

P99000065933

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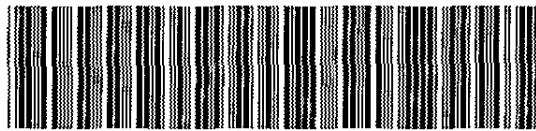
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01 JAN 21 PM 1:45
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TALLAHASSEE, FLORIDA

FILED
03 JAN 21 PM 2:20
STATE REGISTRATIONS
TALLAHASSEE, FLORIDA

POF

1/27/03

ARTICLES OF MERGER
Merger Sheet

MERGING:

ORIOUS CORP., a Florida corporation P99000065933

INTO

ORIOUS MERGER CORP., a Delaware entity not qualified in Florida

File date: January 21, 2003, effective January 23, 2003

Corporate Specialist: Annette Ramsey

CT CORPORATION SYSTEM

January 21, 2003

Secretary of State, Florida
409 East Gaines Street
Tallahassee FL 32399

Re: Order #: 5771788 SO
Customer Reference 1: 067840/1
Customer Reference 2:

Dear Secretary of State, Florida:

Please file the attached:

Orius Corp. (FL)
Merger (Survivor)
Florida

Orius Merger Corp. (DE)
Merger (Discontinuing Company)
Florida

Please FILE SECOND and return a certified copy along with regular evidence.

Enclosed please find a check for the requisite fees. Please return evidence of filing(s) to my attention.

If for any reason the enclosed cannot be filed upon receipt, please contact me immediately at (850) 222-1092. Thank you very much for your help.

660 East Jefferson Street
Tallahassee, FL 32301
Tel. 850 222 1092
Fax 850 222 7615

CT CORPORATION SYSTEM

Sincerely,

Jeffrey J Netherton
Sr. Fulfillment Specialist
Jeff_Netherton@cch-lis.com

~~EXECUTED DATE~~
1/23/03

ARTICLES OF MERGER
OF
ORIOUS CORP.
INTO
ORIOUS MERGER CORP.

FILED
03 JAN 21 PM 2:20
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

The following articles of merger are submitted in accordance with the Florida Business Corporation Law (the "FBCA") pursuant to Sections 607.1105 and 607.1107.

1. The name and jurisdiction of the "Surviving Corporation":

<u>Name</u>	<u>Jurisdiction</u>
ORIOUS MERGER CORP.	Delaware

2. The name and jurisdiction of the "Merging Corporation":

<u>Name</u>	<u>Jurisdiction</u>
ORIOUS CORP.	Florida

3. An Agreement and Plan of Merger (the "Merger Agreement"), attached hereto as Exhibit A, by and among the Surviving Corporation and the Merging Corporation is one of the Restructuring Transactions (as defined in the reorganization plan of Orius Corp., dated as of October 18, 2002, (as such plan may be amended, supplemented, or modified from time to time and confirmed on January 13, 2003, by the United States Bankruptcy Court for the Northern District of Illinois Eastern Division (the "Reorganization Plan")), contemplated by Section 5.2 of the Reorganization Plan and, pursuant to Section 5.4(c) of the Reorganization Plan, the Merger Agreement is authorized and approved in all respects without any requirement of further action of the security holders (including stockholders) of each of the constituent corporations.
4. The Merger Agreement was adopted by the board of directors of the Surviving Corporation on January 21, 2003, and shareholder approval was not required.
5. The Merger Agreement was adopted by the board of directors of the Merging Corporation on January 21, 2003, and shareholder approval was not required.
6. The name of the Surviving Corporation is Orius Merger Corp. except at the effective time of the merger it shall be changed to ORIOUS CORP.
7. The Certificate of Incorporation of the Surviving Corporation shall be amended to read in its entirety as set forth in Exhibit B attached hereto.
8. The merger shall become effective at 5:00 p.m. on January 23, 2003.
9. The Merger Agreement is on file at the following place of business of the Surviving Corporation: 1000 Hart Road, Suite 140, Barrington, IL, 60010. A copy of the Merger Agreement will be furnished by the Surviving Corporation, upon request and without cost, to any stockholder of any constituent corporation.

