. However, third parties could seek to hold us responsible for any of the liabilities that BWXT agreed to retain, and there can be no assurance that the indemnity from BWXT will be sufficient to protect us against the full amount of such liabilities, or that BWXT will be able to fully satisfy its indemnification obligations. Moreover, even if we ultimately succeed in recovering from BWXT any amounts for which we are held liable, we may be temporarily required to bear these losses.

General Risk Factors

Our reported financial results may be adversely affected by new accounting pronouncements or changes in existing accounting standards and practices, which could result in volatility in our results of operations.

We prepare our financial statements in conformity with accounting principles generally accepted in the U.S. These accounting principles are subject to interpretation or changes by the FASB and the SEC. New accounting pronouncements and varying interpretations of accounting standards and practices have occurred in the past and are expected to occur in the future. New accounting pronouncements or a change in the interpretation of existing accounting standards or practices may have a significant effect on our reported financial results and may even affect our reporting of transactions completed before the change is announced or effective.

Any difficulties in adopting or implementing any new accounting standard could result in our failure to meet our financial reporting obligations, which could result in regulatory discipline and harm investors' confidence in us. Finally, if we were to change our critical accounting estimates, our operating results could be significantly affected.

We could be subject to changes in tax rates or tax law, adoption of new regulations, changing interpretations of existing law or exposure to additional tax liabilities in excess of accrued amounts that could adversely affect our financial position.

We are subject to income taxes in the United States and numerous foreign jurisdictions. A change in tax laws, treaties or regulations, or in their interpretation, in any country in which we operate could result in a higher tax rate on our earnings, which could have a material impact on our earnings and cash flows from operations. Tax reform legislation enacted in December of 2017 has made substantial changes to United States tax law, including a reduction in the corporate tax rate, a limitation on deductibility of interest expense, a limitation on the use of net operating losses to offset future taxable income, the allowance of immediate expensing of capital expenditures and the transition of U.S. international taxation from a worldwide tax system to a more generally territorial system, and a one-time transition tax on the mandatory deemed repatriation of foreign earnings. Generally, future changes in applicable U.S. or foreign tax laws and regulations, or their interpretation and application could have an adverse effect on our business, financial conditions and results of operations.

Significant judgment is required in determining our worldwide provision for income taxes. In the ordinary course of our business, there are many transactions and calculations where the ultimate tax determination is uncertain, and we are regularly subject to audit by tax authorities. Although we believe that our tax estimates and tax positions are reasonable, they could be materially affected by many factors including the final outcome of tax audits and related litigation, the introduction of new tax accounting standards, legislation, regulations and related interpretations, our global mix of earnings, the ability to realize deferred tax assets and changes in uncertain tax positions. A significant increase in our tax rate could have a material adverse effect on our profitability and liquidity.

Our ability to use net operating losses ("NOLs") and certain tax credits to reduce future tax payments could be further limited if we experience an additional "ownership change".

Some or all of the Company's deferred tax assets, consisting primarily of NOLs and interest carryforwards that are not currently deductible for tax purposes, could expire unused if we are unable to generate sufficient taxable income in the future to take advantage of them or if we enter into transactions that limit our right to use them, which includes transactions that result in an "ownership change" under Section 382 of the Code.

Sections 382 and 383 of the Code limits for U.S. federal income tax purposes, the annual use of NOL carryforwards, disallowed interest carryforwards and tax credit carryforwards, respectively, following an ownership change. Under Section 382 of the Code, a company has undergone an ownership change if shareholders owning at least 5% of the company have increased their collective holdings by more than 50% during the prior three-year period. Based on information that is publicly available, the Company determined that a Section 382 ownership change occurred on July 23, 2019 as a result of the Equitization Transactions. If the Company experiences subsequent ownership changes, certain NOL carryforwards (including previously disallowed interest carryforwards) may be subject to more than one section 382 limitation.

The loss of the services of one or more of our key personnel, or our failure to attract, recruit, motivate, and retain qualified personnel in the future, could disrupt our business and harm our results of operations.

We depend on the skills, working relationships, and continued services of key personnel, including our management team and others throughout our organization. We are also dependent on our ability to attract and retain qualified personnel, for whom we compete with other companies both inside and outside our industry. Our business, financial condition or results of operations may be adversely impacted by the unexpected loss of any of our management team or other key personnel, or more generally if we fail to attract, recruit, motivate and retain qualified personnel.

We outsource certain business processes to third-party vendors and have certain business relationships that subject us to risks, including disruptions in business which could increase our costs.

We outsource some of our business processes to third-party vendors. We make a diligent effort to ensure that all providers of these outsourced services are observing proper internal control practices; however, there are no guarantees that failures will not occur. Failure of third parties to provide adequate services or our inability to arrange for alternative providers on favorable terms in a timely manner could disrupt our business, increase our costs or otherwise adversely affect our business and our financial results.

Negotiations with labor unions and possible work stoppages and other labor problems could divert management's attention and disrupt operations. In addition, new collective bargaining agreements or amendments to existing agreements could increase our labor costs and operating expenses.

A significant number of our employees are members of labor unions. If we are unable to negotiate acceptable new contracts with our unions from time to time, we could experience strikes or other work stoppages by the affected employees. If any such strikes, protests or other work stoppages were to occur, we could experience a significant disruption of operations. In addition, negotiations with unions could divert management's attention. New union contracts could result in increased operating costs, as a result of higher wages or benefit expenses, for both union and nonunion employees. If nonunion employees were to unionize, we could experience higher ongoing labor costs.

Pension and medical expenses associated with our retirement benefit plans may fluctuate significantly depending on a number of factors, and we may be required to contribute cash to meet underfunded pension obligations.

A substantial portion of our current and retired employee population is covered by pension and postretirement benefit plans, the costs and funding requirements of which depend on our various assumptions, including estimates of rates of return on benefit-related assets, discount rates for future payment obligations, rates of future cost growth, mortality assumptions and trends for future costs. Variances from these estimates could have a material adverse effect on us. Our policy to recognize these variances annually through mark to market accounting could result in volatility in our results of operations, which could be material. The funding obligations for the Company's pension plans are impacted by the performance of the financial markets, particularly the equity markets, and interest rates. If the financial markets do not provide the long-term returns that are expected, or discount rates increase the present value of liabilities, the Company could be required to make larger contributions.

As of December 31, 2021, our defined benefit pension and postretirement benefit plans were underfunded by approximately \$174.9 million. In addition, certain of these postretirement benefit plans were collectively bargained, and our ability to curtail or change the benefits provided may be impacted by contractual provisions set forth in the relevant union agreements and other plan documents. We also participate in various multi-employer pension plans in the United States and Canada under union and industry agreements that generally provide defined benefits to employees covered by collective bargaining agreements. Absent an applicable exemption, a contributor to a United States multi-employer plan is liable, upon termination

or withdrawal from a plan, for its proportionate share of the plan's underfunded vested liability. Funding requirements for benefit obligations of these multi-employer pension plans are subject to certain regulatory requirements, and we may be required to make cash contributions which may be material to one or more of these plans to satisfy certain underfunded benefit obligations. See Note 13 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report for additional information regarding our pension and postretirement benefit plan obligations.

Natural disasters or other events beyond our control, such as war, armed conflicts or terrorist attacks could adversely affect our business.

Matters outside of our control could adversely affect demand for or supply of our products or disrupt our facilities, systems or projects, which could interrupt operational processes and performance on our contracts and adversely impact our ability to manufacture our products and provide services and support to our customers. Insurance for such matters may be unavailable or insufficient. Such matters could include natural disasters, such as earthquakes, tsunamis, hurricanes, floods, tornadoes, war, armed conflicts, or terrorist attacks, among others. We operate facilities in areas of the world that are exposed to such risks, which could be general in nature or targeted at us or our markets.

Item 1B. Unresolved Staff Comments

None

Item 2. Properties

The following table provides the primary segment, location and general use of each of our principal properties that we own or lease at December 31, 2021.

Business Segment and Location	Principal Use	Owned/Leased (Lease Expiration)
<i>B&W Renewable segment</i>		
Copenhagen, Denmark	Administrative office	Leased (2023)
Esbjerg, Denmark	Manufacturing facility / administrative office	Owned
Vejen, Denmark	Administrative office	Leased (2022)
Freeport, Illinois	Administrative office	Leased (2026)
<i>B&W Environmental segment</i>		
Paruzzaro, Italy	Administrative offices	Leased (2024)
Ding Xiang, Xin Zhou, Shan Xi, China	Manufacturing facility	Leased (2023)
<i>B&W Thermal segment</i>		
Akron, Ohio	Administrative offices	Leased (2034)
Lancaster, Ohio	Manufacturing facility	Leased (2041)
Copley, Ohio	Warehouse / service center	Leased (2033)
Dumbarton, Scotland	Manufacturing facility	Owned
Guadalupe, NL, Mexico	Manufacturing facility	Leased (2024)
Cambridge, Ontario, Canada	Administrative office / warehouse	Leased (2024)

We believe that our major properties are adequate for our present needs and, as supplemented by planned improvements and construction, expect them to remain adequate for the foreseeable future.

Item 3. Legal Proceedings

For information regarding ongoing investigations and litigation, see Note 22 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report, which we incorporate by reference into this Item.

Item 4. Mine Safety Disclosures.

Not Applicable.

PART II

Item 5. Market for Registrant's Common Equity Related Stockholder Matters and Issuer Purchases of Equity Securities

Our common stock is traded on the New York Stock Exchange under the symbol BW.

As of January 31, 2022, there were approximately 950 record holders of our common stock.

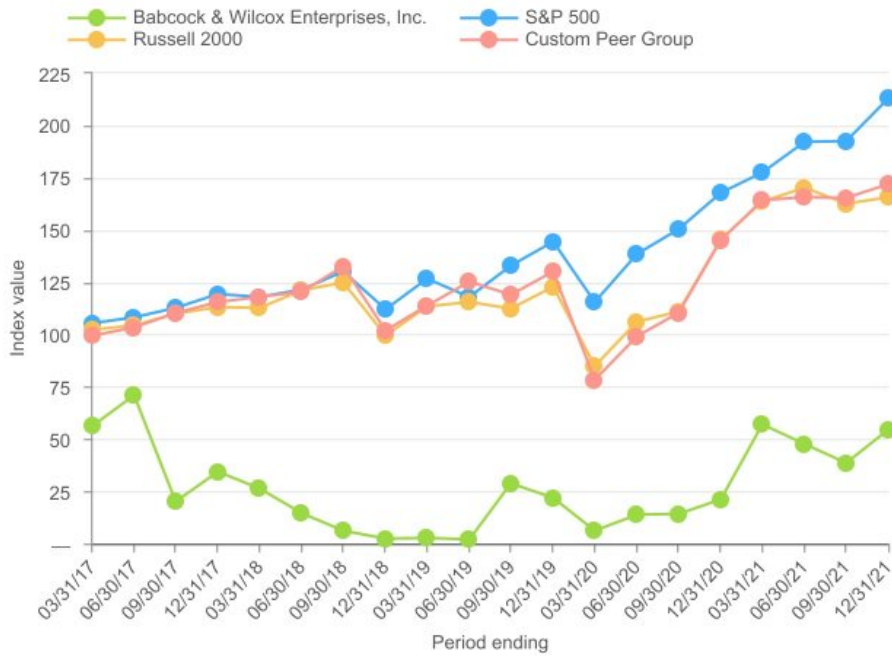
In accordance with the provisions of the employee benefit plans, the Company acquired the following shares in connection with the vesting of employee restricted stock that require us to withhold shares to satisfy employee statutory income tax withholding obligations. The following table identifies the number of common shares and average price per share for each month during the quarter ended December 31, 2021. The Company does not have a general share repurchase program at this time.

(data in whole amounts)

Period	Total number of shares acquired ⁽¹⁾	Average price per share	Total number of shares purchased as part of publicly announced plans or programs	Approximate dollar value of shares that may yet be purchased under the plans or programs
October 2021	—	\$ —	—	\$ —
November 2021	13,150	\$ 6.21	—	\$ —
December 2021	—	\$ —	—	\$ —
Total	13,150	\$ 6.21	—	\$ —

⁽¹⁾ Acquired shares are recorded in treasury stock in our Consolidated Balance Sheets.

The following graph provides a comparison of our cumulative total shareholder return over five years through December 31, 2021 to the return of the S&P 500, the Russell 2000 and our custom peer group.



(1) Assumes initial investment of \$100 on December 31, 2016.

The peer group used for the comparison above is comprised of the following companies:

AMETEK Inc.	Curtiss-Wright Corp.	Ilex Corp.
CECO Environmental Corp.	Dycom Industries Inc.	MasTec Inc.
Chart Industries Inc.	Energypac Tool Group Corp.	Primoris Services Corp.
CIRCOR Int. Inc.	Flowsolve Corp.	SPX Corp.
Crane Co.	Harsco Corp.	Tetra Tech, Inc.

Unregistered Sales of Equity Securities

On June 1, 2021, the Company and B. Riley, a related party, entered into an agreement pursuant to which we (i) issued B. Riley 2,916,880 shares of our Preferred Stock, representing an exchange price of \$25.00 per share and paid \$0.4 million in cash, and (ii) paid \$0.9 million in cash to B. Riley for accrued interest due, in exchange for a deemed prepayment of \$73.3 million of our then existing term loans with B. Riley under the Company's prior A&R Credit Agreement (the "A&R Credit Agreement"). The shares of Preferred Stock issued to B. Riley in the exchange were offered pursuant to the exemption from registration under the Securities Act in Rule 506 of Regulation D under Section 4(a)(2) thereof.

Item 6. [Reserved]

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

You should read the following discussion of our financial condition and results of operations in conjunction with the financial statements and the notes thereto included in Financial Statements under Item 1 within this Annual Report. The following discussion contains forward-looking statements that reflect our plans, estimates, and beliefs. Our actual results could differ materially from those discussed in the forward-looking statements. See Cautionary Statement Concerning Forward-Looking Information.

BUSINESS OVERVIEW

B&W is a growing, globally-focused renewable, environmental and thermal technologies provider with over 150 years of experience providing diversified energy and emissions control solutions to a broad range of industrial, electrical utility, municipal and other customers. B&W's innovative products and services are organized into three market-facing segments. Our reportable segments are as follows:

- **Babcock & Wilcox Renewable:** Cost-effective technologies for efficient and environmentally sustainable power and heat generation, including waste-to-energy, solar construction and installation, biomass energy and black liquor systems for the pulp and paper industry. B&W's leading technologies support a circular economy, diverting waste from landfills to use for power generation and replacing fossil fuels, while recovering metals and reducing emissions.
- **Babcock & Wilcox Environmental:** A full suite of best-in-class emissions control and environmental technology solutions for utility, waste to energy, biomass, carbon black, and industrial steam generation applications around the world. B&W's broad experience includes systems for cooling, ash handling, particulate control, nitrogen oxides and sulfur dioxides removal, chemical looping for carbon control, and mercury control.
- **Babcock & Wilcox Thermal:** Steam generation equipment, aftermarket parts, construction, maintenance and field services for plants in the power generation, oil and gas, and industrial sectors. B&W has an extensive global base of installed equipment for utilities and general industrial applications including refining, petrochemical, food processing, metals and others.

On September 30, 2021, we acquired a 60% controlling ownership stake in Illinois-based solar energy contractor Fosler Construction Company Inc. ("Fosler Construction") for approximately \$27.2 million in cash plus contingent consideration of up to \$10 million, valued at \$8.8 million. Fosler Construction provides commercial, industrial and utility-scale solar services and owns two community solar projects in Illinois being developed under the Illinois Solar for All program. Fosler Construction was founded in 1998 and employs approximately 120 people. It has a strong track record of successfully completing solar projects profitably with union labor and has aligned its model with a growing number of renewable project incentives in the U.S. We believe Fosler Construction is positioned to capitalize on the high-growth solar market in the U.S. and that the acquisition aligns with B&W's aggressive growth and expansion of our clean and renewable energy businesses. Fosler Construction is reported as part of our B&W Renewable segment, and operates under the name Fosler Solar, a Babcock & Wilcox company.

On November 30, 2021, we acquired 100% ownership of VODA A/S ("VODA") through our wholly-owned subsidiary, B&W PGG Luxembourg Finance SARL, for approximately \$32.9 million. VODA is a Denmark-based multi-brand aftermarket parts and services provider, focusing on energy-producing incineration plants including waste-to-energy, biomass-to-energy or other fuels, providing service, engineering services, spare parts as well as general outage support and management. VODA has extensive experience in incineration technology, boiler and pressure parts, SRO, automation, and performance optimization. VODA employs approximately 65 people mainly in Denmark and Sweden. We believe VODA will solidify our platform for our renewable service business in Europe and that the acquisition aligns with B&W's aggressive growth and expansion of our clean and renewable energy businesses. VODA is reported as part of our B&W Renewable segment. We plan to form B&W Renewable Services to integrate VODA and our waste-to-energy and biomass aftermarket services businesses.

On February 1, 2022, we acquired 100% ownership of Fossil Power Systems, Inc. for approximately \$59.1 million, excluding working capital adjustments. Fossil Power Systems, Inc., is a leading designer and manufacturer of hydrogen, natural gas and renewable pulp and paper combustion equipment including ignitors, plant controls and safety systems based in Dartmouth, Nova Scotia, Canada. Fossil Power Systems, Inc. will initially be reported as part of our B&W Thermal segment.

On February 28, 2022, we acquired 100% ownership of Optimus Industries, LLC for approximately \$19 million, excluding working capital adjustments. Optimus designs and manufactures waste heat recovery products for use in power generation, petrochemical, and process industries, including package boilers, watertube and firetube waste heat boilers, economizers, superheaters, waste heat recovery equipment and sulfuric acid plants and is based in Tulsa, Oklahoma and Chanute, Kansas. Optimus Industries, LLC will be reported as part of our B&W Thermal segment.

Our business depends significantly on the capital, operations and maintenance expenditures of global electric power generating companies, including renewable and thermal powered heat generation industries and industrial facilities with environmental compliance policy requirements. Several factors may influence these expenditures, including:

- climate change initiatives promoting environmental policies which include renewable energy options utilizing waste-to-energy or biomass to meet legislative requirements and clean energy portfolio standards in the United States, European, Middle East and Asian markets;
- requirements for environmental improvements in various global markets;
- expectation of future governmental requirements to further limit or reduce greenhouse gas and other emissions in the United States, Europe and other international climate change sensitive countries;
- prices for electricity, along with the cost of production and distribution including the cost of fuels within the United States, Europe, Middle East and Asian based countries;
- demand for electricity and other end products of steam-generating facilities;
- level of capacity utilization at operating power plants and other industrial uses of steam production;
- requirements for maintenance and upkeep at operating power plants to combat the accumulated effects of usage;
- overall strength of the industrial industry; and
- ability of electric power generating companies and other steam users to raise capital.

Customer demand is heavily affected by the variations in our customers' business cycles and by the overall economies and energy, environmental and noise abatement needs of the countries in which they operate.

We have manufacturing facilities in Mexico, the United States, Denmark, Scotland and China. Many aspects of our operations and properties could be affected by political developments, environmental regulations and operating risks. These and other factors may have a material impact on our international and domestic operations or our business as a whole.

Through our restructuring efforts, we continue to make significant progress to make our cost structure more variable and to reduce costs. We expect our cost saving measures to continue to translate to bottom-line results, with top-line growth driven by opportunities for our core technologies and support services across the B&W Renewable, B&W Environmental and B&W Thermal segments globally.

We expect to continue to explore other cost saving initiatives to improve cash generation and evaluate additional non-core asset sales to continue to strengthen our liquidity. There are or will be important factors that could cause our actual results to differ materially from those indicated in these statements. If one or more events related to these or other risks or uncertainties materialize, or if our underlying assumptions prove to be incorrect, actual results may differ materially from what we anticipate.

In addition, we continue to evaluate further dispositions, opportunities for additional cost savings and opportunities for subcontractor recoveries and other claims where appropriate and available. If the value of our business was to decline, or if we were to determine that we were unable to recognize an amount in connection with any proposed disposition in excess of the carrying value of any disposed asset, we may be required to recognize impairments for one or more of our assets that may adversely impact our business, financial condition and results of operations.

RESULTS OF OPERATIONS—YEARS ENDED DECEMBER 31, 2021, 2020 AND 2019

Components of Our Results of Operations

Revenue

Our revenue is the total amount of income generated by our business and consists primarily of income from our renewable, environmental and thermal technology solutions we provide to a broad range of industrial electric utility and other customers.

Revenue from our operations is assessed based on our three market-facing segments, Babcock & Wilcox Renewable, Babcock & Wilcox Environmental and Babcock & Wilcox Thermal.

Operating Income

Operating income consists primarily of our revenue minus costs and expenses, including cost of operations, SG&A, and advisory fees and settlement costs.

Net Income

Net income consists primarily of operating income minus other income and expenses, including interest income, foreign exchange and expense related to our benefit plans.

Consolidated Results of Operations

The following discussion of our business segment results of operations includes a discussion of adjusted EBITDA, which when used on a consolidated basis is a non-GAAP financial measure. Adjusted EBITDA differs from the most directly comparable measure calculated in accordance with generally accepted accounting principles (“GAAP”). A reconciliation of net income (loss), the most directly comparable GAAP measure, to adjusted EBITDA is included in “Non-GAAP Financial Measures” below. Management believes that this financial measure is useful to investors because it excludes certain expenses, allowing investors to more easily compare our financial performance period to period.

(in thousands)	Year ended December 31,		
	2021	2020	2019
Revenues:			
B&W Renewable segment	\$ 156,800	\$ 156,187	\$ 205,551
B&W Environmental segment	133,826	107,968	275,635
B&W Thermal segment	433,329	304,968	409,744
Eliminations	(592)	(2,806)	(31,819)
	<u>\$ 723,363</u>	<u>\$ 566,317</u>	<u>\$ 859,111</u>

(in thousands)	Year ended December 31,		
	2021	2020	2019
Adjusted EBITDA			
B&W Renewable segment ⁽¹⁾	\$ 23,219	\$ 24,957	\$ 1,617
B&W Environmental segment	11,773	3,503	12,553
B&W Thermal segment	49,143	36,052	52,235
Corporate	(12,467)	(14,425)	(17,579)
Research and development costs	(1,093)	(4,379)	(2,861)
	<u>\$ 70,575</u>	<u>\$ 45,708</u>	<u>\$ 45,965</u>

⁽¹⁾ Adjusted EBITDA for 2020 includes a \$26 million non-recurring loss recovery related to certain historical EPC loss contracts.

2021 vs 2020 Consolidated Results

Revenues increased by \$157.0 million to \$723.4 million in 2021 as compared to \$566.3 million in 2020, primarily attributable to a higher level of activity in our Thermal and Environmental segments which were both adversely impacted by COVID-19 in the prior year and the acquisitions of Fosler Construction and VODA in our Renewable segment. Segment specific changes are discussed in further detail in the sections below

Net income (loss) increased by \$41.8 million to \$31.5 million in 2021 as compared to \$(10.3) million. Operating income (loss) increased \$22.6 million to \$20.8 million in 2021 as compared to \$(1.7) million in 2020. The increase is primarily due to the revenue increase described above, contributions from the Fosler Construction and VODA acquisitions and the recognition of a settlement from a subcontractor to reimburse the Company for project costs related to three of the Renewable EPC loss

contracts as described in Note 5 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report. These increases were also partially offset by the non-recurring loss recovery of \$26.0 million recognized in the prior year under an October 10, 2020 settlement agreement with an insurer in connection with five of the six European B&W Renewable EPC loss contracts, as described in Note 5 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report. Restructuring expenses, advisory fees, research and development, depreciation and amortization expense, pension and other postretirement benefit plans, foreign exchange, income taxes and gains (losses) on dispositions are discussed in further detail in the sections below.

2020 vs 2019 Consolidated Results

Revenues decreased by \$292.8 million to \$566.3 million in 2020 as compared to \$859.1 million in 2019. Revenues for each of our segments have been adversely impacted by COVID-19, including the postponement and delay of several projects due to COVID-19. In addition to the impacts of COVID-19, revenue was also impacted by segment specific changes which are discussed in further detail in the sections below.

Net loss improved \$118.7 million to \$(10.3) million in 2020 from \$(129.0) million in 2019. Operating losses improved \$27.6 million to \$(1.7) million in 2020 from \$(29.4) million in 2019, primarily due to the insurance loss recovery of \$26.0 million and a lower level of losses on the EPC loss contracts, partially offset by the divestiture of Loibl and the impacts of COVID-19 in the B&W Renewable segment, as well as a decline in volume in the B&W Environmental and B&W Thermal segments related primarily to COVID-19. Restructuring expenses, advisory fees, research and development, depreciation and amortization expense, pension and other postretirement benefit plans, foreign exchange, income taxes and gains (losses) on dispositions are discussed in further detail in the sections below.

Year-over-year comparisons of our results from net income (loss) were also impacted by:

- \$4.9 million, \$11.8 million and \$11.7 million of restructuring costs were recognized in 2021, 2020 and 2019, respectively, and are more fully described in Note 12 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report.
- \$2.7 million, \$4.4 million and \$9.1 million of financial advisory service fees were recognized in 2021, 2020 and 2019, respectively. Financial advisory service fees are included in *advisory fees and settlement costs* in our Consolidated Statement of Operations.
- \$5.5 million, \$6.4 million and \$11.8 million of legal and other advisory fees were recognized in 2021, 2020 and 2019, respectively. These fees are related to the contract settlement and liquidity planning and are included in *advisory fees and settlement costs* in our Consolidated Statement of Operations.
- \$6.5 million, \$(6.2) million and \$(4.0) million of gain (loss) on debt extinguishment in 2021, 2020 and 2019, respectively.
- \$1.8 million, \$0.1 million and \$3.6 million of loss on sale of business in 2021, 2020 and 2019, respectively.
- \$15.5 million, \$(23.2) million and \$8.8 million of actuarially determined mark to market (“MTM”) gains (losses) on our pension and other post-retirement benefits in 2021, 2020 and 2019, respectively. MTM losses are further described in Note 13 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report.
- \$4.9 million, \$2.1 million and \$0.5 million of litigation legal costs were recognized in 2021, 2020 and 2019, respectively. These fees are included in *advisory fees and settlement costs* in our Consolidated Statement of Operations.
- \$6.6 million of settlement cost was recognized in 2019 in connection with an additional European waste-to-energy EPC contract, for which notice to proceed was not given and the contract was not started and is included in *advisory fees and settlement costs* in our Consolidated Statement of Operations.
- \$4.8 million of costs related to completed and potential acquisitions were recognized in 2021. These costs are included in *selling, general and administrative expenses* in our Consolidated Statement of Operations.

Bookings and Backlog

Bookings and backlog are our measure of remaining performance obligations under our sales contracts. It is possible that our methodology for determining bookings and backlog may not be comparable to methods used by other companies.

We generally include expected revenue from contracts in our backlog when we receive written confirmation from our customers authorizing the performance of work and committing the customers to payment for work performed. Backlog may not be indicative of future operating results, and contracts in our backlog may be canceled, modified or otherwise altered by customers. Backlog can vary significantly from period to period, particularly when large new build projects or operations and maintenance contracts are booked because they may be fulfilled over multiple years. Because we operate globally, our backlog is also affected by changes in foreign currencies each period. We do not include orders of our unconsolidated joint ventures in backlog.

Bookings represent changes to the backlog. Bookings include additions from booking new business, subtractions from customer cancellations or modifications, changes in estimates of liquidated damages that affect selling price and revaluation of backlog denominated in foreign currency. We believe comparing bookings on a quarterly basis or for periods less than one year is less meaningful than for longer periods, and that shorter-term changes in bookings may not necessarily indicate a material trend.

	Year ended December 31,	
	2021	2020
(In approximate millions)		
B&W Renewable ⁽¹⁾	\$ 294	\$ 116
B&W Environmental	148	147
B&W Thermal	337	390
Other/eliminations	—	(8)
Bookings	\$ 779	\$ 645

⁽¹⁾ B&W Renewable bookings includes the revaluation of backlog denominated in currency other than U.S. dollars. The foreign exchange impact on B&W Renewable bookings in the years ended December 31, 2021 and 2020 was \$15.0 million and \$(14.7) million, respectively.

Our backlog as of December 31, 2021 and 2020 was as follows:

	As of December 31,	
	2021	2020
(In approximate millions)		
B&W Renewable ⁽¹⁾	\$ 394	\$ 208
B&W Environmental	123	106
B&W Thermal	126	226
Other/eliminations	(4)	(5)
Backlog	\$ 639	\$ 535

⁽¹⁾ B&W Renewable backlog at December 31, 2021, includes \$149.1 million related to long-term operation and maintenance contracts for renewable energy plants, with remaining durations extending until 2034. Generally, such contracts have a duration of 10-20 years and include options to extend.

Of the backlog at December 31, 2021, we expect to recognize revenues as follows:

	2022	2023	Thereafter	Total
(In approximate millions)				
B&W Renewable	\$ 204	\$ 56	\$ 134	\$ 394
B&W Environmental	89	11	23	123
B&W Thermal	108	15	3	126
Other/eliminations	(4)	—	—	(4)
Expected revenue from backlog	\$ 397	\$ 82	\$ 160	\$ 639

Non-GAAP Financial Measures

Adjusted EBITDA on a consolidated basis is a non-GAAP metric defined as the sum of the adjusted EBITDA for each of the segments, further adjusted for corporate allocations and research and development costs. At a segment level, the adjusted EBITDA presented below is consistent with the way the Company's chief operating decision maker reviews the results of operations and makes strategic decisions about the business and is calculated as earnings before interest, tax, depreciation and amortization adjusted for items such as gains or losses on asset sales, net pension benefits, restructuring costs, impairments, gains and losses on debt extinguishment, costs related to financial consulting, research and development costs and other costs that may not be directly controllable by segment management and are not allocated to the segment. The Company uses

adjusted EBITDA internally to evaluate its performance and in making financial and operational decisions. When viewed in conjunction with GAAP results and the accompanying reconciliation in Note 4 to the Consolidated Financial Statements, the Company believes that its presentation of adjusted EBITDA provides investors with greater transparency and a greater understanding of factors affecting its financial condition and results of operations than GAAP measures alone. As previously disclosed, the Company changed its reportable segments in 2020 and has recast prior period results to account for this change. Additionally, the Company redefined its definition of adjusted EBITDA to eliminate the effects of certain items including the loss from a non-strategic business, interest on letters of credit included in cost of operations and loss on business held for sale. Prior period results have been revised to conform with the revised definition and present separate reconciling items in our reconciliation.

(in thousands)	Year ended December 31,		
	2021	2020	2019
Net income (loss)	\$ 31,538	\$ (10,297)	\$ (129,039)
Interest expense	41,359	60,713	95,266
Income tax (benefit) expense	(2,224)	8,179	5,286
Depreciation & amortization	18,337	16,805	23,605
EBITDA	89,010	75,400	(4,882)
Benefit plans, net	(48,142)	(5,600)	(22,800)
Gain on sales, net	(13,984)	(3,155)	(339)
(Gain) loss on debt extinguishment	(6,530)	6,194	3,969
Stock compensation	10,476	4,587	3,376
Restructuring activities and business services transition costs	10,726	11,849	11,707
Advisory fees for settlement costs and liquidity planning	5,480	6,357	11,824
Litigation legal costs	4,894	2,137	475
Acquisition pursuit and related costs	4,841	—	—
Product development ⁽¹⁾	4,713	—	—
Foreign exchange	4,294	(58,799)	16,602
Financial advisory services	2,709	4,384	9,069
Other - net	1,489	1,128	(285)
Loss from business held for sale	483	467	5,850
Loss from a non-strategic business	116	2,559	5,518
Settlement cost to exit contract ⁽²⁾	—	—	6,575
Income from discontinued operations	—	(1,800)	(694)
Adjusted EBITDA ⁽³⁾	\$ 70,575	\$ 45,708	\$ 45,965

⁽¹⁾ Costs associated with development of commercially viable products that are ready to go to market.

⁽²⁾ In March 2019, we entered into a settlement in connection with an additional B&W Renewable waste-to-energy EPC contract, for which notice to proceed was not given and the contract was not started. The settlement eliminated our obligations to act, and our risk related to acting, as the prime EPC should the project have moved forward.

⁽³⁾ Adjusted EBITDA for the twelve months ended December 31, 2020 includes a \$26 million non-recurring loss recovery related to certain historical EPC loss contracts in the third quarter.

(in thousands)	Year ended December 31,		
	2021	2020	2019
Adjusted EBITDA			
B&W Renewable segment ⁽¹⁾	\$ 23,219	\$ 24,957	\$ 1,617
B&W Environmental segment	11,773	3,503	12,553
B&W Thermal segment	49,143	36,052	52,235
Corporate	(12,467)	(14,425)	(17,579)
Research and development benefit (costs)	(1,093)	(4,379)	(2,861)
	\$ 70,575	\$ 45,708	\$ 45,965

⁽¹⁾ Adjusted EBITDA for the twelve months ended December 31, 2020 includes a \$26 million non-recurring loss recovery related to certain historical EPC loss contracts in the third quarter.

B&W Renewable Segment Results

(in thousands)	Year ended December 31,			Year ended December 31,		
	2021	2020	\$ Change	2020	2019	\$ Change
Revenues	\$ 156,800	\$ 156,187	\$ 613	\$ 156,187	\$ 205,551	\$ (49,364)
Adjusted EBITDA	\$ 23,219	\$ 24,957	\$ (1,738)	\$ 24,957	\$ 1,617	\$ 23,340

2021 vs 2020 results

Revenues in the B&W Renewable segment increased \$0.6 million, to \$156.8 million in 2021 compared to \$156.2 million in 2020. The increase in revenue is primarily due to the acquisitions of Fosler Construction and VODA on September 30, 2021 and November 30, 2021, respectively, and higher part sales offset by the timing of a large project order slipping into early 2022.

Adjusted EBITDA in the B&W Renewable segment decreased \$1.7 million, to \$23.2 million in 2021 compared to \$25.0 million in 2020. The decrease is primarily due to the non-recurring loss recovery of \$26.0 million recognized in 2020 under an October 10, 2020 settlement agreement with an insurer in connection with five of the six European B&W Renewable EPC loss contracts offset by higher revenue volume and the acquisitions of Fosler Construction and VODA, as described above, in addition to recognition of a settlement from a subcontractor to reimburse the Company for project costs related to three of the Renewable EPC loss contracts as described in as described in Note 5 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report.

2020 vs 2019 results

Revenues in the B&W Renewable segment decreased 24%, or \$49.4 million to \$156.2 million in 2020 compared to \$205.6 million in 2019. The reduction in revenue is due to the advanced completion of activities on the European B&W Renewable EPC loss contracts in the prior year as well as new anticipated activities being deferred due to COVID-19, partially offset by a higher level of activities on two operations and maintenance contracts in the U.K. which followed the turnover of the EPC loss contracts to the customers. Additionally, the reduction in revenue partially relates to the divestiture of Loibl, a materials handling business in Germany that generated revenues of approximately \$14.3 million in 2019.

Adjusted EBITDA in the B&W Renewable segment improved \$23.3 million to \$25.0 million in 2020 compared to \$1.6 million in 2019. The improvement is primarily due to the loss recovery of \$26.0 million recognized in 2020 under an October 10, 2020 settlement agreement with an insurer in connection with five of the six European B&W Renewable EPC loss contracts. In addition the B&W Renewable segment incurred lower costs in 2020 to complete the six European B&W Renewable EPC loss contracts which included \$3.7 million and \$6.9 million in net losses, including warranty in 2020 and 2019, respectively. The Adjusted EBITDA improvement was also partially offset by the divestiture of Loibl and lower volume.

B&W Environmental Segment Results

(In thousands)	Year ended December 31,			Year ended December 31,		
	2021	2020	\$ Change	2020	2019	\$ Change
Revenues	\$ 133,826	\$ 107,968	\$ 25,858	\$ 107,968	\$ 275,635	\$ (167,667)
Adjusted EBITDA	\$ 11,773	\$ 3,503	\$ 8,270	\$ 3,503	\$ 12,553	\$ (9,050)

2021 vs 2020 results

Revenues in the B&W Environmental segment increased 24%, or \$25.9 million to \$133.8 million in 2021 compared to \$108.0 million in 2020. The increase is primarily driven by the postponement of several new projects in the prior year due to COVID-19 which have since resumed in addition to higher overall volume in our ASH project business.

Adjusted EBITDA in the B&W Environmental segment was \$11.8 million in 2021 compared to \$3.5 million in 2020. The increase is driven primarily by higher volume, as described above.

2020 vs 2019 results

Revenues in the B&W Environmental segment decreased 61%, or \$167.7 million, to \$108.0 million in 2020 from \$275.6 million in 2019. The decrease is primarily due to the completion of large construction projects in the prior year and a lower level of activity primarily due to the postponement of new projects by several customers as a result of COVID-19. B&W Environmental's two significant legacy loss contracts, generated revenues of \$4.1 million and \$18.8 million in 2020 and 2019, respectively.

Adjusted EBITDA in the B&W Environmental segment decreased \$9.1 million to \$3.5 million in 2020 compared to \$12.6 million in 2019. The decline is primarily attributable to the impacts of lower volume, the effects of which were partially offset by a lower percentage of overhead being allocated to the segment that were not previously allocated to other segments.

B&W Thermal Segment Results

(In thousands)	Year ended December 31,			Year ended December 31,		
	2021	2020	\$ Change	2020	2019	\$ Change
Revenues	\$ 433,329	\$ 304,968	\$ 128,361	\$ 304,968	\$ 409,744	\$ (104,776)
Adjusted EBITDA	\$ 49,143	\$ 36,052	\$ 13,091	\$ 36,052	\$ 52,235	\$ (16,183)

2021 vs 2020 results

Revenues in the B&W Thermal segment increased 42%, or \$128.4 million, to \$433.3 million in 2021 compared to \$305.0 million generated in 2020. The revenue increase is attributable to a higher level of activity on construction projects, an increase in volume in our package boilers and parts business and the adverse impacts of COVID-19 which significantly impacted prior year revenues, as described below.

Adjusted EBITDA in the B&W Thermal segment increased \$13.1 million to \$49.1 million in 2021 compared to \$36.1 million in 2020, which is mainly attributable to the increase in volume as described above and continued cost savings and restructuring initiatives benefiting the current year.

2020 vs 2019 results

Revenues in the B&W Thermal segment decreased 26%, or \$104.8 million, to \$305.0 million in 2020 compared to \$409.7 million in 2019. The revenue decrease is attributable to the completion of large construction projects in the prior year in addition to the adverse impacts of COVID-19 resulting in lower parts, construction, package boilers and international service orders.

Adjusted EBITDA in the B&W Thermal segment decreased 31%, or \$16.2 million, to \$36.1 million in 2020 compared to \$52.2 million in 2019, primarily attributable to lower volume of project activity and a higher percentage of overhead being

allocated to the segment that was previously allocated to other segments, the effects of which were partially offset by favorable product mix and a full period of cost savings and restructuring initiatives benefiting the 2020 year.

Corporate

Corporate costs in adjusted EBITDA include SG&A expenses that are not allocated to the reportable segments. These costs include, among others, certain executive, compliance, strategic, reporting and legal expenses associated with governance of the total organization and being an SEC registrant. Corporate costs decreased \$2.0 million to \$12.5 million in year ended December 31, 2021 as compared to \$14.4 million incurred in the year ended December 31, 2020. The decrease is primarily due to an increase in the allocation of corporate costs to the reporting segments, lower personnel costs and audit and director fees partially offset by an increase in the bonus expense of \$1.0 million. Corporate costs decreased \$3.2 million to \$14.4 million in the year ended December 31, 2020 as compared to \$17.6 million in the year ended December 31, 2019, primarily due to decreased bonus costs recognized for the year ended December 31, 2020.

Advisory Fees and Settlement Costs

Advisory fees and settlement costs increased \$0.2 million to \$13.1 million in the year ended December 31, 2021 as compared to \$12.9 million in the corresponding period of 2020. The change is primarily due to increased use of external consultants in 2021. Advisory fees and settlement costs decreased by \$15.1 million to \$12.9 million in the year ended December 31, 2020 as compared to \$27.9 million in the year ended December 31, 2019, primarily due to settlement costs to exit a certain B&W Renewable EPC contract in the first quarter of 2019 and also due to reduced use of external consultants in 2020 as the Company staffed certain positions internally.

Research and Development

Our research and development activities are focused on improving our products through innovations to reduce their cost and make them more competitive, as well as to reduce performance risk of our products to better meet our and our customers' expectations. Research and development (benefit) expenses totaled \$1.6 million, \$4.4 million and \$2.9 million in the years ended December 31, 2021, 2020 and 2019, respectively. The change resulted primarily from timing of specific research and development efforts and the recognition of approximately \$0.9 million in 2021 related to certain credits.

Restructuring

Restructuring actions across our business units and corporate functions resulted in \$4.9 million, \$11.8 million and \$11.7 million of expense in the years ended December 31, 2021, 2020 and 2019, respectively. The charges primarily consist of severance related to actions taken, including as part of the Company's strategic, market-focused organizational and re-branding initiatives.

Transition Costs

Transition costs across our corporate and business functions resulted in \$5.9 million of expense in the year ended December 31, 2021. These charges primarily result from non-recurring actions taken to outsource certain tasks to offshore service providers or to transfer administrative and compliance tasks to global service providers as part of our strategic efforts to reduce future selling, general and administrative costs. Transition costs are included in selling, general and administrative expenses in our Consolidated Statement of Operations,

Depreciation and Amortization

Depreciation expense was \$9.7 million, \$11.3 million and \$19.3 million in the years ended December 31, 2021, 2020 and 2019, respectively. In December 2019, we consolidated all of our Barberton and most of our Copley, Ohio operations into new, leased office space in Akron, Ohio and \$4.9 million of accelerated depreciation was recognized during the year ended December 31, 2019.

