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

DIVISION OF
CORPORATION FINANCE

September 27, 2016

Daniel J. Winnike
Fenwick & West LLP
dwinnike@fenwick.com

Re: Cisco Systems, Inc.
Incoming letter dated August 5, 2016

Dear Mr. Winnike:

This is in response to your letters dated August 5, 2016 and August 19, 2016 concerning the shareholder proposal submitted to Cisco by James McRitchie. We also have received letters from the proponent dated August 9, 2016 and August 22, 2016. Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair
Senior Special Counsel

Enclosure

cc: John Chevedden

*** FISMA & OMB Memorandum M-07-16 ***

September 27, 2016

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Cisco Systems, Inc.
Incoming letter dated August 5, 2016

The proposal requests that the board adopt a proxy access bylaw with the procedures and criteria set forth in the proposal.

There appears to be some basis for your view that Cisco may exclude the proposal under rule 14a-8(i)(10). We note your representation that the board has adopted a proxy access bylaw that addresses the proposal's essential objective. Accordingly, we will not recommend enforcement action to the Commission if Cisco omits the proposal from its proxy materials in reliance on rule 14a-8(i)(10).

Sincerely,

Evan S. Jacobson
Special Counsel

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal from the company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

Corporate Governance
CorpGov.net: improving accountability through democratic corporate governance since 1995

VIA EMAIL: shareholderproposals@sec.gov
Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

August 22, 2016

Re: Cisco Systems, Inc
Shareholder Proposal submitted by James McRitchie
SEC Rule 14a-8

To Whom It May Concern:

This is in response to the August 19, 2016 letter, supplementing an August 5, 2016 request, submitted to the Securities and Exchange Commission (SEC) on behalf of Cisco Systems, Inc. ("Cisco" or the "Company"), which seeks assurance that Staff of the Division of Corporation Finance (the "Staff") will not recommend an enforcement action if the Company excludes my shareholder proposal (the "Proposal") from its proxy statement for the 2016 annual meeting.

The Proposal may not be excluded under Rule 14a-8(i)(10) because Cisco has failed to demonstrate substantial implementation of the 2016 proposal.

As I indicated in my previous letter, when Staff issued the series of no-action letters on proxy access on February 12, 2016, they had apparently concluded that 3% of shares held for 3 years is 'essential' to proxy access, whereas ensuring shareholders can actually group together to meet those requirements is not an 'essential' element. That was a subjective judgment, made without consideration of substantive research.

Especially after *Oracle Corp.* (August 11, 2016), Boards without proxy access bylaws are now probably being advised *not* to adopt proxy access bylaws until *after* a shareholder proposal is submitted in order to delay a vote on possible amendments, which are allowed per *H&R Block* (July 21, 2016).

With its latest assertions, the Company continues to try to game the system by postponing for another year an almost inevitable vote to amend its recently adopted proxy access bylaws. How is delay of that dialogue and debate in the interest of shareholders or the Company? The Company fails to raise, let alone rebut, the issue.

Shareholders want proxy access bylaws that can actually be *implemented*, not just sham bylaws that provide for proxy access in name only. This was readily apparent with the howls of protest that came when staff granted *Whole Foods Market, Inc.* a

no-action letter under subdivision (i)(9). Their proxy access was limited to 1 director nominee by 1 shareholder, holding at least 5% (originally 9%) of common stock in the company for 5 years (December 1, 2014).

It was widely recognized that such conditions would never be met. Companies that had previously acknowledged the importance of granting proxy access, grabbed on to the sham proxy access bylaw idea used by Whole Foods and rapidly began submitting similar, but less obvious, sham proposals. That tidal wave led to the protest and the review and subsequent Staff Legal Bulletin 14H (CF).

Since Staff somehow concluded in February that only 3% held for 3 years were essential elements, we started including the proviso that certain conditions were "essential elements." Maybe with *Oracle Corp.* (August 11, 2016), Staff thought our words weren't specific enough. The proposal included "essential elements" for what? Anticipating such a question, we modified future proposals to clarify that certain provisions were to be considered "essential elements for *substantial implementation*." Staff should not consider proxy access substantially implemented under (i)(10) without these elements.

