

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

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

Date of report (Date of earliest event reported)

August 3, 2022

MERITOR, INC.

(Exact Name of Registrant as Specified in its Charter)

Indiana

1-15983

38-3354643

(State or Other Jurisdiction of Incorporation)

(Commission File Number)

(IRS Employer Identification No.)

2135 West Maple Road, Troy, Michigan

48084-7186

(Address of Principal Executive Offices)

(Zip Code)

Registrant's telephone number, including area code

(248) 435-1000

Not Applicable

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2 below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class:

Common Stock, \$1 par value

Trading Symbol(s)

MTOR

Name of each exchange on which registered:

New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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

Introductory Note

On August 3, 2022, Meritor, Inc., an Indiana corporation (the “Company”), completed the transactions contemplated by the Agreement and Plan of Merger, dated as of February 21, 2022 (the “Merger Agreement”), by and among the Company, Cummins Inc., an Indiana corporation (“Parent”), Rose NewCo Inc., an Indiana corporation and a wholly owned subsidiary of Parent (“Merger Sub”). At the closing, Merger Sub merged with and into the Company (the “Merger”), with the Company surviving the Merger as the surviving corporation and as a wholly owned subsidiary of Parent.

Item 1.01. Entry into a Material Definitive Agreement.

The information provided in the Introductory Note of this Current Report on Form 8-K (this “Current Report”) is incorporated herein by reference.

Concurrently with the closing of the Merger, on August 3, 2022, the Company and U.S. Bank Trust Company, National Association, as trustee (the “Trustee”), entered into that certain First Supplemental Indenture (the “Supplemental Indenture”) to the Indenture, dated as of September 22, 2017 (the “Base Indenture”) and, together with the Supplemental Indenture, the “Indenture”), between the Company and the Trustee, relating to the Company’s 3.25% Convertible Senior Notes due 2037 (the “Convertible Notes”).

As a result of the Merger, and pursuant to the Supplemental Indenture, the Convertible Notes are no longer convertible into shares of common stock of the Company. Instead, subject to the terms and conditions of the Indenture, the Convertible Notes will be convertible into an amount of cash based on the per share merger consideration payable pursuant to the Merger Agreement, pursuant to the “Reference Property” provisions in the Indenture. This Current Report on Form 8-K does not constitute an offer or solicitation with respect to any securities.

The foregoing description of the Supplemental Indenture does not purport to be complete and is qualified in its entirety by reference to the Supplemental Indenture, a copy of which is attached as Exhibit 4.1 hereto and incorporated by reference herein.

Item 1.02. Termination of a Material Definitive Agreement.

The information provided in the Introductory Note of this Current Report is incorporated herein by reference.

Concurrently with the closing of the Merger, the Company terminated all commitments outstanding under the Fourth Amended and Restated Credit Agreement, dated as of June 7, 2019 (as amended by that certain Amendment No. 1, dated as of March 12, 2020, and that certain Amendment No. 2, dated as of June 26, 2020, the “Credit Agreement”), among the Company, ArvinMeritor Finance Ireland Unlimited Company, the lenders and other parties from time to time party thereto and JPMorgan Chase Bank, N.A., as administrative agent. In connection with the termination of the Credit Agreement, on August 3, 2022, all outstanding loans and other amounts due under the Credit Agreement were repaid in full.

Concurrently with the closing of the Merger, the Company also terminated all commitments outstanding under the Receivables Purchase Agreement, dated as of June 18, 2012 (as amended through the Fourth Amendment, dated as of October 15, 2014 and as otherwise amended, restated, supplemented or otherwise modified from time to time, the “Securitization Facility”), by and among ArvinMeritor Receivables Corporation, the Company, the various conduit purchasers, related committed purchasers, LC participants and purchaser agents from to time party thereto and PNC Bank, National Association. In connection with the termination of the Securitization Facility, on August 3, 2022, all amounts owing thereunder were repaid in full and certain outstanding letters of credit and assets were transferred and assigned, respectively, to Parent.

Item 2.01. Completion of Acquisition or Disposition of Assets.

The information set forth in the Introductory Note and in Items 3.03, 5.01, 5.02 and 5.03 of this Current Report is incorporated herein by reference.

On August 3, 2022, Parent completed the acquisition of the Company. Pursuant to the Merger Agreement, Merger Sub merged with and into the Company, with the Company surviving the Merger as a wholly owned subsidiary of Parent.

At the effective time of the Merger (the “Effective Time”), each share of common stock, par value \$1.00 per share, of the Company (the “Common Stock”) issued and outstanding immediately prior to the Effective Time, other than shares of Common Stock (“Shares”) held by the Company as treasury stock or held by Parent or Merger Sub or held by a subsidiary of Parent (other than Merger Sub) or the Company (other than Shares held on behalf of third parties), was converted into the right to receive \$36.50 in cash, without interest (the “Merger Consideration”).