Amortization expense was \$8.6 million, \$5.5 million and \$4.3 million in the year ended December 31, 2021, 2020, and 2019, respectively.

Pension and Other Postretirement Benefit Plans

We recognize benefits from our defined benefit and other postretirement benefit plans based on actuarial calculations primarily because our expected return on assets is greater than our service cost. Service cost is low because our plan benefits are frozen except for a small number of hourly participants. Pension benefits before MTM were \$32.7 million, \$28.8 million and \$14.0 million in the years ended December 31, 2021, 2020 and 2019, respectively.

Our pension costs also include MTM adjustments from time to time and are primarily a result of changes in the discount rate, curtailments and settlements. Any MTM charge or gain should not be considered to be representative of future MTM adjustments as such events are not currently predicted and are in each case subject to market conditions and actuarial assumptions as of the date of the event giving rise to the MTM adjustment. Total MTM adjustments for our pension benefit plans were gains of \$15.3 million for the twelve months ended December 31, 2021. Total MTM adjustments for our other postretirement benefit plans were gains of \$0.2 million during the twelve months ended December 31, 2021. Pension benefits, excluding MTM adjustments of a loss of \$23.2 million and a gain of \$8.8 million, were \$28.8 million and \$14.0 million in the years ended December 31, 2020 and 2019, respectively.

The following sensitivity analysis reflects the impact of a 25 basis point change in the assumed discount rate and return on assets on our pension plan obligations and expense for the year ended December 31, 2021:

(In millions)	0.25% increase	0.25% decrease
<i>Discount rate:</i>		
Effect on ongoing net periodic benefit cost ⁽¹⁾	\$ (28.0)	\$ 29.3
Effect on projected benefit obligation	(31.0)	32.8
<i>Return on assets:</i>		
Effect on ongoing net periodic benefit cost	(2.6)	2.6

⁽¹⁾ Excludes effect of annual MTM adjustment.

A 25 basis point change in the assumed discount rate and return on assets would have no meaningful impact on our other postretirement benefit plan obligations and expense for the year ended December 31, 2021 individually or in the aggregate, excluding the impact of any annual MTM adjustments we record annually.

Refer to Note 13 to the Consolidated Financial Statements for further information regarding our pension and other postretirement plans.

Foreign Exchange

We translate assets and liabilities of our foreign operations into United States dollars at current exchange rates, and we translate items in our statement of operations at average exchange rates for the periods presented. We record adjustments resulting from the translation of foreign currency financial statements as a component of accumulated other comprehensive income (loss). We report foreign currency transaction gains and losses in Consolidated Statements of Operations.

Foreign exchange was a gain/(loss) of \$(4.3) million, \$58.8 million and \$(16.6) million for the years ended December 31, 2021, 2020, and 2019, respectively. Foreign exchange gains and losses are primarily related to unhedged intercompany loans denominated in European currencies to fund foreign operations. Foreign exchange gains in 2020 were primarily driven by a weakening U.S. dollar compared to the underlying European currencies and changes in intercompany loan balances denominated in Danish Krone that averaged over \$500 million throughout the year. The 2020 loan balances denominated in Danish Krone were converted to equity in 2020.

Income Taxes

(In thousands, except for percentages)	Year ended December 31,		
	2021	2020	2019
Income (loss) before income taxes	\$ 29,314	\$ (3,918)	\$ (124,447)
Income tax expense (benefit)	\$ (2,224)	\$ 8,179	\$ 5,286
Effective tax rate	(7.6)%	(208.8)%	(4.2)%

Our effective tax rate in 2021 reflects a valuation allowance against deferred tax assets in jurisdictions other than Mexico, Canada, Brazil, Finland, Germany, Thailand, the Philippines, Indonesia, the United Kingdom, Sweden and certain United States state jurisdictions.

The decrease in our income tax expense in 2021 compared to 2020 is primarily attributable to a \$8.7 million reduction in the valuation allowance on net operating losses and temporary deductible benefits in certain states that are now expected to be recovered.

The increase in our income tax expense in 2020 compared to 2019 is primarily attributable to additional income in our profitable foreign subsidiaries, additional foreign withholding taxes incurred on cross-border transactions, and a \$1.1 million deferred tax liability related to unremitted earnings of certain foreign subsidiaries.

Liquidity and Capital Resources

Liquidity

Our primary liquidity requirements include debt service, funding dividends on preferred stock and working capital needs. We fund our liquidity requirements primarily through cash generated from operations, external sources of financing, including our recent revolving credit agreement, senior notes, and equity offerings, including our Preferred Stock, each of which are described below and in the Notes to our Consolidated Financial Statements included in Part II, Item 8 of this Annual Report in further detail along with other sources of liquidity.

During 2021, we executed the following actions:

- on February 12, 2021, we received gross proceeds of approximately \$172.5 million after closing a public offering of our common stock in which 29,487,180 shares of common stock were issued, inclusive of 3,846,154 shares issued to B. Riley Securities, Inc., a related party, as representative of several underwriters in the common stock offering. Net proceeds received were approximately \$163.0 million after deducting underwriting discounts and commissions, but before expenses;
- on February 12, 2021, we received gross proceeds of approximately \$125.0 million after completing an issuance of our \$125.0 million aggregate principal amount of 8.125% Senior Notes, in a public offering through B. Riley Securities, Inc., a related party, as representative of several underwriters in the senior notes offering. Net proceeds received were approximately \$120.0 million after deducting underwriting discounts and commissions, but before expenses;
- on March 15, 2021, we completed the sale of certain fixed assets for the Copley, Ohio location for \$4.0 million, received \$3.3 million of net cash proceeds after adjustments and recognized a gain on sale of \$1.9 million. In conjunction with the sale, we executed a leaseback agreement commencing March 16, 2021 and expiring on March 31, 2033;
- in May 2021, we completed a public offering of our Preferred Stock, in which we ultimately issued an aggregate 4,444,700 shares of our Preferred Stock, at an offering price of \$25.00 per share for net proceeds of approximately \$106.4 million after deducting underwriting discounts, commissions but before expenses, as described in Note 17 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report;
- in June 2021, we issued 2,916,880 shares of our Preferred Stock and paid \$0.4 million in cash to B. Riley, a related party, in exchange for a deemed prepayment of \$73.3 million of our then-existing Tranche A-3 term loan and paid \$0.9 million in cash for accrued interest due to B. Riley, as described in Note 15 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report. As a result of such deemed prepayment, the total amount outstanding under our Last Out Term Loans was reduced to zero;
- on June 30, 2021, September 30, 2021 and December 31, 2021, we paid dividends on our outstanding Preferred Stock totaling \$1.7 million, \$3.7 million and \$3.7 million, respectively, as described in Note 17 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report;
- on June 30, 2021, we entered into a Revolving Credit Agreement (the "Revolving Credit Agreement") with PNC Bank, National Association, as administrative agent ("PNC") and swing loan lender which provides for an up to \$50.0 million asset-based revolving credit facility, including a \$15 million letter of credit sublimit and a \$5 million swingline sublimit. In addition, we entered into a Letter of Credit Agreement (the "Letter of Credit Agreement") with PNC, pursuant to which PNC has agreed to issue up to \$110 million in letters of credit secured in part by cash collateral provided by an affiliate of MSD Partners, MSD PCOF Partners XLV, LLC ("MSD"). Lastly, we entered into a Reimbursement Agreement (the "Reimbursement Agreement") with MSD, as administrative agent, and the cash collateral providers from time to time party thereto, pursuant to which we shall reimburse MSD and any other

cash collateral provider to the extent the up to \$110 million of cash collateral provided by MSD and any other cash collateral provider to secure the Letter of Credit Agreement is drawn to satisfy draws on letters of credit, as described in Note 16 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report;

- in August 2021, we completed the sale of certain real property assets at our Lancaster, Ohio location for \$18.9 million. We received \$15.8 million of net proceeds after adjustments and expenses and recognized a gain on sale of \$13.9 million. In conjunction with the sale, we executed a leaseback agreement commencing August 13, 2021 and expiring on August 31, 2041;
- on September 30, 2021, we acquired a 60% controlling ownership stake in Illinois-based solar energy contractor Fosler Construction Company Inc. (“Fosler Construction”) for approximately \$27.2 million in cash plus contingent consideration arrangement, initially valued at \$8.8 million, with a maximum value up to \$10.0 million if a certain revenue target is achieved in 2022;
- on November 30, 2021, we acquired 100% ownership of VODA A/S (“VODA”) for approximately \$32.9 million;
- on December 13, 2021, we completed a public offering of \$140.0 million aggregate principal amount of our 6.50% senior notes due 2026 (the “6.50% Senior Notes”) and a subsequent exercise of \$11.4 million aggregate principal of our 6.50% senior notes due 2026 by the underwriters was completed on December 30, 2021. At the completion of the offering and exercise, we received net proceeds of approximately \$145.8 million after deducting underwriting discounts, commissions, and before expenses;
- as of December 31, 2021, we issued additional shares of our Preferred Stock for \$7.7 million net proceeds under the sales agreement as described in Note 17 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report;
- as of December 31, 2021, we issued an additional \$26.2 million aggregate principal amount of 8.125% Senior Notes for \$26.6 million net proceeds under the March 31, 2021 sales agreement as described in Note 14 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report;
- on February 1, 2022, we acquired 100% ownership of Fossil Power Systems, Inc. for approximately \$59.1 million, excluding working capital adjustments as described in Note 26 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report;
- on February 28, 2022, we acquired 100% ownership of Optimus Industries, LLC for approximately \$19 million, excluding working capital adjustments as described in Note 26 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report.

See Note 14, Note 15, Note 16, Note 17, Note 18 and Note 26 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report for additional information on our external sources of financing and equity offerings.

As part of the Company’s ongoing response to the impact of the COVID-19 pandemic on its business, the Company continues to take a number of cash conservation and cost reduction measures which include:

- utilizing options for government loans and programs in the U.S. and abroad that are appropriate and available; and
- deferring the remaining \$20.9 million of the estimated Pension Plan contribution payments of \$45.6 million that would have been due during 2021, in accordance with the American Rescue Plan Act of 2021 (the “ARPA relief plan”) signed into law in March 2021.

Cash and Cash Flows

At December 31, 2021, our unrestricted cash and cash equivalents totaled \$224.9 million and we had total debt of \$340.3 million as well as \$191.7 million of gross preferred stock outstanding. Our foreign business locations held \$42.1 million of our total unrestricted cash and cash equivalents at December 31, 2021. In general, our foreign cash balances are not available to fund our U.S. operations unless the funds are repatriated or used to repay intercompany loans made from the U.S. to foreign entities, which could expose us to taxes we presently have not made a provision for in our results of operations. We presently have no plans to repatriate these funds to the U.S. In addition, we had \$0.4 million of restricted cash at December 31, 2021 related to collateral for certain letters of credit.

Cash used in operations was \$111.2 million in the year ended December 31, 2021, which is primarily attributable to the \$60.8 million reduction in pension, postretirement and employee benefit liabilities and a \$62.2 million net decrease in operating cash outflows associated with changes in working capital. In the year ended December 31, 2020, cash used in operations was \$40.8 million which is primarily the result of the change in accounts payable.

Cash flows from investing activities used net cash of \$33.5 million in the year ended December 31, 2021, primarily due to the acquisition of business of \$55.3 million and \$6.7 million of capital expenditures, offset by proceeds from the sale of business and assets of \$25.4 million. In the year ended December 31, 2020, cash flows from investing activities provided net cash of \$2.2 million, primarily related to \$8.0 million from the settlement of remaining escrows associated with the sale of Palm Beach Resource Recovery Corporation and the MEGTEC and Universal businesses, offset by the net change in available-for-sale securities and \$8.2 million of capital expenditures.

Cash flows from financing activities provided net cash of \$302.8 million in the year ended December 31, 2021, primarily related to the issuance of common stock, senior notes and preferred stock offset by \$75.4 million of repayments of the Last Out Term Loans, a \$164.3 million net reduction on the prior U.S. Revolving Credit Facility and \$24.6 million of financing fees. Cash flows from financing activities provided net cash of \$44.1 million in the year ended December 31, 2020, primarily related to \$70.0 million face value borrowings from the Last Out Term Loans offset by \$14.7 million of net repayments from the prior U.S. Revolving Credit Facility and \$10.6 million of financing fees.

Debt Facilities

As described in the Notes to our Consolidated Financial Statements included in Part II, Item 8 of this Annual Report, on June 30, 2021, we entered into the Reimbursement Agreement, Revolving Credit Agreement and Letter of Credit Agreement (collectively, the "Debt Documents" and the facilities thereunder, the "Debt Facilities"). The obligations of the Company under each of the Debt Facilities are guaranteed by certain existing and future domestic and foreign subsidiaries of the Company. B. Riley, a related party, has provided a guaranty of payment with regard to the Company's obligations under the Reimbursement Agreement. The Company expects to use the proceeds and letter of credit availability under the Debt Facilities for working capital purposes and general corporate purposes, including to backstop or replace certain letters of credit issued under our previous A&R Credit Agreement, for which commitments were terminated, all loans were repaid and all outstanding and undrawn letters of credit were collateralized on June 30, 2021.

Last Out Term Loans

Effective with the new debt facilities the Company entered into on June 30, 2021, as described in Note 16 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report, the Company has no remaining Last Out Term Loans and no further borrowings thereunder are available.

The Company recognized a loss on debt extinguishment of \$6.2 million for the year ended December 31, 2020, primarily representing the unamortized value of the original issuance discount and fees on the Tranche A-3 Last Out Term Loan.

See Note 15 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report for additional information on our Last Out Term Loans.

A&R Credit Agreement

As described above, the A&R Credit Agreement commitments were terminated, all loans were repaid and all outstanding and undrawn letters of credit were collateralized on June 30, 2021. The Company recognized a gain on debt extinguishment of \$6.5 million for the year ended December 31, 2021, primarily representing the write-off of accrued revolver fees of \$11.3 million offset by the unamortized deferred financing fees of \$4.8 million related to the prior A&R Credit Agreement.

Letters of Credit, Bank Guarantees and Surety Bonds

Certain of our subsidiaries primarily outside of the United States have credit arrangements with various commercial banks and other financial institutions for the issuance of letters of credit and bank guarantees in association with contracting activity. The aggregate value of all such letters of credit and bank guarantees outside of our Letter of Credit Agreement as of December 31, 2021 was \$52.8 million. The aggregate value of the outstanding letters of credit provided under the Letter of Credit Agreement backstopping letters of credit or bank guarantees was \$35.5 million as of December 31, 2021. Of the outstanding letters of credit issued under the Letter of Credit Agreement, \$51.5 million are subject to foreign currency revaluation.

We have also posted surety bonds to support contractual obligations to customers relating to certain contracts. We utilize bonding facilities to support such obligations, but the issuance of bonds under those facilities is typically at the surety's discretion. These bonds generally indemnify customers should we fail to perform our obligations under the applicable

contracts. We, and certain of our subsidiaries, have jointly executed general agreements of indemnity in favor of surety underwriters relating to surety bonds those underwriters issue in support of some of our contracting activity. As of December 31, 2021, bonds issued and outstanding under these arrangements in support of contracts totaled approximately \$188.3 million. The aggregate value of the letters of credit backstopping surety bonds was \$13.1 million.

Our ability to obtain and maintain sufficient capacity under our new Debt Facilities is essential to allow us to support the issuance of letters of credit, bank guarantees and surety bonds. Without sufficient capacity, our ability to support contract security requirements in the future will be diminished.

Other Indebtedness - Loans Payable

During the year ended December 31, 2021, our Denmark subsidiary received three unsecured interest-free loans totaling \$3.3 million under a local government loan program related to COVID-19. The loans of \$0.8 million, \$1.6 million and \$0.9 million are payable in April 2022, May 2022 and May 2023, respectively. The loan payable in May 2023 is included in *long term loans payables* in our Consolidated Balance Sheets.

As of December 31, 2021, as a result of our recent acquisition of a 60% controlling ownership stake in Fosler Construction Company Inc. (“Fosler Construction”) as described in Note 26 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report, Fosler Construction has two loans totaling \$8.3 million. Both loans have a variable interest rate with a minimum rate of 6% and are due June 30, 2022. Fosler Construction also has loans primarily for vehicles and equipment totaling \$0.7 million at December 31, 2021. The vehicle and equipment loans are included in *long term loans payables* in our Consolidated Balance Sheets.

Off-Balance Sheet Arrangements

The Company does not have any off-balance sheet arrangements that have, or are reasonably expected to have, a material current or future effect on its financial condition, results of operations, liquidity, capital expenditures or capital resources at December 31, 2021.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

The Consolidated Financial Statements included in Part II, Item 8 of this Annual Report are prepared in accordance with accounting principles generally accepted in the United States. Preparing financial statements requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses. These estimates and assumptions are affected by management’s application of accounting policies. We believe the following are our most critical accounting policies that we apply in the preparation of our consolidated financial statements. These policies require our most difficult, subjective and complex judgments, often as a result of the need to make estimates of matters that are inherently uncertain.

Contracts and revenue recognition

A significant portion of our revenue is recognized over time using the cost-to-cost input method, which involves significant estimates. This method of revenue recognition uses costs incurred to date relative to total estimated costs at completion to measure progress toward satisfying our performance obligations. Incurred cost represents work performed, which corresponds with, and thereby best depicts, the transfer of control to the customer. Contract costs include labor, material, overhead, warranty and, when appropriate, SG&A expenses. Variable consideration in these contracts includes estimates of liquidated damages, contractual bonuses and penalties, and contract modifications.

We review contract price and cost estimates each reporting period as the work progresses and reflect adjustments proportionate to the costs incurred to date relative to total estimated costs at completion in income in the period when those estimates are revised. These changes in estimates can be material. For all contracts, if a current estimate of total contract cost indicates a loss on a contract, the projected contract loss is recognized in full through the statement of operations and an accrual for the estimated loss on the uncompleted contract is included in *other accrued liabilities* in the Consolidated Balance Sheets. In addition, when we determine that an uncompleted contract will not be completed on-time and the contract has liquidated damages provisions, we recognize the estimated liquidated damages we will incur and record them as a reduction of the estimated selling price in the period the change in estimate occurs. Losses accrued in advance of the completion of a contract are included in *other accrued liabilities* in our Consolidated Balance Sheets.

Contract modifications are routine in the performance of our contracts. Contracts are often modified to account for changes in the contract specifications or requirements. In most instances, contract modifications are for goods or services that are not distinct and, therefore, are accounted for as part of the existing contract, with cumulative adjustment to revenue.

We recognize claims receivable in contract revenues for extra work or changes in scope of work to the extent of costs incurred when we believe we have an enforceable right to the modification or claim and the amount can be estimated reliably, and its realization is probable. In evaluating these criteria, we consider the contractual/legal basis for enforcing the claim, the cause of any additional costs incurred and whether those costs are identifiable or otherwise determinable, the nature and reasonableness of those costs, the objective evidence available to support the amount of the claim, and our relevant history with the counter-party that supports our expectations about their willingness and ability to pay for the additional cost along with a reasonable margin. In our Consolidated Balance Sheets, claims receivable at December 31, 2021 and December 31, 2020 were not significant.

Our revenue recognition policies, assumptions, changes in estimates and significant loss contracts are described in greater detail in Note 2 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report.

Business Combinations

Assets acquired and liabilities assumed in a business combination are recognized and measured based on their estimated fair values at the acquisition date, while the acquisition-related costs are expensed as incurred. Any excess of the purchase consideration when compared to the fair value of the net tangible and intangible assets acquired, if any, is recorded as goodwill. We engaged valuation specialists to assist with the determination of the fair value of assets acquired, liabilities assumed, non-controlling interest, and goodwill, for the acquisitions. If the initial accounting for the business combination is incomplete by the end of the reporting period in which the acquisition occurs, an estimate will be recorded. Subsequent to the acquisition date, and not later than one year from the acquisition date, we will record any material adjustments to the initial estimate based on new information obtained that would have existed as of the date of the acquisition. Any adjustment that arises from information obtained that did not exist as of the date of the acquisition will be recorded in the period the adjustment arises. See Note 26 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report for further discussion.

Warranty

We accrue estimated expense included in *cost of operations* on our Consolidated Statements of Operations to satisfy contractual warranty requirements when we recognize the associated revenues on the related contracts. In addition, we record specific provisions or reductions when we expect the actual warranty costs to significantly differ from the accrued estimates. Factors that impact our estimate of warranty costs include prior history of warranty claims and our estimates of future costs of materials and labor. Such changes could have a material effect on our consolidated financial condition, results of operations and cash flows. See Note 11 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report for further discussion.

Loss contingencies

We estimate liabilities for loss contingencies when it is probable that a liability has been incurred and the amount of loss is reasonably estimable. We provide disclosure when there is a reasonable possibility that the ultimate loss will exceed the recorded provision or if such probable loss is not reasonably estimable. We are currently involved in some significant litigation. See Note 22 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report for a discussion of this litigation. As disclosed, we have accrued estimates of the probable losses associated with these matters; however, these matters are typically resolved over long periods of time and are often difficult to estimate due to the possibility of multiple actions by third parties. Therefore, it is possible that future earnings could be affected by changes in our estimates related to these matters.

Income taxes

Income tax expense for federal, foreign, state, and local income taxes is calculated on taxable income based on the income tax law in effect at the latest balance sheet date and includes the cumulative effect of any changes in tax rates from those used previously in determining deferred tax assets and liabilities. We record a valuation allowance to reduce our deferred tax assets to the amount that is more likely than not to be realized. We assess the need for valuation allowances on a quarterly

basis. In determining the need for a valuation allowance, we consider relevant positive and negative evidence, including carryback potential, reversals of taxable temporary differences, future taxable income, and tax-planning strategies. As of December 31, 2021, we have a valuation allowance on our deferred tax assets in substantially all jurisdictions, as we do not believe it is more likely than not that the deferred tax assets will be realized.

For those tax positions where it is more likely than not that a tax benefit will be sustained, we have recorded the largest amount of tax benefit with a greater than 50% likelihood of being realized upon ultimate settlement with a taxing authority that has full knowledge of all relevant information. For those income tax positions where it is not more likely than not that a tax benefit will be sustained, no tax benefit has been recognized in our consolidated financial statements. We record interest and penalties (net of any applicable tax benefit) related to income taxes as a component of provision for income taxes on our Consolidated Statements of Operations.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Our exposure to market risk from changes in interest rates relates primarily to our cash equivalents and our investment portfolio, which primarily consists of investments in U.S. government obligations and highly liquid money market instruments denominated in U.S. dollars. We are averse to principal loss and seek to ensure the safety and preservation of our invested funds by limiting default risk, market risk and reinvestment risk. Our investments are classified as available-for-sale.

We have operations in many foreign locations, and, as a result, our financial results could be significantly affected by factors such as changes in foreign currency exchange ("FX") rates or weak economic conditions in those foreign markets. Foreign currency transaction gains and losses on intercompany loans that are not designated as permanent loans are recorded in earnings. Our primary foreign currency exposures are Danish krone, British pound, Euro, Canadian dollar, Mexican peso, and Chinese yuan. If the balances of these intercompany loans at December 31, 2021 were to remain constant, a 100 basis point change in FX rates would impact our earnings by an estimated \$0.8 million per year.

ITEM 8. Consolidated Financial Statements and Supplemental Data

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and the Board of Directors of Babcock & Wilcox Enterprises, Inc.:

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Babcock & Wilcox Enterprises, Inc. (the "Company") as of December 31, 2021 and 2020, the related consolidated statements of operations, comprehensive income (loss), stockholders' equity (deficit), and cash flows, for each of the three years in the period ended December 31, 2021, and the related notes and the schedule listed in the Index at Item 15 (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2021 and 2020, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2021, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2021, based on criteria established in Internal Control — Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 8, 2022, expressed an unqualified opinion on the Company's internal control over financial reporting.

Change in Accounting Principle

As discussed in Notes 2 and 6 to the consolidated financial statements, the Company elected to change its method of accounting for certain inventories from the last-in, first-out ("LIFO") cost method to the first-in, first-out ("FIFO") cost method which has been retrospectively applied to the consolidated financial statements as of December 31, 2020 and 2019.

Basis for Opinion

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

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

Critical Audit Matter

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

Revenue Recognition and Contracts – Refer to Notes 2 and 5 to the financial statements

Critical Audit Matter Description

The Company recognizes fixed price long-term contract revenue over the contract term (“over time”) as the work progresses, either as products are produced or as services are rendered, because transfer of control to the customer occurs over time. Substantially all of the Company’s fixed price long-term contracts represent a single performance obligation as the interdependent nature of the goods and services provided prevents them from being separately identifiable within the contract. Revenue recognized over time primarily relates to customized, engineered solutions and construction services from all three of the Company’s segments. Typically, revenue is recognized over time using the cost-to-cost input method that uses costs incurred to date relative to total estimated costs at completion to measure progress toward satisfying the Company’s performance obligations. The accounting for these contracts involves judgment, particularly as it relates to the process of estimating total costs and profit for the performance obligation. Revenue from fixed price long term contracts for products and services transferred to customer over time accounted for 81% of Company revenue for the year ended December 31, 2021.

We identified revenue on certain fixed price long-term contracts as a critical audit matter because of the judgments necessary for management to estimate total costs and profit for the performance obligations used to recognize revenue for fixed price long-term contracts. This required extensive audit effort due to the volume and complexity of fixed price long-term contracts and required a high degree of auditor judgment when performing audit procedures to audit management’s estimates of total costs and profit and evaluating the results of those procedures.

How the Critical Audit Matter Was Addressed in the Audit

Our audit procedures related to management’s estimates of total costs and profit for the performance obligations used to recognize revenue for certain fixed price long-term contracts included the following, among others:

- We selected a sample of fixed price long-term contracts performed over time and performed the following:
 - Evaluated whether the fixed price contracts were properly included in management’s calculation of fixed price long-term contract revenue based on the terms and conditions of each contract, including whether continuous transfer of control to the customer occurred as progress was made toward fulfilling the performance obligation.

- Compared the transaction prices to the consideration expected to be received based on current rights and obligations under the contracts and any modifications that were agreed upon with the customers.
 - Tested management’s identification of distinct performance obligations by evaluating whether the underlying goods, services, or both were highly interdependent and interrelated.
 - Tested the accuracy and completeness of the costs incurred to date for the performance obligation.
 - With the assistance of our capital projects specialists we evaluated the estimates of total cost and profit for the performance obligation by:
 - Comparing costs incurred to date to the costs which management estimated to be incurred to date.
 - Evaluating management’s ability to achieve the estimates of total cost and profit by performing corroborating inquiries with the Company’s project managers and engineers, and comparing the estimates to management’s work plans, engineering specifications, and supplier contracts.
 - Comparing management’s estimates for the selected contracts to costs and profits of similar performance obligations, when applicable.
 - Performing multiple live project site visits
 - Tested the mathematical accuracy of management’s calculation of revenue for the performance obligation.
 - Tested management’s retrospective review of each contract’s revenue to determine whether revenue is accurately recognized during the period under audit.
- Evaluated the Company’s disclosures related to revenue recognition and contracts to assess their conformity with the applicable accounting standards.

/s/ DELOITTE & TOUCHE LLP

Cleveland, Ohio
March 8, 2022

We have served as the Company's auditor since 2014.

BABCOCK & WILCOX ENTERPRISES, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS

(in thousands, except per share amounts)	Year ended December 31,		
	2021	2020*	2019*
Revenues	\$ 723,363	\$ 566,317	\$ 859,111
Costs and expenses:			
Cost of operations	543,835	400,465	698,853
Selling, general and administrative expenses	154,897	141,746	151,069
Advisory fees and settlement costs	13,083	12,878	27,943
Restructuring activities	4,869	11,849	11,707
Research and development costs	1,595	4,379	2,861
Gain on asset disposals, net	(15,737)	(3,263)	(3,940)
Total costs and expenses	702,542	568,054	888,493
Operating income (loss)	20,821	(1,737)	(29,382)
Other income (expense):			
Interest expense	(39,393)	(59,796)	(94,901)
Interest income	531	646	923
Gain (loss) on debt extinguishment	6,530	(6,194)	(3,969)
Loss on sale of business	(1,753)	(108)	(3,601)
Benefit plans, net	48,142	5,600	22,800
Foreign exchange	(4,294)	58,799	(16,602)
Other – net	(1,270)	(1,128)	285
Total other income (expense)	8,493	(2,181)	(95,065)
Income (loss) before income tax expense	29,314	(3,918)	(124,447)
Income tax (benefit) expense	(2,224)	8,179	5,286
Income (loss) from continuing operations	31,538	(12,097)	(129,733)
Income from discontinued operations, net of tax	—	1,800	694
Net income (loss)	31,538	(10,297)	(129,039)
Net (income) loss attributable to non-controlling interest	(644)	(21)	7,065
Net income (loss) attributable to stockholders	30,894	(10,318)	(121,974)
Less: Dividend on Series A preferred stock	9,127	—	—
Net income (loss) attributable to stockholders of common stock	\$ 21,767	\$ (10,318)	\$ (121,974)
Basic income (loss) per share			
Continuing operations	\$ 0.26	\$ (0.25)	\$ (3.89)
Discontinued operations	—	0.04	0.02
Basic income (loss) per share	\$ 0.26	\$ (0.21)	\$ (3.87)
Diluted income (loss) per share			
Continuing operations	\$ 0.26	\$ (0.25)	\$ (3.89)
Discontinued operations	—	0.04	0.02
Diluted income (loss) per share	\$ 0.26	\$ (0.21)	\$ (3.87)
Shares used in the computation of income (loss) per share:			
Basic	82,391	48,710	31,514
Diluted	83,580	48,710	31,514

*Year ended December 31, 2020 and 2019 amounts have been adjusted to reflect the change in inventory accounting method, as described in Notes 2 and 6 to the Consolidated Financial Statements.

See accompanying notes to Consolidated Financial Statements.

BABCOCK & WILCOX ENTERPRISES, INC.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)

(in thousands)	Year ended December 31,		
	2021	2020	2019
Net income (loss)	\$ 31,538	\$ (10,297)	\$ (129,039)
Other comprehensive income (loss):			
Currency translation adjustments (CTA)	(3,412)	\$ (53,318)	13,401
Reclassification of CTA to net income (loss)	(4,512)	—	3,176
Derivative financial instruments:			
Unrealized gains on derivative financial instruments	—	—	(1,367)
Derivative financial instrument losses reclassified into net loss	—	—	202
Derivative financial instruments reclassified to advanced billings on contracts	—	—	(197)
Benefit obligations:			
Pension and post retirement adjustments, net of tax	1,492	(998)	(1,857)
Other comprehensive (loss) income	(6,432)	(54,316)	13,358
Total comprehensive income (loss)	25,106	(64,613)	(115,681)
Comprehensive (loss) income attributable to non-controlling interest	(595)	(29)	7,140
Comprehensive income (loss) attributable to stockholders	\$ 24,511	\$ (64,642)	\$ (108,541)

See accompanying notes to Consolidated Financial Statements.

BABCOCK & WILCOX ENTERPRISES, INC.
CONSOLIDATED BALANCE SHEETS

(in thousands, except per share amount)	December 31, 2021	December 31, 2020*
Cash and cash equivalents	\$ 224,874	\$ 57,338
Restricted cash and cash equivalents	1,841	10,085
Accounts receivable – trade, net	132,068	128,317
Accounts receivable – other	34,553	35,442
Contracts in progress	80,176	59,308
Inventories	79,527	74,446
Other current assets	29,395	26,421
Current assets held for sale	—	4,728
Total current assets	582,434	396,085
Net property, plant and equipment, and finance lease	85,627	85,078
Goodwill	116,462	47,363
Intangible assets	43,795	23,908
Right-of-use assets	30,163	10,814
Other assets	54,784	24,673
Non-current assets held for sale	—	11,156
Total assets	\$ 913,265	\$ 599,077
Accounts payable	\$ 85,929	\$ 73,481
Accrued employee benefits	12,989	13,906
Advance billings on contracts	68,380	64,002
Accrued warranty expense	12,925	25,399
Financing lease liabilities	2,445	886
Operating lease liabilities	3,950	3,995
Other accrued liabilities	54,385	80,858
Loans payable	12,380	—
Current liabilities held for sale	—	8,305
Total current liabilities	253,383	270,832
Senior notes	326,366	—
Long term loans payable	1,543	—
Last out term loans	—	183,330
Revolving credit facilities	—	164,300
Pension and other accumulated postretirement benefit liabilities	182,730	252,292
Non-current finance lease liabilities	29,369	29,690
Non-current operating lease liabilities	26,685	7,031
Other non-current liabilities	34,567	22,579
Total liabilities	854,643	930,054
Commitments and contingencies		
Stockholders' equity (deficit):		
Preferred stock, par value \$0.01 per share, authorized shares of 20,000; issued and outstanding shares of 7,669 and 0 at December 31, 2021 and 2020, respectively	77	—
Common stock, par value \$0.01 per share, authorized shares of 500,000; issued and outstanding shares of 86,286 and 54,452 at December 31, 2021 and 2020, respectively	5,110	4,784
Capital in excess of par value	1,518,872	1,164,436
Treasury stock at cost, 1,525 and 718 shares at December 31, 2021 and 2020, respectively	(110,934)	(105,990)
Accumulated deficit	(1,321,154)	(1,342,921)
Accumulated other comprehensive loss	(58,822)	(52,390)
Stockholders' equity (deficit) attributable to shareholders	33,149	(332,081)
Non-controlling interest	25,473	1,104
Total stockholders' equity (deficit)	58,622	(330,977)
Total liabilities and stockholders' equity (deficit)	\$ 913,265	\$ 599,077

*Year ended December 31, 2020 amounts have been adjusted to reflect the change in inventory accounting method, as described in Notes 2 and 6 to the Consolidated Financial Statements.

See accompanying notes to Consolidated Financial Statements.

BABCOCK & WILCOX ENTERPRISES, INC.
CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY (DEFICIT)

(in thousands, except share and per share amounts)	Common Stock		Preferred Stock		Capital In Excess of Par Value	Treasury Stock	Accumulated Deficit	Accumulated Other Comprehensive Loss	Non-controlling Interest	Total Stockholders' Equity (Deficit)
	Shares	Par Value	Shares	Par Value						
Balance at December 31, 2018 (As reported)	16,879	\$ 1,748	—	\$ —	\$ 1,047,062	\$ (105,590)	\$ (1,217,914)	\$ (11,432)	\$ 8,829	\$ (277,297)
Inventory accounting method change*	—	—	—	—	—	—	7,285	—	—	7,285
Balance at December 31, 2018	16,879	1,748	—	—	1,047,062	(105,590)	(1,210,629)	(11,432)	8,829	(270,012)
Net loss	—	—	—	—	—	—	(121,974)	—	(7,065)	(129,039)
Currency translation adjustments	—	—	—	—	—	—	—	16,577	(75)	16,502
Derivative financial instruments	—	—	—	—	—	—	—	(1,362)	—	(1,362)
Pension and post retirement adjustments, net of tax	—	—	—	—	—	—	—	(1,857)	—	(1,857)
Stock-based compensation charges	108	12	—	—	3,072	(117)	—	—	—	2,967
Rights offering, net	13,922	1,392	—	—	39,544	—	—	—	—	40,936
Last Out Term Loan principal value exchanged for common stock	15,465	1,547	—	—	44,848	—	—	—	—	46,395
Issuance of beneficial conversion option of Last Out Term Loan Tranche A-3	—	—	—	—	2,022	—	—	—	—	2,022
Warrants	—	—	—	—	6,066	—	—	—	—	6,066
Dividends to non-controlling interest	—	—	—	—	—	—	—	—	(272)	(272)
Balance at December 31, 2019	46,374	4,699	—	\$ —	\$ 1,142,614	\$ (105,707)	\$ (1,332,603)	\$ 1,926	\$ 1,417	\$ (287,654)
Net (loss) income	—	—	—	—	—	—	(10,318)	—	21	(10,297)
Currency translation adjustments	—	—	—	—	—	—	—	(53,318)	8	(53,310)
Pension and post retirement adjustments, net of tax	—	—	—	—	—	—	—	(998)	—	(998)
Stock-based compensation charges	460	9	—	—	4,548	(283)	—	—	—	4,274
Equitized guarantee fee payment	1,713	17	—	—	3,883	—	—	—	—	3,900
Equitized Last Out Term Loan principal payment	5,905	59	—	—	13,391	—	—	—	—	13,450
Dividends to non-controlling interest	—	—	—	—	—	—	—	—	(342)	(342)
Balance at December 31, 2020	54,452	\$ 4,784	—	\$ —	\$ 1,164,436	\$ (105,990)	\$ (1,342,921)	\$ (52,390)	\$ 1,104	\$ (330,977)
Net income	—	—	—	—	—	—	30,894	—	644	31,538
Currency translation adjustments	—	—	—	—	—	—	—	(7,924)	(49)	(7,973)
Pension and post retirement adjustments, net of tax	—	—	—	—	—	—	—	1,492	—	1,492
Stock-based compensation charges	2,347	31	—	—	7,770	(4,944)	—	—	—	2,857
Common stock offering	29,487	295	—	—	160,546	—	—	—	—	160,841
Preferred stock offering, net	—	—	4,752	48	113,227	—	—	—	—	113,275
Equitized Last Out Term Loan principal payment	—	—	2,917	29	72,893	—	—	—	—	72,922
Dividends to preferred stockholders	—	—	—	—	—	—	(9,127)	—	—	(9,127)
Non-controlling interest from acquisition	—	—	—	—	—	—	—	—	23,996	23,996
Dividends to non-controlling interest	—	—	—	—	—	—	—	—	(222)	(222)
Balance at December 31, 2021	86,286	\$ 5,110	7,669	\$ 77	\$ 1,518,872	\$ (110,934)	\$ (1,321,154)	\$ (58,822)	\$ 25,473	\$ 58,622

*Amount reflects the change in inventory accounting method, as described in Notes 2 and 6 to the Consolidated Financial Statements

See accompanying notes to Consolidated Financial Statements.

BABCOCK & WILCOX ENTERPRISES, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands)	Year ended December 31,		
	2021	2020	2019
Cash flows from operating activities:			
Net income (loss)	\$ 31,538	\$ (10,297)	\$ (129,039)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization of long-lived assets	18,337	16,805	23,605
Amortization of deferred financing costs and debt discount	7,918	16,743	61,181
Amortization of guaranty fee	1,832	1,159	—
Non-cash operating lease expense	4,154	4,765	5,356
Loss on sale of business	1,753	108	3,601
(Gain) loss on debt extinguishment	(6,530)	6,194	3,969
Gain on asset disposals	(15,737)	(3,262)	(3,940)
(Benefit from) provision for deferred income taxes, including valuation allowances	(7,745)	1,791	(855)
Mark to market, prior service cost amortization for pension and postretirement plans	(15,512)	22,156	(10,661)
Stock-based compensation, net of associated income taxes	7,801	4,557	3,084
Equitized non-cash interest expense	—	13,450	—
Foreign exchange	4,294	(58,799)	16,602
Changes in assets and liabilities:			
Accounts receivable	225	21,673	63,914
Contracts in progress	(20,099)	35,850	48,492
Advance billings on contracts	1,641	(13,057)	(71,268)
Inventories	(3,047)	(4,084)	(4,141)
Income taxes	(2,142)	(2,425)	1,273
Accounts payable	7,080	(42,001)	(80,459)
Accrued and other current liabilities	(47,768)	9,146	(23,101)
Accrued contract loss	(204)	(5,557)	(50,654)
Pension liabilities, accrued postretirement benefits and employee benefits	(60,760)	(37,223)	(16,346)
Other, net	(18,225)	(18,498)	(16,930)
Net cash used in operating activities	(111,196)	(40,806)	(176,317)
Cash flows from investing activities:			
Purchase of property, plant and equipment	(6,679)	(8,230)	(3,804)
Acquisition of business, net of cash acquired	(55,341)	—	—
Proceeds from sale of business and assets, net	25,390	8,000	7,445
Purchases of available-for-sale securities	(12,605)	(29,068)	(8,914)
Sales and maturities of available-for-sale securities	15,694	26,563	11,547
Other, net	—	4,954	2,505
Net cash (used in) from investing activities	(33,541)	2,219	8,779

(in thousands)	Year ended December 31,		
	2021	2020	2019
Cash flows from financing activities:			
Issuance of senior notes	303,324	—	—
Borrowings on loan payable	7,145	—	—
Repayments on loan payable	(846)	—	—
Borrowings under last out term loans	—	70,000	151,350
Repayments under last out term loans	(75,408)	—	(41,766)
Borrowings under U.S. revolving credit facility	14,500	158,900	291,600
Repayments of U.S. revolving credit facility	(178,800)	(173,600)	(257,500)
Repayments under our foreign revolving credit facilities	—	—	(605)
Issuance of preferred stock, net	113,275	—	—
Payment of preferred stock dividends	(9,127)	—	—
Shares of common stock returned to treasury stock	(4,944)	(283)	(117)
Proceeds from rights offering	—	—	40,376
Costs related to rights offering	—	—	(832)
Issuance of common stock, net	160,841	—	1,392
Debt issuance costs	(24,560)	(10,590)	(16,619)
Other, net	(2,588)	(329)	(261)
Net cash from financing activities	302,812	44,098	167,018
Effects of exchange rate changes on cash	1,217	4,971	(2,818)
Net increase (decrease) in cash, cash equivalents and restricted cash	159,292	10,482	(3,338)
Cash, cash equivalents and restricted cash, beginning of period	67,423	56,941	60,279
Cash, cash equivalents and restricted cash, end of period	\$ 226,715	\$ 67,423	\$ 56,941

See accompanying notes to Consolidated Financial Statements.