IN WITNESS WHEREOF, these Articles of Merger have been duly executed as of January 21, 2003, and is being filed in accordance with Section 607.1105 of the Florida Business Corporation Act by an authorized person of the Surviving Corporation.

ORIOUS MERGER CORP.

By: Ronald L. Blake
Name: Ronald L. Blake
Title: President

ORIOUS CORP.

By: Ronald L. Blake
Name: Ronald L. Blake
Title: President

Any schedules, exhibits, or annexes, which are omitted from this document, are assumed to be a part of the agreement of merger and are not required in the plan.

EXHIBIT A

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER

By and Between

ORIOUS MERGER CORP.

And

ORIOUS CORP.

January 21, 2003

This Agreement and Plan of Merger (this "Agreement"), dated as of January 21, 2003, by and among Orius Merger Corp., a Delaware corporation ("MergerCo" or the "Surviving Corporation"), and Orius Corp., a Florida corporation ("Orius"), said two corporations being herein sometimes collectively called the "Constituent Corporations."

WITNESSETH:

WHEREAS, MergerCo is a corporation duly organized and existing under the laws of the State of Delaware, having been incorporated on January 17, 2003;

WHEREAS, Orius is a corporation duly organized and existing under the laws of the State of Florida, having been incorporated on July 26, 1999;

WHEREAS, pursuant to the reorganization plan of Orius, dated as of October 18, 2002, (as such plan may be amended, supplemented, or modified from time to time (the "Reorganization Plan")) and confirmed on January 13, 2003, by the United States Bankruptcy Court for the Northern District of Illinois Eastern Division, it is deemed advisable and in the best interest of Orius and MergerCo that Orius be merged with and into MergerCo (the "Merger"), subject to the terms and conditions hereof, and pursuant to Sections 252 and 303 of the General Corporation Law of the State of Delaware (the "DGCL") and the provisions of Section 607.1107 of the Florida Business Corporation Act (the "FBCA").

WHEREAS, pursuant to the Merger, MergerCo will be the surviving corporation (the "Surviving Corporation");

WHEREAS, pursuant to Section 5.2 of the Reorganization Plan, Orius is authorized to effect one or more mergers, consolidations, restructures, dispositions, liquidations or dissolutions as it may deem appropriate to implement the Reorganization Plan (the "Restructuring Transactions");

WHEREAS, prior to the Merger, all issued and outstanding shares of Orius Common Stock, par value \$0.01 per share ("Orius Common Shares"), Orius Series C Preferred Stock, par value \$0.01 per share ("Orius Series C Shares"), Orius Series D Preferred Stock, par value \$0.01 per share ("Orius Series D Shares"), Orius Series E Preferred Stock, par value \$0.01 per share ("Orius Series E Shares") and Orius Series F Preferred Stock, par value \$0.01 per share ("Orius Series F Shares"), were cancelled and retired pursuant to Section 5.5 of the Reorganization Plan and Section 607.1008 of the Florida Business Corporation Act and have ceased to exist, and Orius currently has authorized twenty-five million (25,000,000) shares of Common Stock, par value \$0.01 per share, none of which is currently issued and outstanding ("Orius New Common Stock");

WHEREAS, MergerCo. currently has authorized twenty-five million (25,000,000) shares of Common Stock, par value \$0.01 per share, none of which is currently issued and outstanding ("MergerCo Common Stock"); and

WHEREAS, the Merger is one of the Restructuring Transactions contemplated by Section 5.2 of the Reorganization Plan and, pursuant to Section 5.4(c) of the Reorganization Plan and Sections 252 and 303 of the DGCL and Section 607.1107 of the Florida Business Corporation Act, this Agreement is authorized and approved in all respects without any requirement of further action of the security holders (including the stockholders) of Orius and MergerCo.