At the Effective Time, restricted stock awards became fully vested and were treated as outstanding shares of Company Common Stock, and performance share units (“PSUs”) scheduled to vest on or before September 30, 2024 vested and were cancelled in exchange for the right to receive, on a per share basis, the Merger Consideration. Restricted stock units, and PSUs scheduled to vest after September 30, 2024, were converted into the right to receive, on a per share basis, cash equal to the Merger Consideration, without interest, with awards continuing to vest over the remaining service-vesting schedule (subject to accelerated vesting on a qualifying termination of employment). If a performance period in respect of any PSU was incomplete or performance was not determinable as of the Effective Time, the number of shares subject to such PSU was determined assuming applicable performance goals were satisfied at the target level of performance at the Effective Time.

The description of the Merger and the Merger Agreement contained in this Item 2.01 does not purport to be complete and is subject to and qualified in its entirety by reference to the Merger Agreement, which was filed as Exhibit 2.1 to the Current Report on Form 8-K filed by the Company with the Securities and Exchange Commission (the “SEC”) on February 22, 2022, and is incorporated by reference herein.

Item 3.01. Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.

The information set forth under Item 2.01 of this Current Report is incorporated by reference into this Item 3.01.

On August 3, 2022, the Company notified the New York Stock Exchange (the “NYSE”) that the Merger had been completed, and requested that the NYSE suspend trading of the Common Stock on the NYSE and withdraw the Common Stock from listing on the NYSE prior to the opening of trading on August 3, 2022. The Company also requested that the NYSE file with the SEC a notification of removal from listing and registration on Form 25 to effect the delisting of all shares of Common Stock from the NYSE and the deregistration of such Common Stock under Section 12(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). As a result, the Common Stock will no longer be listed on the NYSE.

In addition, the Company intends to file a certification on Form 15 with the SEC requesting the termination of registration of the shares of Common Stock under Section 12(g) of the Exchange Act and the suspension of the Company’s reporting obligations under Sections 13 and 15(d) of the Exchange Act with respect to the shares of Common Stock.

Item 3.03. Material Modification to Rights of Security Holders.

The information set forth in the Introductory Note and under Items 2.01, 3.01 and 5.03 of this Current Report is incorporated by reference into this Item 3.03.

Item 5.01. Change in Control of Registrant.

The information set forth in the Introductory Note and under Items 2.01, 3.03 and 5.02 of this Current Report is incorporated by reference into this Item 5.01.

As a result of the completion of the Merger, a change in control of the Company occurred, and the Company became a wholly owned subsidiary of Parent.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

The information set forth in the Introductory Note and Item 2.01 of this Current Report is incorporated by reference into this Item 5.02.

In accordance with the terms of the Merger Agreement, all directors of the Company prior to the Effective Time ceased to be directors of the Company effective as of the Effective Time. No director resigned as a result of any disagreement with the Company on any matter relating to the Company's operations, policies or practices.

In connection with the consummation of the Merger and in accordance with the terms of the Merger Agreement, the directors of Merger Sub immediately prior to the Effective Time became the directors of the Company, effective as of the Effective Time.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

The information set forth in the Introductory Note and Item 2.01 of this Current Report is incorporated by reference into this Item 5.03.

Pursuant to the Merger Agreement, at the Effective Time, the Amended and Restated Articles of Incorporation of the Company, as in effect immediately prior to the Effective Time, were amended and restated in their entirety to be in the form of the Articles of Incorporation of Merger Sub as in effect immediately prior to the Effective Time (the "Articles of Incorporation"). In addition, at the Effective Time, the Amended and Restated By-laws of the Company, as in effect immediately prior to the Effective Time, were amended and restated in their entirety to be in the form of the Bylaws of Merger Sub as in effect immediately prior to the Effective Time (the "Bylaws"). Copies of the Certificate of Incorporation and the Bylaws are filed as Exhibits 3.1 and 3.2 to this Current Report, respectively, and are incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

- [2.1](#) Agreement and Plan of Merger, dated as of February 21, 2022, by and among Meritor, Inc., Cummins Inc. and Rose NewCo Inc. (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K filed by the Company on February 22, 2022).*
- [3.1](#) Amended and Restated Certificate of Incorporation of Meritor, Inc.
- [3.2](#) Amended and Restated Bylaws of Meritor, Inc.
- [4.1](#) First Supplemental Indenture, dated August 3, 2022, between Meritor, Inc. and U.S. Bank Trust Company, National Association, as trustee
- 104 Cover Page Interactive Data File - the cover page iXBRL tags are embedded within the Inline XBRL document.