BABCOCK & WILCOX ENTERPRISES, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
DECEMBER 31, 2021

NOTE 1 – BASIS OF PRESENTATION

The Consolidated Financial Statements of Babcock & Wilcox Enterprises, Inc. (“B&W,” “management,” “we,” “us,” “our” or the “Company”) have been prepared in accordance with accounting principles generally accepted in the United States (“GAAP”). We have eliminated all intercompany transactions and accounts. We present the notes to our Consolidated Financial Statements on the basis of continuing operations, unless otherwise stated.

COVID-19

In December 2019, a novel strain of coronavirus, COVID-19, was identified in Wuhan, China and subsequently spread globally. This global pandemic has disrupted business operations, including global supply chains, trade, commerce, financial and credit markets, and daily life throughout the world. Our business has been, and continues to be, adversely impacted by the measures taken and restrictions imposed in the countries in which we operate and by local governments and others to control the spread of this virus. These measures and restrictions have varied widely and have been subject to significant changes from time to time depending on changes in the severity of the virus in these countries and localities. These restrictions, including curtailment of travel and other activity, negatively impact our ability to conduct business.

Disruption to our global supply changes from COVID-19 has included impacts to the manufacturing, supply, distribution, transportation and delivery of our products. We could also see significant disruptions of the operations of our logistics, service providers, delays in shipments and negative impacts to pricing of certain of our products. Disruptions and delays in our supply chains as a result of the COVID-19 pandemic could adversely our ability to meet our customers’ demands. Additionally, the prioritization of shipments of certain products as a result of the pandemic could cause delays in the shipment or delivery of our products. Such disruptions could result in reduced sales.

The volatility and variability of the virus has limited our ability to forecast the impact of the virus on our customers and our business. The ongoing impact of COVID-19, including new strains such as the delta and omicron variants, has resulted in the reimposition of certain restrictions and may lead to other restrictions being implemented in response to efforts to reduce the spread of the virus. These varying and changing events have caused many of the projects we had anticipated would begin in 2020 to be delayed into the 2022 and beyond. Many customers and projects require B&W’s employees to travel to customer and project worksites. Certain customers and significant projects are located in areas where travel restrictions have been imposed, certain customers have closed or reduced on-site activities, and timelines for completion of certain projects have, as noted above, been extended into 2022 and beyond. Additionally, out of concern for our employees, even where restrictions permit employees to return to our offices and worksites, we incurred additional costs to protect our employees and advised those who are uncomfortable returning to worksites due to the pandemic that they are not required to do so for an indefinite period of time. The resulting uncertainty concerning, among other things, the spread and economic impact of the virus has also caused significant volatility and, at times, illiquidity in global equity and credit markets. The full extent of the impact of COVID-19 and its variants on our operational and financial performance will depend on future developments, including the ultimate duration and spread of the pandemic and related actions taken by the U.S. government, state and local government officials, and international governments to prevent outbreaks, as well as the availability, effectiveness and acceptance of COVID-19 vaccinations in the U.S. and abroad, all of which are uncertain, out of our control, and cannot be predicted.

NOTE 2 – SIGNIFICANT ACCOUNTING POLICIES

Reportable segments

Our operations are assessed based on three reportable market-facing segments as part of the Company’s strategic, market-focused organizational and re-branding initiative to accelerate growth and provide stakeholders improved visibility into our renewable and environmental growth platforms. Our reportable segments are as follows:

- **Babcock & Wilcox Renewable:** Cost-effective technologies for efficient and environmentally sustainable power and heat generation, including waste-to-energy, solar construction and installation, biomass energy and black liquor systems for the pulp and paper industry. B&W's leading technologies support a circular economy, diverting waste from landfills to use for power generation and replacing fossil fuels, while recovering metals and reducing emissions.
- **Babcock & Wilcox Environmental:** A full suite of best-in-class emissions control and environmental technology solutions for utility, waste to energy, biomass, carbon black, and industrial steam generation applications around the world. B&W's broad experience includes systems for cooling, ash handling, particulate control, nitrogen oxides and sulfur dioxides removal, chemical looping for carbon control, and mercury control.
- **Babcock & Wilcox Thermal:** Steam generation equipment, aftermarket parts, construction, maintenance and field services for plants in the power generation, oil and gas, and industrial sectors. B&W has an extensive global base of installed equipment for utilities and general industrial applications including refining, petrochemical, food processing, metals and others..

For financial information about our segments see Note 4 to our Consolidated Financial Statements.

Use of estimates

We use estimates and assumptions to prepare our Consolidated Financial Statements in conformity with GAAP. Some of our more significant estimates include our estimate of costs to complete long-term construction contracts, estimates associated with assessing whether goodwill, intangible assets and other long-lived assets are impaired, estimates of costs to be incurred to satisfy contractual warranty requirements, estimates of the value of acquired intangible and tangible assets, estimates associated with the realizability of deferred tax assets, and estimates we make in selecting assumptions related to the valuations of our pension and postretirement plans, including the selection of our discount rates, mortality and expected rates of return on our pension plan assets. These estimates and assumptions affect the amounts we report in our Consolidated Financial Statements and accompanying notes. Our actual results could differ from these estimates. Variances could result in a material effect on our financial condition and results of operations in future periods.

Earnings per share

We have computed earnings per common share on the basis of the weighted average number of common shares, and, where dilutive, common share equivalents, outstanding during the indicated periods. The weighted average shares used to calculate basic and diluted earnings per share reflect the bonus element for the 2019 Rights Offering on July 23, 2019 and the one-for-ten reverse stock split on July 24, 2019. We have a number of forms of stock-based compensation, including incentive and non-qualified stock options, restricted stock, restricted stock units, performance shares, and performance units, subject to satisfaction of specific performance goals. We include the shares applicable to these plans in dilutive earnings per share when related performance criteria have been met. The computation of basic and diluted earnings per share is included in Note 3.

Investments

Our investments primarily relate to our wholly owned insurance subsidiary. We classify investments available for current operations in the Consolidated Balance Sheets as current assets, while we classify investments held for long-term purposes as non-current assets. We adjust the amortized cost of debt securities for amortization of premiums and accretion of discounts to maturity. That amortization is included in interest income. We include realized gains and losses on our investments in *other - net* in our Consolidated Statements of Operations. The cost of securities sold is based on the specific identification method. We include interest on securities in interest income.

Foreign currency translation

We translate assets and liabilities of our foreign operations into U.S. dollars at current exchange rates, and we translate items in our statement of operations at average exchange rates for the periods presented. We record adjustments resulting from the translation of foreign currency financial statements as a component of accumulated other comprehensive income (loss). We report foreign currency transaction gains and losses in income. We have included a transaction (loss) gain of \$(4.3) million, \$58.8 million and \$(16.6) million in the years ended December 31, 2021, 2020, and 2019, respectively, in *foreign exchange* in our Consolidated Statements of Operations. These foreign exchange net gains and losses are primarily related to transaction gains or losses from unhedged intercompany loans when the loan is denominated in a currency different than the participating entity's functional currency.

Revenue recognition

A performance obligation is a contractual promise to transfer a distinct good or service to the customer. A contract's transaction price is allocated to each distinct performance obligation and is recognized as revenue when (point in time) or as (over time) the performance obligation is satisfied.

Revenue from goods and services transferred to customers at a point in time, which includes certain aftermarket parts and services, accounted for 19%, 29% and 21% of our revenue for the years ended December 31, 2021, 2020, and 2019, respectively. Revenue on these contracts is recognized when the customer obtains control of the asset, which is generally upon shipment or delivery and acceptance by the customer. Standard commercial payment terms generally apply to these sales.

Revenue from products and services transferred to customers over time accounted for 81%, 71% and 79% of our revenue for the years ended years ended December 31, 2021, 2020, and 2019, respectively. Revenue recognized over time primarily relates to customized, engineered solutions and construction services. Typically, revenue is recognized over time using the cost-to-cost input method that uses costs incurred to date relative to total estimated costs at completion to measure progress toward satisfying our performance obligations. Incurred cost represents work performed, which corresponds with, and thereby best depicts, the transfer of control to the customer. Contract costs include labor, material, overhead and, when appropriate, SG&A expenses. Variable consideration in these contracts includes estimates of liquidated damages, contractual bonuses and penalties, and contract modifications. Substantially all of our revenue recognized over time under the cost-to-cost input method contains a single performance obligation as the interdependent nature of the goods and services provided prevents them from being separately identifiable within the contract. Generally, we try to structure contract milestones to mirror our expected cash outflows over the course of the contract; however, the timing of milestone receipts can greatly affect our overall cash position. Refer to Note 4 for our disaggregation of revenue by product line.

As of December 31, 2021, we have estimated the costs to complete of all our in-process contracts in order to estimate revenues using a cost-to-cost input method. However, it is possible that current estimates could change due to unforeseen events, which could result in adjustments to overall contract costs. The risk on fixed-priced contracts is that revenue from the customer does not cover increases in our costs. It is possible that current estimates could materially change for various reasons, including, but not limited to, fluctuations in forecasted labor productivity, transportation, fluctuations in foreign exchange rates or steel and other raw material prices. Increases in costs on our fixed-price contracts could have a material adverse impact on our consolidated financial condition, results of operations and cash flows. Alternatively, reductions in overall contract costs at completion could materially improve our consolidated financial condition, results of operations and cash flows. Variations from estimated contract performance could result in material adjustments to operating results for any fiscal quarter or year.

Contract modifications are routine in the performance of our contracts. Contracts are often modified to account for changes in the contract specifications or requirements. In most instances, contract modifications are for goods or services that are not distinct and, therefore, are accounted for as part of the existing contract, with cumulative adjustment to revenue.

We recognize accrued claims in contract revenues for extra work or changes in scope of work to the extent of costs incurred when we believe we have an enforceable right to the modification or claim and the amount can be estimated reliably, and its realization is probable. In evaluating these criteria, we consider the contractual/legal basis for enforcing the claim, the cause of any additional costs incurred and whether those costs are identifiable or otherwise determinable, the nature and reasonableness of those costs, the objective evidence available to support the amount of the claim, and our relevant history

with the counter-party that supports our expectations about their willingness and ability to pay for the additional cost along with a reasonable margin.

We generally recognize sales commissions in equal proportion as revenue is recognized. Our sales agreements are structured such that commissions are only payable upon receipt of payment, thus a capitalized asset at contract inception has not been recorded for sales commission as a liability has not been incurred at that point.

Contract balances

Contracts in progress, a current asset in our Consolidated Balance Sheets, includes revenues and related costs so recorded, plus accumulated contract costs that exceed amounts invoiced to customers under the terms of the contracts. Advance billings, a current liability in our Consolidated Balance Sheets, includes advance billings on contracts invoices that exceed accumulated contract costs and revenues and costs recognized under the cost-to-cost input method. Those balances are classified as current based on the life cycle of the associated contracts. Most long-term contracts contain provisions for progress payments. Our unbilled receivables do not contain an allowance for credit losses as we expect to invoice customers and the collection of all amounts for unbilled revenues is deemed probable. We review contract price and cost estimates each reporting period as the work progresses and reflect adjustments proportionate to the costs incurred to date relative to total estimated costs at completion in income in the period when those estimates are revised. For all contracts, if a current estimate of total contract cost indicates a loss on a contract, the projected contract loss is recognized in full through the statement of operations and an accrual for the estimated loss on the uncompleted contract is included in *other accrued liabilities* in the Consolidated Balance Sheets. In addition, when we determine that an uncompleted contract will not be completed on-time and the contract has liquidated damages provisions, we recognize the estimated liquidated damages at the most likely amount we will incur and record them as a reduction of the estimated selling price in the period the change in estimate occurs. Losses accrued in advance of the completion of a contract are included in *other accrued liabilities* in our Consolidated Balance Sheets.

Warranty expense

We accrue estimated expense included in *cost of operations* on our Consolidated Statements of Operations to satisfy contractual warranty requirements when we recognize the associated revenues on the related contracts, or in the case of a loss contract, the full amount of the estimated warranty costs is accrued when the contract becomes a loss contract. In addition, we record specific provisions or reductions where we expect the actual warranty costs to significantly differ from the accrued estimates. Such changes could have a material effect on our consolidated financial condition, results of operations and cash flows.

Research and development

Our research and development activities are related to improving our products through innovations to reduce the cost of our products to make them more competitive and through innovations to reduce performance risk of our products to better meet our and our customers' expectations. Research and development activities totaled \$1.6 million, \$4.4 million and \$2.9 million in the years ended December 31, 2021, 2020, and 2019, respectively.

Advertising expense

Advertising expense is recognized when incurred and is included in *selling, general and administrative expenses* on our Consolidated Statements of Operations. Advertising expenses in the years ended December 31, 2021, 2020, and 2019 were not significant.

Pension plans and postretirement benefits

We sponsor various defined benefit pension and postretirement plans covering certain employees of our U.S., Canadian and U.K. subsidiaries. We use actuarial valuations to calculate the cost and benefit obligations of our pension and postretirement benefits. The actuarial valuations use significant assumptions in the determination of our benefit cost and obligations, including assumptions regarding discount rates, expected returns on plan assets, mortality and health care cost trends.

We determine our discount rate based on a review of published financial data and discussions with our actuary regarding rates of return on high-quality, fixed-income investments currently available and expected to be available during the period to maturity of our pension and postretirement plan obligations. We use an alternative spot rate method for discounting the benefit obligation rather than a single equivalent discount rate because it more accurately applies each year's spot rates to the projected cash flows.

The components of benefit cost related to service cost, interest cost, expected return on plan assets and prior service cost amortization are recorded on a quarterly basis based on actuarial assumptions. In the fourth quarter of each year, or as interim remeasurements are required, we recognize net actuarial gains and losses into earnings as a component of net periodic benefit cost (mark to market ("MTM") pension adjustment). Recognized net actuarial gains and losses consist primarily of our reported actuarial gains and losses and the difference between the actual return on plan assets and the expected return on plan assets.

We recognize the funded status of each plan as either an asset or a liability in the Consolidated Balance Sheets. The funded status is the difference between the fair value of plan assets and the present value of its benefit obligation, determined on a plan-by-plan basis. See Note 13 for a detailed description of our plan assets.

Income taxes

Income tax expense for federal, foreign, state and local income taxes are calculated on taxable income based on the income tax law in effect at the latest balance sheet date and includes the cumulative effect of any changes in tax rates from those used previously in determining deferred tax assets and liabilities. We record a valuation allowance to reduce our deferred tax assets to the amount that is more likely than not to be realized. For those tax positions where it is more likely than not that a tax benefit will be sustained, we have recorded the largest amount of tax benefit with a greater than 50% likelihood of being realized upon ultimate settlement with a taxing authority that has full knowledge of all relevant information. For those income tax positions where it is not more likely than not that a tax benefit will be sustained, no tax benefit has been recognized in our Consolidated Financial Statements. We record interest and penalties (net of any applicable tax benefit) related to income taxes as a component of *income tax expense* on our Consolidated Statements of Operations.

Cash and cash equivalents and restricted cash

Our cash equivalents are highly liquid investments, with maturities of three months or less when we purchase them. We record cash and cash equivalents as restricted when we are unable to freely use such cash and cash equivalents for our general operating purposes.

Trade accounts receivable and allowance for doubtful accounts

Our trade accounts receivable balance is stated at the amount owed by our customers, net of allowances for estimated uncollectible balances. We maintain allowances for doubtful accounts for estimated losses expected to result from the inability of our customers to make required payments. These estimates are based on management's evaluation of the ability of customers to make payments, with emphasis on historical remittance experience, known customer financial difficulties, the age of receivable balances and any other known factors specific to a receivable. Accounts receivable are charged to the allowance when it is determined they are no longer collectible. Our allowance for doubtful accounts was \$11.9 million and \$17.2 million at December 31, 2021 and 2020, respectively. Amounts charged to selling, general and administrative expenses were \$(0.1) million, \$(0.2) million and \$0.2 million for the years ended December 31, 2021, 2020, and 2019, respectively.

Inventories

We carry our inventories at the lower of cost or net realizable value. We determine cost on the first-in, first-out basis. During the fourth quarter of 2021, the Company voluntarily changed its method of accounting for certain domestic inventory previously valued by the LIFO method to the FIFO method. The cumulative effect of this change on periods presented prior to 2019 resulted in an increase in retained earnings of \$7.3 million at December 31, 2018. The impact on earnings was a decrease of \$0.1 million and an increase of \$0.4 million for the years ending December 31, 2020 and 2019, respectively. The FIFO method of accounting for inventory is preferable because it more closely matches the physical inventory flow, better reflects the current value of inventories on our Consolidated Balance Sheets, improves our financial reporting by having a consistent method across the organization, and increases comparability with certain peers of the Company. Our obsolete

inventory reserve was \$6.5 million and \$7.1 million at December 31, 2021 and 2020, respectively. The components of inventories can be found in Note 6.

Property, plant and equipment

We carry our property, plant and equipment at depreciated cost, less any impairment provisions. We depreciate our property, plant and equipment using the straight-line method over estimated economic useful lives of eight to 33 years for buildings and three to 28 years for machinery and equipment. Our depreciation expense was \$9.7 million, \$11.3 million and \$19.3 million for the years ended December 31, 2021, 2020, and 2019, respectively. We expense the costs of maintenance, repairs and renewals that do not materially prolong the useful life of an asset as we incur them.

Property, plant and equipment amounts are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset, or asset group, may not be recoverable. An impairment loss would be recognized when the carrying amount of an asset exceeds the estimated undiscounted future cash flows expected to result from the use of the asset and its eventual disposition. The amount of the impairment loss to be recorded is calculated by the excess of the asset carrying value over its fair value. Fair value is generally determined using a discounted cash flow analysis. Our estimates of cash flow may differ from actual cash flow due to, among other things, technological changes, economic conditions or changes in operating performance. Any changes in such factors may negatively affect our business and result in future asset impairments.

Investments in consolidated entities

SPIG maintains a 60% ownership interest in a joint venture entity, which is consolidated into the B&W Environmental segment results.

On September 30, 2021, we acquired a 60% controlling ownership interest in Illinois-based solar energy contractor Fosler Construction Company Inc. ("Fosler Construction"). See Note 26 for further information on this acquisition.

Goodwill

Goodwill represents the excess of the cost of our acquired businesses over the fair value of the net assets acquired. We perform testing of goodwill for impairment annually on October 1st or when impairment indicators are present. We may elect to perform a qualitative test when we believe that there is substantially in excess fair value over carrying value based on our most recent quantitative assessment, adjusted for relevant events and circumstances that could affect fair value during the current year. If we conclude based on this assessment that it is more likely than not that the reporting unit is not impaired, we do not perform a quantitative impairment test. In all other circumstances, we perform a quantitative impairment test to identify potential goodwill impairment and measure the amount of any goodwill impairment. Goodwill impairment tests recognize impairment for the amount that the carrying value of a reporting unit exceeds its fair value up to the remaining amount of goodwill.

Intangible assets

Intangible assets are recognized at fair value when acquired. Intangible assets with definite lives are amortized to operating expense using the straight-line method over their estimated useful lives and tested for impairment when events or changes in circumstances indicate that their carrying amounts may not be recoverable. Intangible assets with indefinite lives are not amortized and are subject to impairment testing at least annually or in interim periods when impairment indicators are present. We may elect to perform a qualitative assessment when testing indefinite lived intangible assets for impairment to determine whether events or circumstances affecting significant inputs related to the most recent quantitative evaluation have occurred, indicating that it is more likely than not that the indefinite lived intangible asset is impaired. Otherwise, we test indefinite lived intangible assets for impairment by determining the fair value of the indefinite lived intangible asset and comparing the fair value of the intangible asset to its carrying amount. If the carrying amount of the intangible asset exceeds its fair value, we recognize impairment for the amount of the difference.

Accounting for Leases

We determine if an arrangement is a lease at inception. Operating leases are included in *right-of-use ("ROU") assets, operating lease liabilities and non-current operating lease liabilities* in the Consolidated Balance Sheets. Finance leases are included in *net property, plant and equipment, and finance lease, other accrued liabilities and other non-current finance*

liabilities in the Consolidated Balance Sheets. Lease liabilities are recognized based on the present value of the future minimum lease payments over the lease term at commencement date. As substantially all of our leases do not provide an implicit rate, we use our incremental borrowing rate based on the information available at lease commencement date in determining the present value of future payments. Our incremental borrowing rate is estimated to approximate the interest rate on a collateralized basis with similar terms and payments, and in economic environments where the leased asset is located. The ROU assets also include any prepaid lease payments made and initial direct costs incurred and excludes lease incentives. Our lease terms may include options to extend or terminate the lease, which we recognize when it is reasonably certain that we will exercise that option. Lease expense for minimum lease payments is recognized on a straight-line basis over the lease term. Leases with an initial term of 12 months or less are not recorded on the balance sheet.

For leases beginning in 2019 and later, we account for lease components (e.g., fixed payments including rent) together with the non-lease components (e.g., common-area maintenance costs) as a single lease component for all classes of underlying assets.

Derivative financial instruments

Derivative assets and liabilities usually consist of FX forward contracts. Where applicable, the value of these derivative assets and liabilities is computed by discounting the projected future cash flow amounts to present value using market-based observable inputs, including FX forward and spot rates, interest rates and counterparty performance risk adjustments. As of December 31, 2021, we do not hold any derivative assets or liabilities.

Self-insurance

We have a wholly owned insurance subsidiary that provides employer's liability, general and automotive liability and workers' compensation insurance and, from time to time, builder's risk insurance (within certain limits) to our companies. We may also, in the future, have this insurance subsidiary accept other risks that we cannot or do not wish to transfer to outside insurance companies. Included in *other non-current liabilities* on our Consolidated Balance Sheets are reserves for self-insurance totaling \$9.3 million and \$11.6 million as of December 31, 2021 and 2020, respectively.

Loss contingencies

We estimate liabilities for loss contingencies when it is probable that a liability has been incurred and the amount of loss is reasonably estimable. We provide disclosure when there is a reasonable possibility that the ultimate loss will exceed the recorded provision or if such probable loss is not reasonably estimable. We are currently involved in some significant litigation, as discussed in Note 22. Our losses are typically resolved over long periods of time and are often difficult to assess and estimate due to, among other reasons, the possibility of multiple actions by third parties; the attribution of damages, if any, among multiple defendants; plaintiffs, in most cases involving personal injury claims, do not specify the amount of damages claimed; the discovery process may take multiple years to complete; during the litigation process, it is common to have multiple complex unresolved procedural and substantive issues; the potential availability of insurance and indemnity coverages; the wide-ranging outcomes reached in similar cases, including the variety of damages awarded; the likelihood of settlements for de minimis amounts prior to trial; the likelihood of success at trial; and the likelihood of success on appeal. Consequently, it is possible future earnings could be affected by changes in our assessments of the probability that a loss has been incurred in a material pending litigation against us and/or changes in our estimates related to such matters.

Loss recoveries

We recognize loss recoveries and provide disclosures only when receipt of the recovery is probable and we are able to reasonably estimate the amount of the recovery. Our loss recoveries are typically resolved over long periods of time and are often difficult to assess and estimate due to, among other reasons, the possibility of multiple actions by third parties, multiple complex unresolved procedural and substantive issues; the wide-ranging outcomes reached in similar cases, including the variety of losses incurred. Consequently, it is possible future earnings could be affected by changes in our assessments of the probability that a loss recovery has been recognized and/or changes in our estimates related to such matters. See Note 5 for discussions regarding the project contract cost recovery recognized in 2021 and the non-recurring loss recovery in 2020.

Contingent consideration

The fair values of earn-out arrangements are included as part of the purchase price of the acquired companies on their respective acquisition dates. For each transaction, we estimate the fair value of contingent earn-out payments as part of the initial purchase price and record the estimated fair value of contingent consideration as a liability in *other non-current liabilities* on our Consolidated Balance Sheets.

We review and re-assess the estimated fair value of contingent consideration on a quarterly basis, and the updated fair value could differ materially from the initial estimates. Changes in the estimated fair value of our contingent earn-out liabilities related to the time component of the present value calculation are reported in *interest expense* on our Consolidated Statements of Operations. Adjustments to the estimated fair value related to changes in all other unobservable inputs are reported in *operating income (loss)* on our Consolidated Statements of Operations.

Stock-based compensation

The fair value of equity-classified awards, such as restricted stock, performance shares and stock options, is determined on the date of grant and is not remeasured. The fair value of liability-classified awards, such as cash-settled stock appreciation rights, restricted stock units and performance units, is determined on the date of grant and is remeasured at the end of each reporting period through the date of settlement. Fair values for restricted stock, restricted stock units, performance shares and performance units are determined using the closing price of our common stock on the date of grant. Fair values for stock options are determined using a Black-Scholes option-pricing model (“Black-Scholes”). For performance shares or units that contain a Relative Total Shareholder Return vesting criteria and for stock appreciation rights, we utilize a Monte Carlo simulation to determine the fair value, which determines the probability of satisfying the market condition included in the award. The determination of the fair value of a share-based payment award using an option-pricing model or a Monte Carlo simulation requires the input of significant assumptions, such as the expected life of the award and stock price volatility.

We recognize expense for all stock-based awards granted on a straight-line basis over the requisite service periods of the awards, which is generally equivalent to the vesting term. For liability-classified awards, changes in fair value are recognized through cumulative catch-ups each period. Excess tax benefits on stock-based compensation should be classified along with other income tax cash flows as an operating activity. These excess tax benefits result from tax deductions in excess of the cumulative compensation expense recognized for options exercised and other equity-classified awards. See Note 20 for further discussion of stock-based compensation.

Recently adopted accounting standards

We adopted the following accounting standard during the year ended December 31, 2021:

Effective January 1, 2021 we adopted ASU 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*. The amendments in this update simplify the accounting for income taxes by removing exceptions related to the incremental approach for intra-period tax allocation, certain deferred tax liabilities, and the general methodology for calculating income taxes in an interim period. The amendment also provides simplification related to accounting for franchise (or similar) tax, evaluating the tax basis step up of goodwill, allocation of consolidated current and deferred tax expense, reflection of the impact of enacted tax law or rate changes in annual effective tax rate calculations in the interim period that includes enactment date, and other minor codification improvements. The impact of this standard on our consolidated financial statements was immaterial.

In March 2021, the FASB issued ASU 2021-01, *Reference Rate Reform (Topic 848): Scope*. The amendments in this update clarify that certain optional expedients and exceptions in Topic 848 for contract modifications and hedge accounting apply to derivatives that are affected by the discounting transition. This update is an amendment to ASU 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform of Financial Reporting*, which was issued in March 2020 and provides optional expedients and exceptions for applying generally accepted accounting principles to contracts, hedging relationships, and other transactions affected by reference rate reform if certain criteria are met. The amendments in the updates apply only to contracts, hedging relationships, and other transactions that reference LIBOR or another reference rate expected to be discontinued because of reference rate reform. The expedients and exceptions provided by the updates do not apply to contract modifications made and hedging relationships entered into or evaluated after December 31, 2022, except for hedging relationships existing as of December 31, 2022, that an entity has elected certain optional expedients for and that are retained through the end of the hedging relationship. As of December 31, 2021, we have not yet elected any optional expedients provided in the standard. We will apply the accounting relief as relevant contract and hedge accounting relationship modifications are made during the reference rate reform transition period. The impact of this standard on our consolidated financial statements was immaterial.

In May 2021, the FASB issued ASU 2021-04, *Earnings Per Share (Topic 260)*, *Debt-Modifications and Extinguishments (Subtopic 470-50)*, *Compensation-Stock Compensation (Topic 718)*, and *Derivatives and Hedging-Contracts in Equity's Own Equity (Subtopic 815-40): Issuer's Accounting for Certain Modifications or Exchanges of Freestanding Equity-Classified Written Call Options (a consensus of the FASB Emerging Issues Task Force)*. The amendments in this update affect all entities that issue freestanding written call options that are classified in equity. Specifically, the amendments affect those entities when a freestanding equity-classified written call option is modified or exchanged and remains equity classified after the modification or exchange. The amendments that relate to the recognition and measurement of EPS for certain modifications or exchanges of freestanding equity-classified written call options affect entities that present EPS in accordance with the guidance in *Earnings Per Share (Topic 260)*. The amendments in this update do not apply to modifications or exchanges of financial instruments that are within the scope of another Topic. That is, accounting for those instruments continues to be subject to the requirements in other Topics. The amendments in this update do not affect a holder's accounting for freestanding call options. The update is applicable to B&W as we have previously issued freestanding written call options. As of December 31, 2021, these options remain unexercised and we will apply the accounting standard as freestanding written call options are modified or exchanged. The impact of this standard on our consolidated financial statements was immaterial.

NOTE 3 – EARNINGS PER SHARE

The following table sets forth the computation of basic and diluted earnings (loss) per share of our common stock, net of non-controlling interest and dividends on preferred stock:

(in thousands, except per share amounts)	Year ended December 31,		
	2021	2020	2019
Income (loss) from continuing operations attributable to stockholders of common stock	\$ 21,767	\$ (12,118)	\$ (122,668)
Income from discontinued operations attributable to stockholders of common stock, net of tax	—	1,800	694
Net income (loss) attributable to stockholders of common stock	\$ 21,767	\$ (10,318)	\$ (121,974)
Weighted average shares used to calculate basic income (loss) per share	82,391	48,710	31,514
Dilutive effect of stock options, restricted stock and performance units	1,189	—	—
Weighted average shares used to calculate diluted income (loss) per share	83,580	48,710	31,514
Basic income (loss) per share			
Continuing operations	\$ 0.26	\$ (0.25)	\$ (3.89)
Discontinued operations	—	0.04	0.02
Basic income (loss) per share	\$ 0.26	\$ (0.21)	\$ (3.87)
Diluted income (loss) per share			
Continuing operations	\$ 0.26	\$ (0.25)	\$ (3.89)
Discontinued operations	—	0.04	0.02
Diluted income (loss) per share	\$ 0.26	\$ (0.21)	\$ (3.87)

Because we incurred a net loss in the years ended December 31, 2020 and 2019 basic and diluted shares are the same.

If we had net income in the years ended December 31, 2020 and 2019 diluted shares would include an additional 610.9 thousand and 150.0 thousand shares, respectively.

We excluded 0.3 million, 1.3 million, and 0.3 million shares related to stock options from the diluted share calculation for the years ended December 31, 2021, 2020, and 2019 respectively, because their effect would have been anti-dilutive.

NOTE 4 – SEGMENT REPORTING

Our operations are assessed based on three reportable segments as described in Note 2. Revenues exclude eliminations of revenues generated from sales to other segments or to other product lines within the segment. An analysis of our operations by segment is as follows:

(in thousands)	Year ended December 31,		
	2021	2020	2019
Revenues:			
B&W Renewable segment			
B&W Renewable	\$ 83,639	\$ 89,790	\$ 94,119
Vølund	60,671	66,397	111,432
Fosler	12,490	—	—
	<u>156,800</u>	<u>156,187</u>	<u>205,551</u>
B&W Environmental segment			
B&W Environmental	58,262	45,186	184,477
SPIG	55,615	52,341	80,729
GMAB	19,949	10,441	10,429
	<u>133,826</u>	<u>107,968</u>	<u>275,635</u>
B&W Thermal segment			
B&W Thermal	433,329	304,968	409,744
	<u>433,329</u>	<u>304,968</u>	<u>409,744</u>
Eliminations	(592)	(2,806)	(31,819)
Total Revenues	<u>\$ 723,363</u>	<u>\$ 566,317</u>	<u>\$ 859,111</u>

The presentation of the components of our adjusted EBITDA in the table below is consistent with the way our chief operating decision maker reviews the results of our operations and makes strategic decisions about our business. Items such as gains or losses on asset sales, net pension benefits, restructuring costs, impairments, gains and losses on debt extinguishment, costs related to financial consulting, research and development costs and other costs that may not be directly controllable by segment management are not allocated to the segments.

Adjusted EBITDA for each segment is presented below with a reconciliation from net income (loss).

(in thousands)	Year ended December 31,		
	2021	2020	2019
Net income (loss)	\$ 31,538	\$ (10,297)	\$ (129,039)
Interest expense	41,359	60,713	95,266
Income tax (benefit) expense	(2,224)	8,179	5,286
Depreciation & amortization	18,337	16,805	23,605
EBITDA	89,010	75,400	(4,882)
Benefit plans, net	(48,142)	(5,600)	(22,800)
Gain on sales, net	(13,984)	(3,155)	(339)
(Gain) loss on debt extinguishment	(6,530)	6,194	3,969
Stock compensation	10,476	4,587	3,376
Restructuring activities and business services transition costs	10,726	11,849	11,707
Advisory fees for settlement costs and liquidity planning	5,480	6,357	11,824
Litigation legal costs	4,894	2,137	475
Acquisition pursuit and related costs	4,841	—	—
Product development ⁽¹⁾	4,713	—	—
Foreign exchange	4,294	(58,799)	16,602
Financial advisory services	2,709	4,384	9,069
Other - net	1,489	1,128	(285)
Loss from business held for sale	483	467	5,850
Loss from a non-strategic business	116	2,559	5,518
Settlement cost to exit contract ⁽²⁾	—	—	6,575
Income from discontinued operations	—	(1,800)	(694)
Adjusted EBITDA ⁽³⁾	\$ 70,575	\$ 45,708	\$ 45,965

⁽¹⁾ Costs associated with development of commercially viable products that are ready to go to market.

⁽²⁾ In March 2019, we entered into a settlement in connection with an additional B&W Renewable waste-to-energy EPC contract, for which notice to proceed was not given and the contract was not started. The settlement eliminated our obligations to act, and our risk related to acting, as the prime EPC should the project have moved forward.

⁽³⁾ Adjusted EBITDA for the twelve months ended December 31, 2020 includes a \$26 million non-recurring loss recovery related to certain historical EPC loss contracts in the third quarter.

(in thousands)	Year ended December 31,		
	2021	2020	2019
Adjusted EBITDA			
B&W Renewable segment ⁽¹⁾	\$ 23,219	\$ 24,957	\$ 1,617
B&W Environmental segment	11,773	3,503	12,553
B&W Thermal segment	49,143	36,052	52,235
Corporate	(12,467)	(14,425)	(17,579)
Research and development benefit (costs)	(1,093)	(4,379)	(2,861)
Adjusted EBITDA	\$ 70,575	\$ 45,708	\$ 45,965

⁽¹⁾ Adjusted EBITDA for the twelve months ended December 31, 2020 includes a \$26 million non-recurring loss recovery related to certain historical EPC loss contracts in the third quarter.

We do not separately identify or report our assets by segment as our chief operating decision maker does not consider assets by segment to be a critical measure by which performance is measured.

We estimate that 47%, 43% and 45% of our consolidated revenues in 2021, 2020, and 2019, respectively, were related to coal-fired power plants. The availability of natural gas in great supply has caused, in part, low prices for natural gas in the United States, which has led to more demand for natural gas relative to energy derived from coal. A material decline in spending by electric power generating companies and other steam-using industries on coal-fired power plants over a sustained period of time could materially and adversely affect the demand for our power generation products and services and, therefore, our financial condition, results of operations and cash flows. Coal-fired power plants have been scrutinized by environmental groups and government regulators over the emissions of potentially harmful pollutants. This scrutiny and other economic incentives including tax advantages, have promoted the growth of nuclear, wind and solar power, among others, and a decline in cost of renewable power plant components and power storage. The recent economic environment and uncertainty concerning new environmental legislation or replacement rules or regulations in the United States and elsewhere has caused many of our major customers, principally electric utilities, to delay making substantial expenditures for new plants, and delay upgrades to existing power plants.

Information about our consolidated operations in different geographic areas

(in thousands)	Year ended December 31,		
	2021	2020	2019
REVENUES ⁽¹⁾			
United States	\$ 431,540	\$ 310,958	\$ 460,484
Canada	48,206	43,936	113,660
Denmark	30,310	28,590	27,311
United Kingdom	26,722	25,811	54,347
Sweden	22,391	11,430	18,789
Israel	14,110	1,635	635
Saudi Arabia	12,529	9,545	5,243
Hong Kong	11,056	4,490	4,524
China	10,028	8,461	18,430
Finland	6,310	6,606	14,118
South Korea	3,961	4,050	14,443
Indonesia	1,853	19,644	16,739
Aggregate of all other countries, each with less than \$10 million in revenues	104,347	91,161	110,388
	<u>\$ 723,363</u>	<u>\$ 566,317</u>	<u>\$ 859,111</u>

⁽¹⁾ We allocate geographic revenues based on the location of the customer's operations.

(in thousands)	Year ended December 31,		
	2021	2020	2019
NET PROPERTY, PLANT AND EQUIPMENT, AND FINANCE LEASE			
United States	\$ 52,516	\$ 46,734	\$ 61,111
Mexico	17,071	18,173	19,241
Denmark	6,573	7,327	6,801
United Kingdom	5,722	5,274	5,469
Italy	1,565	1,881	2,172
Aggregate of all other countries	2,180	5,689	2,259
	<u>\$ 85,627</u>	<u>\$ 85,078</u>	<u>\$ 97,053</u>

NOTE 5 – REVENUE RECOGNITION AND CONTRACTS

Revenue Recognition

We generate the vast majority of our revenues from the supply of, and aftermarket services for, steam-generating, environmental and auxiliary equipment. We also earn revenue from the supply of custom-engineered cooling systems for steam applications along with related aftermarket services. Our revenue recognition accounting policy is described in more detail in Note 2.

Contract Balances

The following represents the components of our *contracts in progress* and *advance billings on contracts* included in our Consolidated Balance Sheets:

(in thousands)	December 31, 2021	December 31, 2020	\$ Change	% Change
Contract assets - included in contracts in progress:				
Costs incurred less costs of revenue recognized	\$ 35,939	\$ 25,888	\$ 10,051	39 %
Revenues recognized less billings to customers	44,237	33,420	10,817	32 %
Contracts in progress	<u>\$ 80,176</u>	<u>\$ 59,308</u>	<u>\$ 20,868</u>	<u>35 %</u>
Contract liabilities - included in advance billings on contracts:				
Billings to customers less revenues recognized	\$ 68,615	\$ 61,884	\$ 6,731	11 %
Costs of revenue recognized less cost incurred	(235)	2,118	(2,353)	(111)%
Advance billings on contracts	<u>\$ 68,380</u>	<u>\$ 64,002</u>	<u>\$ 4,378</u>	<u>7 %</u>
Net contract balance	<u>\$ 11,796</u>	<u>\$ (4,694)</u>	<u>\$ 16,490</u>	<u>(351)%</u>
Accrued contract losses	<u>\$ 378</u>	<u>\$ 582</u>	<u>\$ (204)</u>	<u>(35)%</u>

The following amounts represent retainage on contracts:

(in thousands)	December 31, 2021	December 31, 2020	\$ Change	% Change
Retainage expected to be collected within one year	\$ 2,575	\$ 2,969	\$ (394)	(13) %
Retainage expected to be collected after one year	1,591	632	959	152 %
Total retainage	<u>\$ 4,166</u>	<u>\$ 3,601</u>	<u>\$ 565</u>	<u>16 %</u>

We have included retainage expected to be collected in 2022 in *accounts receivable – trade, net* in our Consolidated Balance Sheets. Retainage expected to be collected after one year are included in *other assets* in our Consolidated Balance Sheets. Of the long-term retainage at December 31, 2021, we anticipate collecting \$1.6 million in 2023.

Backlog

On December 31, 2021 we had \$639.0 million of remaining performance obligations, which we also refer to as total backlog. We expect to recognize approximately 62.2%, 12.8% and 25.0% of our remaining performance obligations as revenue in 2022, 2023 and thereafter, respectively.

Changes in Contract Estimates

In the years ended December 31, 2021, 2020 and 2019 we recognized changes in estimated gross profit related to long-term contracts accounted for on the over time basis, which are summarized as follows:

(in thousands)	Year ended December 31,		
	2021	2020	2019
Increases in gross profit for changes in estimates for over time contracts ⁽¹⁾	\$ 16,042	\$ 43,597	\$ 34,622
Decreases in gross profit for changes in estimates for over time contracts	(6,531)	(17,480)	(50,050)
Net changes in gross profit for changes in estimates for over time contracts	\$ 9,511	\$ 26,117	\$ (15,428)

⁽¹⁾ Increases in gross profits for changes in estimates for over time contracts reflects a non-recurring loss recovery of \$26.0 million in the year ended December 31, 2020.

B&W Renewable EPC Loss Contracts

We had six B&W Renewable EPC contracts for renewable energy facilities in Europe that were loss contracts at December 31, 2017. The scope of these EPC (Engineer, Procure and Construct) contracts extended beyond our core technology, products and services. In addition to these loss contracts, we have one remaining extended scope contract in our Babcock & Wilcox Renewable segment which turned into a loss contract in the fourth quarter of 2019.

Five of the six contracts were 100% complete and the remaining one contract was nearly 100% complete at December 31, 2021, with only limited warranty obligations remaining, and all have been turned over to the customers. In the years ended December 31, 2021 and 2020, we recorded \$42 thousand in net gains and \$3.7 million in net losses, respectively, inclusive of warranty expense as described in Note 11, resulting from changes in the estimated revenues and costs to complete those contracts. All liquidated damages associated with these six contracts have been settled and paid as of December 31, 2020.

In October 2020, we entered into a settlement agreement with an insurer under which we received a settlement of \$26.0 million to settle claims in connection with five of six European B&W Renewable EPC loss contracts disclosed above. We recognized this non-recurring loss recovery of \$26.0 million as a reduction of our *cost of operations* in our Consolidated Statements of Operations in 2020.

During 2021, the Company settled a dispute with a subcontractor for project costs related to three of the Renewable EPC loss contracts described above. Accordingly, we recognized this settlement as a reduction of our *cost of operations* in our Consolidated Statements of Operations and recorded the receivable in *accounts receivable - other* in our Consolidated Balance Sheets at December 31, 2021 and in the Table above.

The Company, as a normal part of its ongoing business operations, is continuing to pursue other additional potential claims and recoveries from subcontractors and others where appropriate and available.