NOW, THEREFORE, in furtherance of the foregoing, the parties agree as follows:

ARTICLE I

TERMS

1.1 *The Merger.* Upon the terms and subject to the conditions set forth in this Agreement and in accordance with the applicable provisions of the DGCL and the FBCA, at the Effective Time (as hereinafter defined) of the Merger, Orius shall be merged with and into MergerCo. Following the Effective Time (as hereinafter defined) of the Merger, the separate corporate existence of Orius shall automatically cease and MergerCo shall continue as the surviving corporation, and shall succeed to and assume all the rights and obligations of Orius in accordance with the provisions of the DGCL and the FBCA. The name of the Surviving Corporation shall be changed to "Orius Corp." at the Effective Time.

1.2 *Effective Time.* Unless terminated as contemplated by Article IV hereof, a certificate of merger, executed in accordance with the relevant provisions of the DGCL and attached hereto as Exhibit A (the "Certificate of Merger"), and articles of merger, executed in accordance with the relevant provisions of the Florida Business Corporation Act and attached hereto as Exhibit B (the "Articles of Merger") shall be filed with the Secretary of State of the State of Delaware (the "Delaware Secretary of State") and the Secretary of State of the State of Florida (the "Florida Secretary of State"), respectively. The Merger shall become effective on January 23, 2003 (or at such later time as reflected in such Certificate of Merger and Articles of Merger). The date and time when the Merger shall become effective is hereinafter referred to as the "Effective Time."

1.3 *Organizational Documents.*

(a) The Certificate of Incorporation of MergerCo, as amended as set forth in Exhibit C hereto, shall be the Certificate of Incorporation of the Surviving Corporation, to remain unchanged until amended in accordance with the provisions thereof and of applicable law.

(b) The By-Laws of MergerCo, as restated as set forth in Exhibit D hereto, shall be the By-Laws of the Surviving Corporation, to remain unchanged until amended in accordance with the provisions thereof and of applicable law.

1.4 *Directors and Officers.* The directors of the Surviving Corporation shall be as set forth on Exhibit E hereto, and the officers of the Surviving Corporation shall be as set forth in Exhibit F hereto, in each case to serve until their successors have been duly elected or appointed.

1.5 *Capital Stock of MergerCo.* At the Effective Time, by virtue of the Merger and without any action on the part of the holder of any shares of capital stock of MergerCo or the holder of any shares of capital stock of Orius, each share of MergerCo Common Stock issued and outstanding immediately prior to the Effective Time shall remain one fully paid and non-assessable share of the Surviving Corporation, par value \$0.01 per share.

1.6 *Cancellation of Capital Stock of Orius.* At the Effective Time, by virtue of the Merger and without any action on the part of the holder of any shares of capital stock of MergerCo or the holder of any shares of capital stock of Orius, the Orius New Common Stock shall automatically be cancelled and retired and shall cease to exist.

ARTICLE II

CONDITIONS TO MERGER

2.1 *Conditions Precedent.* The respective obligation of each party to effect the Merger is subject to the satisfaction or waiver of each of the following conditions:

(a) The conditions to confirmation of the Reorganization Plan as set forth in Section 9.1 of the Reorganization Plan shall have been satisfied or waived; and

(b) The parties hereto shall be reasonably satisfied that the conditions to the "Effective Date" (as defined in the Reorganization Plan) set forth in Section 9.2 of the Reorganization Plan shall have either been satisfied or shall be satisfied concurrently with or immediately following the Effective Time.

ARTICLE III

AMENDMENT AND TERMINATION

3.1 *Amendment.* At any time before or after the Effective Time, this Agreement may be amended, modified or supplemented by the Boards of Directors of each of MergerCo and Orius to the extent permitted by Delaware and Florida law; provided, however, that no such amendment, modification or supplement shall be made that is inconsistent with the terms of the Reorganization Plan.

3.2 *Termination.* At any time prior to the Effective Time, this Agreement may be terminated and abandoned by the mutual agreement of the Boards of Directors of each of MergerCo and Orius.

ARTICLE IV

MISCELLANEOUS

4.1 *Governing Law.* This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to conflicts of laws principles. All actions and proceedings arising out of or relating to this Agreement shall be heard and determined in any Delaware state or federal court.

4.2 *Entire Agreement.* This Agreement (including the documents and the instruments referred to herein), together with all schedules, appendices, certificates, instruments and agreements delivered pursuant hereto and thereto (a) constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, and (b) except as provided herein, is not intended to confer upon any person other than the parties hereto any rights or remedies hereunder.