*The schedules to the Merger Agreement have been omitted from this filing pursuant to Item 601(b)(2)(ii) of Regulation S-K.

SIGNATURES

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

Dated: August 3, 2022

MERITOR, INC.

By: /s/ Scott M. Confer

Name: Scott M. Confer

Title: Vice President and Interim General Counsel & Corporate Secretary

AMENDED & RESTATED
ARTICLES OF INCORPORATION
OF
MERITOR, INC.

Article 1. NAME.

Section 1.1. **Corporate Name.** The name of the Corporation is “Meritor, Inc.” (the “**Corporation**”).

Article 2. PURPOSES AND POWERS.

Section 2.1. **Corporate Purposes.** The purpose for which the Corporation is formed is to transact any and all lawful business for which a corporation may be incorporated under the Indiana Business Corporation Law (the “**Law**”). The Corporation is a for-profit corporation.

Section 2.2. **Corporate Powers.** The Corporation shall have the power to perform any act which is necessary, convenient or expedient to accomplish any purpose within the contemplation of this Article 2.

Article 3. PERIOD OF EXISTENCE.

Section 3.1. **Period of Existence.** The period during which the Corporation shall continue is perpetual.

Article 4. REGISTERED AGENT AND REGISTERED OFFICE.

Section 4.1. **Registered Agent.** Corporation Service Company is a commercial registered agent and the Corporation’s registered agent and Corporation Service Company has consented to such appointment as registered agent.

Article 5. PRINCIPAL OFFICE.

Section 5.1. **Principal Office.** The street address of the Corporation’s Principal Office is 500 Jackson Street, Columbus, IN 47201.

Article 6. AUTHORIZED SHARES.

Section 6.1. **Number of Shares.** The total number of shares which the Corporation is to have the authority to issue is 1,000.

Section 6.2. **Terms of Shares.** The authorized shares of the Corporation shall consist of one class of common shares. All common shares shall have the same preferences, limitations, voting rights and privileges. Holders of the Corporation’s common shares shall have unlimited voting rights and shall be entitled to receive the net assets of the Corporation upon dissolution.

Section 6.3. **Voting Rights.** Every holder of common shares of the Corporation shall have the right, at every shareholders' meeting, to one vote for each common share standing in the shareholder's name on the books of the Corporation.

Article 7. DIRECTORS.

Section 7.1. **Number of Directors.** The number of directors shall be as specified in, or fixed in accordance with, the By-Laws of the Corporation.

Section 7.2. **Qualifications of Directors.** Directors need not be residents of the State of Indiana nor shareholders of the Corporation.

Section 7.3. **Powers of Directors.** The Board of Directors shall have the power to direct the management of the business and affairs of the Corporation. In addition to the powers and authorities set forth herein or expressly conferred upon the directors by statute or common law, the directors are hereby authorized to exercise all such powers and perform all such acts as may be exercised or done by a corporation organized and existing under the provisions of the Law.

Section 7.4. **Removal of Directors.** Any or all of the directors may be removed at any time, for a specific cause found and determined by a vote of not less than two-thirds (2/3) of the entire Board of Directors at the time. Any or all of the directors may be removed, with or without cause, at a meeting of the shareholders called expressly for that purpose, by the affirmative vote of the holders of a majority of the shares then entitled to vote at an election of directors. Directors may only be removed in accordance with this Section.

Article 8. INDEMNIFICATION.

Section 8.1. **Indemnification of Directors, Officers and Others.** To the extent permitted by the Law and the By-Laws, the Corporation may:

8.1.1 indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil or criminal, administrative or investigative, formal or informal (an "**Action**"), by reason of the fact that such person is or was an Director, Officer, employee or agent of the Corporation (collectively, "**Corporate Person**"), or is or was serving at the request of the Corporation as a director, officer, employee, agent, partner, trustee or member or in another authorized capacity (collectively, an "**Authorized Capacity**") of or for another corporation, unincorporated association, business trust, estate, partnership, trust, joint venture, individual or other legal entity, whether or not organized or formed for profit (collectively, "**Another Entity**"), against expenses (including attorneys' fees) ("**Expenses**") and judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such Action;

8.1.2 pay, in advance of the final disposition of an Action, the Expenses reasonably incurred in defending such action by a person who may be entitled to indemnification by the Corporation; and

8.1.3 purchase and maintain insurance on behalf of any person who is or was a Corporate Person, or is or was serving at the request of the Corporation in an Authorized Capacity of or for Another Entity, against any liability asserted against and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability.