B&W Environmental Loss Contracts

At December 31, 2021, the B&W Environmental segment had two significant loss contracts of which both contracts were nearly 100% complete. In the year ended December 31, 2021 our estimated loss on these contracts improved by \$0.4 million. In the twelve months ended December 31, 2020 and 2019, we recognized \$1.3 million and \$5.6 million, respectively, of additional charges on these contracts.

NOTE 6 – INVENTORIES

Inventories are stated at the lower of cost or net realizable value. During the fourth quarter of 2021, the Company voluntarily changed its method of accounting for certain domestic inventory previously valued by the LIFO method to the FIFO method. The cumulative effect of this change on periods presented prior to 2019 resulted in an increase in retained earnings of \$7.3 million at December 31, 2018. The impact on earnings was a decrease of \$0.1 million and an increase of \$0.4 million for the years ending December 31, 2020 and 2019, respectively. The FIFO method of accounting for inventory is preferable because it more closely matches the physical inventory flow, better reflects the current value of inventories on our Consolidated

Balance Sheets, improves our financial reporting by having a consistent method across the organization, and increases comparability with certain peers of the Company.

The components of inventories are as follows:

(in thousands)	December 31, 2021	December 31, 2020 ⁽¹⁾
Raw materials and supplies	\$ 56,352	\$ 53,944
Work in progress	5,723	8,195
Finished goods	17,452	12,307
Total inventories	<u>\$ 79,527</u>	<u>\$ 74,446</u>

⁽¹⁾ December 31, 2020 amounts have been revised to reflect the change in inventory accounting method, as described above.

As a result of the retrospective application of this change in accounting method, the following financial statement line items within the accompanying financial statements were adjusted, as follows:

(in thousands)	December 31, 2021			December 31, 2020		
	As Computed Under LIFO	As Reported Under FIFO	Effect of Change	As Computed Under LIFO	As Reported Under FIFO	Effect of Change
Consolidated Balance Sheets						
Inventories	\$ 72,242	\$ 79,527	\$ 7,285	\$ 67,161	\$ 74,446	\$ 7,285
Accumulated deficit	(1,328,439)	(1,321,154)	7,285	(1,350,206)	(1,342,921)	7,285

NOTE 7 – PROPERTY, PLANT & EQUIPMENT, & FINANCE LEASE

Property, plant and equipment less accumulated depreciation is as follows:

(in thousands)	December 31, 2021	December 31, 2020
Land	\$ 1,489	\$ 1,584
Buildings	31,895	34,207
Machinery and equipment	144,325	151,399
Property under construction	12,480	5,336
	<u>190,189</u>	<u>192,526</u>
Less accumulated depreciation	133,137	135,925
Net property, plant and equipment	57,052	56,601
Finance lease	34,159	30,551
Less finance lease accumulated amortization	5,584	2,074
Net property, plant and equipment, and finance lease	<u>\$ 85,627</u>	<u>\$ 85,078</u>

NOTE 8 - GOODWILL

The following summarizes the changes in the net carrying amount of goodwill as of December 31, 2021:

(in thousands)	B&W Renewable	B&W Environmental	B&W Thermal	Total
Balance at December 31, 2020	\$ 10,211	\$ 5,673	\$ 31,479	\$ 47,363
Addition - Fosler Construction ⁽¹⁾	51,979	—	—	51,979
Addition - VODA ⁽¹⁾	17,176	—	—	17,176
Currency translation adjustments	(9)	(6)	(41)	(56)
Balance at December 31, 2021	<u>\$ 79,357</u>	<u>\$ 5,667</u>	<u>\$ 31,438</u>	<u>\$ 116,462</u>

⁽¹⁾ As described in Note 26, we are in the process of completing the purchase price allocation associated with the Fosler Construction and VODA acquisitions and as a result, the provisional measurements of goodwill associated with these acquisitions are subject to change.

Goodwill is tested for impairment annually and when impairment indicators exist. No impairment indicators were identified during the year ended December 31, 2021.

In conducting the annual impairment test for goodwill, the Company has the option to first assess qualitative factors to determine whether it is more likely than not the fair value of any reporting unit is less than its carrying amount. If the Company elects to perform a qualitative assessment and determines an impairment is more likely than not, the Company is required to perform a quantitative impairment test. Otherwise, no further analysis is required. Alternatively, the Company may elect to proceed directly to the quantitative impairment test.

During the annual goodwill impairment testing as of October 1, 2021, the Company elected to perform a quantitative impairment test. No impairment charges were recorded as a result of the quantitative testing performed.

NOTE 9 – INTANGIBLE ASSETS

Our intangible assets are as follows:

(in thousands)	December 31, 2021	December 31, 2020
Definite-lived intangible assets⁽¹⁾		
Customer relationships	\$ 46,903	\$ 24,862
Unpatented technology	15,410	15,713
Patented technology	3,103	2,642
Tradename	12,747	13,088
Acquired backlog	3,100	—
All other	9,319	9,262
Gross value of definite-lived intangible assets	<u>90,582</u>	<u>65,567</u>
Customer relationships amortization	(20,800)	(19,537)
Unpatented technology amortization	(8,313)	(6,751)
Patented technology amortization	(2,729)	(2,593)
Tradename amortization	(5,425)	(4,831)
Acquired backlog	(1,620)	—
All other amortization	(9,205)	(9,252)
Accumulated amortization	<u>(48,092)</u>	<u>(42,964)</u>
Net definite-lived intangible assets	<u>\$ 42,490</u>	<u>\$ 22,603</u>
Indefinite-lived intangible assets		
Trademarks and trade names	\$ 1,305	\$ 1,305
Total intangible assets, net	<u>\$ 43,795</u>	<u>\$ 23,908</u>

⁽¹⁾ As described in Note 26, we are in the process of completing the purchase price allocation associated with the Fosler Construction and VODA acquisitions and as a result, the increase in intangible assets associated with these acquisitions are subject to change.

The following summarizes the changes in the carrying amount of intangible assets:

(in thousands)	Year ended December 31,	
	2021	2020
Balance at beginning of period	\$ 23,908	\$ 25,300
Business acquisitions and adjustments ⁽¹⁾	26,583	—
Amortization expense	(5,128)	(3,406)
Currency translation adjustments	(1,568)	2,014
Balance at end of the period	<u>\$ 43,795</u>	<u>\$ 23,908</u>

⁽¹⁾ As described in Note 26, we are in the process of completing the purchase price allocation associated with the Fosler Construction and VODA acquisitions and as a result, the increase in amortization expense associated with these acquisitions are subject to change.

Amortization of intangible assets is included in *cost of operations* and *SG&A* in our Consolidated Statement of Operations but is not allocated to segment results.

Estimated future intangible asset amortization expense, including the preliminary amortization expense resulting from the acquisitions of Fosler Construction and VODA, during the year ended December 31, 2021 is as follows (in thousands):

	Amortization Expense⁽¹⁾
Year ending December 31, 2022	6,759
Year ending December 31, 2023	5,382
Year ending December 31, 2024	5,300
Year ending December 31, 2025	4,480
Year ending December 31, 2026	3,256
Thereafter	17,313

⁽¹⁾ As described in Note 26, we are in the process of completing the purchase price allocation associated with the Fosler Construction and VODA acquisitions and as a result, the estimated future intangible asset amortization expense associated with these acquisitions are subject to change.

As of December 31, 2021 and 2020, the B&W Volund asset group had \$0.7 million and \$0.5 million of identifiable intangible assets, net of accumulated amortization, respectively.

As of December 31, 2021 and 2020, the B&W SPIG asset group had \$16.6 million and \$21.1 million of identifiable intangible assets, net of accumulated amortization, respectively.

See Note 26 for intangible assets identified in conjunction with the acquisitions of Fosler Construction and VODA, which are subject to change pending the finalization of the purchase price allocation associated with these acquisitions.

NOTE 10 – LEASES

Certain real property assets for our Copley, Ohio location were sold on March 15, 2021, as described in Note 26. In conjunction with the sale, we executed a leaseback agreement commencing March 16, 2021 and expiring on March 31, 2033. The lease is classified as an operating lease with total future minimum payments during the initial term of the lease of approximately \$5.6 million as of December 31, 2021. An incremental borrowing rate of 7.71% was used to determine the right-of-use (the "ROU") asset. As of December 31, 2021, a \$3.5 million ROU asset is recorded in *right of use assets* with corresponding liabilities of \$3.8 million in *other accrued liabilities* and *other non-current operating liabilities* in our Consolidated Balance Sheets as of December 31, 2021.

Certain real property assets for our Lancaster, Ohio location were sold on August 13, 2021, as described in Note 26. In conjunction with the sale, we executed a leaseback agreement commencing August 13, 2021 and expiring on August 31, 2041. The lease is classified as an operating lease with total future minimum payments during the initial term of the lease of approximately \$36.6 million as of December 31, 2021. An incremental borrowing rate of 8.215% was used to determine the ROU asset. We recorded a \$19.4 million ROU asset in *right of use assets* and corresponding liabilities of \$19.5 million in *other accrued liabilities* and *other non-current operating liabilities* in our Consolidated Balance Sheets as of December 31, 2021.

In conjunction with our acquisition of Fosler Construction, as described in Note 26, we assumed two leases classified as operating leases with total future minimum payments during the remaining term of the leases of approximately \$1.5 million. As of December 31, 2021, a \$1.1 million ROU asset is recorded in *right-of-use assets* with corresponding liabilities of \$1.1 million in *operating lease liabilities* and *non-current operating lease liabilities* in our Consolidated Balance Sheets. As of December 31, 2021, there was one lease classified as a finance lease with total future minimum payments during the remaining term of the leases of approximately \$1.5 million. An incremental borrowing rate of 6.65% was used to determine the ROU asset. We recorded a \$0.7 million ROU asset in *net property, plant and equipment, and finance lease* and corresponding liabilities of \$0.7 million in *other accrued liabilities* and *other non-current finance liabilities* in our Consolidated Balance Sheets as of December 31, 2021.

The components of lease expense included on our Consolidated Statements of Operations were as follows:

(in thousands)	Classification	Year ended December 31,		
		2021	2020	2019
Operating lease expense:				
Operating lease expense	Selling, general and administrative expenses	\$ 4,974	\$ 5,736	\$ 6,624
Operating lease expense	Cost of operations	1,077	—	—
Short-term lease expense	Selling, general and administrative expenses	\$ 3,541	\$ 1,960	\$ 6,575
Variable lease expense ⁽¹⁾	Selling, general and administrative expenses	385	1,973	2,349
Total operating lease expense		\$ 9,977	\$ 9,669	\$ 15,548
Finance lease expense:				
Amortization of right-of-use assets	Cost of operations	\$ 3,510	\$ 2,061	\$ 13
Interest on lease liabilities	Interest expense	2,502	2,452	14
Total finance lease expense		\$ 6,012	\$ 4,513	\$ 27
Sublease income ⁽²⁾	Other – net	\$ (86)	\$ (86)	\$ (67)
Net lease cost		\$ 15,903	\$ 14,096	\$ 15,508

⁽¹⁾ Variable lease expense primarily consists of common area maintenance expenses paid directly to lessors of real estate leases.

⁽²⁾ Sublease income excludes rental income from owned properties, which is not material.

Other information related to leases is as follows:

(in thousands)	Year ended December 31,		
	2021	2020	2019
Cash paid for amounts included in the measurement of lease liabilities:			
Operating cash flows from operating leases	\$ 5,614	\$ 5,603	\$ 6,578
Operating cash flows from finance leases	2,502	2,452	14
Financing cash flows from finance leases	2,366	(13)	(12)

(in thousands)	December 31, 2021		December 31, 2020	
	Right-of-use assets obtained in exchange for lease liabilities:			
Operating leases	\$ 24,886	\$ 24,886	\$ 2,629	\$ 2,629
Finance leases	\$ 3,608	\$ 3,608	\$ 146	\$ 146

Weighted-average remaining lease term:			
Operating leases (in years)		13.6	3.1
Finance leases (in years)		12.7	13.9
Weighted-average discount rate:			
Operating leases		8.24 %	9.26 %
Finance leases		7.93 %	8.00 %

Amounts relating to leases were presented on our Consolidated Balance Sheets in the following line items:

(in thousands)			December 31, 2021	December 31, 2020
Assets:				
	Classification			
Operating lease assets	Right-of-use assets	\$	30,163	\$ 10,814
Finance lease assets	Net property, plant and equipment, and finance lease		28,575	28,477
Total non-current lease assets		\$	58,738	\$ 39,291
Liabilities:				
Current				
Operating lease liabilities	Operating lease liabilities	\$	3,950	\$ 3,995
Finance lease liabilities	Financing lease liabilities		2,445	886
Non-current				
Operating lease liabilities	Non-current operating lease liabilities		26,685	7,031
Finance lease liabilities	Non-current finance lease liabilities		29,369	29,690
Total lease liabilities		\$	62,449	\$ 41,602

Future minimum lease payments required, including the future minimum lease payments resulting from the September 30, 2021 acquisition of Fosler Construction, under non-cancellable leases as of December 31, 2021 were as follows:

(in thousands)	Operating Leases	Finance Leases	Total
2022	\$ 6,209	\$ 4,833	\$ 11,042
2023	4,975	3,459	8,434
2024	3,889	3,525	7,414
2025	2,890	3,552	6,442
2026	2,548	3,623	6,171
Thereafter	32,264	32,481	64,745
Total	\$ 52,775	\$ 51,473	\$ 104,248
Less imputed interest	(22,140)	(19,659)	(41,799)
Lease liability	\$ 30,635	\$ 31,814	\$ 62,449

NOTE 11 – ACCRUED WARRANTY EXPENSE

We may offer assurance type warranties on products and services we sell. Changes in the carrying amount of our accrued warranty expense are as follows:

(in thousands)	Year ended December 31,	
	2021	2020
Balance at beginning of period	\$ 25,399	\$ 33,376
Additions	7,470	11,912
Expirations and other changes	(7,808)	(8,391)
Payments	(12,206)	(13,916)
Translation and other	70	2,418
Balance at end of period	\$ 12,925	\$ 25,399

We accrue estimated expense included in *cost of operations* on our Consolidated Statements of Operations to satisfy contractual warranty requirements when we recognize the associated revenues on the related contracts, or in the case of a loss contract, the full amount of the estimated warranty costs is accrued when the contract becomes a loss contract. In addition, we

record specific provisions or reductions where we expect the actual warranty costs to significantly differ from the accrued estimates. Such changes could have a material effect on our consolidated financial condition, results of operations and cash flows.

NOTE 12 – RESTRUCTURING ACTIVITIES

The Company incurred restructuring charges in 2021, 2020 and 2019. The charges primarily consist of severance and related costs to actions taken, including as part of the Company’s strategic, market-focused organizational and re-branding initiative. During 2021 and 2020, these charges also include actions taken to address the impact of COVID-19 on our business.

The following tables summarizes the restructuring activity incurred by segment:

(in thousands)	Year ended December 31, 2021		
	Total	Severance and related costs	Other ⁽¹⁾
B&W Renewable segment	\$ 1,876	\$ 1,732	\$ 144
B&W Environmental segment	430	360	70
B&W Thermal segment	2,207	1,734	473
Corporate	356	213	143
	<u>\$ 4,869</u>	<u>\$ 4,039</u>	<u>\$ 830</u>
Cumulative costs to date	<u>\$ 45,183</u>	<u>\$ 37,252</u>	<u>\$ 7,931</u>

⁽¹⁾ Other amounts consist primarily of exit, relocation, COVID-19 related and other costs.

(in thousands)	Year ended December 31, 2020		
	Total	Severance and related costs	Other ⁽¹⁾
B&W Renewable segment	\$ 5,926	\$ 4,537	\$ 1,389
B&W Environmental segment	745	293	452
B&W Thermal segment	4,725	1,962	2,763
Corporate	453	(52)	505
	<u>\$ 11,849</u>	<u>\$ 6,740</u>	<u>\$ 5,109</u>

⁽¹⁾ Other amounts consist primarily of exit, relocation, COVID-19 related and other costs.

(in thousands)	Year ended December 31, 2019		
	Total	Severance and related costs	Other ⁽¹⁾
B&W Renewable segment	\$ 2,233	\$ 2,176	\$ 57
B&W Environmental segment	2,000	1,888	112
B&W Thermal segment	3,040	2,791	249
Corporate	4,434	3,566	868
	<u>\$ 11,707</u>	<u>\$ 10,421</u>	<u>\$ 1,286</u>

⁽¹⁾ Other amounts consist primarily of exit, relocation and other costs.

Restructuring liabilities are included in *other accrued liabilities* on our Consolidated Balance Sheets. Activity related to the restructuring liabilities is as follows:

(in thousands)	Year ended December 31,	
	2021	2020
Balance at beginning of period	\$ 8,146	\$ 5,359
Restructuring expense	4,869	11,849
Payments	(6,454)	(9,062)
Balance at end of period	\$ 6,561	\$ 8,146

The payments shown above for the years ended December 31, 2021 and 2020 relate primarily to severance. Accrued restructuring liabilities at December 31, 2021 and 2020 relate primarily to employee termination benefits.

NOTE 13 – PENSION PLANS AND OTHER POSTRETIREMENT BENEFITS

We have historically provided defined benefit retirement benefits to domestic employees under the Retirement Plan for Employees of Babcock & Wilcox Commercial Operations (the “U.S. Plan”), a noncontributory plan. As of 2006, the U.S. Plan was closed to new salaried plan entrants. Effective December 31, 2015, benefit accruals for those salaried employees covered by, and continuing to accrue service and salary adjusted benefits under the U.S. Plan ceased. As of December 31, 2021, and 2020, approximately 73 and 85 hourly union employees continue to accrue benefits under the U.S. Plan for the respective years.

Effective January 1, 2012, a defined contribution component was adopted applicable to Babcock & Wilcox Canada, Ltd. (the “Canadian Plans”). Any employee with less than two years of continuous service as of December 31, 2011 was required to enroll in the defined contribution component of the Canadian Plans as of January 1, 2012 or upon the completion of 6 months of continuous service, whichever is later. These and future employees will not be eligible to enroll in the defined benefit component of the Canadian Plans. In 2014, benefit accruals under certain hourly Canadian pension plans were ceased with an effective date of January 1, 2015. As part of the spin-off transaction, we split the Canadian defined benefit plans from BWXT, which was completed in 2017. We did not present these plans as multi-employer plans because our portion was separately identifiable, and we were able to assess the assets, liabilities and periodic expense in the same manner as if it were a separate plan in each period.

We also sponsor the Diamond Power Specialty Limited Retirement Benefits Plan (the “U.K. Plan”) through our subsidiary. Benefit accruals under this plan ceased effective November 30, 2015. We have accounted for the GMP equalization following the U.K. High Court ruling during the fourth quarter of 2018 by recording prior service cost in accumulated other comprehensive income that will be amortized through net periodic pension cost over 15 years, ending December 31, 2033.

We do not provide retirement benefits to certain non-resident alien employees of foreign subsidiaries. Retirement benefits for salaried employees who accrue benefits in a defined benefit plan are based on final average compensation and years of service, while benefits for hourly paid employees are based on a flat benefit rate and years of service. Our funding policy is to fund the plans as recommended by the respective plan actuaries and in accordance with the Employee Retirement Income Security Act of 1974, as amended, or other applicable law. Funding provisions under the Pension Protection Act accelerate funding requirements to ensure full funding of benefits accrued.

We make available other benefits which include postretirement health care and life insurance benefits to certain salaried and union retirees based on their union contracts, and on a limited basis, to future retirees.

Obligations and funded status

(in thousands)	Pension Benefits Year Ended December 31,		Other Benefits Year Ended December 31,	
	2021	2020	2021	2020
Change in benefit obligation:				
Benefit obligation at beginning of period	\$ 1,284,019	\$ 1,218,968	\$ 11,802	\$ 12,134
Service cost	781	792	22	19
Interest cost	22,559	33,267	145	288
Plan participants' contributions	—	—	155	160
Amendments	676	—	—	—
Actuarial (gain) loss	(28,815)	108,623	(153)	478
Foreign currency exchange rate changes	165	1,615	3	33
Benefits paid	(79,540)	(79,246)	(1,602)	(1,310)
Benefit obligation at end of period	\$ 1,199,845	\$ 1,284,019	\$ 10,372	\$ 11,802
Change in plan assets:				
Fair value of plan assets at beginning of period	\$ 1,047,646	\$ 974,117	\$ —	\$ —
Actual return on plan assets	42,954	148,100	—	—
Employer contribution	26,158	2,892	1,447	1,150
Plan participants' contributions	—	—	155	160
Foreign currency exchange rate changes	17	1,783	—	—
Benefits paid	(79,540)	(79,246)	(1,602)	(1,310)
Fair value of plan assets at the end of period	1,037,235	1,047,646	—	—
Funded status	\$ (162,610)	\$ (236,373)	\$ (10,372)	\$ (11,802)
Amounts recognized in the balance sheet consist of:				
Accrued employee benefits	\$ (1,162)	\$ (1,163)	\$ (1,297)	\$ (1,399)
Accumulated postretirement benefit obligation	—	—	(9,075)	(10,403)
Pension liability	(173,655)	(241,889)	—	—
Prepaid pension	12,207	6,679	—	—
Accrued benefit liability, net	\$ (162,610)	\$ (236,373)	\$ (10,372)	\$ (11,802)
Amount recognized in accumulated comprehensive income (before taxes):				
Prior service cost	\$ 1,146	\$ 557	\$ 2,355	\$ 3,046
Supplemental information:				
Plans with accumulated benefit obligation in excess of plan assets				
Projected benefit obligation	\$ 1,141,706	\$ 1,219,129	\$ —	\$ —
Accumulated benefit obligation	\$ 1,141,706	\$ 1,219,129	\$ 10,372	\$ 11,802
Fair value of plan assets	\$ 966,889	\$ 976,078	\$ —	\$ —
Plans with plan assets in excess of accumulated benefit obligation				
Projected benefit obligation	\$ 58,139	\$ 64,890	\$ —	\$ —
Accumulated benefit obligation	\$ 58,139	\$ 64,890	\$ —	\$ —
Fair value of plan assets	\$ 70,346	\$ 71,568	\$ —	\$ —

Components of net periodic benefit cost (benefit) included in net income (loss) are as follows:

(in thousands)	Pension Benefits			Other Benefits		
	Year ended December 31,			Year ended December 31,		
	2021	2020	2019	2021	2020	2019
Interest cost	\$ 22,559	\$ 33,267	\$ 43,312	\$ 145	\$ 288	\$ 424
Expected return on plan assets	(56,154)	(61,322)	(55,717)	—	—	—
Amortization of prior service cost (credit)	97	97	142	691	(1,084)	(2,157)
Recognized net actuarial (gain) loss	(15,327)	22,676	(7,603)	(153)	478	(1,201)
Benefit plans, net ⁽¹⁾	(48,825)	(5,282)	(19,866)	683	(318)	(2,934)
Service cost included in COS ⁽²⁾	781	792	778	22	19	15
Net periodic benefit cost (benefit)	\$ (48,044)	\$ (4,490)	\$ (19,088)	\$ 705	\$ (299)	\$ (2,919)

⁽¹⁾ *Benefit plans, net*, which is presented separately in our Consolidated Statements of Operations, is not allocated to the segments.

⁽²⁾ Service cost related to a small group of active participants is presented within *cost of operations* in our Consolidated Statement of Operations and is allocated to the B&W Thermal segment.

Recognized net actuarial gain consists primarily of our reported actuarial gain and the difference between the actual return on plan assets and the expected return on plan assets. Total net mark to market (“MTM”) adjustments for our pension and other postretirement benefit plans were (gains) losses of \$(15.5) million, \$23.2 million and \$(8.8) million in the years ended, December 31, 2021, 2020 and 2019, respectively. The recognized net actuarial (gain) loss was recorded in *benefit plans, net* in our Consolidated Statements of Operations.

Assumptions

	Pension Benefits			Other Benefits		
	Year ended December 31,			Year ended December 31,		
	2021	2020	2019	2021	2020	2019
Weighted average assumptions used to determine net periodic benefit obligations:						
Comparative single equivalent discount rate	2.81%	2.50%	3.25%	2.50%	1.97%	2.99%
Rate of compensation increase	0.07%	0.08%	0.07%	—	—	—
Weighted average assumptions used to determine net periodic benefit cost:						
Comparative single equivalent discount rate	2.52%	3.23%	4.28%	2.50%	1.97%	2.99%
Expected return on plan assets	5.76%	6.63%	6.66%	—	—	—
Rate of compensation increase	0.07%	0.08%	0.07%	—	—	—

The expected rate of return on plan assets is based on the long-term expected returns for the investment mix of assets currently in the portfolio. In setting this rate, we use a building-block approach. Historic real return trends for the various asset classes in the plan's portfolio are combined with anticipated future market conditions to estimate the real rate of return for each asset class. These rates are then adjusted for anticipated future inflation to determine estimated nominal rates of return for each asset class. The expected rate of return on plan assets is determined to be the weighted average of the nominal returns based on the weightings of the asset classes within the total asset portfolio. We use an expected return on plan assets assumption of 6% for the majority of our pension plan assets (approximately 93% of our total pension assets at December 31, 2021).

Investment goals

The overall investment strategy of the pension trusts is to achieve long-term growth of principal, while avoiding excessive risk and to minimize the probability of loss of principal over the long term. The specific investment goals that have been set

for the pension trusts in the aggregate are (1) to ensure that plan liabilities are met when due and (2) to achieve an investment return on trust assets consistent with a reasonable level of risk.

Allocations to each asset class for both domestic and foreign plans are reviewed periodically and rebalanced, if appropriate, to assure the continued relevance of the goals, objectives and strategies. The pension trusts for both our domestic and foreign plans employ a professional investment advisor and a number of professional investment managers whose individual benchmarks are, in the aggregate, consistent with the plans' overall investment objectives. The goals of each investment manager are (1) to meet (in the case of passive accounts) or exceed (for actively managed accounts) the benchmark selected and agreed upon by the manager and the trust and (2) to display an overall level of risk in its portfolio that is consistent with the risk associated with the agreed upon benchmark.

The investment performance of total portfolios, as well as asset class components, is periodically measured against commonly accepted benchmarks, including the individual investment manager benchmarks. In evaluating investment manager performance, consideration is also given to personnel, strategy, research capabilities, organizational and business matters, adherence to discipline and other qualitative factors that may impact the ability to achieve desired investment results.

Domestic plans: We sponsor the U.S. Plan, which is a domestic defined benefit plan. The assets of this plan are held by the Trustee in The Babcock & Wilcox Company Master Trust (the "Master Trust"). For the years ended December 31, 2021 and 2020, the investment return on domestic plan assets of the Master Trust (net of deductions for management fees) was approximately 4.25% and 17%, respectively.

The following is a summary of the asset allocations for the Master Trust by asset category:

Asset category:	Year ended December 31,	
	2021	2020
Commingled and mutual funds	— %	41 %
United States government securities	17 %	16 %
Corporate stocks	8 %	5 %
Venture capital	40 %	18 %
Hedge funds	30 %	13 %
Cash and accrued items	5 %	7 %

The target asset allocation for the Master Trust as of December 31, 2021 was 50% of alternative, liquid credit and direct lending funds, 20% of fixed income securities, and 30% of equity and other investments. As of December 31, 2020, the target allocation was 54% of alternative, liquid credit and direct lending funds, 22% of fixed income securities, and 24% of equity and other investments. We routinely reassess the target asset allocation with a goal of better aligning the timing of expected cash flows from those assets to the anticipated timing of benefit payments.

Foreign plans: We sponsor various plans through certain of our foreign subsidiaries. These plans are the Canadian Plans and the U.K. Plan. The combined weighted average asset allocations of these plans by asset category were as follows:

Asset category:	Year ended December 31,	
	2021	2020
Commingled and mutual funds	30 %	35 %
Fixed income	67 %	62 %
Other	3 %	3 %

The target allocation for 2021 for the foreign plans, by asset class, is as follows:

Asset class:	Canadian Plans	U.K. Plan
	United States equity	25 %
Global equity	25 %	4 %
Fixed income and other	50 %	93 %

Fair value of plan assets

See Note 24 for a detailed description of fair value measurements and the hierarchy established for valuation inputs. In accordance with Subtopic 820-10, *Fair Value Measurement and Disclosures*, certain investments that are measured at fair value using the net asset value ("NAV") per share practical expedient have not been classified in the fair value hierarchy. The investments that are measured at fair value using NAV per share included in the tables below are intended to permit reconciliation of the fair value hierarchy to the fair value of plan assets at the end of each period, which is presented in the first table above titled "obligations and funded status". The following is a summary of total investments for our plans measured at fair value:

(in thousands)	Year ended December 31,			
	2021	Level 1	Level 2	Level 3
Commingled and mutual funds	\$ 22,261	\$ —	\$ 22,261	\$ —
United States government securities	167,328	167,328	—	—
Fixed income	65,370	15,196	47,309	2,865
Equity	80,299	74,888	5,243	168
Venture capital	236,730	—	—	236,730
Hedge fund	80,711	—	—	80,711
Cash and accrued items	30,130	30,130	—	—
Investments measured at fair value	\$ 682,829	\$ 287,542	\$ 74,813	\$ 320,474
Investments measured at net asset value	349,798			
Pending trades	4,608			
Total pension and other postretirement benefit assets	\$ 1,037,235			

(in thousands)	Year ended December 31, 2020		Level 1	Level 2	Level 3			
Commingled and mutual funds	\$	429,101	\$	402,935	\$	26,166	\$	—
United States government securities		160,488		160,488		—		—
Fixed income		44,604		—		44,604		—
Equity		45,539		45,539		—		—
Venture capital		56,719		—		—		56,719
Cash and accrued items		69,822		69,822		—		—
Investments measured at fair value	\$	806,273	\$	678,784	\$	70,770	\$	56,719
Investments measured at net asset value		241,568		—		—		—
Pending trades		(195)		—		—		—
Total pension and other postretirement benefit assets	\$	1,047,646		—		—		—

Expected cash flows

(in thousands)	Domestic Plans		Foreign Plans	
	Pension Benefits	Other Benefits	Pension Benefits	Other Benefits
Expected employer contributions to trusts of defined benefit plans:				
2022	\$	2,751	\$	1,047
Expected benefit payments ⁽¹⁾:				
2022		74,866		2,721
2023		74,326		2,720
2024		73,639		2,733
2025		72,676		2,846
2026		71,502		2,919
2027-2031		333,824		15,124

⁽¹⁾ Pension benefit payments are made from their respective plan's trust.

We made contributions to our pension and other postretirement benefit plans totaling \$27.6 million and \$4.0 million during the years ended December 31, 2021 and 2020. Contributions made during the year ended December 31, 2021 includes \$0.4 million of interest as required per the CARES Act that was signed into law on March 27, 2020.

In accordance with the American Rescue Plan Act of 2021, we elected to defer \$20.9 million of the estimated Pension Plan contribution payments of \$45.6 million that would have been due during 2021.

Defined contribution plans

We provide benefits under The B&W Thrift Plan (the "Thrift Plan"). The Thrift Plan generally provides for matching employer contributions. Beginning in April 2020 and continuing through December 31, 2021, as part of the Company's response to the impact of the COVID-19 pandemic on its business, the Company suspended its 401(k) company match for U.S. employees. The Company resumed its employer contributions beginning in 2022 inclusive of a one-time profit sharing contribution for the 2021 plan year equal to 0.75% of eligible employees' base pay. Employer matching contributions are typically made in cash. Amounts charged to expense for employer contributions under the Thrift Plan totaled approximately \$0.0 million, \$1.0 million and \$3.1 million in the years ended December 31, 2021, 2020 and 2019, respectively.

Also, our salaried Canadian employees are provided with a defined contribution plan. The amount charged to expense for employer contributions was approximately \$0.3 million, \$0.3 million and \$0.3 million in the years ended December 31, 2021, 2020 and 2019, respectively.

Multi-employer plans

One of our subsidiaries in the B&W Thermal segment contributes to various multi-employer plans. The plans generally provide defined benefits to substantially all unionized workers in this subsidiary. The following table summarizes our contributions to multi-employer plans for the years covered by this report:

Pension Fund	EIN/PIN	Pension Protection Act Zone Status			FIP/RP Status Pending/Implemented	Contributions			Surcharge Imposed	Expiration Date of Collective Bargaining Agreement
		2021	2020	2019		2021	2020	2019		
Boilermaker-Blacksmith National Pension Trust	48-6168020/001	Yellow	Yellow	Red	Yes	\$ 16.6	\$ 4.0	\$ 7.5	No	Described Below
All other						2.2	0.9	4.9		
						<u>\$ 18.8</u>	<u>\$ 4.9</u>	<u>\$ 12.4</u>		

Our collective bargaining agreements with the Boilermaker-Blacksmith National Pension Trust (the “Boilermaker Plan”) is under a National Maintenance Agreement platform which is evergreen in terms of expiration. However, the agreement allows for termination by either party with a 90-day written notice. Our contributions to the Boilermaker Plan constitute less than 5% of total contributions to the Boilermaker Plan. All other contributions expense for all periods included in this report represents multiple amounts to various plans that, individually, are deemed to be insignificant.

NOTE 14 – 2021 SENIOR NOTES OFFERINGS

8.125% Senior Notes

On February 12, 2021, we completed a public offering of \$125.0 million aggregate principal amount of our 8.125% senior notes due 2026 (the “8.125% Senior Notes”) for net proceeds of approximately \$120.0 million.

In addition to the public offering, we issued \$35.0 million of 8.125% Senior Notes to B. Riley Financial, Inc. a related party, in exchange for a deemed prepayment of our existing Last Out Term Loan Tranche A-3 in a concurrent private offering.

On March 31, 2021, we entered into a sales agreement with B. Riley Securities, Inc., a related party, in which we may sell to or through B. Riley Securities, Inc., from time to time, additional 8.125% Senior Notes up to an aggregate principal amount of \$150.0 million. The 8.125% Senior Notes have the same terms as (other than date of issuance), form a single series of debt securities with and have the same CUSIP number and be fungible with, the 8.125% Senior Notes issued February 12, 2021, as described above.

As of December 31, 2021, the Company has sold \$26.2 million aggregate principal amount of 8.125% Senior Notes under the sales agreement for \$26.6 million of net proceeds.

The 8.125% Senior Notes are senior unsecured obligations of the Company and rank equally in right of payment with all of the Company’s other existing and future senior unsecured and unsubordinated indebtedness. The 8.125% Senior Notes bear interest at the rate of 8.125% per annum. Interest on the 8.125% Senior Notes is payable quarterly in arrears on January 31, April 30, July 31 and October 31 of each year, commencing on April 30, 2021. The 8.125% Senior Notes mature on February 28, 2026.

6.50% Senior Notes

On December 13, 2021, we completed a public offering of \$140.0 million aggregate principal amount of our 6.50% senior notes due 2026 (the “6.50% Senior Notes”) and a subsequent exercise of \$11.4 million aggregate principal of our 6.50% senior notes due 2026 by the underwriters was completed on December 30, 2021. At the completion of the offerings, we received net proceeds of approximately \$145.8 million.

The public offering of our 6.50% Senior Notes was conducted pursuant to an underwriting agreement dated December 8, 2021, between us and B. Riley Securities, Inc., an affiliate of B. Riley, a related party, as representative of several underwriters.

The 6.50% Senior Notes are senior unsecured obligations of the Company and rank equally in right of payment with all of the Company's other existing and future senior unsecured and unsubordinated indebtedness. The 6.50% Senior Notes are effectively subordinated in right of payment to all of the Company's existing and future secured indebtedness and structurally subordinated to all existing and future indebtedness of the Company's subsidiaries, including trade payables. The 6.50% Senior Notes bear interest at the rate of 6.50% per annum. Interest on the 6.50% Senior Notes is payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each year, commencing on March 31, 2022. The 6.50% Senior Notes will mature on December 31, 2026.

The components of the Company's senior notes at December 31, 2021 are as follows:

(in thousands)	Senior Notes		
	8.125%	6.50%	Total
Senior notes due 2026	\$ 186,219	\$ 151,440	\$ 337,659
Unamortized deferred financing costs	(5,269)	(6,604)	(11,873)
Unamortized premium	580	—	580
Net debt balance	\$ 181,530	\$ 144,836	\$ 326,366

NOTE 15 – LAST OUT TERM LOANS

Effective with the new debt facilities the Company entered into on June 30, 2021, as described in Note 16 below, the Company has no remaining Last Out Term Loans and no further borrowings thereunder are available. The Last Out Term Loan activity is described as follows:

(in thousands)	Last Out Term Loan Tranche			
	A-3	A-4	A-6	Total
Balance at December 31, 2020	\$ 113,330	\$ 30,000	\$ 40,000	\$ 183,330
Payments in cash	(40,408)	(30,000)	(5,000)	(75,408)
Exchange for Preferred Stock	(72,922)	—	—	(72,922)
Exchange for 8.125% Senior Notes	—	—	(35,000)	(35,000)
Balance at December 31, 2021	\$ —	\$ —	\$ —	\$ —

NOTE 16 – REVOLVING DEBT

Debt Facilities

On June 30, 2021, we entered into a Revolving Credit Agreement (the "Revolving Credit Agreement") with PNC Bank, National Association, as administrative agent ("PNC") and a letter of credit agreement (the "Letter of Credit Agreement") with PNC, pursuant to which PNC agreed to issue up to \$110 million in letters of credit that is secured in part by cash collateral provided by an affiliate of MSD Partners, MSD PCOF Partners XLV, LLC ("MSD"), as well as a reimbursement, guaranty and security agreement with MSD, as administrative agent, and the cash collateral providers from time to time party thereto, along with certain of our subsidiaries as guarantors, pursuant to which we are obligated to reimburse MSD and any other cash collateral provider to the extent the cash collateral provided by MSD and any other cash collateral provider to secure the Letter of Credit Agreement is drawn to satisfy draws on letters of credit (the "Reimbursement Agreement" and collectively with the Revolving Credit Agreement and Letter of Credit Agreement, the "Debt Documents" and the facilities thereunder, the "Debt Facilities"). The obligations of the Company under each of the Debt Facilities are guaranteed by certain existing and future domestic and foreign subsidiaries of the Company. B. Riley Financial, Inc. ("B. Riley"), a related party, has provided a guaranty of payment with regard to the Company's obligations under the Reimbursement Agreement, as described below. The Company expects to use the proceeds and letter of credit availability under the Debt Facilities for working capital purposes and general corporate purposes, including to backstop or replace certain letters of credit issued

under our previous A&R Credit Agreement, dated as of May 14, 2020 (as amended, restated or otherwise modified from time to time), by and among the Company, as borrower, Bank of America, N.A., as administrative agent, the lenders and the other parties from time to time party thereto, which was repaid and commitments thereunder terminated as of June 30, 2021. The Revolving Credit Agreement matures on June 30, 2025. As of December 31, 2021, no borrowings have occurred under the Revolving Credit Agreement and under the Letter of Credit Agreement, usage consisted of \$16.4 million of financial letters of credit and \$90.4 million of performance letters of credit.

Each of the Debt Facilities has a maturity date of June 30, 2025. The interest rates applicable under the Revolving Credit Agreement float at a rate per annum equal to either (i) a base rate plus 2.0% or (ii) 1 or 3 month reserve-adjusted LIBOR rate plus 3.0%. The interest rates applicable to the Reimbursement Agreement float at a rate per annum equal to either (i) a base rate plus 6.50% or (ii) 1 or 3 month reserve-adjusted LIBOR plus 7.50%. Under the Letter of Credit Agreement, the Company is required to pay letter of credit fees on outstanding letters of credit equal to (i) administrative fees of 0.75% and (ii) fronting fees of 0.25%. Under the Revolving Credit Agreement, the Company is required to pay letter of credit fees on outstanding letters of credit equal to (i) letter of credit commitment fees of 3.0% and (ii) letter of credit fronting fees of 0.25%. Under each of the Revolving Credit Agreement and the Letter of Credit Agreement, we are required to pay a facility fee equal to 0.375% per annum of the unused portion of the Revolving Credit Agreement or the Letter of Credit Agreement, respectively. The Company is permitted to prepay all or any portion of the loans under the Revolving Credit Agreement prior to maturity without premium or penalty. Prepayments under the Reimbursement Agreement shall be subject to a prepayment fee of 2.25% in the first year after closing, 2.0% in the second year after closing and 1.25% in the third year after closing, with no prepayment fee payable thereafter.

The Company has mandatory prepayment obligations under the Reimbursement Agreement upon the receipt of proceeds from certain dispositions or casualty or condemnation events. The Revolving Credit Agreement and Letter of Credit Agreement require mandatory prepayments to the extent of an over-advance.

The obligations under the Debt Facilities are secured by substantially all assets of the Company and each of the guarantors, in each case subject to inter-creditor arrangements. As noted above, the obligations under the Letter of Credit Facility are also secured by the cash collateral provided by MSD and any other cash collateral provider thereunder.

The Debt Documents contain certain representations and warranties, affirmative covenants, negative covenants and conditions that are customarily required for similar financings. The Debt Documents require the Company to comply with certain financial maintenance covenants, including a quarterly fixed charge coverage test of not less than 1.00 to 1.00, a quarterly senior net leverage ratio test of not greater than 2.50 to 1.00, a non-guarantor cash repatriation covenant not to exceed \$35 million at any one time, a minimum liquidity covenant of at least \$30.0 million at all times, and an annual cap on maintenance capital expenditures of \$7.5 million. The Debt Documents also contain customary events of default (subject, in certain instances, to specified grace periods) including, but not limited to, the failure to make payments of interest or premium, if any, on, or principal under the respective facility, the failure to comply with certain covenants and agreements specified in the applicable Debt Agreement, defaults in respect of certain other indebtedness, and certain events of insolvency. If any event of default occurs, the principal, premium, if any, interest and any other monetary obligations on all the then outstanding amounts under the Debt Documents may become due and payable immediately.