4.3 *Assignment.* Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other parties. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective permitted successors and assigns.

4.4 *Severability.* If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

4.5 *Counterparts.* This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute on and the same agreement.

IN WITNESS WHEREOF, MergerCo and Orius have each caused this Agreement to be executed by an authorized officer as of the date first above written.

ORJUS MERGER CORP.

BY: Ronald L. Blake
NAME: Ronald L. Blake
TITLE: President

ORJUS CORP.

BY: Ronald L. Blake
NAME: Ronald L. Blake
TITLE: President

EXHIBIT B

CERTIFICATE OF INCORPORATION

CERTIFICATE OF INCORPORATION

OF

ORJUS CORP.

ARTICLE ONE: The name of the Corporation is Orius Corp. (the "Corporation").

ARTICLE TWO: The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle 19801. The name of its registered agent at that address is The Corporation Trust Company.

ARTICLE THREE: The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the DGCL as set forth in Title 8 of the Delaware Code.

ARTICLE FOUR: The aggregate number of shares of stock which the Corporation shall have authority to issue is twenty-five million (25,000,000) shares, all such shares shall be Common Stock, each share having a par value of one cent (\$0.01) (the "Common Stock").

ARTICLE FIVE: The Corporation shall not issue any nonvoting equity securities to the extent prohibited by section 1123 of title 11 of the United States Code (the "Bankruptcy Code") as in effect on the effective date of the Reorganization Plan; provided, however, that this ARTICLE FIVE (a) will have no further force and effect beyond that required under section 1123 of the Bankruptcy Code, (b) will have such force and effect, if any, only for so long as such section of the Bankruptcy Code is in effect and applicable to the Corporation, and (c) in all events may be amended or eliminated in accordance with such applicable law as from time to time may be in effect.

ARTICLE SIX: Subject to the terms of the stockholders' agreement by and among the Corporation and the stockholders party thereto, dated as of the Effective Date (the "Stockholders' Agreement"), the Stockholders (as such term is defined in the Stockholders' Agreement) shall have preemptive rights in connection with any issuance by the Corporation after the Effective Date (as defined in the Reorganization Plan) of any equity securities of the Corporation (including, without limitation, Common Stock) or any option, warrant, right, or similar security or right

exercisable into, exchangeable for, or convertible to equity securities of the Corporation. All preemptive rights of the Stockholders granted pursuant to this ARTICLE SIX shall terminate and be of no further force and effect upon the earlier of (i) the termination of the Stockholders' Agreement and (ii) with regards to any individual Stockholder, the date such Stockholder no longer owns any Common Stock or any option, warrant, right, or similar security or right exercisable into, exchangeable for, or convertible to Common Stock.

ARTICLE SEVEN: The Corporation is to have perpetual existence.

ARTICLE EIGHT: The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

ARTICLE NINE: In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation, subject to the terms of the Stockholders' Agreement, shall have concurrent power with the stockholders to make, alter or repeal the Bylaws of the Corporation.

ARTICLE TEN: (a) The Board of Directors shall consist of five (5) members.

(b) Subject to the terms of the Stockholders' Agreement, directors shall be elected by a plurality of the votes cast at each annual meeting of stockholders. Election of directors need not be by written ballot unless the Bylaws so provide.

(c) In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, the terms of the Stockholders' Agreement, this Certificate of Incorporation, and any Bylaws adopted by the stockholders; provided, however, that no Bylaws hereafter adopted by the stockholders shall invalidate any prior act of the directors which would have been valid if such Bylaws had not been adopted.

ARTICLE ELEVEN: To the fullest extent permitted by the DGCL as the same exists or may hereafter be amended, no director shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL or (iv) for any transaction from which the

director derived an improper personal benefit. Any repeal or modification of this ARTICLE ELEVEN by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

ARTICLE TWELVE: Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the DGCL) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

ARTICLE THIRTEEN: The Corporation expressly elects not to be governed by Section 203 of the DGCL.