The indemnification and advance of Expenses authorized by this Section 9.1 shall (i) not be deemed exclusive of any other rights to which a person may be entitled under any law, any resolution of the Board of Directors or the shareholders, any other authorization, whenever adopted, after notice, by a majority vote of all then outstanding Shares entitled to vote generally in the election of Directors, or the articles of incorporation, by-laws or other governing documents, or any resolution of or other authorization by the directors, shareholders, partners, trustees, members, owners or governing body, of Another Entity; (ii) inure to the benefit of the heirs, executors and administrators of such person; and (iii) continue as to any such person who has ceased to be a Corporate Person or to be serving in an Authorized Capacity of or for Another Entity.

Article 9. AMENDMENT TO ARTICLES OF INCORPORATION AND BY-LAWS.

Section 9.1. **Amendment of Articles of Incorporation.** The Corporation reserves the right to alter, amend and repeal any provisions contained in these Articles of Incorporation in the manner now or hereafter prescribed by the provisions of the Law or any other pertinent enactment of the General Assembly of the State of Indiana and all rights and powers conferred hereby on shareholders, directors and officers of the Corporation are subject to such reserved right.

Section 9.2. **Adoption and Amendment of By-Laws.** The Board of Directors of the Corporation shall have the exclusive power to make, alter, amend and repeal the By-Laws of the Corporation upon the affirmative vote of not less than a majority of its members.

IN WITNESS WHEREOF, these Amended & Restated Articles of Incorporation have been executed this 3rd day of August, 2022.

MERITOR, INC.

By: /s/ Scott M. Confer

Name: Scott M. Confer

Title: Vice President and Interim General Counsel & Corporate Secretary

AMENDED & RESTATED
CODE OF BY-LAWS
OF
MERITOR, INC.

Article 1. DEFINITIONS AND ABBREVIATIONS.

Section 1.1. **Corporation.** As used in this Amended & Restated Code of By-Laws, the term “**Corporation**” means Meritor, Inc.

Section 1.2. **Law.** As used in this Amended & Restated Code of By-Laws, the term “**Law**” means the Indiana Business Corporation Law, as amended from time to time.

Section 1.3. **Articles of Incorporation.** As used in this Amended & Restated Code of By-Laws, the term “**Amended & Restated Articles of Incorporation**” means the Amended & Restated Articles of Incorporation of the Corporation, as amended from time to time.

Section 1.4. **By-Laws.** As used in this Amended & Restated Code of By-Laws, the term “**By-Laws**” means this Amended & Restated Code of By-Laws, as amended from time to time.

Article 2. CORPORATE SEAL.

Section 2.1. **Seal.** The seal of the Corporation, if any, shall be circular in form and mounted upon a metal die, suitable for impressing the same upon paper, or upon a rubber stamp suitable for stamping or printing on paper. About the upper periphery of the seal shall appear the name of the Corporation and about the lower periphery thereof the word “Indiana.” In the center of the seal shall appear the words “Seal” or “Corporate Seal.”

Article 3. SHARES.

Section 3.1. **Consideration for Shares.** The Board of Directors may authorize the Corporation to issue its shares for consideration consisting of any tangible or intangible property or benefit to the Corporation, including, but not limited to, cash, promissory notes, services performed, contracts for services to be performed, or other securities of the Corporation. However, if shares are issued for promissory notes or for promises to render services in the future, the Corporation shall report in writing to the shareholders the number of shares authorized to be so issued with or before notice of the next shareholders’ meeting. In the absence of actual fraud in the transaction, the judgment of the Board of Directors as to the value of such property, labor, or services received as consideration for shares, or the value placed by the Board of Directors upon the corporate assets in the event of a share dividend, shall be conclusive.

Section 3.2. **Subscriptions for Shares.** Subscriptions for shares of the Corporation shall be paid to the Treasurer or Secretary at such time or times, in such installments or calls, and upon such terms, as shall be determined, from time to time, by the Board of Directors. Any call made by the Board of Directors for payment on subscriptions shall be uniform, so far as practicable, as to all shares of the same class or as to all shares of the same series, as the case may be, unless the subscription agreements provide otherwise.

Section 3.3. **Payment for Shares.** When payment of the consideration for which shares were authorized to be issued shall have been received by the Corporation, such shares shall be declared and taken to be fully paid and not liable to any further call or assessment, and the holder thereof shall not be liable for any further payments thereon.