In connection with the Company's entry into the Debt Documents, on June 30, 2021, B. Riley, a related party, entered into a Guaranty Agreement in favor of MSD, in its capacity as administrative agent under the Reimbursement Agreement, for the ratable benefit of MSD, the cash collateral providers and each co-agent or sub-agent appointed by MSD from time to time (the "B. Riley Guaranty"). The B. Riley Guaranty provides for the guarantee of all of the Company's obligations under the Reimbursement Agreement. The B. Riley Guaranty is enforceable in certain circumstances, including, among others, certain events of default and the acceleration of the Company's obligations under the Reimbursement Agreement. Under a fee letter with B. Riley, the Company agreed to pay B. Riley \$0.9 million per annum in connection with the B. Riley Guaranty. The Company entered into a reimbursement agreement with B. Riley governing the Company's obligation to reimburse B. Riley to the extent the B. Riley Guaranty is called upon by the agent or lenders under the Reimbursement Agreement.

As of December 31, 2021, a subsidiary has borrowed \$1.5 million against a \$2.5 million line of credit. The interest rate on the line of credit is 5.5% per annum and matures on January 30, 2022. Subsequent to December 31, 2021, the subsidiary entered into a new \$3.5 million line of credit with a maturity date of January 30, 2023.

A&R Credit Agreement

As described above, the A&R Credit Agreement commitments were terminated, all loans were repaid and all outstanding and undrawn letters of credit were collateralized on June 30, 2021. The Company recognized a gain on debt extinguishment of \$6.5 million in the year ended December 31, 2021, primarily representing the write-off of accrued revolver fees of \$11.3 million offset by the unamortized deferred financing fees of \$4.8 million related to the prior A&R Credit Agreement.

Letters of Credit, Bank Guarantees and Surety Bonds

Certain of our subsidiaries primarily outside of the United States have credit arrangements with various commercial banks and other financial institutions for the issuance of letters of credit and bank guarantees in association with contracting activity. The aggregate value of all such letters of credit and bank guarantees outside of our Letter of Credit Agreement as of December 31, 2021 was \$52.8 million. The aggregate value of the outstanding letters of credit provided under the Letter of Credit Agreement backstopping letters of credit or bank guarantees was \$35.5 million as of December 31, 2021. Of the outstanding letters of credit issued under the Letter of Credit Agreement, \$51.5 million are subject to foreign currency revaluation.

We have also posted surety bonds to support contractual obligations to customers relating to certain contracts. We utilize bonding facilities to support such obligations, but the issuance of bonds under those facilities is typically at the surety's discretion. These bonds generally indemnify customers should we fail to perform our obligations under the applicable contracts. We, and certain of our subsidiaries, have jointly executed general agreements of indemnity in favor of surety underwriters relating to surety bonds those underwriters issue in support of some of our contracting activity. As of December 31, 2021, bonds issued and outstanding under these arrangements in support of contracts totaled approximately \$188.3 million. The aggregate value of the letters of credit backstopping surety bonds was \$13.1 million.

Our ability to obtain and maintain sufficient capacity under our new Debt Facilities is essential to allow us to support the issuance of letters of credit, bank guarantees and surety bonds. Without sufficient capacity, our ability to support contract security requirements in the future will be diminished.

Other Indebtedness - Loans Payable

As of December 31, 2021, our Denmark subsidiary has three unsecured interest free loans totaling \$3.3 million under a local government loan program related to COVID-19. The loans of \$0.8 million, \$1.6 million and \$0.9 million are payable in April 2022, May 2022 and May 2023, respectively. The loan payable in May 2023 is included in *long term loans payables* in our Consolidated Balance Sheets.

As of December 31, 2021, as a result of our recent acquisition of a 60% controlling ownership stake in Fosler Construction Company Inc. ("Fosler Construction") as described in Note 26, Fosler Construction has two loans totaling \$8.3 million. Both loans have a variable interest rate with a minimum rate of 6% and are due June 30, 2022. Fosler Construction also has loans primarily for vehicles and equipment totaling \$0.7 million at December 31, 2021. The vehicle and equipment loans are included in *long term loans payables* in our Consolidated Balance Sheets.

NOTE 17 – PREFERRED STOCK

In May 2021, we completed a public offering of our 7.75% Series A Cumulative Perpetual Preferred Stock (the "Preferred Stock") pursuant to an underwriting agreement (the "Underwriting Agreement") between us and B. Riley Securities, Inc.. At the closing, we issued to the public 4,444,700.00 shares of our Preferred Stock, at an offering price of \$25.00 per share for net proceeds of approximately \$106.4 million after deducting underwriting discounts, commissions but before expenses. The Preferred Stock has a par value of \$0.01 per share and is perpetual and has no maturity date. The Preferred Stock has a cumulative cash dividend, when and as if declared by our Board of Directors, at a rate of 7.75% per year on the liquidation preference amount of \$25.00 per share and payable quarterly in arrears.

The Preferred Stock ranks, as to dividend rights and rights as to the distribution of assets upon our liquidation, dissolution or winding-up: (1) senior to all classes or series of our common stock and to all other capital stock issued by us expressly designated as ranking junior to the Preferred Stock; (2) on parity with any future class or series of our capital stock expressly designated as ranking on parity with the Preferred Stock; (3) junior to any future class or series of our capital stock expressly designated as ranking senior to the Preferred Stock; and (4) junior to all our existing and future indebtedness.

The Preferred Stock has no stated maturity and is not subject to mandatory redemption or any sinking fund. We will pay cumulative cash dividends on the Preferred Stock when, as and if declared by our Board of Directors, only out of funds legally available for payment of dividends. Dividends on the Preferred Stock will accrue on the stated amount of \$25.00 per share of the Preferred Stock at a rate per annum equal to 7.75% (equivalent to \$1.9375 per year), payable quarterly in arrears. Dividends on the Preferred Stock declared by our Board of Directors will be payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each year.

During 2021, the Company's Board of Directors approved dividends totaling \$9.1 million.. There are no cumulative undeclared dividends of the Preferred Stock at December 31, 2021.

On June 1, 2021, the Company and B. Riley, a related party, entered into an agreement (the "Exchange Agreement") pursuant to which we (i) issued B. Riley 2,916,880 shares of our Preferred Stock, representing an exchange price of \$25.00 per share and paid \$0.4 million in cash, and (ii) paid \$0.9 million in cash to B. Riley for accrued interest due, in exchange for a deemed prepayment of \$73.3 million of our then existing term loans with B. Riley under the Company's prior A&R Credit Agreement.

On July 7, 2021, we entered into a sales agreement with B. Riley Securities, Inc., a related party, in connection with the offer and to or through B. Riley Securities, Inc., from time to time, additional shares of Preferred Stock up to an aggregate amount of \$76.0 million of Preferred Stock. The Preferred Stock will have the same terms and have the same CUSIP number and be fungible with, the Preferred Stock issued during May 2021. As of December 31, 2021, the Company sold \$7.7 million aggregate principal amount of Preferred Stock for \$7.7 million net proceeds.

NOTE 18 – COMMON STOCK

On February 12, 2021, we completed a public offering of our common stock pursuant to an underwriting agreement dated February 9, 2021, between us and B. Riley Securities, Inc., as representative of the several underwriters. At the closing, we issued to the public 29,487,180 shares of our common stock and received net proceeds of approximately \$163.0 million after deducting underwriting discounts and commissions, but before expenses. The net proceeds of the offering were used to make a prepayment toward the balance outstanding under our U.S. Revolving Credit Facility and permanently reduce the commitments under our senior secured credit facilities.

On May 20, 2021, at the 2021 annual meeting of stockholders of the Company, the stockholders of the Company, upon the recommendation of the Company's Board of Directors, approved the Babcock & Wilcox Enterprises, Inc. 2021 Long-Term Incentive Plan. The 2021 Plan became effective upon such stockholder approval. The maximum number of shares of the Company's common stock that may be issued or transferred pursuant to awards under the 2021 Plan equals: (1) 1,250,000 shares, plus (2) the number of any shares subject to awards granted under the Company's Amended and Restated 2015 Long-Term Incentive Plan (the "2015 Plan") and outstanding as of May 20, 2021 which expire, or are terminated, surrendered, or forfeited for any reason without issuance of such shares (including for outstanding performance share awards to the extent they are earned at less than maximum). No new awards may be granted under the 2015 Plan. As of May 20, 2021 (immediately prior to the stockholder approval of the 2021 Plan), the total number of shares of our common stock subject to outstanding awards granted under the 2015 Plan was 2,007,152 shares.

NOTE 19 –INTEREST EXPENSE AND SUPPLEMENTAL CASH FLOW INFORMATION

Interest expense in our Consolidated Financial Statements consisted of the following components:

(in thousands)	Year ended December 31,		
	2021	2020	2019
Components associated with borrowings from:			
Senior notes	\$ 13,273	\$ —	\$ —
Last Out Term Loans - cash interest	4,349	6,140	11,207
Last Out Term Loans - equitized interest	—	13,450	—
Last Out Term Loans - paid-in-kind interest	—	—	5,964
U.S. Revolving Credit Facility	1,416	13,988	15,639
	<u>19,038</u>	<u>33,578</u>	<u>32,810</u>
Components associated with amortization or accretion of:			
Revolving Credit Agreement	2,735	—	—
Senior notes	2,510	—	—
Last Out Term Loans - discount and financing fees	—	3,183	10,580
U.S. Revolving Credit Facility - deferred financing fees and commitment fees	5,995	14,811	31,567
U.S. Revolving Credit Facility - contingent consent fee for Amendment 16	—	—	13,879
U.S. Revolving Credit Facility - deferred ticking fee for Amendment 16	—	1,660	5,064
	<u>11,240</u>	<u>19,654</u>	<u>61,090</u>
Components associated with interest from:			
Lease liabilities	2,502	2,452	14
Other interest expense	6,613	4,112	987
	<u>9,115</u>	<u>6,564</u>	<u>1,001</u>
Total interest expense	\$ 39,393	\$ 59,796	\$ 94,901

The following table provides a reconciliation of cash and cash equivalents and restricted cash reporting within the Consolidated Balance Sheets and in the Consolidated Statements of Cash Flows:

(in thousands)	December 31, 2021	December 31, 2020	December 31, 2019
Held by foreign entities	\$ 42,070	\$ 38,726	\$ 38,921
Held by U.S. entities	182,804	18,612	4,851
Cash and cash equivalents	<u>224,874</u>	<u>57,338</u>	<u>43,772</u>
Reinsurance reserve requirements	443	4,551	9,318
Restricted foreign accounts	—	2,869	3,851
Bank guarantee collateral	997	2,665	—
Letters of credit collateral	401	—	—
Restricted cash and cash equivalents	<u>1,841</u>	<u>10,085</u>	<u>13,169</u>
Total cash, cash equivalents and restricted cash shown in the Consolidated Statements of Cash Flows	\$ 226,715	\$ 67,423	\$ 56,941

The following cash activity is presented as a supplement to our Consolidated Statements of Cash Flows and is included in *Net cash used in activities*:

(in thousands)	Year ended December 31,		
	2021	2020	2019
Income tax payments, net	\$ 4,991	\$ 6,960	\$ 3,873
Interest payments - 8.125% Senior Notes due 2026	10,451	—	—
Interest payments on our U.S. Revolving Credit Facility	5,979	11,675	14,715
Interest payments on our Last Out Term Loans	3,804	6,140	12,220
Total cash paid for interest	\$ 20,234	\$ 17,815	\$ 26,935

NOTE 20— STOCK-BASED COMPENSATION

Stock options

There were no stock options awarded in 2021. The following table summarizes activity for outstanding stock options for the year ended December 31, 2021:

(share data in thousands)	Number of shares	Weighted-average exercise price	Weighted-average remaining contractual term (in years)	Aggregate intrinsic value (in thousands)
Outstanding at beginning of period	340	\$ 107.84		
Granted	—	—		
Exercised	—	—		
Cancelled/expired/forfeited	(52)	138.73		
Outstanding at end of period	288	\$ 121.59	4.39	\$ —
Exercisable at end of period	288	\$ 121.59	4.39	\$ —

The aggregate intrinsic value included in the table above represents the total pretax intrinsic value that would have been received by the option holders had all option holders exercised their options on December 31, 2021. The intrinsic value is calculated as the total number of option shares multiplied by the difference between the closing price of our common stock on the last trading day of the period and the exercise price of the options. This amount changes based on the price of our common stock.

Restricted stock units

Non-vested restricted stock units activity for the year ended December 31, 2021 was as follows:

(share data in thousands)	Number of shares	Weighted-average grant date fair value
Non-vested at beginning of period	2,490	\$ 3.77
Granted	1,102	7.69
Vested	(1,715)	9.44
Cancelled/forfeited	(73)	3.71
Non-vested at end of period	1,804	\$ 5.79

As of December 31, 2021, total compensation expense not yet recognized related to non-vested restricted stock units was \$5.5 million and the weighted-average period in which the expense is expected to be recognized is 1.7 years.

Performance-based restricted stock units

Performance-based restricted stock units activity for the year ended December 31, 2021 was as follows:

(share data in thousands)	Number of shares	Weighted-average grant date fair value
Non-vested at beginning of period	1,275	\$ 2.50
Exercised	(1,275)	2.50
Non-vested at end of period	—	\$ —

Performance-based, cash settled units

Cash-settled performance units activity for the year ended December 31, 2021 was as follows:

(share data in thousands)	Number of shares	Weighted-average grant date fair value
Non-vested at beginning of period	2	\$ 140.30
Granted	—	—
Vested	—	—
Cancelled/forfeited	(2)	140.30
Non-vested at end of period	—	\$ —

Stock Appreciation Rights

In December 2018, we granted stock appreciation rights to certain employees (“Employee SARs”) and to a non-employee related party, BRPI Executive Consulting, LLC (“Non-employee SARs”). The Employee SARs and Non-employee SARs both expire ten years after the grant date and primarily vest 100% upon completion after the required years of service. Upon vesting, the Employee SARs and Non-employee SARs may be exercised within 10 business days following the end of any calendar quarter during which the volume weighted average share price is greater than the share price goal. Upon exercise of the SARs, holders receive a cash-settled payment equal to the number of SARs that are being exercised multiplied by the difference between the stock price on the date of exercise minus the SARs base price. Employee SARs were issued under the Fourth Amended and Restated 2015 LTIP, and Non-employee SARs were issued under a Non-employee SARs agreement. The liability method was used to recognize the accrued compensation expense with cumulatively adjusted revaluations to the then current fair value at each reporting date through final settlement.

We used the following assumptions to determine the fair value of the SARs granted to employees and non-employee as of December 31, 2021 and 2020:

	Year ended December 31,	
	2021	2020
Risk-free interest rate	1.44 %	0.74 %
Expected volatility	53 %	50 %
Expected life in years	6.49	7.72
Suboptimal exercise factor	2.0x	2.0x

In making these assumptions, we based estimated volatility on the historical returns of the Company's stock price and selected guideline companies. We based risk-free rates on the corresponding U.S. Treasury spot rates for the expected duration at the date of grant, which we convert to a continuously compounded rate. We relied upon a suboptimal exercise factor, representing the ratio of the base price to the stock price at the time of exercise, to account for potential early exercise prior to the expiration of the contractual term. With consideration to the executive level of the SARs holders, a suboptimal exercise multiple of 2.0x was selected. Subject to vesting conditions, should the stock price achieve a value of 2.0x above the base price, we assume the holders will exercise prior to the expiration of the contractual term of the SARs. The expected term for the SARs is an output of our valuation model in estimating the time period that the SARs are expected to remain unexercised. Our valuation model assumes the holders will exercise their SARs prior to the expiration of the contractual term of the SARs.

As of December 31, 2021, the SARS are fully vested and their total intrinsic value is \$7.0 million.

NOTE 21 – PROVISION FOR INCOME TAXES

Income (loss) before income taxes includes the following:

(in thousands)	Year ended December 31,		
	2021	2020	2019
United States	\$ 30,655	\$ (65,591)	\$ (64,610)
Other than the United States	(1,341)	61,673	(59,837)
Income (loss) before income tax expense	\$ 29,314	\$ (3,918)	\$ (124,447)

Significant components of the provision for income taxes are as follows:

(in thousands)	Year ended December 31,		
	2021	2020	2019
Current:			
Federal ⁽¹⁾	1,760	\$ (21)	\$ 534
State	(141)	246	454
Foreign	4,649	3,737	3,705
Total current provision	6,268	3,962	4,693
Deferred:			
Federal ⁽²⁾	(103)	1,084	(257)
State ⁽³⁾	(8,772)	—	—
Foreign	383	3,133	850
Total deferred provision	(8,492)	4,217	593
Provision for income taxes	\$ (2,224)	\$ 8,179	\$ 5,286

⁽¹⁾ The 2020 amount reflects a benefit of \$0.6 million offsetting tax expense of \$0.6 million in discontinued operations pursuant to the guidance in paragraph 740-20-45-7 that requires all components, including discontinued operations, be considered when determining the tax benefit from a loss from continuing operations. The 2021 amount reflects estimated withholding taxes on the divestiture of Diamond Power Machine (Hubei) Co.

⁽²⁾ The 2020 amount reflects \$1.1 million of deferred tax expense as a result of the change in indefinite reinvestment assertion related to certain foreign subsidiaries.

⁽³⁾ The 2021 amount reflects a \$8.7 million of deferred tax benefit primarily attributable to a reduction in the valuation allowance on net operating losses and temporary deductible benefits in certain states that are now expected to be recovered.

The provision for income taxes differs from the amount computed by applying the statutory federal income tax rate to income (loss) before the provision for income taxes.

The sources and tax effects of the differences are as follows:

(in thousands)	Year ended December 31,		
	2021	2020	2019
Income tax benefit at federal statutory rate	\$ 6,156	\$ (823)	\$ (26,134)
State and local income taxes	1,054	346	3,205
Foreign rate differential	132	2,422	2,053
Intra-entity debt restructuring ⁽¹⁾	—	2,908	—
Deferred taxes - change in tax rate	(564)	8,512	9,799
Non-deductible (non-taxable) items	(122)	1,963	4,190
Tax credits	(34)	(2,939)	144
Valuation allowances	(13,136)	(17,498)	56,254
Luxembourg impairment of investments	—	(30,603)	(65,848)
Effect of DPMH sale	(1,090)	—	—
Accrual adjustments	—	405	(995)
Unrecognized tax benefits	150	37,387	(271)
Withholding taxes	3,881	1,416	1,331
Change in indefinite reinvestment assertion	(15)	1,084	—
Disallowed interest deductions	1,010	11,155	11,009
Return to provision and prior year true-up	556	(7,855)	9,875
Other	(202)	299	674
Income tax (benefit) expense	\$ (2,224)	\$ 8,179	\$ 5,286

⁽¹⁾ The 2020 amount reflects a restructuring of intercompany debt that resulted in the reduction of certain foreign net operating loss carryforwards.

Deferred income taxes reflect the tax effects of differences between the financial and tax bases of assets and liabilities.

Significant components of deferred tax assets and liabilities are as follows:

(in thousands)	Year ended December 31,	
	2021	2020
Deferred tax assets:		
Pension liability	\$ 41,520	\$ 50,849
Other accruals	10,683	12,989
Long-term contracts	—	1,121
Net operating loss carryforward	401,750	399,321
State net operating loss carry forward	23,705	23,956
Interest limitation carryforward	41,104	38,539
Foreign tax credit carryforward	5,381	7,312
Other tax credits	5,336	3,270
Lease liability	15,455	—
Other	4,810	8,478
Total deferred tax assets	\$ 549,744	\$ 545,835
Valuation allowance for deferred tax assets	(512,803)	(536,251)
Total deferred tax assets, net	\$ 36,941	\$ 9,584
Deferred tax liabilities:		
Property, plant and equipment	\$ 1,653	\$ 2,763
Right of use assets	14,574	—
Long-term contracts	7,045	—
Unremitted earnings	1,069	1,084
Intangibles	13,999	9,449
Total deferred tax liabilities	38,340	13,296
Net deferred tax liabilities	\$ (1,399)	\$ (3,712)

At December 31, 2021, the Company has foreign net operating loss (NOL) carryforward DTAs of approximately \$357.8 million available to offset future taxable income in certain foreign jurisdictions. Of these foreign NOL carryforwards, \$187.6 million do not expire. The remaining foreign NOLs will expire between 2022 and 2037.

As December 31, 2021, the Company has U.S. federal NOL carryforward DTAs of approximately \$43.9 million. Of this amount, \$20.7 million will expire in 2036 and 2037. The remaining amount of U.S. NOL carryforward does not expire. A portion of the net operating loss carryforward is limited under Code Section 382. Approximately \$19.7 million of our U.S. federal NOL carryforward is not subject to the Code Section 382 limitation.

At December 31, 2021, the Company has state NOL carryforward DTAs of \$23.7 million available to offset future taxable income in various jurisdictions. Of this amount, \$23.3 million will expire between 2022 and 2041.

At December 31, 2021, the Company has foreign tax credit carryforwards of \$5.4 million. These carryforwards will expire between 2022 and 2028.

At December 31, 2021, the Company has valuation allowances of \$512.8 million for deferred tax assets, which we expect will not be realized, through carrybacks, reversals of existing taxable temporary differences, estimates of future taxable income or tax-planning strategies. Deferred tax assets are evaluated for realizability under ASC 740, considering all positive and negative evidence. At December 31, 2021, our weighting of positive and negative evidence included an assessment of historical income by jurisdiction adjusted for nonrecurring items, as well as an evaluation of other qualitative factors such as the length and magnitude of pretax losses. The valuation allowances may be reversed in the future if sufficient positive evidence exists. Any reversal of our valuation allowance could be material to the income or loss for the period in which our assessment changes.

The net change during the year in the total valuation allowance is as follows:

(in thousands)	Year ended December 31,	
	2021	2020
Balance at beginning of period	\$ (536,251)	\$ (539,791)
Charges to costs and expenses	13,136	17,498
Charges to other accounts	10,312	(13,958)
Balance at end of period	\$ (512,803)	\$ (536,251)

Sections 382 and 383 of the Code limits, for U.S. federal income tax purposes, the annual use of NOL carryforwards (including previously disallowed interest carryforwards) and tax credit carryforwards, respectively, following an ownership change. Under Code Section 382, a company has undergone an ownership change if shareholders owning at least 5% of the company have increased their collective holdings by more than 50% during the prior three-year period. Based on information that is publicly available, the Company determined that a Section 382 ownership change occurred on July 23, 2019. As a result of this change in ownership, the Company estimated that the future utilization of our federal NOLs (and certain credits and previously disallowed interest deductions) will become limited to approximately \$1.2 million annually (\$0.3 million tax effected) The Company maintains a full valuation allowance on the majority of its U.S. deferred tax assets, including the deferred tax assets associated with the federal NOLs, credits and disallowed interest carryforwards.

Undistributed earnings of certain foreign subsidiaries amounted to approximately \$308.7 million. The Company no longer intends to assert indefinite reinvestment with respect to withholding taxes of \$1.1 million that could be assessed on the repatriation of \$11.3 million in undistributed earnings. The Company continues to assert indefinite reinvestment in the remaining \$297.4 million of existing earnings that are not expected to be distributed in the future. Upon repatriation of those earnings, in the form of dividends or otherwise, the Company would be subject to withholding taxes payable to various foreign countries. The Company expects to take the 100% dividends received deduction to offset any US federal taxable income on the undistributed earnings. Withholding taxes of approximately \$1.6 million would be payable upon remittance of these previously unremitted earnings.

We recognize the benefit of a tax position when we conclude that a tax position, based solely on its technical merits, is more-likely-than-not to be sustained upon examination. A recognized tax benefit is measured as the largest amount of benefit, on a cumulative probability basis, which is more likely-than-not to be realized upon settlement. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs.

Below is a tabular rollforward of the beginning and ending aggregate unrecognized tax benefits:

(in thousands)	Year ended December 31,		
	2021	2020	2019
Balance at beginning of period	\$ 39,013	\$ 1,229	\$ 1,500
Increases based on tax positions taken in the current year	—	37,900	29
Increases based on tax positions taken in prior years	242	—	27
Decreases based on tax positions taken in prior years	—	(29)	(223)
Decreases due to settlements with tax authorities	—	—	—
Decreases due to lapse of applicable statute of limitation	—	(87)	(104)
CTA/Translation	(2,807)	—	—
Balance at end of period	\$ 36,448	\$ 39,013	\$ 1,229

Unrecognized tax benefits of \$0.7 million would, if recognized, impact the effective tax rate. The remaining balance of unrecognized tax benefits relates to deferred tax assets that, if recognized, would require a full valuation allowance. It is not expected that the amount of unrecognized tax benefits will change significantly during the next 12 months. We recognize interest and penalties related to unrecognized tax benefits in our provision for income taxes; however, such amounts are not significant to any period presented.

Tax years 2015 through 2020 remain open to assessment by the United States Internal Revenue Service and various state and international tax authorities. We do not have any returns under examination for years prior to 2014. The United States

Internal Revenue Service has completed examinations of the federal tax returns of our former parent, BWXT, through 2014, and all matters arising from such examinations have been resolved.

NOTE 22 – CONTINGENCIES

Litigation Relating to Boiler Installation and Supply Contract

On December 27, 2019, a complaint was filed against Babcock & Wilcox by P.H. Glatfelter Company (“Glatfelter”) in the United States District Court for the Middle District of Pennsylvania, Case No. 1:19-cv-02215-JPW, alleging claims of breach of contract, fraud, negligent misrepresentation, promissory estoppel and unjust enrichment (the “Glatfelter Litigation”). The complaint alleges damages in excess of \$58.9 million. On March 16, 2020 we filed a motion to dismiss, and on December 14, 2020 the court issued its order dismissing the fraud and negligent misrepresentation claims and finding that, in the event that parties’ contract is found to be valid, Plaintiffs’ claims for damages will be subject to the contractual cap on liability (defined as the \$11.7 million purchase price subject to certain adjustments). On January 11, 2021, we filed our answer and a counterclaim for breach of contract, seeking damages in excess of \$2.9 million. We intend to continue to vigorously litigate the action. However, given the preliminary stage of the litigation, it is too early to determine if the outcome of the Glatfelter Litigation will have a material adverse impact on our consolidated financial condition, results of operations or cash flows.

SEC Investigation

As the Company previously disclosed, the U.S. SEC (“SEC”) had been conducting a formal investigation of the Company, focusing on the accounting charges and related matters involving the Company’s B&W Renewable segment from 2015-2019. On October 20, 2021, the SEC informed the Company that the staff does not intend to recommend any enforcement action against the Company.

Stockholder Derivative and Class Action Litigation

On April 14, 2020, a putative B&W stockholder (“Plaintiff”) filed a derivative and class action complaint against certain of the Company’s directors (current and former), executives and significant stockholders (“Defendants”) and the Company (as a nominal defendant). The action was filed in the Delaware Court of Chancery and is captioned Parker v. Avril, et al., C.A. No. 2020-0280-PAF (“Stockholder Litigation”). Plaintiff alleges that Defendants, among other things, did not properly discharge their fiduciary duties in connection with the 2019 rights offering and related transactions. The case is currently in discovery. We believe that the outcome of the Stockholder Litigation will not have a material adverse impact on our consolidated financial condition, results of operations or cash flows, net of any insurance coverage.

Russian Invasion of Ukraine

We do not currently have contracts directly with Russian entities or businesses and we currently do not do business in Russia directly. We believe the Company’s only involvement with Russia or Russian-entities, involves sales of our products in the amount of approximately \$3.1 million by a wholly-owned Italian subsidiary of the Company to non-Russian counterparties who may resell our products to Russian entities or perform services in Russia using our products. The economic sanctions and export-control measures and the ongoing invasion of Ukraine could impact our subsidiary’s rights and responsibilities under the contracts and could result in potential losses to the Company.

Other

Due to the nature of our business, we are, from time to time, involved in routine litigation or subject to disputes or claims related to our business activities, including, among other things: performance or warranty-related matters under our customer and supplier contracts and other business arrangements; and workers’ compensation, premises liability and other claims. Based on our prior experience, we do not expect that any of these other litigation proceedings, disputes and claims will have a material adverse effect on our consolidated financial condition, results of operations or cash flows.

NOTE 23 – COMPREHENSIVE INCOME

Gains and losses deferred in accumulated other comprehensive income (loss) ("AOCI") are generally reclassified and recognized in the Consolidated Statements of Operations once they are realized. The changes in the components of AOCI, net of tax, for the years ended of 2021, 2020, and 2019 were as follows:

(in thousands)	Currency translation loss	Net unrealized gain (loss) on derivative instruments	Net unrecognized loss related to benefit plans (net of tax)	Total
Balance at December 31, 2018	\$ (10,834)	\$ 1,362	\$ (1,960)	\$ (11,432)
Other comprehensive income (loss) before reclassifications	13,401	(1,367)	—	12,034
Reclassified from AOCI to net income (loss)	3,176	202	(1,857)	1,521
Amounts reclassified from AOCI to advanced billings on contracts	—	(197)	—	(197)
Net other comprehensive (loss) income	16,577	(1,362)	(1,857)	13,358
Balance at December 31, 2019	\$ 5,743	\$ —	\$ (3,817)	\$ 1,926
Other comprehensive loss before reclassifications	(53,318)	—	—	(53,318)
Reclassified from AOCI to net income (loss)	—	—	(998)	(998)
Net other comprehensive (loss) income	(53,318)	—	(998)	(54,316)
Balance at December 31, 2020	\$ (47,575)	\$ —	\$ (4,815)	\$ (52,390)
Other comprehensive income (loss) before reclassifications	(3,412)	—	676	(2,736)
Reclassified from AOCI to net income (loss)	(4,512)	—	816	(3,696)
Net other comprehensive income (loss)	(7,924)	—	1,492	(6,432)
Balance at December 31, 2021	\$ (55,499)	\$ —	\$ (3,323)	\$ (58,822)

The amounts reclassified out of AOCI by component and the affected Consolidated Statements of Operations line items are as follows (in thousands):

AOCI component	Line items in the Consolidated Statements of Operations affected by reclassifications from AOCI	Year ended December 31,		
		2021	2020	2019
Release of currency translation adjustment with the sale of business	Loss on sale of business	\$ 4,512	\$ —	\$ (3,176)
Derivative financial instruments	Other – net	—	—	(202)
Pension and post retirement adjustments, net of tax	Benefit plans, net	(816)	998	1,857
	Net (loss) income	\$ 3,696	\$ 998	\$ (1,521)

NOTE 24 – FAIR VALUE MEASUREMENTS

The following tables summarize our financial assets and liabilities carried at fair value, all of which were valued from readily available prices or using inputs based upon quoted prices for similar instruments in active markets (known as "Level 1" and "Level 2" inputs, respectively, in the fair value hierarchy established by the FASB Topic, *Fair Value Measurements and Disclosures*).

(in thousands)

Available-for-sale securities	December 31, 2021	Level 1	Level 2
Corporate notes and bonds	\$ 9,477	\$ 9,477	\$ —
Mutual funds	714	—	714
United States Government and agency securities	2,017	2,017	—
Total fair value of available-for-sale securities	\$ 12,208	\$ 11,494	\$ 714

(in thousands)

Available-for-sale securities	December 31, 2020	Level 1	Level 2
Corporate notes and bonds	\$ 6,139	\$ 6,139	\$ —
Mutual funds	636	—	636
Corporate Stocks	4,168	4,168	—
United States Government and agency securities	4,365	4,365	—
Total fair value of available-for-sale securities	\$ 15,308	\$ 14,672	\$ 636

Available-For-Sale Debt Securities

Our investments in available-for-sale debt securities are presented in *other assets* on our Consolidated Balance Sheets with contractual maturities ranging from 0-5 years.

Senior Notes

See Note 14 above for a discussion of our recent offerings of senior notes. The fair value of the senior notes is based on readily available quoted market prices as of December 31, 2021.

(in thousands)

Senior Notes	December 31, 2021	
	Carrying Value	Estimated Fair Value
8.125% Senior Notes due 2026 ('BWSN')	\$ 186,219	\$ 195,250
6.50% Senior Notes due 2026 ('BWNB')	\$ 151,440	\$ 150,229

Other Financial Instruments

We used the following methods and assumptions in estimating our fair value disclosures for our other financial instruments:

- Cash and cash equivalents and restricted cash and cash equivalents.* The carrying amounts that we have reported in the accompanying Consolidated Balance Sheets for cash and cash equivalents and restricted cash and cash equivalents approximate their fair values due to their highly liquid nature.
- Last Out Term Loans and Revolving Debt.* We base the fair values of debt instruments on quoted market prices. Where quoted prices are not available, we base the fair values on Level 2 inputs such as the present value of future cash flows discounted at estimated borrowing rates for similar debt instruments or on estimated prices based on current yields for debt issues of similar quality and terms. The fair value of our Last Out Term Loans and Revolving Debt approximated their carrying value at December 31, 2020.

- *Warrants.* The fair value of the warrants was established using the Black-Scholes option pricing model value approach.
- *Contingent consideration:* In connection with the Fosler Construction Company acquisition, the Company agreed to pay contingent consideration based on the achievement of targeted revenue thresholds for the year ended December 31, 2022. The range of undiscounted amounts the Company could be required to pay under the contingent consideration arrangement is between \$0.0 million and \$10.0 million. As of December 31, 2021, the fair value of the contingent earn-out liability is \$9.2 millions and is classified as a component of other non-current liabilities in the Company's Consolidated Balance Sheets. The fair value measurement of the contingent consideration related to the Fosler Construction Company acquisition was categorized as a Level 3 liability, as the measurement amount is based primarily on significant inputs not observable in the markets. The Company evaluates the fair value of contingent consideration and the corresponding liability each reporting period using an option pricing framework. The Company estimates projections during the earn-out period and volatility within the option pricing model captures variability in the potential pay-out. The analysis considers a discount rate applicable to the underlying projections and the risk of the Company paying the future liability.

NOTE 25 – RELATED PARTY TRANSACTIONS

The Company believes its transactions with related parties were conducted on terms equivalent to those prevailing in an arm's length transaction.

Transactions with B. Riley

Based on its Schedule 13D filings with the SEC, B. Riley beneficially owns 30.3% of our outstanding common stock as of December 31, 2021.

B. Riley was party to the Last Out Term Loans under our prior A&R Credit Agreement, as described in Note 15.

We entered into an agreement with BRPI Executive Consulting, LLC, an affiliate of B. Riley, on November 19, 2018 and amended the agreement on November 9, 2020 to retain the services of Mr. Kenny Young, to serve as our Chief Executive Officer until December 31, 2023, unless terminated by either party with thirty days written notice. Under this agreement, payments are \$0.75 million per annum, paid monthly. Subject to the achievement of certain performance objectives as determined by the Compensation Committee of the Board, a bonus or bonuses may also be earned and payable to BRPI Executive Consulting, LLC. In June 2019, we granted a total of \$2.0 million in cash bonuses to BRPI Executive Consulting LLC for Mr. Young's performance and services.

Total fees associated with B. Riley related to the Last Out Term Loans and services of Mr. Kenny Young, both as described above, were \$0.8 million, \$7.4 million and \$12.4 million for the twelve months ended December 31, 2021, 2020 and 2019, respectively.

On November 13, 2020 we entered into an agreement with B. Riley Principal Merger Corp. II, an affiliate of B. Riley, to purchase 200,000 shares of Class A common stock of Eos Energy Storage LLC for an aggregate purchase price of \$2.0 million. The shares were sold in January 2021 for which the Company recognized net proceeds of \$4.5 million.

The public offering of our 8.125% Senior Notes in February 2021, as described in Note 14, was conducted pursuant to an underwriting agreement dated February 10, 2021, between us and B. Riley Securities, Inc., an affiliate of B. Riley, as representative of several underwriters. At the closing date on February 12, 2021, we paid B. Riley Securities, Inc. \$5.2 million for underwriting fees and other transaction cost related to the 8.125% Senior Notes offering.

The public offering of our common stock, as described in Note 18, was conducted pursuant to an underwriting agreement dated February 9, 2021, between us and B. Riley Securities, Inc., as representative of the several underwriters. Also on February 12, 2021, we paid B. Riley Securities, Inc. \$9.5 million for underwriting fees and other transaction costs related to the offering.

On February 12, 2021, the Company and B. Riley entered into the Exchange Agreement pursuant to which we agreed to issue to B. Riley \$35.0 million aggregate principal amount of 8.125% Senior Notes in exchange for a deemed prepayment of \$35.0 million of our existing Tranche A term loan with B. Riley Financial in the Exchange, as described in Note 14.

On March 31, 2021, we entered into a sales agreement with B. Riley Securities, Inc., a related party, in which we may sell, from time to time, up to an aggregated principal amount of \$150.0 million of 8.125% Senior Notes due 2026 to or through B. Riley Securities, Inc., as described in Note 14. As of December 31, 2021, we paid B. Riley Securities, Inc. \$0.5 million for underwriting fees and other transaction costs related to the offering.

The public offering of our 7.75% Series A Cumulative Perpetual Preferred Stock, as described in Note 17, was conducted pursuant to an underwriting agreement dated May 4, 2021, between us and B. Riley Securities, Inc., as representative of several underwriters. At the closing date on May 2021, we paid B. Riley Securities, Inc. \$4.3 million for underwriting fees and other transaction cost related to the Preferred Stock offering.

On May 26, 2021, we completed the additional sale of 444,700 shares of our Preferred Stock, related to the grant to the underwriters, as described in Note 17, and paid B. Riley Securities, Inc. \$0.4 million for underwriting fees in conjunction with the transaction.

On June 1, 2021, we issued 2,916,880 shares of the Company's 7.75% Series A Cumulative Perpetual Preferred Stock and paid \$0.4 million in cash due to B. Riley, a related party, in exchange for a deemed prepayment of \$73.3 million of our then existing Last Out Term Loans and paid \$0.9 million in cash for accrued interest, as described in Note 17.

On June 30, 2021, we entered into new Debt Facilities, as described in Note 16. In connection with the Company's entry into the Debt Facilities, B. Riley Financial, Inc., an affiliate of B. Riley, has provided a guaranty of payment with regard to the Company's obligations under the Reimbursement Agreement, as describe in Note 16. Under a fee letter with B. Riley, the Company shall pay B. Riley \$0.9 million per annum in connection with the B. Riley Guaranty.

On July 7, 2021, we entered into a sales agreement with B. Riley Securities, Inc., a related party, in which we may sell, from time to time, up to an aggregated principal amount of \$76 million of Preferred Stock to or through B. Riley Securities, Inc., as described in Note 17. As of December 31, 2021, we paid B. Riley Securities, Inc. \$0.2 million for underwriting fees and other transaction costs related to the offering.

The public offering of our 6.50% Senior Notes in December 2021, as described in Note 14, was conducted pursuant to an underwriting agreement dated December 8, 2021, between us and B. Riley Securities, Inc., an affiliate of B. Riley, as representative of several underwriters. At the closing date on December 13, 2021, we paid B. Riley Securities, Inc. \$5.5 million for underwriting fees and other transaction cost related to the 6.50% Senior Notes offering.

On December 17, 2021, B. Riley Financial, Inc. entered into a General Agreement of Indemnity (the "Indemnity Agreement"), between us and AXA-XL and or its affiliated associated and subsidiary companies (collectively the "Surety"). Pursuant to the terms of the Indemnity Agreement, B. Riley will indemnify the Surety for losses the Surety may incur as a result of providing a payment and performance bond in an aggregate amount not to exceed €30.0 million in connection with our proposed performance on a specified project. In consideration of B. Riley's execution of the Indemnity Agreement, we paid B. Riley a fee of \$1.7 million following the issuance of the bond by the Surety, which represents approximately 5.0% of the bonded obligations, to be amortized over the term of the agreement.

On December 28, 2021, we received a notice that the underwriters of the 6.50% Senior Notes had elected to exercise their over-allotment option for an additional \$11.4 million in aggregate principal amount of the Senior Notes. At the closing date on December 30, 2021, we paid B. Riley Securities, Inc. \$0.5 million for underwriting fees and other transaction cost related to the 6.50% Senior Notes over-allotment.

Transactions with Vintage Capital Management, LLC

On March 26, 2021, Vintage and B. Riley completed a transaction pursuant to which B. Riley agreed to purchase from Vintage, and Vintage agreed to sell to B. Riley, all 10,720,785 shares of our common stock owned by Vintage.

Based on its Schedule 13D filings, Vintage beneficially owns 0% of our outstanding common stock as of December 31, 2021.

NOTE 26 – ACQUISITIONS, ASSETS HELD FOR SALE, DIVESTITURES AND DISCONTINUED OPERATIONS

Acquisitions

Fosler Construction

On September 30, 2021, we acquired a 60% controlling ownership stake in Illinois-based solar energy contractor Fosler Construction Company Inc. (“Fosler Construction”). Fosler Construction provides commercial, industrial and utility-scale solar services and owns two community solar projects in Illinois being developed under the Illinois Solar for All program. Fosler Construction was founded in 1998 and employs approximately 120 people with a track record of successfully completing solar projects profitably with union labor and aligning its model with a growing number of renewable project incentives in the U.S. We believe Fosler Construction is positioned to capitalize on the high-growth solar market in the U.S. and that the acquisition aligns with B&W’s aggressive growth and expansion of our clean and renewable energy businesses. Fosler Construction is reported as part of our B&W Renewable segment, and will operate under the name Fosler Solar, a Babcock and Wilcox company.

The total fair value of consideration for the acquisition is \$36.0 millions, including \$27.2 million in cash plus \$8.8 million in estimated fair value of the contingent consideration arrangement. In connection with the acquisition, the Company agreed to pay contingent consideration based on the achievement of targeted revenue thresholds for the year ended December 31, 2022. The range of undiscounted amounts the Company could be required to pay under the contingent consideration arrangement is between \$0.0 million and \$10.0 million.