Section 3.4. **Certificates for Shares.** Unless the Board of Directors shall, by resolution, authorize the issuance of uncertificated shares, each shareholder of the Corporation shall be entitled to a certificate, signed by the President and Secretary of the Corporation, stating: (i) the name of the Corporation and a statement that it is organized under the laws of the State of Indiana, (ii) the name of the registered holder, (iii) the number of shares represented thereby and the kind and class thereof, (iv) the par value of each share or a statement that such shares have no par value, and (v) whether such shares have been fully paid and are non-assessable. If such certificate is countersigned by the written signature of a transfer agent other than the Corporation or its employee, the signatures of the officers of the Corporation may be facsimiles. If such certificate is countersigned by the written signature of a registrar other than the Corporation or its employee, the signatures of the transfer agent and the officers of the Corporation may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if the person were such officer, transfer agent or registrar at the date of its issue. Such certificates shall be in such form as the Board of Directors may, from time to time, by resolution approve.

Article 4. MEETINGS OF SHAREHOLDERS.

Section 4.1. **Place of Meetings.** All meetings of the shareholders of the Corporation shall be held at such place, within or without the State of Indiana, as may be specified in the respective notices or waivers of notice thereof, or proxies to represent shareholders thereat. If no designation is made, the meeting shall be held at the principal office of the Corporation as the same is designated in the most recent report filed with the Secretary of State of Indiana.

Section 4.2. **Annual Meeting.** The shareholders of the Corporation shall meet at least once each year. The annual meeting of the shareholders for the election of directors, and for the transaction of such other business as may properly come before the meeting, shall be held at such date and time as shall be determined by the Board of Directors. Failure to hold the annual meeting at the designated time shall not work any forfeiture or a dissolution of the Corporation.

Section 4.3. **Special Meetings.** Special meetings of the shareholders may be called by the President, a majority of the members of the Board of Directors, or by shareholders holding of record not less than one-fourth (1/4) of all of the shares outstanding and entitled by the Amended & Restated Articles of Incorporation to vote on the business proposed to be transacted thereat.

Section 4.4. **Notice of Meetings.** A written or printed notice, stating the place, day and time of the meeting, and in case of a special meeting, or when required by any other provision of the Law, the Amended & Restated Articles of Incorporation, or By-Laws, the purpose or purposes for which the meeting is called, shall be delivered or mailed by the Secretary, or by the officers or persons calling the meeting, to each shareholder of record entitled by the Amended & Restated Articles of Incorporation and by the Law to vote at such meeting. Notices shall be sent to shareholders at such address as appears upon the records of the Corporation, at least ten (10) and not more than sixty (60) days before the date of the meeting. Notice of any meeting may be waived in writing by any shareholder before or after the date and time stated in the notice, if the waiver sets forth in reasonable detail the purpose or purposes for which the meeting is called, and the time and place thereof. Attendance at any meeting in person, or by proxy when the instrument of proxy sets forth in reasonable detail the purpose or purposes for which the meeting was called, shall constitute a waiver of notice of such meeting. Each shareholder, who has in the manner above provided waived notice of a shareholders' meeting, or who personally attends a shareholders' meeting, or is represented thereat by a proxy authorized to appear by an instrument of proxy complying with the requirements above set forth, shall be conclusively presumed to have been given due notice of such meeting.

Section 4.5. **Closing of Books or Fixing of Record Date.** The Board of Directors may, in its discretion, fix a date, not more than seventy (70) days prior to the date of any meeting of shareholders, or the last day on which any consent or dissent of shareholders may be expressed without a meeting, or the date for the dissent of shareholders may be expressed without a meeting, or the date for the payment of any dividends or the making of any distribution or the delivery of evidences of rights, or the date when any change or conversion or exchange of shares shall go into effect, as the date for the determination of shareholders entitled to notice of and to vote at such meeting or to express such consent or dissent or to receive any such dividend, distribution or rights or to exercise the rights in respect of any change, conversion or exchange of shares. All persons who are holders of record of shares at the close of business on such record date, and no others, shall be entitled to notice of and to vote at such meeting or to express such consent or dissent or to receive such dividend, distribution or rights or to exercise such rights in respect of any change, conversion or exchange of shares as the case may be. In any event when dividends are declared, the share transfer books will not be closed but a record date will be set as hereinabove provided.

Article 5. THE BOARD OF DIRECTORS.

Section 5.1. **Election and Qualification.** At the first annual meeting of the shareholder's and at each annual meeting thereafter, directors shall be elected by the shareholders entitled by the Amended & Restated Articles of Incorporation and these By-Laws to elect directors, for a term of one year, and they shall hold office until their respective successors are elected and qualified or until their earlier death or resignation. The Board of Directors shall consist of between one (1) and ten (10) directors with the actual number being set from time to time by the Board of Directors. Directors need not be shareholders of the Corporation or residents of the State of Indiana. The range of directors may be increased or decreased from time to time by amendment to these By-Laws, but no decrease shall have the effect of shortening the term of any incumbent director.