We estimated fair values primarily using the discounted cash flow method at September 30, 2021 for the preliminary allocation of consideration to the assets acquired and liabilities assumed. During the measurement period, we will continue to obtain information to assist in finalizing the fair value of assets acquired and liabilities assumed, which may differ materially from these preliminary estimates. If we determine any measurement period adjustments are material, we will apply those adjustments, including any related impacts to net income, in the reporting period in which the adjustments are determined.

VODA

On November 30, 2021, we acquired 100% ownership of VODA A/S (“VODA”) through our wholly-owned subsidiary, B&W PGG Luxembourg Finance SARL, for approximately \$32.9 million. VODA is a Denmark-based multi-brand aftermarket parts and services provider, focusing on energy-producing incineration plants including waste-to-energy, biomass-to-energy or other fuels, providing service, engineering services, spare parts as well as general outage support and management. VODA has extensive experience in incineration technology, boiler and pressure parts, SRO, automation, and performance optimization. VODA employs approximately 65 people mainly in Denmark and Sweden. We believe VODA will solidify our platform for our renewable service business in Europe and that the acquisition aligns with B&W’s aggressive growth and expansion of our clean and renewable energy businesses. VODA is reported as part of our B&W Renewable segment. We plan to form B&W Renewable Services to integrate VODA and our waste-to-energy and biomass aftermarket services businesses.

The provisional measurements noted in the table below are preliminary and subject to modification in the future. The preliminary purchase price allocation to assets acquired and liabilities assumed in the acquisitions were:

(in thousands)	Purchase Price Allocation			
	Purchase Price Allocation at September 30, 2021	Purchase Price Allocation Adjustments since September 30, 2021 ⁽³⁾	Purchase Price Allocation at December 31, 2021	Purchase Price Allocation at December 31, 2021
	Fosler Construction			VODA
Cash	\$ —	\$ —	\$ —	\$ 4,737
Accounts receivable	1,904	121	2,025	5,654
Contracts in progress	1,363	(158)	1,205	258
Other current assets	1,137	(835)	302	825
Property, plant and equipment	9,527	(14)	9,513	253
Goodwill ⁽¹⁾	43,230	8,749	51,979	17,176
Other assets	17,497	(4,600)	12,897	14,321
Right of use assets	1,093	—	1,093	433
Debt	(7,625)	—	(7,625)	—
Current liabilities	(5,073)	(390)	(5,463)	(5,181)
Advance billings on contracts	(1,557)	238	(1,319)	(2,036)
Non-current lease liabilities	(1,730)	—	(1,730)	(302)
Other non-current liabilities	(4,112)	1,218	(2,894)	(3,264)
Non-controlling interest ⁽²⁾	(22,262)	(1,734)	(23,996)	—
Net acquisition cost	\$ 33,392	\$ 2,595	\$ 35,987	\$ 32,874

⁽¹⁾ Goodwill is calculated as the excess of the purchase price over the net assets acquired. With respect to the Fosler Construction acquisition, goodwill represents Fosler's ability to significantly expand EPC and O&M services among new customers across the U.S. by leveraging B&W's access to capital and geographic reach. With respect to the VODA acquisition, goodwill represents VODA's ability to significantly expand within the aftermarket parts and services industries by leveraging B&W's access to capital and existing platform within the renewable service market. Goodwill is not expected to be deductible for U.S. federal income tax purposes.

⁽²⁾ The fair value of the non-controlling interest was derived based on the fair value of the 60% controlling interest acquired by B&W. The transaction price paid by B&W reflects a Level 2 input involving an observable transaction involving an ownership interest in Fosler Construction. Also, as described above, a portion of the purchase consideration relates to the contingent consideration.

⁽³⁾ Our preliminary purchase price allocation changed due to additional information and further analysis.

Intangible assets are included in other assets above and consists of the following:

(in thousands)	Fosler Construction		VODA	
	Estimated Acquisition Date Fair Value	Weighted Average Estimated Useful Life	Estimated Acquisition Date Fair Value	Weighted Average Estimated Useful Life
Customer Relationships	9,400	12 years	13,855	11 years
Tradename	—	—	228	3 years
Backlog	3,100	5 months	—	—
Total intangible assets ⁽¹⁾	\$ 12,500		\$ 14,083	

⁽¹⁾ Intangible assets were valued using the income approach, which includes significant assumptions around future revenue growth, profitability, discount rates and customer attrition. Such assumptions are classified as level 3 inputs within the fair value hierarchy.

The Company incurred approximately \$0.7 million and \$0.4 million of costs related to the acquisitions of VODA and Fosler Construction, respectively, which were recorded as a component of our operating expenses in our Consolidated Statement of Operations for 2021.

Acquisitions - Subsequent Event

On February 1, 2022, we acquired 100% ownership of Fossil Power Systems, Inc. ("FPS") for approximately \$59.1 million, excluding working capital adjustments. FPS is a leading designer and manufacturer of hydrogen, natural gas and renewable pulp and paper combustion equipment including ignitors, plant controls and safety systems based in Dartmouth, Nova Scotia, Canada.

On February 28, 2022, we acquired 100% ownership of Optimus Industries, LLC for approximately \$19 million, excluding working capital adjustments. Optimus designs and manufactures waste heat recovery products for use in power generation, petrochemical, and process industries, including package boilers, watertube and firetube waste heat boilers, economizers, superheaters, waste heat recovery equipment and sulfuric acid plants and is based in Tulsa, Oklahoma and Chanute, Kansas. Optimus Industries, LLC will be reported as part of our B&W Thermal segment.

Assets Held for Sale

Certain real property assets for the Copley, Ohio location were sold on March 15, 2021 for \$4.0 million. We received \$3.3 million of net proceeds after adjustments and recognized a gain on sale of \$1.9 million. In conjunction with the sale, we executed a leaseback agreement commencing March 16, 2021 and expiring on March 31, 2033. These assets were treated as *assets held for sale* on our Consolidated Balance Sheets as of December 31, 2020.

Certain real property assets for the Lancaster, Ohio location were sold on August 13, 2021 for \$18.9 million. We received \$15.8 million of net proceeds after adjustments and expenses and recognized a gain on sale of \$13.9 million. In conjunction with the sale, we executed a leaseback agreement commencing August 13, 2021 and expiring on August 31, 2041. These assets were treated as *assets held for sale* on our Consolidated Balance Sheets as of December 31, 2020.

In December 2019, we determined that a small business within the B&W Thermal segment met the criteria to be classified as held for sale. At December 31, 2020, the carrying value of the net assets planned to be sold approximated the estimated fair value less costs to sell. Refer to *Divestitures* below as this sale closed March 5, 2021.

The following table summarizes the carrying value of the assets and liabilities held for sale at December 31, 2020:

(in thousands)	December 31, 2020
Accounts receivable – trade, net	\$ 2,103
Accounts receivable – other	86
Contracts in progress	458
Inventories	1,676
Other current assets	405
Current assets held for sale	<u>4,728</u>
Net property, plant and equipment	10,365
Intangible assets	759
Right-of-use-asset	32
Non-current assets held for sale	<u>11,156</u>
Total assets held for sale	<u>\$ 15,884</u>
Accounts payable	\$ 5,211
Accrued employee benefits	178
Advance billings on contracts	370
Accrued warranty expense	466
Operating lease liabilities	32
Other accrued liabilities	2,048
Current liabilities held for sale	<u>8,305</u>
Total liabilities held for sale	<u>\$ 8,305</u>

Divestitures

Effective March 5, 2021, we sold all of the issued and outstanding capital stock of Diamond Power Machine (Hubei) Co., Inc, for \$2.8 million. We received \$2.0 million in gross proceeds before expenses and recorded an \$0.8 million favorable contract asset for the amortization period from March 8, 2021 through December 31, 2023. For the twelve months ended December 31, 2021, we recognized a \$1.8 million pre-tax loss, inclusive of the recognition of \$4.5 million of currency translation adjustment, on the sale of the business and after consideration of certain working capital adjustments that are in dispute. Additional adjustments may be necessary as this is finalized.

On March 17, 2020, we fully settled the remaining escrow associated with the sale of PBRRC and received \$4.5 million in cash.

Discontinued Operations

On April 6, 2020, we fully settled the remaining escrow associated with the sale of the MEGTEC and Universal businesses and received \$3.5 million in cash.

NOTE 27 – NEW ACCOUNTING STANDARDS

We adopted the following accounting standard during the year ended December 31, 2021:

Effective January 1, 2021 we adopted ASU 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*. The amendments in this update simplify the accounting for income taxes by removing exceptions related to the incremental approach for intra-period tax allocation, certain deferred tax liabilities, and the general methodology for calculating income taxes in an interim period. The amendment also provides simplification related to accounting for franchise (or similar) tax, evaluating the tax basis step up of goodwill, allocation of consolidated current and deferred tax expense, reflection of the impact of enacted tax law or rate changes in annual effective tax rate calculations in the interim period that includes enactment date, and other minor codification improvements. The impact of this standard on our consolidated financial statements was immaterial.

In March 2021, the FASB issued ASU 2021-01, *Reference Rate Reform (Topic 848): Scope*. The amendments in this update clarify that certain optional expedients and exceptions in Topic 848 for contract modifications and hedge accounting apply to derivatives that are affected by the discounting transition. This update is an amendment to ASU 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform of Financial Reporting*, which was issued in March 2020 and provides optional expedients and exceptions for applying generally accepted accounting principles to contracts, hedging relationships, and other transactions affected by reference rate reform if certain criteria are met. The amendments in the updates apply only to contracts, hedging relationships, and other transactions that reference LIBOR or another reference rate expected to be discontinued because of reference rate reform. The expedients and exceptions provided by the updates do not apply to contract modifications made and hedging relationships entered into or evaluated after December 31, 2022, except for hedging relationships existing as of December 31, 2022, that an entity has elected certain optional expedients for and that are retained through the end of the hedging relationship. As of December 31, 2021, we have not yet elected any optional expedients provided in the standard. We will apply the accounting relief as relevant contract and hedge accounting relationship modifications are made during the reference rate reform transition period. We do not expect the standard to have a material impact on our consolidated financial statements.

In May 2021, the FASB issued ASU 2021-04, *Earnings Per Share (Topic 260), Debt-Modifications and Extinguishments (Subtopic 470-50), Compensation-Stock Compensation (Topic 718), and Derivatives and Hedging-Contracts in Equity's Own Equity (Subtopic 815-40): Issuer's Accounting for Certain Modifications or Exchanges of Freestanding Equity-Classified Written Call Options (a consensus of the FASB Emerging Issues Task Force)*. The amendments in this update affect all entities that issue freestanding written call options that are classified in equity. Specifically, the amendments affect those entities when a freestanding equity-classified written call option is modified or exchanged and remains equity classified after the modification or exchange. The amendments that relate to the recognition and measurement of EPS for certain modifications or exchanges of freestanding equity-classified written call options affect entities that present EPS in accordance with the guidance in *Earnings Per Share (Topic 260)*. The amendments in this update do not apply to modifications or exchanges of financial instruments that are within the scope of another Topic. That is, accounting for those instruments continues to be subject to the requirements in other Topics. The amendments in this update do not affect a holder's accounting for freestanding call options. The update is applicable to B&W as we have previously issued freestanding written call options. As of December 31, 2021, these options remain unexercised and we will apply the accounting standard as freestanding written call options are modified or exchanged. We do not expect the standard to have a material impact on our consolidated financial statements.

New accounting standards not yet adopted that could affect our Consolidated Financial Statements in the future are summarized as follows:

In October 2021, the FASB issued ASU 2021-08, *Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers*. The amendment in this update provides an exception to fair value measurement for contract assets and contract liabilities (i.e., deferred revenue) acquired in a business combination. As a result, contract assets and contract liabilities will be recognized and measured by the acquirer in accordance with ASC 606, Revenue from Contracts with Customers. The amendment also improves consistency in revenue recognition in the post-acquisition period for acquired contracts as compared to contracts entered into after the business combination. The amendment in this update is effective for public business entities in January 2023; all other entities have an additional year to adopt. Early adoption is permitted; however, if the new guidance is adopted in an interim period, it is required to be applied retrospectively to all business combinations within the year of adoption. This amendment is effective for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. We are currently evaluating the impact of the standard on our consolidated financial statements.

In August 2020, the FASB issued ASU 2020-06, *Debt – Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging – Contracts in Entity’s Own Equity (Subtopic 815 – 40)*. The amendments in this update simplify the accounting for certain financial instruments with characteristics of liabilities and equity, including convertible instruments and contracts on an entity’s own equity by removing major separation models required under current U.S. GAAP. The amendments also improve the consistency of diluted earnings per share calculations. The amendments in this update are effective for public business entities that meet the definition of an SEC filer, excluding entities eligible to be smaller reporting companies as defined by the SEC, for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years. For all other entities, the amendments are effective for fiscal years beginning after December 15, 2023, including interim periods within those fiscal years. Early adoption is permitted, but no earlier than fiscal years beginning after December 15, 2020, including interim periods within those fiscal years. We are currently evaluating the impact of the standard on our consolidated financial statements.

In November 2018, the FASB issued ASU 2018-19, *Codification Improvements to Topic 326: Financial Instruments - Credit Losses*. This update is an amendment to the new credit losses standard, ASU 2016-13, *Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, that was issued in June 2016 and clarifies that operating lease receivables are not within the scope of Topic 326. The new credit losses standard changes the accounting for credit losses for certain instruments. The new measurement approach is based on expected losses, commonly referred to as the current expected credit loss (CECL) model, and applies to financial assets measured at amortized cost, including loans, held-to-maturity debt securities, net investment in leases, and reinsurance and trade receivables, as well as certain off-balance sheet credit exposures, such as loan commitments. The standard also changes the impairment model for available-for-sale debt securities. The provisions of this standard will primarily impact the allowance for doubtful accounts on our trade receivables, contracts in progress, and potentially our impairment model for available-for-sale debt securities (to the extent we have any upon adoption). For public, smaller reporting companies, this standard is effective for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. We are currently evaluating the impact of both standards on our consolidated financial statements.

Item 9A. Controls and Procedures

Disclosure Controls and Procedures

As of the end of the period covered by this report, the Company's management, with the participation of our Chief Executive Officer and the Chief Financial Officer, has evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as that term is defined in Rules 13a-15(e) and 15d-15(e) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the "Exchange Act")). Our disclosure controls and procedures, by their nature, can provide only reasonable assurance regarding the control objectives. It should be noted that the design of any system of disclosure controls and procedures is based in part upon various assumptions about the likelihood of future events, and we cannot assure that any design will succeed in achieving its stated goals under all potential future conditions, regardless of how remote.

Based on the evaluation referred to above, our Chief Executive Officer and Chief Financial Officer concluded that the design and operation of our disclosure controls and procedures are effective as of December 31, 2021 to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the Securities and

Exchange Commission, and such information is accumulated and communicated to management as appropriate to allow timely decisions regarding disclosure.

Management's Report on Internal Control Over Financial Reporting

B&W's management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934, as amended). Our internal control over financial reporting includes, among other things, policies and procedures for conducting business, information systems for processing transactions and an internal audit department. Mechanisms are in place to monitor the effectiveness of our internal control over financial reporting and actions are taken to remediate identified internal control deficiencies. Our procedures for financial reporting include the involvement of senior management, our Audit and Finance Committee and our staff of financial and legal professionals. Our financial reporting process and associated internal controls were designed to provide reasonable assurance to management and the Board of Directors regarding the reliability of financial reporting and the preparation of our Consolidated Financial Statements for external reporting in accordance with accounting principles generally accepted in the United States of America.

On September 30, 2021, we acquired a 60% controlling ownership in Fosler Construction and on November 30, 2021, we acquired 100% ownership of VODA, as described in Note 26 of the Consolidated Financial Statements in Part I of this report. In accordance with the SEC's general guidance that an assessment of a recently acquired business may be omitted from our internal control over financial reporting scope in the year of acquisition we excluded the acquired businesses from management's report on internal control over financial reporting.

Management, with the participation of our principal executive and financial officers, assessed the effectiveness of our internal control over financial reporting as of December 31, 2021. Management based its assessment on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework). Because of its inherent limitations, a system of internal control over financial reporting can provide only reasonable assurance as to its effectiveness and may not prevent or detect misstatements. Further, because of changing conditions, effectiveness of internal control over financial reporting may vary over time. Based on our assessment, management has concluded that B&W's internal control over financial reporting was effective at the reasonable assurance level described above as of December 31, 2021.

Attestation Report of Independent Registered Public Accounting Firm

The effectiveness of our internal control over financial reporting as of December 31, 2021 has been audited by Deloitte & Touche LLP, our independent registered public accounting firm, as stated in their report, which is included in Item 8, Financial Statements and Supplementary Data under the heading "Report of Independent Registered Public Accounting Firm," and is incorporated herein by reference.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting during the year ended December 31, 2021 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting. We have not experienced any material impact to our internal controls over financial reporting, despite the fact that some of our team members are working remotely in response to the COVID-19 pandemic. In addition, during 2021, the Company outsourced certain support functions to external service providers of which some were still in transition as of December 31, 2021. We are continually monitoring and assessing these situations on our internal controls to ensure their operating effectiveness.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and the Board of Directors of Babcock & Wilcox Enterprises, Inc.:

Opinion on Internal Control over Financial Reporting

We have audited the internal control over financial reporting of Babcock & Wilcox Enterprises, Inc. (the "Company") as of December 31, 2021, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). In our opinion, the Company maintained, in

all material respects, effective internal control over financial reporting as of December 31, 2021, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by COSO.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated financial statements as of and for the year ended December 31, 2021, of the Company and our report dated March 8, 2022, expressed an unqualified opinion on those financial statements and included an explanatory paragraph regarding the Company's change in accounting principle.

As described in Item 9A, management excluded from its assessment the internal control over financial reporting at Fosler Construction Company Inc. and VODA A/S, which were acquired on September 30, 2021, and November 30, 2021, respectively, and whose financial statements constitute approximately 14% of total assets and 2% of revenues of the consolidated financial statement amounts as of and for the year ended December 31, 2021. Accordingly, our audit did not include the internal control over financial reporting at these acquired entities.

Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Item 9A. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

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

Definition and Limitations of Internal Control over Financial Reporting

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

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

/s/ Deloitte & Touche LLP

Cleveland, Ohio

March 8, 2022

Item 9B. Other Information

On March 2, 2022, our Board of Directors approved an amendment to our Amended and Restated Bylaws of Babcock & Wilcox Enterprises, Inc. (the “Amendment”). Pursuant to such amendment, the entirety of Section 2.10(e) was deleted. As a result of the Amendment, our Bylaws no longer include an age limitation for members of our Board of Directors. The effective date of the Amendment is March 2, 2022. A complete copy of the Bylaws reflecting the Amendment is attached to this Annual Report on Form 10-K as Exhibit 3.4.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

The information required by this item with respect to directors is incorporated by reference to the material appearing under the heading “Election of Directors” in the Proxy Statement for our 2021 Annual Meeting of Stockholders. The information required by this item with respect to compliance with section 16(a) of the Securities and Exchange Act of 1934, as amended, is incorporated by reference to the material appearing under the heading “Section 16(a) Beneficial Ownership Compliance” in the Proxy Statement for our 2022 Annual Meeting of Stockholders. The information required by this item with respect to the Audit Committee and Audit and Finance Committee financial experts is incorporated by reference to the material appearing in the “Director Independence” and “Audit and Finance Committee” sections under the heading “Corporate Governance –Board of Directors and Its Committees” in the Proxy Statement for our 2021 Annual Meeting of Stockholders.

We have adopted a Code of Business Conduct for our employees and directors, including, specifically, our chief executive officer, our chief financial officer, our chief accounting officer, and our other executive officers. Our code satisfies the requirements for a “code of ethics” within the meaning of SEC rules. A copy of the code is posted on our web site, www.babcock.com under “Investor Relations – Corporate Governance – Highlights.” We intend to disclose promptly on our website any amendments to, or waivers of, the code covering our chief executive officer, chief financial officer and chief accounting officer.

EXECUTIVE OFFICERS

Our executive officers and their ages as of March 1, 2022, are as follows:

Name	Age	Position
Kenneth Young	58	Chairman and Chief Executive Officer
Louis Salamone	75	Executive Vice President, Chief Financial Officer and Chief Accounting Officer
Jimmy B. Morgan	53	Executive Vice President and Chief Operating Officer
John J. Dziejewicz	56	Executive Vice President, General Counsel and Corporate Secretary

Kenneth Young has served as our Chief Executive Officer since November 2018 and as the Chairman of our Board of Directors since September 2020. Mr. Young also serves as the President of B. Riley Financial, Inc. (“B. Riley”), a provider of collaborative financial services and solutions, since July 2018, and as Chief Executive Officer of B. Riley’s subsidiary, B. Riley Principal Investments, since October 2016. From August 2008 to March 2016, Mr. Young served as the President and Chief Executive Officer of Lightbridge Communications Corporation (f/k/a LCC International, Inc.), a provider of integrated end-to-end solutions for wireless voice and data communications networks. Mr. Young has served as a member of the boards of directors of Globalstar, Inc. since 2015, Orion Energy Systems, Inc. since 2017, Liberty Tax, Inc. since 2018 and bebe stores, inc. since 2018. Mr. Young previously served as a member of the boards of directors of B. Riley from 2015 to 2016 and Standard Diversified Opportunities Inc. from 2015 to 2017.

Louis Salamone has served as our Executive Vice President, Chief Financial Officer and Chief Accounting Officer since August 2019. Before that, Mr. Salamone served as our Chief Financial Officer since February 2019. Prior to that, Mr. Salamone served as the Company’s Executive Vice President of Finance since November 2018. Mr. Salamone also served as an advisor to MDx Diagnostics, LLC, a provider of medical devices, from December 2017 until February 2019. From April 2013 until December 2017, Mr. Salamone served as Chief Financial Officer of CityMD, an urgent care provider. Prior to joining CityMD, Mr. Salamone was Vice President and Chief Financial Officer of OpenPeak Inc., a provider of mobile cybersecurity solutions, from April 2009 until March 2013, and Executive Vice President and Chief Financial Officer of LCC, from June 2006 until April 2009.

Jimmy B. Morgan has served as Chief Operating Officer of The Babcock & Wilcox Company since August 2020 and was additionally named Executive Vice President on January 1, 2022. He has also served as Managing Director of our Babcock & Wilcox Vølund subsidiary since March 2020. Previously, Mr. Morgan served as our Senior Vice President, Babcock & Wilcox from January 2019 to August 2020. From December 2016 until January 2019, Mr. Morgan served as Senior Vice President, Renewable, with responsibility for the company's Babcock & Wilcox Vølund subsidiary and for Babcock & Wilcox's operations and maintenance services businesses. From August 2016 to December 2016, he served as Senior Vice President, Operations. He was Vice President, Operations from May 2016 to August 2016 and was Vice President and General Manager of Babcock & Wilcox Construction Co., Inc. from February 2016 to May 2016. Before joining Babcock & Wilcox, he was President of Allied Technical Resources, Inc., a technical staffing company, from September 2013 to January 2016. Previous positions included serving as Chief Operating Officer with BHI Energy, Vice President of Installation and Modification Services with Westinghouse Electric Company, and as Managing Director for AREVA T&D. He began his career with Duke Energy.

John J. Dziewisz served as our Senior Vice President and Corporate Secretary since February 1, 2020. He was additionally named Executive Vice President on January 1, 2022 and the Company's General Counsel on January 27, 2022. He also serves as the Company's Chief Compliance Officer. Previously, Mr. Dziewisz served as the General Counsel of The Babcock & Wilcox Company from February 2020 to January 2022, as well as our Vice President, Assistant General Counsel & Chief Compliance Officer from January 2019 to February 2020. From June 2013 until January 2019, Mr. Dziewisz served as Assistant General Counsel, Operations & Intellectual Property. From June 2005 until June 2013, Mr. Dziewisz served as Managing Attorney with the Company. Mr. Dziewisz joined the Company in 1997.

Item 11. Executive Compensation

The information required by this item is incorporated by reference to the material appearing under the headings "Compensation of Directors" and "Compensation of Executive Officers" in the Proxy Statement for our 2022 Annual Meeting of Stockholders.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The following table provides information on our equity compensation plans as of December 31, 2021:

(share data in thousands)

Plan Category	Equity Compensation Plan Information	Equity compensation plans approved by security holders
Number of securities to be issued upon exercise of outstanding options and rights		2,093
Weighted-average exercise price of outstanding options and rights		\$19.11
Number of securities remaining available for future issuance		326

The other information required by this item is incorporated by reference to the material appearing under the headings "Security Ownership of Directors and Executive Officers" and "Security Ownership of Certain Beneficial Owners" in the Proxy Statement for our 2022 Annual Meeting of Stockholders.

Item 13. Certain Relationships and Related Transactions, and Director Independence

Information required by this item is incorporated by reference to the material appearing under the headings "Corporate Governance – Director Independence" and "Certain Relationships and Related Transactions" in the Proxy Statement for our 2022 Annual Meeting of Stockholders.

Item 14. Principal Accountant Fees and Services

The information about aggregate fees billed to us by our principal accountant, Deloitte & Touche LLP (PCAOB ID No. 34) will be presented under the caption "Ratification of Appointment of Independent Registered Public Accounting Firm for Year Ending December 31, 2022" in the Proxy Statement for our 2022 Annual Meeting of Stockholders.

PART IV

Item 15. Exhibits, Financial Statement Schedules

a) The following documents are filed as part of this Annual Report on Form 10-K:

- 1) Financial Statements—the consolidated financial statements of Babcock & Wilcox Enterprises, Inc. and its consolidated subsidiaries are included in Part II, Item 8 of this Annual Report on Form 10-K.
- 2) Exhibits—the exhibit index listed in the exhibit index below are filed with, or incorporated by reference in, this Annual Report on Form 10-K.

EXHIBIT INDEX

2.1*	Master Separation Agreement, dated as of June 8, 2015, between The Babcock & Wilcox Company and Babcock & Wilcox Enterprises, Inc. (incorporated by reference to Exhibit 2.1 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876)).
3.1	Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876)).
3.2	Certificate of Amendment of the Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Babcock & Wilcox Enterprises, Inc. Current Report on Form 8-K filed on June 17, 2019 (File No. 001-36876)).
3.3	Certificate of Amendment of the Restated Certificate of Incorporation, as amended (incorporated by reference to Exhibit 3.1 to the Babcock & Wilcox Enterprises, Inc. Current Report on Form 8-K filed on July 24, 2019 (File No. 001-36876)).
3.4	Amended and Restated Bylaws of the Babcock & Wilcox Enterprises, Inc.
3.5	Certificate of Designations with respect to the 7.75% Series A Cumulative Perpetual Preferred Stock, dated May 6, 2021, filed with the Secretary of State of Delaware and effective on May 6, 2021 (incorporated by reference to Exhibit 3.4 to the Babcock & Wilcox Enterprises, Inc. Form 8-A filed on May 7, 2021 (File No. 001-36876)).
3.6	Certificate of Increase in Number of Shares of 7.75% Series A Cumulative Perpetual Preferred Stock, dated June 1, 2021 (incorporated by reference to Exhibit 3.1 to the Babcock & Wilcox Enterprises, Inc. Current Report on Form 8-K filed on July 7, 2021 (File No. 001-36876)).
4.2	Description of Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934 (incorporated by reference to Exhibit 4.2 of the Babcock & Wilcox Enterprises, Inc. Annual Report on Form 10-K for the year ended December 31, 2019 (File No. 001-36876)).
4.3	Indenture dated February 12, 2021 (incorporated by reference to Exhibit 4.1 to the Babcock & Wilcox Enterprises, Inc. Current Report on Form 8-K filed on February 12, 2021 (File No. 001-36876)).
4.4	First Supplemental Indenture dated February 12, 2021 (incorporated by reference to Exhibit 4.2 to the Babcock & Wilcox Enterprises, Inc. Current Report on Form 8-K filed on February 12, 2021 (File No. 001-36876)).
4.5	Second Supplemental Indenture dated December 13, 2021 (incorporated by reference to Exhibit 4.3 to the Babcock & Wilcox Enterprises, Inc. Current Report on Form 8-K filed on December 14, 2021 (File No. 001-36876)).
4.6	Form of 8.125% Senior Note Due 2026 (included in Exhibit 4.4)
4.7	Form of 6.50% Senior Note Due 2026 (included in Exhibit 4.5)
4.8	Form of Certificate representing 7.75% Series A Cumulative Perpetual Preferred Stock (incorporated by reference to Exhibit 4.1 to the Babcock & Wilcox Enterprises, Inc. Form 8-A filed on May 7, 2021 (File No. 001-36876)).

- [10.1](#) Tax Sharing Agreement, dated as of June 8, 2015, by and between The Babcock & Wilcox Company and Babcock & Wilcox Enterprises, Inc. (incorporated by reference to Exhibit 10.1 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876)).
- [10.2](#) Employee Matters Agreement, dated as of June 8, 2015, by and between The Babcock & Wilcox Company and Babcock & Wilcox Enterprises, Inc. (incorporated by reference to Exhibit 10.2 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876)).
- [10.3](#) Transition Services Agreement, dated as of June 8, 2015, between The Babcock & Wilcox Company, as service provider, and Babcock & Wilcox Enterprises, Inc., as service receiver (incorporated by reference to Exhibit 10.3 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876)).
- [10.4](#) Transition Services Agreement, dated as of June 8, 2015, between Babcock & Wilcox Enterprises, Inc., as service provider, and The Babcock & Wilcox Company, as service receiver (incorporated by reference to Exhibit 10.4 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876)).
- [10.5](#) Assumption and Loss Allocation Agreement, dated as of June 19, 2015, by and among ACE American Insurance Company and the Ace Affiliates (as defined therein), Babcock & Wilcox Enterprises, Inc. and The Babcock & Wilcox Company (incorporated by reference to Exhibit 10.5 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876)).
- [10.6](#) Reinsurance Novation and Assumption Agreement, dated as of June 19, 2015, by and among ACE American Insurance Company and the Ace Affiliates (as defined therein), Creole Insurance Company and Dampkraft Insurance Company (incorporated by reference to Exhibit 10.6 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876)).
- [10.7](#) Novation and Assumption Agreement, dated as of June 19, 2015, by and among The Babcock & Wilcox Company, Babcock & Wilcox Enterprises, Inc., Dampkraft Insurance Company and Creole Insurance Company (incorporated by reference to Exhibit 10.7 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876)).
- [10.8†](#) Babcock & Wilcox Enterprises, Inc. Amended and Restated 2015 Long-Term Incentive Plan (Amended and Restated as of June 14, 2019) (incorporated by reference to Appendix G to the Babcock & Wilcox Enterprises, Inc. Definitive Proxy Statement filed with the Securities and Exchange Commission on May 13, 2019).
- [10.9](#) Babcock & Wilcox Enterprises, Inc. 2021 Long-Term Incentive Plan (incorporated by reference to the Babcock & Wilcox Enterprises, Inc. Current Report on Form 8-K filed on May 26, 2021 (File No. 001-36876)).
- [10.10†](#) Babcock & Wilcox Enterprises, Inc. Executive Incentive Compensation Plan (incorporated by reference to Exhibit 10.9 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876)).
- [10.11†](#) Babcock & Wilcox Enterprises, Inc. Management Incentive Compensation Plan (incorporated by reference to Exhibit 10.10 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876)).
- [10.12†](#) Supplemental Executive Retirement Plan of Babcock & Wilcox Enterprises, Inc. (incorporated by reference to Exhibit 10.11 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876)).
- [10.13†](#) Babcock & Wilcox Enterprises, Inc. Defined Contribution Restoration Plan (incorporated by reference to Exhibit 10.12 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876)).
- [10.14](#) Intellectual Property Agreement, dated as of June 26, 2015, between Babcock & Wilcox Power Generation Group, Inc. and BWXT Foreign Holdings, LLC (incorporated by reference to Exhibit 10.13 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876)).
- [10.15](#) Intellectual Property Agreement, dated as of June 27, 2015, between Babcock & Wilcox Technology, Inc. and Babcock & Wilcox Investment Company (incorporated by reference to Exhibit 10.14 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876)).
- [10.16](#) Intellectual Property Agreement, dated as of May 29, 2015, between Babcock & Wilcox Canada Ltd. and B&W PGG Canada Corp. (incorporated by reference to Exhibit 10.15 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876)).

- [10.17](#) Intellectual Property Agreement, dated as of May 29, 2015, between Babcock & Wilcox mPower, Inc. and Babcock & Wilcox Power Generation Group, Inc. (incorporated by reference to Exhibit 10.16 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876)).
- [10.18](#) Intellectual Property Agreement, dated as of June 26, 2015, between The Babcock & Wilcox Company and Babcock & Wilcox Enterprises, Inc. (incorporated by reference to Exhibit 10.17 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876)).
- [10.19†](#) Form of Change-in-Control Agreement, by and between Babcock & Wilcox Enterprises, Inc. and certain officers for officers elected prior to August 4, 2016 (incorporated by reference to Exhibit 10.1 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended September 30, 2016 (File No. 001-36876)).
- [10.20†](#) Form of Restricted Stock Grant Agreement (Spin-off Award) (incorporated by reference to Exhibit 10.1 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended September 30, 2015 (File No. 001-36876)).
- [10.21†](#) Form of Restricted Stock Units Grant Agreement (incorporated by reference to Exhibit 10.2 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended September 30, 2015 (File No. 001-36876)).
- [10.22†](#) Form of Stock Option Grant Agreement (incorporated by reference to Exhibit 10.3 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended September 30, 2015 (File No. 001-36876)).
- [10.23†](#) Form of Performance Restricted Stock Unit Agreement (incorporated by reference to Exhibit 10.23 to the Babcock & Wilcox Enterprises, Inc. Annual Report on Form 10-K for the year ended December 31, 2015 (File No. 001-36876)).
- [10.24](#) Form of Director and Officer Indemnification Agreement (incorporated by reference to Exhibit 10.24 to the Babcock & Wilcox Enterprises, Inc. Annual Report on Form 10-K for the year ended December 31, 2015 (File No. 001-36876)).
- [10.25](#) Form of Change-in-Control Agreement, by and between Babcock & Wilcox Enterprises, Inc. and certain officers for officers elected on or after August 4, 2016 (incorporated by reference to Exhibit 10.2 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended September 30, 2016 (File No. 001-36876)).
- [10.26†](#) Form of Performance Unit Award Grant Agreement (Cash Settled) (incorporated by reference to Exhibit 10.1 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2017 (File No. 001-36876)).
- [10.27†](#) Form of Special Restricted Stock Unit Award Grant Agreement (incorporated by reference to Exhibit 10.2 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2017 (File No. 001-36876)).
- [10.28](#) Babcock & Wilcox Enterprises, Inc., Severance Plan, as revised effective June 1, 2018 (incorporated by reference to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2018 (File No. 001-36876)).
- [10.29†](#) Consulting Agreement dated November 19, 2018 between Babcock & Wilcox Enterprises, Inc., and BRPI Executive Consulting (incorporated by reference to Exhibit 10.49 of the Babcock & Wilcox Enterprises, Inc. Annual Report on Form 10-K for the year ended December 31, 2018 (File No. 001-36876)).
- [10.30†](#) Executive Employment Agreement dated November 19, 2018 between Babcock & Wilcox Enterprises, Inc. and Louis Salamone (incorporated by reference to Exhibit 10.50 of the Babcock & Wilcox Enterprises, Inc. Annual Report on Form 10-K for the year ended December 31, 2018 (File No. 001-36876)).
- [10.31†](#) Executive Employment Agreement dated November 19, 2018 between Babcock & Wilcox Enterprises, Inc. and Henry Bartoli, as amended (incorporated by reference to Exhibit 10.30 of the Babcock & Wilcox Enterprises, Inc. Annual Report on Form 10-K for the year ended December 31, 2019 (File No. 001-36876)).
- [10.32†](#) Form of Stock Appreciation Right Award Grant Agreement (incorporated by reference to Exhibit 10.52 of the Babcock & Wilcox Enterprises, Inc. Annual Report on Form 10-K for the year ended December 31, 2018 (File No. 001-36876)).
- [10.33](#) Credit Agreement, dated as of May 11, 2015, among Babcock & Wilcox Enterprises, Inc., as the borrower, Bank of America, N.A., as Administrative Agent, and the Other Lenders Party Thereto (incorporated by reference to Exhibit 10.18 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876)).

- [10.34](#) Amendment No. 1 dated June 10, 2016 to Credit Agreement, dated May 11, 2015, among Babcock & Wilcox Enterprises, Inc., as the Borrower, Bank of America, N.A., as Administrative Agent, and the other Lenders party thereto (incorporated by reference to Exhibit 10.1 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2016 (File No. 001-36876)).
- [10.35](#) Amendment No. 2 dated February 24, 2017 to Credit Agreement, dated May 11, 2015, among Babcock & Wilcox Enterprises, Inc., as the Borrower, Bank of America, N.A., as Administrative Agent, and the other Lenders party thereto (incorporated by reference to Exhibit 10.1 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended March 31, 2017 (File No. 001-36876)).
- [10.36](#) Amendment No. 3 dated August 9, 2017, to Credit Agreement dated May 11, 2015, among Babcock & Wilcox Enterprises, Inc., as the Borrower, Bank of America, N.A., as administrative Agent and Lender, and the other Lenders party thereto (incorporated by reference to Exhibit 10.1 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended September 30, 2017 (File No. 001-36876)).
- [10.37](#) Amendment No. 4 dated September 30, 2017, to Credit Agreement dated May 11, 2015, among Babcock & Wilcox Enterprises, Inc., as the Borrower, Bank of America, N.A., as administrative Agent and Lender, and the other Lenders party thereto (incorporated by reference to Exhibit 10.3 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended September 30, 2017 (File No. 001-36876)).
- [10.38](#) Amendment No. 5 dated March 1, 2018, to Credit Agreement, dated as of May 11, 2015, among Babcock & Wilcox Enterprises, Inc., as the borrower, Bank of America, N.A., as Administrative Agent, and the other lenders party thereto (incorporated by reference to the Babcock & Wilcox Enterprises, Inc. Current Report on Form 8-K filed March 5, 2018 (File No. 001-36876)).
- [10.39](#) Amendment No. 6 dated April 10, 2018, to Credit Agreement, dated as of May 11, 2015, among Babcock & Wilcox Enterprises, Inc., as the borrower, Bank of America, N.A., as Administrative Agent, and the other lenders party thereto (incorporated by reference to the Babcock & Wilcox Enterprises, Inc. Current Report on Form 8-K filed April 11, 2018 (File No. 001-36876)).
- [10.40](#) Consent and Amendment No. 7 dated May 31, 2018, to Credit Agreement, dated as of May 11, 2015, among Babcock & Wilcox Enterprises, Inc., as the borrower, Bank of America, N.A., as Administrative Agent, and the other lenders party thereto (incorporated by reference to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2018 (File No. 001-36876)).
- [10.41](#) Amendment No. 8 dated August 9, 2018, to Credit Agreement, dated as of May 11, 2015, among Babcock & Wilcox Enterprises, Inc., as the borrower, Bank of America, N.A., as Administrative Agent, and the other lenders party thereto (incorporated by reference to the Babcock & Wilcox Enterprises, Inc. Current Report on Form 8-K filed August 13, 2018 (File No. 001-36876)).
- [10.42](#) Amendment No. 9 dated September 14, 2018, to Credit Agreement, dated as of May 11, 2015, among Babcock & Wilcox Enterprises, Inc., as the borrower, Bank of America, N.A., as Administrative Agent, and the other lenders party thereto (incorporated by reference to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended September 30, 2018 (File No. 001-36876)).
- [10.43](#) Amendment No. 10 dated September 28, 2018, to Credit Agreement, dated as of May 11, 2015, among Babcock & Wilcox Enterprises, Inc., as the borrower, Bank of America, N.A., as Administrative Agent, and the other lenders party thereto (incorporated by reference to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended September 30, 2018 (File No. 001-36876)).
- [10.44](#) Amendment No. 11 dated October 4, 2018, to Credit Agreement, dated as of May 11, 2015, among Babcock & Wilcox Enterprises, Inc., as the borrower, Bank of America, N.A., as Administrative Agent, and the other lenders party thereto (incorporated by reference to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended September 30, 2018 (File No. 001-36876)).
- [10.45](#) Amendment No. 12 dated October 31, 2018, to Credit Agreement, dated as of May 11, 2015, among Babcock & Wilcox Enterprises, Inc., as the borrower, Bank of America, N.A., as Administrative Agent, and the other lenders party thereto (incorporated by reference to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended September 30, 2018 (File No. 001-36876)).
- [10.46](#) Amendment No. 13 dated December 31, 2018, to Credit Agreement, dated as of May 11, 2015, among Babcock & Wilcox Enterprises, Inc., as the borrower, Bank of America, N.A., as Administrative Agent, and the other lenders party thereto (incorporated by reference to Exhibit 10.47 of the Babcock & Wilcox Enterprises, Inc. Annual Report on Form 10-K for the year ended December 31, 2018 (File No. 001-36876)).
- [10.47](#) Amendment No. 14 dated January 15, 2019 to Credit Agreement, dated as of May 11, 2015, among Babcock & Wilcox Enterprises, Inc., as the borrower, Bank of America, N.A., as Administrative Agent, and the other lenders party thereto (incorporated by reference to Exhibit 10.48 of the Babcock & Wilcox Enterprises, Inc. Annual Report on Form 10-K for the year ended December 31, 2018 (File No. 001-36876)).

- [10.48†](#) Amendment No. 15 and Limited Waiver dated March 19, 2019 to Credit Agreement, dated as of May 11, 2015, among Babcock & Wilcox Enterprises, Inc., as the borrower, Bank of America, N.A., as Administrative Agent, and the other lenders party thereto (incorporated by reference to Exhibit 10.53 of the Babcock & Wilcox Enterprises, Inc. Annual Report on Form 10-K for the year ended December 31, 2018 (File No. 001-36876)).
- [10.49†](#) Amendment No. 16, dated April 5, 2019, to Credit Agreement, dated as of May 11, 2015, among Babcock & Wilcox Enterprises, Inc., as the borrower, Bank of America, N.A., as Administrative Agent, and the other lenders party thereto (incorporated by reference to Exhibit 10.1 to the Babcock & Wilcox Enterprises, Inc. Current Report on Form 8-K filed on April 5, 2019 (File No. 001-36876)).
- [10.50†](#) Amendment No. 17, dated August 7, 2019, to Credit Agreement, dated as of May 11, 2015, among Babcock & Wilcox Enterprises, Inc., as the borrower, Bank of America, N.A., as Administrative Agent, and the other lenders party thereto (incorporated by reference to Exhibit 10.49 of the Babcock & Wilcox Enterprises, Inc. Annual Report on Form 10-K for the year ended December 31, 2019 (File No. 001-36876)).
- [10.51†](#) Amendment No. 18, dated December 31, 2019, to Credit Agreement, dated as of May 11, 2015, among Babcock & Wilcox Enterprises, Inc., as the borrower, Bank of America, N.A., as Administrative Agent, and the other lenders party thereto (incorporated by reference to Exhibit 10.50 of the Babcock & Wilcox Enterprises, Inc. Annual Report on Form 10-K for the year ended December 31, 2019 (File No. 001-36876)).
- [10.52†](#) Amendment No. 19, dated January 17, 2020, to Credit Agreement, dated as of May 11, 2015, among Babcock & Wilcox Enterprises, Inc., as the borrower, Bank of America, N.A., as Administrative Agent, and the other lenders party thereto (incorporated by reference to Exhibit 10.51 of the Babcock & Wilcox Enterprises, Inc. Annual Report on Form 10-K for the year ended December 31, 2019 (File No. 001-36876)).
- [10.53†](#) Amendment No. 20, dated January 31, 2020, to Credit Agreement, dated as of May 11, 2015, among Babcock & Wilcox Enterprises, Inc., as the borrower, Bank of America, N.A., as Administrative Agent, and the other lenders party thereto (incorporated by reference to Exhibit 10.52 of the Babcock & Wilcox Enterprises, Inc. Annual Report on Form 10-K for the year ended December 31, 2019 (File No. 001-36876)).
- [10.54](#) Investor Rights Agreement, dated as of April 30, 2019, by and among Babcock & Wilcox Enterprises, Inc., B. Riley FBR, Inc. and Vintage Capital Management, LLC (incorporated by reference to Exhibit 10.4 of the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2019 (File No. 001-36876)).
- [10.55](#) Registration Rights Agreement, dated as of April 30, 2019, by and among Babcock & Wilcox Enterprises, Inc., and certain investors party thereto (incorporated by reference to Exhibit 10.5 of the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2019 (File No. 001-36876)).
- [10.56†](#) Form of 2019 Restricted Stock Units Director Grant Agreement (incorporated by reference to Exhibit 10.1 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended September 30, 2019 (File No. 001-36876)).
- [10.57](#) First Amendment to the Babcock & Wilcox Enterprises, Inc. Defined Contribution Restoration Plan. (incorporated by reference to Exhibit 10.56 of the Babcock & Wilcox Enterprises, Inc. Annual Report on Form 10-K for the year ended December 31, 2019 (File No. 001-36876)).
- [10.58](#) Backstop Commitment Letter, dated January 31, 2020, between Babcock & Wilcox Enterprises, Inc. and B. Riley Financial, Inc. (incorporated by reference to Exhibit 10.2 to the Babcock & Wilcox Enterprises, Inc. Current Report on Form 8-K filed on February 3, 2020 (File No. 001-36876)).
- [10.59†](#) Amendment No. 21, dated March 27, 2020, to Credit Agreement, dated as of May 11, 2015, among Babcock & Wilcox Enterprises, Inc., as the borrower, Bank of America, N.A., as Administrative Agent, and the other lenders party thereto (incorporated by reference to Exhibit 10.58 of the Babcock & Wilcox Enterprises, Inc. Annual Report on Form 10-K for the year ended December 31, 2019 (File No. 001-36876)).
- [10.60](#) Amendment and Restatement Agreement (attaching the Amended and Restated Credit Agreement), dated as of May 14, 2020, among Babcock & Wilcox Enterprises, Inc., as the borrower, Bank of America, N.A., as Administrative Agent, and the other lenders party thereto (incorporated by reference to Exhibit 10.1 of the Babcock & Wilcox Enterprises, Inc. Current Report on Form 8-K filed May 15, 2020 (File No. 001-36876)).
- [10.61](#) Form of 2021 Long-Term Cash Incentive Award Grant Agreement (incorporated by reference to Exhibit 10.10 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended September 30, 2020 (File No. 001-36876)).
- [10.62](#) Amendment No. 1 to Amended and Restated Credit Agreement, dated as of October 30, 2020, among Babcock & Wilcox Enterprises, Inc., as the borrower, Bank of America, N.A., as Administrative Agent, and the other lenders party thereto (incorporated by reference to Exhibit 10.1 of the Babcock & Wilcox Enterprises, Inc. Current Report on Form 8-K filed November 5, 2020 (File No. 001-36876)).

10.63†	Second Amendment to Executive Services Agreement between Babcock & Wilcox Enterprises, Inc. and BRPI Executive Consulting, LLC dated November 9, 2020 (incorporated by reference to Exhibit 10.1 of the Babcock & Wilcox Enterprises, Inc. Current Report on Form 8-K filed November 10, 2020 (File No. 001-36876)).
10.64†	Third Amendment to Executive Employment Agreement between Babcock & Wilcox Enterprises, Inc. and Henry Bartoli dated November 5, 2020 (incorporated by reference to Exhibit 10.2 of the Babcock & Wilcox Enterprises, Inc. Current Report on Form 8-K filed November 10, 2020 (File No. 001-36876)).
10.65†	Consultant Agreement by and between The Babcock & Wilcox Company Inc. and Henry Bartoli effective as of January 1, 2021 (incorporated by reference to Exhibit 10.3 of the Babcock & Wilcox Enterprises, Inc. Current Report on Form 8-K filed November 10, 2020 (File No. 001-36876)).
10.66†	Settlement Agreement between Babcock & Wilcox Volund A/S and XL Insurance Company SE dated October 10, 2020 (incorporated by reference to Exhibit 10.65 of the Babcock & Wilcox Enterprises, Inc. Annual Report on Form 10-K for the year ended December 31, 2020 (File No. 001-36876)).
10.67	Exchange Agreement by and between Babcock & Wilcox Enterprises Inc. and B. Riley Financial, Inc. dated February 12, 2021 (incorporated by reference to Exhibit 1.3 to the Babcock & Wilcox Enterprises, Inc. Current Report on Form 8-K filed on February 12, 2021 (File No. 001-36876)).
10.68	Amendment No. 2 to Amended and Restated Credit Agreement by and between Babcock and Wilcox Enterprises Inc. and Bank of America, N.A., as Administrative Agent, dated February 8, 2021 (incorporated by reference to Exhibit 10.1 to the Babcock & Wilcox Enterprises, Inc. Current Report on Form 8-K filed on February 12, 2021 (File No. 001-36876)).
10.69	Amendment No. 3 to Amended and Restated Credit Agreement by and between Babcock and Wilcox Enterprises Inc. and Bank of America, N.A., as Administrative Agent, dated March 4 2021 (incorporated by reference to Exhibit 10.68 of the Babcock & Wilcox Enterprises, Inc. Annual Report on Form 10-K for the year ended December 31, 2020 (File No. 001-36876)).
10.70	Amendment No. 4 to Amended and Restated Credit Agreement by and between Babcock and Wilcox Enterprises Inc. and Bank of America, N.A., as Administrative Agent, dated March 26, 2021 (incorporated by reference to Exhibit 10.1 to the Babcock & Wilcox Enterprises, Inc. Current Report on Form 8-K filed on April 1, 2021 (File No. 001-36876)).
10.71	Amendment No. 5 to Amended and Restated Credit Agreement dated May 10, 2021 (incorporated by reference to the Babcock & Wilcox Enterprises, Inc. Current Report on Form 8-K filed on May 13, 2021 (File No. 001-36876)).
10.72	Revolving Credit, Guaranty and Security Agreement, dated as of June 30, 2021, by and among Babcock & Wilcox Enterprises, Inc. and PNC Bank, National Association, as administrative agent, lender and swing loan lender (incorporated by reference to the Babcock & Wilcox Enterprises, Inc. Current Report on Form 8-K filed on July 7, 2021 (File No. 001-36876)).
10.73	Letter of Credit Issuance and Reimbursement and Guaranty Agreement, dated as of June 30, 2021, by and among Babcock & Wilcox Enterprises, Inc. and PNC Bank, National Association, as issuer (incorporated by reference to the Babcock & Wilcox Enterprises, Inc. Current Report on Form 8-K filed on July 7, 2021 (File No. 001-36876)).
10.74	Reimbursement, Guaranty and Security Agreement, dated as of June 30, 2021, by and among Babcock & Wilcox Enterprises, Inc. and MSD PCOF Partners XLV, LLC, as administrative agent (incorporated by reference to the Babcock & Wilcox Enterprises, Inc. Current Report on Form 8-K filed on July 7, 2021 (File No. 001-36876)).
10.75	Guaranty Agreement, dated as of June 30, 2021, by B. Riley Financial, Inc. in favor of MSD PCOF Partners XLV, LLC, as administrative agent (incorporated by reference to the Babcock & Wilcox Enterprises, Inc. Current Report on Form 8-K filed on July 7, 2021 (File No. 001-36876)).
18	LIFO Preferability Letter
21.1	Significant Subsidiaries of the Registrant.
23.1	Consent of Deloitte & Touche LLP.
31.1	Rule 13a-14(a)/15d-14(a) certification of Chief Executive Officer.
31.2	Rule 13a-14(a)/15d-14(a) certification of Chief Financial Officer.
32.1	Section 1350 certification of Chief Executive Officer.
32.2	Section 1350 certification of Chief Financial Officer.

101.SCH	XBRL Taxonomy Extension Schema Document.
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document.
101.LAB	XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document.
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document.
104	Cover Page Interactive Data File (embedded within the inline XBRL document)

* Certain schedules and exhibits to this agreement have been omitted pursuant to Item 601(b)(2) of Regulation S-K. A copy of any omitted schedule and/or exhibit will be furnished to the SEC upon request.

† Management contract or compensatory plan or arrangement.

‡ The Company has omitted certain information contained in this exhibit pursuant to Rule 601(b)(10) of Regulation S-K. The omitted information is not material and, if publicly disclosed, would likely cause competitive harm to the Company.

BABCOCK & WILCOX ENTERPRISES, INC.
SCHEDULE II - VALUATION AND QUALIFYING ACCOUNTS

Allowance for Doubtful Accounts

(in thousands)	Year ended December 31,	
	2021	2020
Balance at beginning of period	\$ 17,222	\$ 25,071
Charges to costs and expenses	262	(1,044)
Deductions	(4,207)	(6,783)
Currency translation adjustments and other	(1,449)	(22)
Balance at end of period	<u>\$ 11,828</u>	<u>\$ 17,222</u>

Inventory Reserves

(in thousands)	Year ended December 31,	
	2021	2020 *
Balance at beginning of period	\$ 7,078	\$ 6,880
Charges to costs and expenses	(655)	769
Deductions	14	(867)
Currency translation adjustments and other	97	296
Balance at end of period	<u>\$ 6,534</u>	<u>\$ 7,078</u>

* December 31, 2020 balance at beginning of period amount has been adjusted to reflect the change in inventory accounting method, as described in Notes 2 and 6 to the Consolidated Financial Statements included in Part II, Item 8 of this Annual Report.

Item 16. Form 10-K Summary

None.

SIGNATURES

Pursuant to the requirements of the Section 13 or 15(d) of Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

BABCOCK & WILCOX ENTERPRISES, INC.

March 8, 2022

By: _____
/s/ Kenneth M. Young
Kenneth M. Young
Chairman and Chief Executive Officer

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

Signature

Title

/s/ Kenneth M. Young
Kenneth M. Young

Chairman and Chief Executive Officer
(Principal Executive Officer)

/s/ Louis Salamone
Louis Salamone

Executive Vice President, Chief Financial Officer and Chief Accounting Officer (Principal Financial and Accounting Officer and Duly Authorized Representative)

/s/ Henry E. Bartoli
Henry E. Bartoli

Director

/s/ Alan B. Howe
Alan B. Howe

Director

/s/ Philip D. Moeller
Philip D. Moeller

Director

/s/ Rebecca Stahl
Rebecca Stahl

Director

/s/ Joseph A. Tato
Joseph A. Tato

Director

March 8, 2022

AMENDED AND RESTATED BYLAWS
OF
BABCOCK & WILCOX ENTERPRISES, INC.

TABLE OF CONTENTS

		Page
Article I	STOCKHOLDERS	1
	Section 1.1 Annual Meetings	1
	Section 1.2 Special Meetings	1
	Section 1.3 Notice of Meetings	1
	Section 1.4 Fixing Date for Determination of Stockholders of Record	2
	Section 1.5 List of Stockholders Entitled To Vote	3
	Section 1.6 Adjournments	3
	Section 1.7 Quorum	3
	Section 1.8 Organization	3
	Section 1.9 Voting by Stockholders	4
	Section 1.10 Stockholder Proposals	4
	Section 1.11 Proxies	7
	Section 1.12 Conduct of Meetings	7
Article II	BOARD OF DIRECTORS	8
	Section 2.1 Powers, Number, Classification and Vacancies	8
	Section 2.2 Regular Meetings	9
	Section 2.3 Special Meetings	9
	Section 2.4 Telephonic Meetings	9
	Section 2.5 Organization	9
	Section 2.6 Order of Business	9
	Section 2.7 Notice of Meetings	9
	Section 2.8 Quorum; Vote Required for Action	10
	Section 2.9 Board Action by Unanimous Written Consent in Lieu of Meeting	10
	Section 2.10 Nomination of Directors; Qualifications	10
	Section 2.11 Compensation	13
Article III	BOARD COMMITTEES	14
	Section 3.1 Board Committees	14
	Section 3.2 Board Committee Rules	14
Article IV	OFFICERS	14
	Section 4.1 Designation	14
	Section 4.2 CEO	15
	Section 4.3 Powers and Duties of Other Officers	15
	Section 4.4 Vacancies	15
	Section 4.5 Removal	15
	Section 4.6 Action with Respect to Securities of Other Corporations	15
Article V	CAPITAL STOCK	15
	Section 5.1 Uncertificated Shares	15
	Section 5.2 Transfer of Shares	15
	Section 5.3 Ownership of Shares	16
	Section 5.4 Regulations Regarding Shares	16

TABLE OF CONTENTS
(continued)

		Page
Article VI	INDEMNIFICATION.....	16
Section 6.1	General	16
Section 6.2	Expenses	16
Section 6.3	Advances.....	16
Section 6.4	Request for Indemnification	16
Section 6.5	Determination of Entitlement; No Change of Control.....	17
Section 6.6	Determination of Entitlement; Change of Control.....	17
Section 6.7	Procedures of Independent Counsel.....	17
Section 6.8	Independent Counsel Expenses.....	18
Section 6.9	Adjudication.....	19
Section 6.10	Participation by the Corporation.....	19
Section 6.11	Nonexclusivity of Rights	20
Section 6.12	Insurance and Subrogation.....	20
Section 6.13	Severability	20
Section 6.14	Certain Actions Where Indemnification Is Not Provided.....	21
Section 6.15	Definitions.....	21
Section 6.16	Notices	22
Section 6.17	Contractual Rights	22
Section 6.18	Indemnification of Employees, Agents and Fiduciaries.....	22
Article VII	MISCELLANEOUS	23
Section 7.1	Fiscal Year	23
Section 7.2	Seal.....	23
Section 7.3	Interested Directors; Quorum	23
Section 7.4	Form of Records	23
Section 7.5	Bylaw Amendments.....	23
Section 7.6	Notices; Waiver of Notice	24
Section 7.7	Resignations.....	24
Section 7.8	Books, Reports and Records.....	24
Section 7.9	Facsimile Signatures	24
Section 7.10	Certain Definitional Provisions.....	25
Section 7.11	Captions	25



AMENDED AND RESTATED
BYLAWS
OF
BABCOCK & WILCOX ENTERPRISES, INC.

EFFECTIVE AS OF MARCH 2, 2022

The Board of Directors of Babcock & Wilcox Enterprises, Inc. (the “Corporation”) by resolution has duly adopted these Amended and Restated Bylaws (these “Bylaws”) to govern the Corporation’s internal affairs.

ARTICLE I
STOCKHOLDERS

Section 1.1 Annual Meetings. If required by applicable law, the Corporation will hold an annual meeting of the holders of its capital stock (each, a “Stockholder”) for the election of directors of the Corporation (each, a “Director”) at such date, time and place as the Board of Directors of the Corporation (the “Board”) by resolution may designate from time to time. The Corporation may transact any other business, or act on any proposal, at an annual meeting which has properly come before that meeting in accordance with Sections 1.10 or 2.10.

Section 1.2 Special Meetings. Any of the following may call special meetings of Stockholders for any purpose or purposes at any time and designate the date, time and place of any such meeting: (i) the Chairman of the Board (the “Chairman”); and (ii) the Board pursuant to a resolution that at least a majority of the total number of Directors approves by an affirmative vote. Except as the restated certificate of incorporation of the Corporation (as amended from time to time and including each certificate of designation, if any, respecting any class or series of preferred stock of the Corporation which has been executed, acknowledged and filed in accordance with applicable law, the “Certificate of Incorporation”) or applicable law otherwise provides, no other Person or Persons may call a special meeting of Stockholders. Business transacted at any special meeting of Stockholders shall be limited to the purposes stated in the notice.

Section 1.3 Notice of Meetings. By or at the direction of the Chairman, the chief executive officer of the Corporation (the “CEO”) or the secretary of the Corporation (the “Secretary”) whenever Stockholders are to take any action at a meeting, the Corporation will give a notice of that meeting to the Stockholders entitled to vote at that meeting which states the place, date, the means of remote communications, if any, by which Stockholders and proxy holders may be deemed to be present in person and vote at the meeting, and hour of that meeting and, in the case of a special meeting, the purpose or purposes for which that meeting is called. Unless the Certificate of Incorporation, these Bylaws or applicable law otherwise provides, the Corporation will give the notice of any meeting of Stockholders not less than ten nor more than 60 days before the date of that meeting. Written notice may be given personally, by mail or by a form of electronic transmission consented to by the Stockholder to whom the notice is given, to the fullest extent allowed under the General Corporation Law of the State of Delaware or any successor statute (the “DGCL”). Notice of any meeting of Stockholders need not be given to any Stockholder (a) if waived by such Stockholder in writing in accordance with Section 7.6 or (b) to



whom (i) notice of two consecutive annual meetings, and all notices of meetings or of the taking of action by written consent without a meeting to such person during the period between such two consecutive annual meetings, or (ii) all, and at least two, payments (if sent by first-class mail) of dividends or interest on securities during a 12-month period, in either case (i) or (ii) above, have been mailed addressed to such person at such person's address as shown on the records of the Corporation and have been returned undeliverable; provided, however, that the exception in (b)(i) shall not be applicable to any notice returned as undeliverable if the notice was given by electronic transmission. If any person to whom notice need not be given in accordance with clause (b) of the immediately preceding sentence shall deliver to the Corporation a written notice setting forth such person's then current address, the requirement that notice be given to such person shall be reinstated. Attendance at a meeting of the Stockholders shall constitute a waiver of notice of such meeting, except when a Stockholder attends a meeting for the express purpose of objecting (and so expresses such objection at the beginning of the meeting) to the transaction of any business on the ground that the meeting has not been called or convened in accordance with applicable law, the Certificate of Incorporation or these Bylaws.

Section 1.4 Fixing Date for Determination of Stockholders of Record.

(a) Registered Holders as Owners. Unless otherwise provided under Delaware law, the Corporation may regard the person in whose name any shares issued by the Corporation are registered in the stock transfer records of the Corporation at any particular time (including, without limitation, as of a record date fixed pursuant to paragraph (b) of this Section 1.4) as the owner of those shares at that time for purposes of voting those shares, receiving distributions thereon or notices in respect thereof, transferring those shares, exercising rights of dissent with respect to those shares, entering into agreements with respect to those shares, or giving proxies with respect to those shares; and neither the Corporation nor any of its officers, Directors, employees or agents shall be liable for regarding that person as the owner of those shares at that time for any of those purposes.

(b) Record Date. In order that the Corporation may determine the Stockholders entitled to notice of or to vote at any meeting of Stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board by resolution may fix a record date, which record date: (i) must not precede the date on which the Board adopts that resolution; (ii) in the case of a determination of Stockholders entitled to vote at any meeting of Stockholders or adjournment thereof, will, unless applicable law otherwise requires, not be more than 60 nor less than ten days before the date of that meeting; and (iii) in the case of any other action, will not be more than 60 days prior to that other action. If the Board does not fix a record date: (i) the record date for determining Stockholders entitled to notice of or to vote at a meeting of Stockholders will be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived in accordance with Section 7.6 of these Bylaws, at the close of business on the day next preceding the day on which the meeting is held; and (ii) the record date for determining Stockholders for any other purpose will be at the close of business on the day on which the Board adopts the resolution relating thereto. A determination of Stockholders of record entitled



to notice of or to vote at a meeting of Stockholders will apply to any adjournment of that meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

Section 1.5 List of Stockholders Entitled To Vote. The Secretary will prepare and make, at least ten days before each meeting of Stockholders, a list of the Stockholders entitled to vote at that meeting which complies with the requirements of Section 219 of the DGCL as in effect at that time.

Section 1.6 Adjournments. Any meeting of Stockholders, annual or special, may be adjourned from time to time by the Chairman or presiding officer of the meeting or by the Stockholders or their proxies in attendance to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business it might have transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment the Board fixes a new record date for the adjourned meeting, the Corporation will give, in accordance with Section 1.3, notice of the adjourned meeting to each Stockholder of record and entitled to vote at the adjourned meeting.

Section 1.7 Quorum. Except as the Certificate of Incorporation, these Bylaws or applicable law otherwise provides: (i) at each meeting of Stockholders the presence in person or by proxy of the holders of shares of stock having a majority of the votes the holders of all outstanding shares of capital stock of the Corporation entitled to vote at the meeting could cast will be necessary and sufficient to constitute a quorum; and (ii) the holders of capital stock of the Corporation so present and entitled to vote at any duly convened meeting at which the necessary quorum has been ascertained may continue to transact business until that meeting adjourns notwithstanding any withdrawal from that meeting of shares of capital stock counted in determining the existence of that quorum. Any shares subject to "broker non-votes" shall be considered present at the meeting with respect to the determination of a quorum but shall not be considered as votes cast with respect to matters as to which no authority is granted. In the absence of a quorum, the Chairman or presiding officer of the meeting or the Stockholders so present may, by majority vote, adjourn the meeting from time to time in the manner Section 1.6 provides until a quorum attends. Shares of its own capital stock belonging to the Corporation or to another corporation, limited liability company, partnership or other entity (each, an "Entity"), if the Corporation, directly or indirectly, holds a majority of the shares entitled to vote in the election of directors (or the equivalent) of that other Entity, will be neither entitled to vote nor counted for quorum purposes; provided, however, that the foregoing will not limit the right of the Corporation to vote shares of capital stock, including but not limited to its own capital stock, it holds in a fiduciary capacity.

Section 1.8 Organization. The Chairman will chair and preside over any meeting of Stockholders at which he or she is present. The Board will designate the chairman and presiding officer over any meeting of Stockholders from which the Chairman is absent. In the absence of such designation by the Board, the chairman of the meeting will be chosen at the meeting. The Secretary will act as secretary of meetings of Stockholders, but in his or her absence from any such meeting the chairman of that meeting may appoint any person to act as secretary of that meeting. The chairman of any meeting of Stockholders will announce at that



meeting the date and time of the opening and the closing of the polls for each matter on which the Stockholders will vote at that meeting.

Section 1.9 Voting by Stockholders.

(a) Voting on Matters Other than the Election of Directors. With respect to any matters as to which no other voting requirement is specified by the DGCL, the Certificate of Incorporation or these Bylaws, the affirmative vote required for Stockholder action shall be that of a majority of the shares present in person or represented by proxy at the meeting and entitled to vote on the matter. Any shares subject to broker non-votes shall not be considered as shares entitled to vote as to matters with respect to which no authority has been granted. In the case of a matter submitted for a vote of the Stockholders as to which a Stockholder approval requirement is applicable under the Stockholder approval policy of any stock exchange or quotation system on which the capital stock of the Corporation is traded or quoted, the requirements (to the extent applicable to the Corporation) of Rule 16b-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or any provision of the Internal Revenue Code, in each case for which no higher voting requirement is specified by the DGCL, the Certificate of Incorporation or these Bylaws, the vote required for approval shall be the requisite vote specified in such Stockholder approval policy, Rule 16b-3 or Internal Revenue Code provision, as the case may be (or the highest such requirement if more than one is applicable). For the approval or ratification of the appointment of independent public accountants (if submitted for a vote of the Stockholders), the vote required for approval shall be a majority of the votes cast on the matter. For this purpose, abstentions shall not be considered as votes cast.

(b) Voting in the Election of Directors. Directors shall be elected by a plurality vote in all elections of Directors, but Section 1.9(c) shall apply to any Director nominee of the Board who fails to receive a Majority Vote for election except in respect of the election of Directors in a Contested Election. For this purpose, a "Contested Election" means an election in which nominees for election are to be voted on who have not been recommended for election by the Board or the Governance Committee thereof or as to which the number of nominees for election at the meeting exceeds the number of Directors to be elected at such meeting.

(c) Majority Voting. The Board shall only nominate for election or re-election to the Board and shall only fill Director vacancies and elect persons to new Directorships candidates who agree to tender, before they are nominated for election or re-election as Directors, irrevocable resignations that will be effective upon (i) the failure to receive a Majority Vote at the next meeting at which they stand for election or re-election (unless there is a Contested Election at such meeting) and (ii) the Board's acceptance of such resignation. For this purpose, a "Majority Vote" means a majority of the votes cast in respect of the Director's election shall have been voted "for" such Director's election (counting votes cast "for" election, votes "against" election and votes to withhold authority as votes with respect to such Director's election, and not counting any abstentions or broker non-votes). If a Director nominee fails to receive the required vote for election or re-election, the Governance Committee of the Board will act on an expedited basis to recommend whether the Board should accept the Director's resignation and will submit such recommendation for prompt consideration by the Board. Pending such final determination by the Board as to whether to accept such resignation, the Director shall be a member of the Board if he or she shall have been elected by plurality vote, but



shall have no right to participate in such determination except and solely to the extent (if any) specifically required by the Board or the Governance Committee thereof (as applicable).

Section 1.10 Stockholder Proposals. (a) At an annual meeting of Stockholders, only such business shall be conducted, and only such proposals shall be acted upon, as shall have been properly brought before such annual meeting. To be properly brought before an annual meeting, business or proposals (other than any nomination of Directors, which is governed by Section 2.10 hereof) must (i) be specified in the notice relating to the meeting (or any supplement thereto) given by or at the direction of the Board in accordance with Section 1.3 hereof or (ii) be properly brought before the meeting by a Stockholder who (A) is a Stockholder of record at the time of the giving of such Stockholder's notice provided for in this Section 1.10 and on the record date for the determination of Stockholders entitled to vote at such annual meeting, (B) is entitled to vote at the annual meeting and (C) complies with the requirements of this Section 1.10, and must otherwise be proper subjects for Stockholder action and be properly introduced at the annual meeting. Clause (ii) of the immediately preceding sentence shall be the exclusive means for a Stockholder to submit business or proposals (other than matters properly brought under Rule 14a-8 under the Exchange Act, to the extent such rule is applicable to the Corporation, and included in the notice relating to the meeting (or any supplement thereto) given by or at the direction of the Board in accordance with Section 1.3 hereof) before an annual meeting of Stockholders. For a proposal to be properly brought before an annual meeting by a Stockholder pursuant to these provisions, in addition to any other applicable requirements, such Stockholder must have given timely advance notice thereof in writing to the Secretary. To be timely, such Stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation not later than the close of business on the 90th day and not earlier than the close of business on the 120th day prior to the first anniversary of the annual meeting date of the next preceding annual meeting; provided, however, that if the scheduled annual meeting date differs from such anniversary date by more than 30 days, notice by such Stockholder, to be timely, must be so delivered or received not earlier than the close of business on the 75th day and not later than the close of business on the later of the 45th day prior to the date of such annual meeting or, if less than 100 days' prior notice or public disclosure of the scheduled meeting date is given or made, the tenth day following the earlier of the day on which the notice of such meeting was mailed to Stockholders or the day on which such public disclosure was made. In no event shall any adjournment, postponement or deferral of an annual meeting or the announcement thereof commence a new time period for the giving of a Stockholder's notice as described above.

(a) Any such Stockholder's notice to the Secretary shall set forth as to each matter such Stockholder proposes to bring before the annual meeting: (i) a description of the proposal desired to be brought before the meeting and the reasons for conducting such business at the meeting, together with the text of the proposal or business (including the text of any resolutions proposed for consideration); (ii) as to such Stockholder proposing such business and the beneficial owner, if any, on whose behalf the proposal is made, (A) the name and address of such Stockholder, as they appear on the Corporation's books, and of such beneficial owner, if any, and the name and address of any other Stockholders known by such Stockholder to be supporting such business or proposal, (B) (1) the class or series and number of shares of capital stock of the Corporation which are, directly or indirectly, owned beneficially and of record by such Stockholder and such beneficial owner, (2) any option, warrant, convertible security, stock



appreciation right or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of capital stock of the Corporation or with a value derived in whole or in part from the price, value or volatility of any class or series of shares of capital stock of the Corporation or any derivative or synthetic arrangement having characteristics of a long position in any class or series of shares of capital stock of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise (a "Derivative Instrument") directly or indirectly owned beneficially by such Stockholder and by such beneficial owner and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of capital stock of the Corporation, (3) any proxy, contract, arrangement, understanding or relationship the effect or intent of which is to increase or decrease the voting power of such Stockholder or beneficial owner with respect to any shares of any security of the Corporation, (4) any pledge by such Stockholder or beneficial owner of any security of the Corporation or any short interest of such Stockholder or beneficial owner in any security of the Corporation (for purposes of this Section 1.10 and Section 2.10, a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (5) any rights to dividends on the shares of capital stock of the Corporation owned beneficially by such Stockholder and by such beneficial owner that are separated or separable from the underlying shares of capital stock of the Corporation, (6) any proportionate interest in shares of capital stock of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such Stockholder or beneficial owner is a general partner or, directly or indirectly, beneficially owns an interest in a general partner and (7) any performance-related fees (other than an asset-based fee) that such Stockholder or beneficial owner is entitled to based on any increase or decrease in the value of shares of capital stock of the Corporation or Derivative Instruments, if any, as of the date of such notice, including, without limitation, for purposes of clauses (B)(1) through (B)(7) above, any of the foregoing held by members of such Stockholder's or beneficial owner's immediate family sharing the same household (which information shall be supplemented by such Stockholder and beneficial owner, if any, not later than ten days after the record date for the meeting to disclose such ownership as of the record date), and (C) any other information relating to such Stockholder and beneficial owner, if any, that would be required to be disclosed in solicitations of proxies for the proposal, or would otherwise be required, in each case pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder; (iii) any material interest of such Stockholder and beneficial owner, if any, in such business or proposal; and (iv) a description of all agreements, arrangements and understandings between such Stockholder and beneficial owner, if any, and any other person or persons (including their names) in connection with such business or proposal by such Stockholder.

(b) A Stockholder providing notice of business proposed to be brought before an annual meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 1.10 shall be true and correct as of the record date for the meeting and as of the date that is ten business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received at, the principal executive offices of the Corporation not later than five business days after the record date for the meeting (in the case of



the update and supplement required to be made as of the record date), and not later than eight business days prior to the date for the meeting and, if practicable (or, if not practicable, on the first practicable date prior to), any adjournment or postponement thereof (in the case of the update and supplement required to be made as of ten business days prior to the meeting or any adjournment or postponement thereof). In addition, a Stockholder providing notice of business proposed to be brought before an annual meeting shall update and supplement such notice, and deliver such update and supplement to the principal executive offices of the Corporation, promptly following the occurrence of any event that materially changes the information provided or required to be provided in such notice pursuant to this Section 1.10.

(c) The Chairman or, if the Chairman is not presiding, the presiding officer of the meeting of Stockholders shall determine whether the requirements of this Section 1.10 have been met with respect to any Stockholder proposal. If the Chairman or the presiding officer determines that any Stockholder proposal was not made in accordance with the terms of this Section 1.10, he or she shall so declare at the meeting and any such proposal shall not be acted upon at the meeting.

(d) At a special meeting of Stockholders, only such business shall be conducted, and only such proposals shall be acted upon, as shall have been properly brought before such special meeting. To be properly brought before such a special meeting, business or proposals (other than any nomination of Directors, which is governed by Section 2.10 hereof) must (i) be specified in the notice relating to the meeting (or any supplement thereto) given by or at the direction of the Board of Directors in accordance with Section 1.3 hereof or (ii) constitute matters incident to the conduct of the meeting as the Chairman or the presiding officer of the meeting shall determine to be appropriate.

(e) In addition to the foregoing provisions of this Section 1.10, a Stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder, to the extent such requirements apply to the Corporation, with respect to the matters set forth in this Section 1.10. Nothing in this Section 1.10 shall be deemed to affect any rights of Stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act, to the extent such rule applies to the Corporation.

Section 1.11 Proxies. Each Stockholder entitled to vote at a meeting of Stockholders may authorize another person or persons to act for such Stockholder by proxy. Proxies for use at any meeting of Stockholders shall be filed with the Secretary, or such other officer as the Board may from time to time determine by resolution to act as secretary of the meeting, before or at the time of the meeting. All proxies shall be received and taken charge of and all ballots shall be received and canvassed by the secretary of the meeting, who shall decide all questions relating to the qualification of voters, the validity of the proxies and the acceptance or rejection of votes, unless an inspector or inspectors shall have been appointed by the Chairman or presiding officer of the meeting, in which event such inspector or inspectors shall decide all such questions.

Section 1.12 Conduct of Meetings. The Board may adopt by resolution such rules and regulations for the conduct of meetings of Stockholders as it deems appropriate.



Except to the extent inconsistent with those rules and regulations, if any, the Chairman or presiding officer of any meeting of Stockholders will have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of the Chairman or presiding officer, are appropriate for the proper conduct of that meeting. Such rules, regulations or procedures whether adopted by the Board or prescribed by the Chairman or presiding officer of the meeting may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) the determination of when the polls shall open and close for any given matter to be voted on at the meeting; (iii) rules and procedures for maintaining order at the meeting and the safety of those present; (iv) limitations on attendance at or participation in the meeting to Stockholders of record, their duly authorized and constituted proxies or such other persons as the Chairman or presiding officer of the meeting may determine; (v) restrictions on entry to the meeting after the time fixed for the commencement thereof; (vi) limitations on the time allotted to questions or comments by participants; and (vii) policies and procedures with respect to the adjournment of such meetings. Except to the extent the Board or the Chairman or presiding officer of any meeting otherwise prescribes, no rules or parliamentary procedure will govern any meeting of Stockholders.

ARTICLE II BOARD OF DIRECTORS

Section 2.1 Powers, Number, Classification and Vacancies.

(a) Powers of the Board of Directors. The powers of the Corporation shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed by or under the direction of, the Board. In addition to the authority and powers conferred upon the Board by the DGCL, the Certificate of Incorporation or these Bylaws, the Board is hereby authorized and empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject to the provisions of the DGCL, the Certificate of Incorporation and these Bylaws; provided, however, that no Bylaw of the Corporation hereafter adopted, nor any amendment thereto, shall invalidate any prior act of the Board that would have been valid if such Bylaw or amendment thereto had not been adopted.

(b) Management. Except as otherwise provided by the Certificate of Incorporation or these Bylaws or to the extent prohibited by Delaware law, the Board shall have the right (which, to the extent exercised, shall be exclusive) to establish the rights, powers, duties, rules and procedures that (i) from time to time shall govern the Board, including, without limiting the generality of the foregoing, the vote required for any action by the Board and (ii) from time to time shall affect the directors' power to manage the business and affairs of the Corporation. No Bylaw of the Corporation shall be adopted by the Stockholders that shall impair or impede the implementation of this Section 2.1(b).

(c) Number of Directors. Within the limits specified in the Certificate of Incorporation, and subject to such rights of holders of shares of one or more outstanding series of preferred stock of the Corporation to elect one or more Directors under circumstances as shall be provided by or pursuant to the Certificate of Incorporation, the number of Directors that shall constitute the whole Board shall be fixed from time to time exclusively by, and may be increased



or decreased from time to time exclusively by, the affirmative vote of at least a majority of the Directors then in office.

(d) Classification. As provided in the Certificate of Incorporation, the directors, other than those who may be elected by the holders of any outstanding series of preferred stock of the Corporation, shall be divided into three classes as nearly equal in size as is practicable: Class I, Class II and Class III. At each annual election, the directors chosen to succeed those whose terms then expire shall be of the same class as the directors they succeed, unless, by reason of any intervening changes in the authorized number of directors, the Board shall have designated one or more directorships whose term then expires as directorships of another class in order more nearly to achieve equality of number of directors among the classes. In the event of any change in the authorized number of directors, each director then continuing to serve as such shall nevertheless continue as a director of the class of which he or she is a member until the expiration of his or her current term, or his or her prior death, resignation or removal in accordance with the Certificate of Incorporation and these Bylaws.

(e) Vacancies. Unless otherwise provided by or pursuant to the Certificate of Incorporation, newly created directorships resulting from any increase in the number of Directors and any vacancies on the Board resulting from death, resignation, removal or other cause in accordance with the Certificate of Incorporation and these Bylaws may be filled only by the affirmative vote of at least a majority of the remaining Directors then in office, even if such remaining Directors constitute less than a quorum of the Board, or by a sole remaining Director. Any person who becomes a Director in accordance with the preceding sentence shall hold office for the remainder of the full term of the class of directors in which the new directorship was created or the vacancy occurred and until such Director's successor shall have been duly elected and qualified or until his or her earlier death, resignation or removal. Unless otherwise provided by or pursuant to the Certificate of Incorporation, no decrease in the number of Directors constituting the Board shall shorten the term of any incumbent Director.

Section 2.2 Regular Meetings. The Board will hold its regular meetings at such places within or without the State of Delaware, on such dates and at such times as the Board by resolution may determine from time to time, and any such resolution will constitute due notice to all Directors of the regular meeting or meetings to which it relates. By notice pursuant to Section 2.7, the Chairman or a majority of the Board may change the place, date or time of any regular meeting of the Board.

Section 2.3 Special Meetings. The Board will hold a special meeting at any place within or without the State of Delaware or time whenever the Chairman or a majority of the Board by resolution calls that meeting by notice pursuant to Section 2.7.

Section 2.4 Telephonic Meetings. Members of the Board may hold and participate in any Board meeting by means of conference telephone or other communications equipment that permits all persons participating in the meeting to hear each other, and participation of any Director in a meeting pursuant to this Section 2.4 will constitute the presence in person of that Director at that meeting for purposes of these Bylaws, except in the case of a Director who so participates only for the express purpose of objecting, at the beginning of the



meeting, to the transaction of any business on the ground that the meeting has not been called or convened in accordance with applicable law or these Bylaws.

Section 2.5 Organization. The Chairman will chair and preside over meetings of the Board at which he or she is present. A majority of the Directors present at any meeting of the Board from which the Chairman is absent will designate one of their number as chairman over that meeting. The Secretary will act as secretary of meetings of the Board, but in his or her absence from any such meeting the chairman of that meeting may appoint any person to act as secretary of that meeting.

Section 2.6 Order of Business. The Board will transact business at its meetings in such order as the Chairman or the Board by resolution will determine.

Section 2.7 Notice of Meetings. To call a special meeting of the Board, the Chairman or a majority of the Board must give a timely notice to each Director of the time and place of, and the general nature of the business the Board will transact at, all special meetings of the Board. To change the time or place of any regular meeting of the Board, the Chairman or a majority of the Board must give a timely notice to each Director of that change. To be timely, any notice this Section 2.7 requires must be delivered to each Director personally or by mail, facsimile, e-mail or other communication at least one day before the meeting to which it relates; provided, however, that notice of any meeting of the Board need not be given to any Director who waives the requirement of that notice (whether after that meeting or otherwise) or is present at that meeting.

Section 2.8 Quorum; Vote Required for Action. At all meetings of the Board, the presence in person of a majority of the total number of Directors then in office will constitute a quorum for the transaction of business, and the participation by a Director in any meeting of the Board will constitute that Director's presence in person at that meeting unless that Director expressly limits that participation to objecting, at the beginning of the meeting, to the transaction of any business at that meeting on the ground that the meeting has not been called or convened in accordance with applicable law or these Bylaws. Except in cases in which the Certificate of Incorporation or these Bylaws otherwise provide, the vote of a majority of the Directors present at a meeting at which a quorum is present will be the act of the Board.

Section 2.9 Board Action by Unanimous Written Consent in Lieu of Meeting. Unless the Certificate of Incorporation or these Bylaws otherwise provides, the Board may, without a meeting, prior notice or a vote, take any action it must or may take at any meeting, if all members of the Board consent thereto in writing or electronic transmission, and the written consents or electronic transmissions are filed with the minutes of proceedings of the Board that the Secretary is to keep.

Section 2.10 Nomination of Directors; Qualifications.