Section 5.2. **Vacancies.** Any vacancy occurring in the Board of Directors caused by resignation, death or other incapacity, or increase in the number of directors may be filled by a majority vote of the remaining members of the Board of Directors, until the next annual or special meeting of the shareholders or, at the discretion of the Board of Directors, such vacancy may be filled by vote of the shareholders at a special meeting called for that purpose. Until any such vacancy is so filled, the existing directors shall constitute the Board of Directors. Shareholders shall be notified of any increase in the number of directors and the name, address, principal occupation, and other pertinent information about any director elected by the Board of Directors to fill any vacancy.

Section 5.3. **Annual Meeting.** The Board of Directors shall meet each year as soon as reasonably possible after the annual meeting of the shareholders, at the place where such meeting of the shareholders has been held (either within or without the State of Indiana), for the purpose of electing officers and consideration of any other business that may properly be brought before the meeting. No notice of any kind to either old or new members of the Board of Directors for such annual meeting shall be necessary. If such meeting is not held as above provided, the election of officers may be had at any subsequent meeting of the Board of Directors specifically called in the manner provided in Section 5.4 of this Article.

Section 5.4. **Regular Meetings.** Regular meetings of the Board of Directors may be held without any notice whatsoever, at such place and times as may be fixed from time to time by resolution of the Board of Directors.

Section 5.5. **Special Meetings.** Special meetings of the Board of Directors may be called at any time by the President or any Vice-President, and shall be called on the written request of one-half (1/2) of the directors. Notice of a special meeting shall be sent by the Secretary or an Assistant Secretary to each director at the director's residence or usual place of business by mail, hand delivery or telecopier delivered for transmission not later than the third day immediately preceding the day for the meeting, or by word of mouth or telephone, received not later than during the second day immediately preceding the day for the meeting. In lieu of such notice, a director may sign a written waiver of notice either before the time of the meeting, at the time of the meeting, or after the time of the meeting. Neither the business to be transacted at, nor the purpose of, any meeting of the Board of Directors need be specified in the notice or waiver of notice of the meeting. Any meeting of the Board of Directors for which notice is required shall be a legal meeting, without notice thereof having been given, if all members of the Board of Directors who have not waived notice thereof in writing shall be present in person.

Section 5.6. **Place of Meetings.** The directors may hold their meetings, have one or more offices, and keep the books of the Corporation, except as may be provided by law, within or without the State of Indiana, at any office or offices of the Corporation, or at any other place, as they may from time to time by resolution determine. If the resolution of the Board of Directors calling a regular meeting or the written request calling a special meeting expressly provides, a meeting of the Board of Directors may be held by conference telephone call or any other medium which allows each director to participate in discussions and to hear the views of the other directors. If a meeting is held, the directors connected to the conference telephone call or other medium shall be counted as present for the purpose of determining a quorum.

Section 5.7. **Quorum.** A majority of the actual number of directors elected and qualified, from time to time, shall be necessary to constitute a quorum for the transaction of any business except the filling of vacancies, and the act of a majority of the directors present at a meeting, at which a quorum is present, shall be the act of the Board of Directors, unless the act of a greater number is required by the law or by the Amended & Restated Articles of Incorporation. A director who is present at a meeting of the Board of Directors at which action on any corporate matter is taken, shall be conclusively presumed to have assented to the action taken, unless (i) the director's dissent shall be affirmatively stated at and before the adjournment of such meeting (in which event the fact of such dissent shall be entered by the secretary of the meeting in the minutes of the meeting), or (ii) the director shall forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. The right of dissent provided for by either clause (i) or clause (ii) of the immediately preceding sentence shall not be available, in respect of any matter acted upon at any meeting, to a director who voted at the meeting in favor of such matter and did not change such vote prior to the time that the result of the vote on such matter was announced by the chairman of such meeting.

Section 5.8. **Duties of Directors.** A director shall perform the duties of a director, including the duties as a member of any committee of the Board of Directors upon which such director may serve, in good faith, in a manner which the director reasonably believes to be in the best interests of the Corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. In performing such duties, a director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

- (a) one or more officers or employees of the Corporation whom the director reasonably believes to be reliable and competent in the matter presented;
- (b) legal counsel, public accountants or other persons as to matters which the director reasonably believes to be within such person's professional or expert competence; or
- (c) a committee of the Board of Directors upon which the director does not serve, duly designated in accordance with a provision of the Amended & Restated Articles of Incorporation or these By-Laws, as to matters within its designated authority, which committee the director reasonably believes to merit confidence.