(a) Subject to such rights of holders of shares of one or more outstanding series of preferred stock of the Corporation to elect one or more Directors under circumstances as shall be provided by or pursuant to the Certificate of Incorporation, only persons who are nominated in accordance with the procedures set forth in this Section 2.10 shall be eligible for



election as, and to serve as, Directors. Nominations of persons for election to the Board may be made only at a meeting of the Stockholders at which Directors are to be elected, and only (i) by or at the direction of the Board or (ii) (if but only if the Board has determined that directors shall be elected at such meeting) by any Stockholder who is a Stockholder of record at the time of the giving of such Stockholder's notice provided for in this Section 2.10 and on the record date for the determination of Stockholders entitled to vote at such meeting, who is entitled to vote at such meeting in the election of Directors and who complies with the requirements of this Section 2.10. Clause (ii) of the immediately preceding sentence shall be the exclusive means for a Stockholder to make any nomination of a person or persons for election as a Director at an annual meeting or special meeting. Any such nomination by a Stockholder shall be preceded by timely advance notice in writing to the Secretary pursuant to this Section 2.10.

To be timely with respect to an annual meeting, such Stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation not earlier than the close of business on the 120th day and not later than the close of business on the 90th day prior to the first anniversary of the annual meeting date of the next preceding annual meeting; provided, however, that (1) if the scheduled annual meeting date differs from such anniversary date by more than 30 days, notice by such Stockholder, to be timely, must be so delivered or received not earlier than the close of business on the 75th day and not later than the close of business on the later of the 45th day prior to the date of such annual meeting or, if less than 100 days' prior notice or public disclosure of the scheduled meeting date is given or made, the tenth day following the earlier of the day on which the notice of such meeting was mailed to Stockholders or the day on which such public disclosure was made; and (2) if the number of directors to be elected to the Board at such annual meeting is increased and there is no prior notice or public disclosure by the Corporation naming all of the nominees for director or specifying the size of the increased Board at least 100 days prior to such anniversary date, a Stockholder's notice required by this Section 2.10 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the principal executive offices of the Corporation not later than the close of business on the tenth day following the earlier of the day on which the notice of such meeting was mailed to Stockholders or the day on which such public disclosure was made. To be timely with respect to a special meeting, such Stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation not earlier than the close of business on the 75th day and not later than the close of business on the 45th day prior to the scheduled special meeting date; provided, however, that if less than 100 days' prior notice or public disclosure of the scheduled meeting date is given or made, notice by such Stockholder, to be timely, must be so delivered or received not later than the close of business on the tenth day following the earlier of the day on which the notice of such meeting was mailed to Stockholders or the day on which such public disclosure was made. In no event shall any adjournment, postponement or deferral of an annual meeting or special meeting or the announcement thereof commence a new time period for the giving of a Stockholder's notice as described above.

Any such Stockholder's notice to the Secretary shall set forth (i) as to each person whom such Stockholder proposes to nominate for election or re-election as a Director, (A) the name, age, business address and residence address of such person, (B) the principal occupation or employment of such person, (C) any other information relating to such person that would be required to be disclosed in solicitations of proxies for election of Directors in a contested

election, or would otherwise be required, in each case pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (including, without limitation, the written consent of such person to having such person's name placed in nomination at the meeting and to serve as a Director if elected), and (D) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such Stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if such Stockholder and such beneficial owner, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; and (ii) as to such Stockholder giving the notice, the beneficial owner, if any, on whose behalf the nomination is made and the proposed nominee, (A) the name and address of such Stockholder, as they appear on the Corporation's books, and of such beneficial owner, if any, and the name and address of any other Stockholders known by such Stockholder to be supporting such nomination, (B) (1) the class or series and number of shares of capital stock of the Corporation which are, directly or indirectly, owned beneficially and of record by such Stockholder, such beneficial owner and such nominee, (2) any Derivative Instrument directly or indirectly owned beneficially by such Stockholder, such beneficial owner and such nominee and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of capital stock of the Corporation, (3) any proxy, contract, arrangement, understanding or relationship the effect or intent of which is to increase or decrease the voting power of such Stockholder, beneficial owner or nominee with respect to any shares of any security of the Corporation, (4) any pledge by such Stockholder, beneficial owner or nominee of any security of the Corporation or any short interest of such Stockholder, beneficial owner or nominee in any security of the Corporation, (5) any rights to dividends on the shares of capital stock of the Corporation owned beneficially by such Stockholder, beneficial owner and nominee that are separated or separable from the underlying shares of capital stock of the Corporation, (6) any proportionate interest in shares of capital stock of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such Stockholder, beneficial owner or nominee is a general partner or, directly or indirectly, beneficially owns an interest in a general partner and (7) any performance-related fees (other than an asset-based fee) that such Stockholder, beneficial owner or nominee is entitled to based on any increase or decrease in the value of shares of capital stock of the Corporation or Derivative Instruments, if any, as of the date of such notice, including, without limitation, for purposes of clauses (B)(1) through (B)(7) above, any of the foregoing held by members of such Stockholder's, beneficial owner's or nominee's immediate family sharing the same household (which information shall be supplemented by such Stockholder, beneficial owner, if any, and nominee not later than ten days after the record date for the meeting to disclose such ownership as of the record date), and (C) any other information relating to such Stockholder, beneficial owner, if any, and nominee that would be required to be disclosed in solicitations of proxies for election of Directors in a contested election, or would otherwise be required, in each case pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder. Any such Stockholder's notice to the Secretary shall also include or be

accompanied by, with respect to each nominee for election or reelection to the Board, a completed and signed questionnaire, representation and agreement required by Section 2.10(c). The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent Director or that could be material to a reasonable Stockholder's understanding of the independence, or lack thereof, of such nominee.

(b) A Stockholder providing notice of any nomination proposed to be made at a meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to Section 2.10(a) shall be true and correct as of the record date for the meeting and as of the date that is ten business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received at, the principal executive offices of the Corporation not later than five business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight business days prior to the date for the meeting and, if practicable (or, if not practicable, on the first practicable date prior to), any adjournment or postponement thereof (in the case of the update and supplement required to be made as of ten business days prior to the meeting or any adjournment or postponement thereof). In addition, a Stockholder providing notice of any nomination proposed to be made at a meeting shall update and supplement such notice, and deliver such update and supplement to the principal executive offices of the Corporation promptly following the occurrence of any event that materially changes the information provided or required to be provided in such notice pursuant to this Section 2.10.

(c) To be eligible to be a nominee for election or reelection as a Director, a person must deliver (in accordance with the time periods prescribed for delivery of notice under Section 2.10(a)) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be in the form provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such person (A) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a Director, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (2) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a Director, with such person's fiduciary duties under applicable law, (B) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a Director that has not been disclosed therein, and (C) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a Director, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation.

(d) The Chairman or, if he or she is not presiding, the presiding officer of the meeting of Stockholders shall determine whether the requirements of this Section 2.10 have been



met with respect to any nomination or purported nomination. If the Chairman or the presiding officer determines that any purported nomination was not made in accordance with the requirements of this Section 2.10, he or she shall so declare at the meeting and the defective nomination shall be disregarded. In addition to the foregoing provisions of this Section 2.10, a Stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder, to the extent such requirements apply to the Corporation, with respect to the matters set forth in this Section 2.10.

(e) Directors need not be residents of the State of Delaware or Stockholders.

Section 2.11 Compensation. Unless otherwise restricted by law, the Board shall have the authority to fix the compensation of the Directors. The Directors may be paid their expenses, if any, of attendance at each meeting of the Board and may be paid a fixed sum for attendance at each meeting of the Board or paid a stated salary or paid other compensation as Director. No such payment shall preclude any Director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may also be paid their expenses, if any, of and allowed compensation for attending committee meetings.

ARTICLE III BOARD COMMITTEES

Section 3.1 Board Committees. (a) The Board may designate one or more Board committees consisting of one or more of the Directors. The Board may designate one or more Directors as alternate members of any Board committee, who may replace any absent or disqualified member at any meeting of that committee. The member or members present at any meeting of any Board committee and not disqualified from voting at that meeting may, whether or not constituting a quorum, unanimously appoint another Director to act at that meeting in the place of any member of that committee who is absent from or disqualified to vote at that meeting.

(b) The Board by resolution may change the membership of any Board committee at any time and fill vacancies on any of those committees. A majority of the members of any Board committee will constitute a quorum for the transaction of business by that committee unless the Board by resolution requires a greater number for that purpose. The Board by resolution may elect a chairman of any Board committee. The election or appointment of any Director to a Board committee will not create any contract rights of that Director, and the Board's removal of any member of any Board committee will not prejudice any contract rights that member otherwise may have.



(c) Each other Board committee the Board may designate pursuant to Section 3.1(a) will, subject to applicable provisions of law, have and may exercise all the powers and authorities of the Board to the extent the Board resolution designating that committee so provides.

Section 3.2 Board Committee Rules. Unless the Board otherwise provides, each Board committee may make, alter and repeal rules for the conduct of its business. In the absence of those rules, each Board committee will conduct its business in the same manner as the Board conducts its business pursuant to Article II.

ARTICLE IV OFFICERS

Section 4.1 Designation. The officers of the Corporation will consist of a CEO, president, Secretary, treasurer and such senior or other vice presidents, assistant secretaries, assistant treasurers and other officers as the Board may elect or appoint from time to time. Any number of offices of the Corporation may be held by the same person. The Board shall also elect or appoint from among the directors a person to act as Chairman who shall not be deemed to be an officer of the Corporation unless he or she has otherwise been elected or appointed as such.

Section 4.2 CEO. The CEO will, subject to the control of the Board: (i) have general supervision and control of the affairs, business, operations and properties of the Corporation; (ii) see that all orders and resolutions of the Board are carried into effect; and (iii) have the power to appoint and remove all subordinate officers, employees and agents of the Corporation, except for those the Board elects or appoints. The CEO also will perform such other duties and may exercise such other powers as generally pertain to his or her office or these Bylaws or the Board by resolution assigns to him or her from time to time.

Section 4.3 Powers and Duties of Other Officers. The other officers of the Corporation will have such powers and duties in the management of the Corporation as the Board by resolution may prescribe and, except to the extent so prescribed, as generally pertain to their respective offices, subject to the control of the Board. The Board may require any officer, agent or employee to give security for the faithful performance of his or her duties.

Section 4.4 Vacancies. Whenever any vacancies shall occur in any office by death, resignation, increase in the number of offices of the Corporation, or otherwise, the same shall be filled by the Board, and the officer so elected shall hold office until such officer's successor is elected or appointed or until his or her earlier death, resignation or removal.

Section 4.5 Removal. Any officer or agent elected or appointed by the Board may be removed by the Board whenever in its judgment the best interests of the Corporation will be served thereby, but such removal shall be without prejudice to the contract, common law and statutory rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

Section 4.6 Action with Respect to Securities of Other Corporations. Unless otherwise directed by the Board, the Chairman, the CEO, the president, any vice president and



the treasurer of the Corporation shall each have power to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of security holders of or with respect to any action of security holders of any other corporation in which the Corporation may hold securities and otherwise to exercise any and all rights and powers which the Corporation may possess by reason of its ownership of securities in such other corporation.

ARTICLE V CAPITAL STOCK

Section 5.1 Uncertificated Shares. Shares of capital stock of the Corporation will be uncertificated. Ownership of such shares shall be evidenced by book entry notation on the stock transfer records of the Corporation.

Section 5.2 Transfer of Shares. The Corporation may act as its own transfer agent and registrar for shares of its capital stock or use the services of one or more transfer agents and registrars as the Board by resolution may appoint from time to time. Shares shall be transferred on the stock transfer records of the Corporation only upon the written instructions originated by the holders thereof or by their duly authorized attorneys or legal representatives.

Section 5.3 Ownership of Shares. The Corporation will be entitled to treat the holder of record of any share or shares of its capital stock as the holder in fact thereof and, accordingly, will not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it has express or other notice thereof, except as the applicable laws of the State of Delaware otherwise provide.

Section 5.4 Regulations Regarding Shares. The Board will have the power and authority to make all such rules and regulations as it may deem expedient concerning the issue, transfer and registration or the replacement of shares of capital stock of the Corporation.

ARTICLE VI INDEMNIFICATION

Section 6.1 General. The Corporation shall, to the fullest extent permitted by applicable law in effect on the date of effectiveness of these Bylaws, and to such greater extent as applicable law may thereafter permit, indemnify and hold each Indemnitee (as this and all other capitalized words used in this Article VI not previously defined in these Bylaws are defined in Section 6.15 hereof) harmless from and against any and all losses, liabilities, costs, claims, damages and, subject to Section 6.2, Expenses arising out of any event or occurrence related to the fact that Indemnitee is or was a Director or an officer of the Corporation or is or was serving in another Corporate Status.

Section 6.2 Expenses. If Indemnitee is, by reason of his or her Corporate Status, a party to and is successful, on the merits or otherwise, in any Proceeding, he or she shall be indemnified against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to any Matter in such Proceeding, the Corporation shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or her or on his or her behalf relating to such Matter. The termination of any Matter in such



a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such Matter. To the extent that the Indemnitee is, by reason of his or her Corporate Status, a witness in any Proceeding, he or she shall be indemnified against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection therewith.

Section 6.3 Advances. In the event of any threatened or pending Proceeding in which Indemnitee is a party or is involved and that may give rise to a right of indemnification under this Article VI, following written request to the Corporation by Indemnitee, the Corporation shall promptly pay to Indemnitee amounts to cover Expenses reasonably incurred by Indemnitee in such Proceeding in advance of its final disposition upon the receipt by the Corporation of (i) a written undertaking executed by or on behalf of Indemnitee providing that Indemnitee will repay the advance if it shall ultimately be determined that Indemnitee is not entitled to be indemnified by the Corporation as provided in this Article VI and (ii) satisfactory evidence as to the amount of such Expenses.

Section 6.4 Request for Indemnification. To obtain indemnification, Indemnitee shall submit to the Secretary a written claim or request. Such written claim or request shall contain sufficient information to reasonably inform the Corporation about the nature and extent of the indemnification or advance sought by Indemnitee. The Secretary shall promptly advise the Board of such request.

Section 6.5 Determination of Entitlement; No Change of Control. If there has been no Change of Control at or before the time the request for indemnification is submitted, Indemnitee's entitlement to indemnification shall be determined in accordance with Section 145(d) of the DGCL. If entitlement to indemnification is to be determined by Independent Counsel, the Corporation shall furnish notice to Indemnitee, within ten days after receipt of the request for indemnification, specifying the identity and address of Independent Counsel. The Indemnitee may, within 14 days after receipt of such written notice, deliver to the Corporation a written objection to such selection. Such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of Independent Counsel and the objection shall set forth with particularity the factual basis for such assertion. If there is an objection to the selection of Independent Counsel, either the Corporation or Indemnitee may petition the Court for a determination that the objection is without a reasonable basis or for the appointment of Independent Counsel selected by the Court.

Section 6.6 Determination of Entitlement; Change of Control. If there has been a Change of Control at or before the time the request for indemnification is submitted, Indemnitee's entitlement to indemnification shall be determined in a written opinion by Independent Counsel selected by Indemnitee. Indemnitee shall give the Corporation written notice advising of the identity and address of the Independent Counsel so selected. The Corporation may, within 14 days after receipt of such written notice of selection, deliver to the Indemnitee a written objection to such selection. Indemnitee may, within 14 days after the receipt of such objection from the Corporation, submit the name of another Independent Counsel and the Corporation may, within seven days after receipt of such written notice, deliver to the Indemnitee a written objection to such selection. Any objections referred to in this Section 6.6 may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of Independent Counsel and such objection shall set forth with particularity the



factual basis for such assertion. Indemnitee may petition the Court for a determination that the Corporation's objection to the first or second selection of Independent Counsel is without a reasonable basis or for the appointment of Independent Counsel of a person selected by the Court.

Section 6.7 Procedures of Independent Counsel. If a Change of Control shall have occurred before the request for indemnification is sent by Indemnitee, Indemnitee shall be presumed (except as otherwise expressly provided in this Article VI) to be entitled to indemnification upon submission of a request for indemnification in accordance with Section 6.4 hereof, and thereafter the Corporation shall have the burden of proof to overcome the presumption in reaching a determination contrary to the presumption. The presumption shall be used by Independent Counsel as a basis for a determination of entitlement to indemnification unless the Corporation provides information sufficient to overcome such presumption by clear and convincing evidence or the investigation, review and analysis of Independent Counsel convinces him or her by clear and convincing evidence that the presumption should not apply.

Except in the event that the determination of entitlement to indemnification is to be made by Independent Counsel, if the person or persons empowered under Section 6.5 or 6.6 hereof to determine entitlement to indemnification shall not have made and furnished to Indemnitee in writing a determination within 60 days after receipt by the Corporation of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and Indemnitee shall be entitled to such indemnification unless Indemnitee knowingly misrepresented a material fact in connection with the request for indemnification or such indemnification is prohibited by applicable law. The termination of any Proceeding or of any Matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Article VI) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the Corporation, or with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his or her conduct was unlawful. A person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan of the Corporation shall be deemed to have acted in a manner not opposed to the best interests of the Corporation.

For purposes of any determination hereunder, a person shall be deemed to have acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal Proceeding, to have had no reasonable cause to believe his or her conduct was unlawful, if his or her action is based on the records or books of account or other records of the Corporation or another enterprise or on information, opinions, reports or statements presented to him or her or to the Corporation by any of the Corporation's officers, employees or Directors, or committees of the Board, or by any other person as to matters the person reasonably believes are in such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation or another enterprise in the course of their duties or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an



appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The term "another enterprise" as used in this Section 6.7 shall mean any other corporation or any partnership, limited liability company, association, joint venture, trust, employee benefit plan or other enterprise for which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. The provisions of this paragraph shall not be deemed to be exclusive or to limit in any way the circumstances in which an Indemnitee may be deemed to have met the applicable standards of conduct for determining entitlement to rights under this Article.

Section 6.8 Independent Counsel Expenses. The Corporation shall pay any and all reasonable fees and expenses of Independent Counsel incurred acting pursuant to this Article VI and in any Proceeding to which it is a party or witness in respect of its investigation and written report and shall pay all reasonable fees and expenses incident to the procedures in which such Independent Counsel was selected or appointed. No Independent Counsel may serve if a timely objection has been made to his or her selection until a court has determined that such objection is without a reasonable basis.

Section 6.9 Adjudication. In the event that (i) a determination is made pursuant to Section 6.5 or 6.6 hereof that Indemnitee is not entitled to indemnification under this Article VI; (ii) advancement of Expenses is not timely made pursuant to Section 6.3 hereof; (iii) Independent Counsel has not made and delivered a written opinion determining the request for indemnification (a) within 90 days after being appointed by the Court, (b) within 90 days after objections to his or her selection have been overruled by the Court or (c) within 90 days after the time for the Corporation or Indemnitee to object to his or her selection; or (iv) payment of indemnification is not made within five days after a determination of entitlement to indemnification has been made or is deemed to have been made pursuant to Section 6.5, 6.6 or 6.7 hereof, Indemnitee shall be entitled to an adjudication by the Court of his or her entitlement to such indemnification or advancement of Expenses. In the event that a determination shall have been made that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 6.9 shall be conducted in all respects as a de novo trial on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. If a Change of Control shall have occurred, in any judicial proceeding commenced pursuant to this Section 6.9, the Corporation shall have the burden of proving that Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be. If a determination shall have been made or is deemed to have been made that Indemnitee is entitled to indemnification, the Corporation shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 6.9, or otherwise, unless Indemnitee knowingly misrepresented a material fact in connection with the request for indemnification, or such indemnification is prohibited by law.

The Corporation shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 6.9 that the procedures and presumptions of this Article VI are not valid, binding and enforceable. If the Indemnitee, pursuant to this Section 6.9, seeks a judicial adjudication to enforce his or her rights under, or to recover damages for breach of, this Article VI, and if he or she prevails therein, then Indemnitee shall be entitled to recover from the Corporation, and shall be indemnified by the Corporation against, any and all Expenses actually and reasonably incurred by him or her in such judicial adjudication. If it shall be determined in

such judicial adjudication that Indemnitee is entitled to receive part but not all of the indemnification or advancement of Expenses sought, then the Expenses incurred by Indemnitee in connection with such judicial adjudication or arbitration shall be prorated.

Section 6.10 Participation by the Corporation. With respect to any Proceeding: (a) the Corporation will be entitled to participate therein at its own expense; (b) except as otherwise provided below, to the extent that it may wish, the Corporation (jointly with any other indemnifying party similarly notified) will be entitled to assume the defense thereof, with counsel reasonably satisfactory to Indemnitee; and (c) the Corporation shall not be liable to indemnify Indemnitee under this Article VI for any amounts paid in settlement of any action or claim effected without its written consent, which consent shall not be unreasonably withheld. After receipt of notice from the Corporation to Indemnitee of the Corporation's election to assume the defense thereof, the Corporation will not be liable to Indemnitee under this Article VI for any legal or other expenses subsequently incurred by Indemnitee in connection with the defense thereof other than as otherwise provided below. Indemnitee shall have the right to employ his or her own counsel in such action, suit, proceeding or investigation but the fees and expenses of such counsel incurred after notice from the Corporation of its assumption of the defense thereof shall be at the expense of Indemnitee unless the employment of counsel by Indemnitee has been authorized by the Corporation, or Indemnitee shall have reasonably concluded that there is a conflict of interest between the Corporation and Indemnitee in the conduct of the defense of such action, or the Corporation shall not in fact have employed counsel to assume the defense of such action, in each of which cases the fees and expenses of counsel employed by Indemnitee shall be subject to indemnification pursuant to the terms of this Article VI. The Corporation shall not be entitled to assume the defense of any Proceeding brought in the name of or on behalf of the Corporation or as to which Indemnitee shall have reasonably concluded that there is a conflict of interest between the Corporation and Indemnitee in the conduct of the defense of such action. The Corporation shall not settle any action or claim in any manner which would impose any limitation or unindemnified penalty on Indemnitee without Indemnitee's written consent, which consent shall not be unreasonably withheld.

Section 6.11 Nonexclusivity of Rights. The rights of indemnification and advancement of Expenses as provided by this Article VI shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled to under applicable law, the Certificate of Incorporation, these Bylaws, any agreement, a vote of Stockholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Article VI or any provision hereof shall be effective as to any Indemnitee for acts, events and circumstances that occurred, in whole or in part, before such amendment, alteration or repeal. The provisions of this Article VI shall be binding upon the Corporation, its successors and assigns and shall continue as to an Indemnitee whose Corporate Status has ceased for any reason and shall inure to the benefit of his or her heirs, executors, administrators or personal representatives. Neither the provisions of this Article VI nor those of any agreement to which the Corporation is a party shall be deemed to preclude the indemnification of any person who is not specified in this Article VI as having the right to receive indemnification or is not a party to any such agreement, but whom the Corporation has the power or obligation to indemnify under the provisions of the DGCL.

Section 6.12 Insurance and Subrogation. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the



Corporation or another corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under applicable law.

The Corporation shall not be liable under this Article VI to make any payment of amounts otherwise indemnifiable hereunder if, but only to the extent that, Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

In the event of any payment hereunder, the Corporation shall be subrogated to the extent of such payment to all the rights of recovery of Indemnitee, who shall execute all papers required and take all action reasonably requested by the Corporation to secure such rights, including execution of such documents as are necessary to enable the Corporation to bring suit to enforce such rights.

Section 6.13 Severability. If any provision or provisions of this Article VI shall be held to be invalid, illegal or unenforceable for any reason whatsoever, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby; and, to the fullest extent possible, the provisions of this Article VI shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

Section 6.14 Certain Actions Where Indemnification Is Not Provided. Notwithstanding any other provision of this Article VI, no person shall be entitled to indemnification or advancement of Expenses under this Article VI with respect to any Proceeding, or any Matter therein, brought or made by such person against the Corporation.

Section 6.15 Definitions. For purposes of this Article VI:

“Change of Control” means a change in control of the Corporation after the date Indemnitee acquired his or her Corporate Status, which shall be deemed to have occurred in any one of the following circumstances occurring after such date: (i) there shall have occurred an event that is or would be required to be reported with respect to the Corporation in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any similar schedule or form) promulgated under the Exchange Act, if the Corporation is or were subject to such reporting requirement; (ii) any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) shall have become the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Corporation representing 40% or more of the combined voting power of the Corporation’s then outstanding voting securities without prior approval of at least two-thirds of the members of the Board in office immediately prior to such person’s attaining such percentage interest; (iii) the Corporation is a party to a merger, consolidation, sale of assets or other reorganization, or a proxy contest, as a consequence of which members of the Board in office immediately prior to such transaction or event constitute less than a majority of the Board thereafter; or (iv) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board (including, for this purpose, any new director whose election or nomination for election by the Stockholders was approved by a vote of at least two-thirds of the Directors then still in office who were directors at the beginning of such period) cease for any reason to constitute at least a majority of the Board.



“Corporate Status” describes the status of an individual as a director, officer or other designated legal representative of the Corporation or of any predecessor of the Corporation, or as a director, officer or other designated legal representative of any other corporation, partnership, limited liability company, association, joint venture, trust, employee benefit plan or other enterprise for which an individual is or was serving as a director, officer or other designated legal representative at the request of the Corporation.

“Court” means the Court of Chancery of the State of Delaware or any other court of competent jurisdiction.

“Expenses” shall include all reasonable attorneys’ fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, or being or preparing to be a witness in a Proceeding.

“Indemnitee” includes any person who is, or is threatened to be made, a witness in or a party to any Proceeding by reason of his or her Corporate Status.

“Independent Counsel” means a law firm, or a member of a law firm, that is experienced in matters of corporate law and neither presently is, nor in the five years previous to his, her or its selection or appointment has been, retained to represent: (i) the Corporation or Indemnitee in any matter material to either such party or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder.

“Matter” is a claim, a material issue or a substantial request for relief.

“Proceeding” includes any action, suit, arbitration, alternate dispute resolution mechanism, investigation, administrative hearing or any other proceeding, whether civil, criminal, administrative or investigative, except one initiated by an Indemnitee pursuant to Section 6.9 hereof to enforce his or her rights under this Article VI.

Section 6.16 Notices. Promptly after receipt by Indemnitee of notice of the commencement of any Proceeding, Indemnitee shall, if he or she anticipates or contemplates making a claim for Expenses or an advance pursuant to the terms of this Article VI, notify the Corporation of the commencement of such Proceeding; provided, however, that any delay in so notifying the Corporation shall not constitute a waiver or release by Indemnitee of rights hereunder and that any omission by Indemnitee to so notify the Corporation shall not relieve the Corporation from any liability that it may have to Indemnitee otherwise than under this Article VI. Any communication required or permitted to the Corporation shall be addressed to the Secretary and any such communication to Indemnitee shall be addressed to Indemnitee’s address as shown on the Corporation’s records unless he or she specifies otherwise and shall be personally delivered, delivered by U.S. Mail, or delivered by commercial express overnight delivery service. Any such notice shall be effective upon receipt.

Section 6.17 Contractual Rights. The right to be indemnified or to the advancement or reimbursement of Expenses (i) is a contract right based upon good and valuable consideration, pursuant to which Indemnitee may sue as if these provisions were set forth in a



separate written contract between Indemnitee and the Corporation, (ii) is and is intended to be retroactive and shall be available as to events occurring prior to the adoption of these provisions and (iii) shall continue after any rescission or restrictive modification of such provisions as to events occurring prior thereto.

Section 6.18 Indemnification of Employees, Agents and Fiduciaries. The Corporation, by adoption of a resolution of the Board of Directors, may indemnify and advance expenses to a person who is an employee, agent or fiduciary of the Corporation including any such person who is or was serving at the request of the Corporation as a director, officer, employee, agent or fiduciary of any other corporation, partnership, joint venture, limited liability company, trust, employee benefit plan or other enterprise to the same extent and subject to the same conditions (or to such lesser extent and/or with such other conditions as the Board of Directors may determine) under which it may indemnify and advance expenses to an Indemnitee under this Article VI.

ARTICLE VII MISCELLANEOUS

Section 7.1 Fiscal Year. The fiscal year of the Corporation shall end on the 31st day of December of each year or as otherwise provided by a resolution adopted by the Board.

Section 7.2 Seal. The corporate seal will have the name of the Corporation inscribed thereon and will be in such form as the Board by resolution may approve from time to time.

Section 7.3 Interested Directors; Quorum. No contract or transaction between the Corporation and one or more of its Directors or officers, or between the Corporation and any other Entity in which one or more of its Directors or officers are Directors or officers (or hold equivalent offices or positions), or have a financial interest, will be void or voidable solely for this reason, or solely because the Director or officer is present at or participates in the meeting of the Board or Board committee which authorizes the contract or transaction, or solely because his, her or their votes are counted for that purpose, if: (i) the material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the Board or the Board committee, and the Board or Board committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum; or (ii) the material facts as to the Director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of those Stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board, a Board committee or the Stockholders. Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or of a Board committee which authorizes the contract or transaction.

Section 7.4 Form of Records. Any records the Corporation maintains in the regular course of its business, including its stock ledger, books of account, and minute books,



may be kept on, or be in the form of, punch cards, magnetic tape, photographs, microphotographs or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time.

Section 7.5 Bylaw Amendments. The Board has the power to adopt, amend and repeal from time to time the Bylaws of the Corporation. Any adoption, amendment or repeal of the Bylaws of the Corporation by the Board shall require the approval of at least a majority of the Directors then in office. The Stockholders shall also have the power to adopt, amend or repeal the Bylaws of the Corporation at any annual meeting before which such matter has been properly brought in accordance with Sections 1.1 and 1.10 hereof, or at any special meeting if notice of the proposed amendment is contained in the notice of said special meeting; provided, however, that, in addition to any vote of the holders of any class or series of capital stock of the Corporation required by law or by the Certificate of Incorporation, the affirmative vote of the holders of at least eighty percent (80%) of the voting power of the then issued and outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of the Bylaws of the Corporation.

Section 7.6 Notices; Waiver of Notice. Whenever any notice is required to be given to any Stockholder, Director or member of any Board committee under the provisions of the DGCL, the Certificate of Incorporation or these Bylaws, that notice will be deemed to be sufficient if given (i) by telegraphic, facsimile, electronic mail, cable, wireless transmission or other electronic transmission or (ii) by deposit of the same in the United States mail, with postage paid thereon, addressed to the person entitled thereto at his or her address as it appears in the records of the Corporation, and that notice shall be deemed to have been given on the day of such transmission or mailing, as the case may be.

Whenever any notice is required to be given to any Stockholder or Director under the provisions of the DGCL, the Certificate of Incorporation or these Bylaws, a waiver thereof in writing signed by the person or persons entitled to that notice or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, will be equivalent to the giving of that notice. Attendance of a person at a meeting will constitute a waiver of notice of that meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Stockholders, the Board or any Board committee need be specified in any written waiver of notice or any waiver by electronic transmission unless the Certificate of Incorporation or these Bylaws so require.

Section 7.7 Resignations. Any Director or officer of the Corporation may resign at any time. Any such resignation shall be made in writing and shall take effect at the time specified in that resignation, or, if that resignation does not specify any time, at the time of its receipt by the Chairman, the CEO or the Secretary. The acceptance of a resignation will not be necessary to make it effective, unless that resignation expressly so provides.

Section 7.8 Books, Reports and Records. The Corporation shall keep books and records of account and shall keep minutes of the proceedings of the Stockholders, the Board



and each committee of the Board. Each Director and each member of any committee designated by the Board shall, in the performance of his or her duties, be fully protected in relying in good faith on the books of account or other records of the Corporation and on information, opinions, reports or statements presented to him or her or to the Corporation by any of the Corporation's officers, employees or other Directors, or committees of the Board, or by any other person as to matters the Director or member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or behalf of the Corporation.

Section 7.9 Facsimile Signatures. In addition to the provisions for the use of facsimile signatures elsewhere specifically authorized in these Bylaws, facsimile signatures of the Chairman, any other Director, or any officer or officers of the Corporation may be used whenever and as authorized by the Board.

Section 7.10 Certain Definitional Provisions. (a) When used in these Bylaws, the words "herein," "hereof" and "hereunder" and words of similar import refer to these Bylaws as a whole and not to any provision of these Bylaws, and the words "Article" and "Section" refer to Articles and Sections of these Bylaws unless otherwise specified.

(b) Whenever the context so requires, the singular number includes the plural and vice versa, and a reference to one gender includes the other gender and the neuter.

(c) The word "including" (and, with correlative meaning, the word "include") means including, without limiting the generality of any description preceding that word, and the words "shall" and "will" are used interchangeably and have the same meaning.

Section 7.11 Captions. Captions to Articles and Sections of these Bylaws are included for convenience of reference only, and these captions do not constitute a part hereof for any other purpose or in any way affect the meaning or construction of any provision hereof.

March 8, 2022

The Board of Directors of
Babcock & Wilcox Enterprises, Inc.
1200 E Market St Suite 650
Akron, OH 44305 USA

Dear Sirs/Madams:

We have audited the consolidated financial statements of Babcock & Wilcox Enterprises, Inc. and its subsidiaries as of December 31, 2021 and 2020, and for each of the three years in the period ended December 31, 2021, included in your Annual Report on Form 10-K to the Securities and Exchange Commission and have issued our report thereon dated March 8, 2022, which expresses an unqualified opinion and includes an explanatory paragraph concerning a change in accounting principle from the last-in-first-out (LIFO) cost method of inventory accounting to the first-in-first-out (FIFO) cost method of inventory accounting for certain inventories. Notes 2 and 6 to such consolidated financial statements contain a description of your adoption during the year ended December 31, 2021 of the change in accounting principle from the last-in-first-out (LIFO) cost method of inventory accounting to the first-in-first-out (FIFO) cost method of inventory accounting for certain inventories. In our judgment, such change is to an alternative accounting principle that is preferable under the circumstances.

Yours truly,

/s/ DELOITTE & TOUCHE LLP

Cleveland, OH

BABCOCK & WILCOX ENTERPRISES, INC.
SUBSIDIARIES
YEAR ENDED DECEMBER 31, 2021

Name of Company	Jurisdiction of Organization	Percentage of Ownership Interest
1867BW, LLC	Delaware	100
American Equipment Services, Inc.	Delaware	100
American, LLC	Delaware	100
B&W de Panama, Inc.	Panama	100
B&W PGG Luxembourg Canada Holdings SARL	Luxembourg	100
B&W PGG Luxembourg Finance SARL	Luxembourg	100
B&W PGG Luxembourg Holdings SARL	Luxembourg	100
B and W SPIG South Africa	South Africa	100
Babcock and Wilcox ME Holdings Limited	United Arab Emirates	100
Babcock & Wilcox Australia Pty. Ltd.	Australia	100
Babcock & Wilcox Canada Corp.	Nova Scotia	100
Babcock & Wilcox Construction Co., LLC	Delaware	100
Babcock & Wilcox de Monterrey, S.A. de C.V.	Mexico	100
Babcock & Wilcox Diamond Power Equipment Supply Co., Ltd.	China	100
Babcock & Wilcox Ebensburg Power, LLC	Delaware	100
Babcock & Wilcox Equity Investments, LLC	Delaware	100
Babcock & Wilcox Global Sales and Services Brazil Ltda.	Brazil	100
Babcock & Wilcox Global Sales & Services - Chile SpA	Chile	100
Babcock & Wilcox Global Sales and Service Pte. Ltd.	Singapore	100
Babcock & Wilcox Global Sales & Services SARL	Luxembourg	100
Babcock & Wilcox Holdings, LLC	Delaware	100
Babcock & Wilcox India Holdings, Inc.	Delaware	100
Babcock & Wilcox India Private Limited	India	100
Babcock & Wilcox International Investments Co., Inc.	Panama	100
Babcock & Wilcox International Sales and Service Corporation	Delaware	100
Babcock & Wilcox International, Inc.	Delaware	100
Babcock & Wilcox Monterrey Finance SARL	Luxembourg	100
Babcock & Wilcox New Energy Holdings, LLC	Delaware	100
Babcock & Wilcox Renewable Service A/S	Denmark	100
Babcock & Wilcox Singapore Pte. Ltd.	Singapore	100
Babcock & Wilcox SPIG, Inc.	New Jersey	100
Babcock & Wilcox Technology, LLC	Delaware	100
Babcock & Wilcox Volund Limited	United Kingdom	100
Babcock & Wilcox Volund AB	Sweden	100
Babcock & Wilcox Volund A/S	Denmark	100
Babcock Wilcox Arabia Limited	Saudi Arabia	100
BWL Energy (Rye House) Ltd.	Northern Ireland	50
BWL Energy (Teesside) Ltd.	Northern Ireland	100
Dampkraft Insurance Company	South Carolina	100
D.C.S. Dry Cooling Services SRL.	Italy	100

Name of Company	Jurisdiction of Organization	Percentage of Ownership Interest
Delta Power Services, LLC	Delaware	100
Diamond Operating Co., Inc.	Delaware	100
Diamond Power Australia Holdings, Inc.	Delaware	100
Diamond Power Central & Eastern Europe s.r.o.	Czech Republic	100
Diamond Power China Holdings, Inc.	Delaware	100
Diamond Power do Brasil Limitada	Brazil	100
Diamond Power Equity Investments, Inc.	Delaware	100
Diamond Power Finland OY	Finland	100
Diamond Power Germany GmbH	Germany	95
Diamond Power International, LLC	Delaware	100
Diamond Power Services S.E.A. Ltd.	Thailand	50
Diamond Power Specialty (Proprietary) Limited	Republic of South Africa	100
Diamond Power Specialty Limited	United Kingdom	100
Diamond Power Sweden AB	Sweden	100
Ebensburg Energy, LLC	Delaware	100
Ebensburg Investors Limited Partnership	Pennsylvania	100
Fosler Construction Company Inc. ⁽¹⁾	Illinois	60
O&M Holding Company	Delaware	100
P. T. Babcock & Wilcox Asia	Indonesia	100
Power Systems Operations, Inc.	Delaware	100
Servicios de Fabricacion de Valle Soleado, S.A. de C.V.	Mexico	100
Servicios Profesionales de Valle Soleado, S.A. de C.V.	Mexico	100
SOFCo - EFS Holdings LLC	Delaware	100
SPIG S.p.A.	Italy	100
SPIG Kuhlurmtechnologien GmbH	Germany	100
SPIG Turn Apa de Racine	Romania	100
SPIG Vostock	Russia	95
SPIG Sogutma Sistemleri Tic Ltd	Turkey	100
SPIG Cooling Towers India Private Limited	India	100
SPIG Torres de Resfriamento Ltda.	Brazil	100
SPIG (Shanxi) Cooling System Co., Ltd.	China	100
SPIG (Shanxi) Cooling Technology Company, Ltd.	China	60
SPIG Korea Ltd.	Korea	100
The Babcock & Wilcox Company	Delaware	100

⁽¹⁾ Gar Creek Solar, LLC (100% owned by subsidiary of Fosler Construction Company, Inc.)

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in:

- Registration Statement No. 333-254032 on Form S-3 dated March 09, 2021 pertaining to the registration of \$150,000,000 of Debt Securities;
- Registration Statement No. 333-254033 on Form S-3 dated March 09, 2021 pertaining to the registration of \$35,000,000 8.125% Five-Year Senior Notes;
- Registration Statement No. 333-255428 on Form S-3 dated April 22, 2021 pertaining to the universal shelf registration of \$350,000,000 of securities;
- Registration Statement No. 333-245144 on Form S-8 dated June 04, 2021 pertaining to the registration of 3,000,000 shares under the Company's Amended and Restated 2015 Long-Term Incentive Plan and the Company's 2021 Long-Term Incentive Plan;
- Registration Statement No. 333-257262 on Form S-3 dated June 21, 2021 pertaining to the registration of \$74,351,271 7.75% Series A Cumulative Perpetual Preferred Stock and \$81,585,174 Common Stock; and
- Registration Statement No. 333-260854 on Form S-3 dated November 08, 2021 pertaining to the universal shelf registration of \$500,000,000 of securities

of our reports dated March 8, 2022, relating to the consolidated financial statements of Babcock & Wilcox Enterprises, Inc. and the effectiveness of Babcock & Wilcox Enterprises Inc.'s internal control over financial reporting appearing in this Annual Report on Form 10-K for the year ended December 31, 2021.

/s/ DELOITTE & TOUCHE LLP

Cleveland, Ohio
March 8, 2022

CERTIFICATION

I, Kenneth M. Young, certify that:

1. I have reviewed this annual report on Form 10-K of Babcock & Wilcox Enterprises, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: March 8, 2022

/s/ Kenneth M. Young

Kenneth M. Young

Chairman and Chief Executive Officer

CERTIFICATION

I, Louis Salamone, certify that:

1. I have reviewed this annual report on Form 10-K of Babcock & Wilcox Enterprises, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: March 8, 2022

/s/ Louis Salamone

Louis Salamone

Executive Vice President, Chief Financial Officer and Chief Accounting Officer
(Principal Financial and Accounting Officer)

BABCOCK & WILCOX ENTERPRISES, INC.

Certification Pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002
(Subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code)

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code), I, Kenneth M. Young, President and Chief Executive Officer of Babcock & Wilcox Enterprises, Inc., a Delaware corporation (the "Company"), hereby certify, to my knowledge, that:

- (1) the Company's annual Report on Form 10-K for the year ended December 31, 2021 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of B&W as of the dates and for the periods expressed in the Report.

Dated: March 8, 2022

/s/ Kenneth M. Young

Kenneth M. Young
Chairman and Chief Executive Officer

BABCOCK & WILCOX ENTERPRISES, INC.

Certification Pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002
(Subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code)

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code), I, Louis Salamone, Chief Financial Officer of Babcock & Wilcox Enterprises, Inc., a Delaware corporation (the "Company"), hereby certify, to my knowledge, that:

- (1) the Company's Annual Report on Form 10-K for the year ended December 31, 2021 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of B&W as of the dates and for the periods expressed in the Report.

Dated: March 8, 2022

/s/ Louis Salamone

Louis Salamone

Executive Vice President, Chief Financial Officer and Chief Accounting Officer
(Principal Financial and Accounting Officer)