But such director shall not be considered to be acting in good faith if that director has knowledge concerning the matter in question that would cause such reliance to be unwarranted. A director who performs such duties in good faith shall have no liability by reason of being or having been a director of the Corporation.

Section 5.9. **Taking Action by Consent.** Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if a written consent to such action is signed by all members of the Board of Directors or such committee, as the case may be, and such written consent is filed with the minutes of proceedings of the Board of Directors or committee.

Section 5.10. **Powers of Directors.** The Board of Directors shall exercise all the powers of the Corporation, subject to the restrictions imposed by law, by the Amended & Restated Articles of Incorporation, or by these By-Laws.

Section 5.11. **Dividends.** The Board of Directors shall have power, subject to any restrictions contained in the Amended & Restated Articles of Incorporation, to declare and pay dividends upon the outstanding shares of the Corporation, subject to the limitations of the law. Dividends may be paid in cash, in property, or in other securities of the Corporation.

Section 5.12. **Resignation.** A director may resign at any time by filing a written resignation with the Board of Directors, the President or the Secretary of the Corporation, and such resignation shall become effective upon delivery unless the notice specifies a later effective date.

Article 6. THE OFFICERS.

Section 6.1. **Number.** The officers of the Corporation shall consist of such officers and assistants as the Board of Directors may appoint from time to time.

Section 6.2. **Election, Term of Office and Qualification.** The officers shall be elected at the annual meeting of the Board of Directors. Each officer shall hold office until the officer's successor is elected and qualified, until the officer's death, until the officer shall have resigned, or shall have been removed in the manner hereinafter provided.

Section 6.3. **Removal.** Any officer may be removed by the Board of Directors at any time with or without cause, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 6.4. **Resignations.** Any officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary. Such resignation shall take effect at the time it is delivered to the Corporation's representative, unless the notice specifies a later date. Unless otherwise specified in the resignation, the acceptance of such resignation shall not be necessary to make it effective.

Section 6.5. **Vacancies.** Any vacancy in any office because of death, resignation, removal or any other cause shall be filled for the unexpired portion of the term in the manner prescribed in these By-Laws for election or appointment to such office.

Section 6.6. **Salaries.** The salaries of the officers shall be fixed, from time to time, by the Board of Directors or committee thereof. No officer shall be prevented from receiving such salary by reason of the fact such officer is also a director of the Corporation.

Section 6.7. **Minutes and Accounting Records.** The Corporation shall keep as permanent records minutes of all meetings of its shareholders and Board of Directors, a record of all actions taken by the shareholders or Board of Directors without a meeting, and a record of all actions taken by a committee of the Board of Directors in place of the Board of Directors on behalf of the Corporation. The Corporation shall maintain appropriate accounting records.

Article 7. AMENDMENTS.

Section 7.1. **Amendments to By-Laws.** The power to make, alter, amend and repeal these By-Laws is vested in the Board of Directors, but the affirmative vote of a majority of the actual number of directors elected and qualified from time to time, shall be necessary to effect any alteration, amendment or repeal of these By-Laws.

FIRST SUPPLEMENTAL INDENTURE

THIS FIRST SUPPLEMENTAL INDENTURE (this “First Supplemental Indenture”) dated as of August 3, 2022 between MERITOR, INC. (the “Company”) and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, successor in interest to U.S. Bank National Association, as trustee under the Indenture referred to below (the “Trustee”). All capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Indenture (as defined below).

WITNESSETH:

WHEREAS, the Company and the Trustee have heretofore executed and delivered an indenture, dated as of September 22, 2017 (the “Indenture”), relating to the Company’s 3.25% Convertible Senior Notes due 2037 (the “Notes”);

WHEREAS, the Company is a party to that certain Agreement and Plan of Merger, dated as of February 21, 2022 (the “Merger Agreement”), by and among the Company, Cummins, Inc., an Indiana corporation (“Parent”) and Rose Newco, Inc., an Indiana corporation and a wholly-owned subsidiary of Parent (“Merger Sub”), pursuant to which Merger Sub will merge with and into the Company, with the Company continuing as the surviving corporation and wholly-owned subsidiary of the Parent (the “Merger”);

WHEREAS, subject to the terms and conditions contained in the Merger Agreement, each issued and outstanding share of common stock, par value \$1.00 per share, of the Company, (each a “Share” and, collectively, the “Shares”) will be converted into the right to receive \$36.50 in cash, without interest (the “Merger Consideration”);

WHEREAS, the Merger will constitute a Merger Event under the Indenture;

WHEREAS, in connection with the foregoing, Section 14.07(a) of the Indenture provides that the Company shall execute a supplemental indenture providing that each Note shall, without the consent of any Holders, become convertible into Reference Property (as defined below);

WHEREAS, pursuant to Section 10.01 of the Indenture, the parties hereto are authorized to execute and deliver this First Supplemental Indenture;

WHEREAS, the Company desires that the Trustee join with it in execution and delivery of this First Supplemental Indenture, and in accordance with Sections 10.05 and 17.05 of the Indenture, has delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel responsive to and in compliance with the matters stated therein; and

WHEREAS, each party hereto has duly authorized the execution and delivery of this First Supplemental Indenture and has done all things necessary to make this First Supplemental Indenture a valid agreement in accordance with its terms.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Company and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

ARTICLE I
Defined Terms

Section 1.01. Defined Terms. As used in this First Supplemental Indenture, terms defined in the Indenture or in the preamble or recital thereto are used herein as therein defined. The words “herein,” “hereof” and “hereby” and other words of similar import used in this First Supplemental Indenture refer to this First Supplemental Indenture as a whole and not to any particular section hereof.

ARTICLE II
Effect of Merger

Section 2.01. Conversion of Notes. In accordance with Section 14.07(a) of the Indenture, from and after the effective time of the Merger, the right to convert each \$1,000 principal amount of the Notes shall be changed to a right to convert such principal amount of Notes into cash (the “Reference Property”) in an amount initially equal to (x) the Conversion Rate in effect immediately prior to the Merger (as increased, pursuant to Section 14.03 of the Indenture for any conversions during the Make-Whole Fundamental Change Period), multiplied by (y) the Merger Consideration. The provisions of the Indenture, as modified herein, shall continue to apply, mutatis mutandis, to the Holders’ right to convert the Notes into the Reference Property.

Section 2.02. Effectiveness. This First Supplemental Indenture shall become effective upon its execution and delivery by the Company and the Trustee and as of the date hereof. The Trustee accepts the Indenture, as supplemented hereby, and agrees to perform the same upon the terms and conditions set forth herein, as supplemented hereby.

ARTICLE III
Miscellaneous

Section 3.01. Governing Law. This First Supplemental Indenture, and any claim, controversy or dispute arising under or related to the Indenture or the Notes, shall be governed by, and construed in accordance with, the laws of the State of New York, (without regard to the conflicts of laws provisions thereof).

Section 3.02. Waiver of Jury Trial. EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS SUPPLEMENTAL INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 3.03. Jurisdiction. The Company hereby irrevocably consents to the jurisdiction of the courts of the State of New York and the courts of the United States of America located in the City of New York and the County of New York, over any suit, action or proceeding with respect to the Indenture or the Notes or the transactions contemplated hereby. The Company waives any objection that it may have to the venue of any suit, action or proceeding with respect to the Indenture or the Notes or the transactions contemplated hereby in the courts of the State of New York or the courts of the United States of America, in each case, located in the City of New York and County of New York, or that such suit, action or proceeding brought in the courts of the State of New York or the United States of America, in each case, located in the City of New York and County of New York was brought in an inconvenient court and agrees not to plead or claim the same.

Section 3.04. Ratification of Indenture; Supplemental Indentures Part of Indenture. Except as supplemented hereby, the Indenture, as amended and supplemented by this First Supplemental Indenture, is in all respects ratified and confirmed, and this First Supplemental Indenture shall be deemed part of the Indenture in the manner and to the extent herein and therein provided.

Section 3.05. Benefits of First Supplemental Indenture. Nothing in this First Supplemental Indenture, express or implied, is intended or shall be construed to give any person, other than the parties hereto, any agent, any registrar, any successors to the foregoing hereunder and the Holders, any benefit or any legal or equitable right, remedy or claim in respect of this First Supplemental Indenture or the Indenture or any provision herein or therein contained.

Section 3.06. Counterparts. This First Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original, and such counterparts shall together constitute but one and the same instrument.

Section 3.07. Effect on Successors and Assigns. All agreements of the Company and the Trustee in this First Supplemental Indenture and the Notes shall bind their respective successors.

Section 3.08. Trustee’s Disclaimer. The recitals contained herein shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this First Supplemental Indenture or of the Notes.

IN WITNESS WHEREOF, the parties have caused this First Supplemental Indenture to be duly executed as of the date first written above.

MERITOR, INC., as the Company

By: /s/ Scott M. Confer

Name: Scott M. Confer

Title: Vice President and Interim General Counsel & Corporate Secretary

(Signature Page to First Supplemental Indenture)

By: /s/ James Kowalski
Name: James Kowalski
Title: Vice President

(Signature Page to First Supplemental Indenture)