Contrary to the Company's assertion in footnote 1 that these elements are simply "the proponent's subjective views," they represent the informed research by the Securities and Exchange Commission prior to adopting rescinded Rule 14a-11 and the Council of Institutional investors after surveying the members whose invested assets exceed $3 trillion.

> Our review of current research found that even if the 20 largest public pension funds were able to aggregate their shares they would not meet the 3% criteria at most of the companies examined." (*Proxy Access: Best Practices*, August 2015, page 2 at http://www.cii.org/files/publications/misc/08_05_15_Best%20Practices%20-%20Proxy%20Access.pdf)

The Company has the burden of proof under Rule 14a-8(g) of substantiating that limiting shareholder groups to 20 will not impair implementation of proxy access. In 2010, the SEC considered, but rejected imposing a cap on the permitted number of members in a nominating group. What objective evidence has the Company provided to counter research by the Council of Instructional Investors or the Securities and Exchange Commission? Their no-action request letters cite no such evidence. The Company is simply trying to impose their subjective views.

As Chair Mary Jo White told the Society of Corporate Secretaries and Governance Professionals (now the Society for Corporate Governance) last year in Chicago (https://www.sec.gov/news/speech/building-meaningful-communication-and-engagement-with-shareholde.html):

> Companies in many cases should consider other possible steps they could take in response to a proposal rather than just saying no. Sometimes, foregoing technical objections could be the right response. Letting

shareholders state their views on matters may be a relatively low cost way of sounding out and preventing potential problems down the line.

If Chair White were to suspend no-action opinions based on Rule 14a-8(i)(10) and call for a review of the history of that subdivision, Staff would find a very similar situation to what they found in investigating the evolution of how (i)(9) is interpreted. Starting out narrowly, Staff gradually widened the exemption far beyond its original intent. J. Robert Brown, a former member of the SEC's Investor Advisory Committee, has already done much of this review in his Comment Letter on Rule 14a-8(I)(10), Securities & Exchange Commission, June 18, 2015 (June 18, 2015). See U Denver Legal Studies Research Paper No. 15-26, available at SSRN at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2620417.

The Company provides no substantive evidence that a standard limiting nominating groups meets the essential purposes of the Proposal, which includes allowing shareholders to combine together in groups of unlimited number to achieve the required holdings. Nor has the Company argued that limiting nominating groups would have insubstantial consequences.

The Company has not met the burden of proof required by Rule 14a-8(g).

Unlike previous proposals subject to no-action relief, the Proposal calls out *essential elements for substantial implementation* with the purpose of meeting best practices specified by the Council of Institutional Investors. Bylaws with more burdensome requirements than those requested in the Proposal as essential for substantial implementation cannot be said to "substantially" implement this purpose

Based on the facts, as stated above, Cisco has not met the burden of demonstrating objectively that the Company has substantially implemented the Proposal. The SEC must therefore conclude it is unable concur that Cisco may exclude the Proposal under Rule 14a-8(i)(10).

Sincerely,

James McRitchie
Shareholder Advocate

cc: Evan Sloves, Cisco, CorporateSecretary@cisco.com

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August 19, 2016

DANIEL J. WINNIKE

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Direct Dial (650) 335-7657

BY E-MAIL

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Exclusion of Shareholder Proposal Submitted by James McRitchie

Ladies and Gentlemen:

Our client Cisco Systems, Inc., a California corporation ("***Cisco***"), received a shareholder proposal from James McRitchie (the "***Proponent***") regarding the inclusion in Cisco's proxy card and other proxy materials (the "***Proxy Materials***") for Cisco's 2016 Annual Meeting of Shareholders (the "***Annual Meeting***") a proposal (the "***Proposal***") seeking to ask Cisco's board of directors to adopt a "proxy access" bylaw. On August 5, 2016, this firm submitted, on behalf of Cisco, pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, a letter (the "***Request Letter***") to request that the staff ("***Staff***") of the Securities and Exchange Commission (the "***Commission***") not recommend enforcement action if Cisco excludes the Proposal from the Proxy Materials. On August 9, 2016, Cisco received a copy of a letter (the "***August 9 letter***") from the Proponent to the Staff in response to the Request Letter.

In the Request Letter, we advised the Staff that Cisco intended to exclude the Proposal from the Proxy Materials under Rule 14a-8(i)(10) on the basis that Cisco has substantially implemented the Proposal by virtue of an amendment to Cisco's bylaws (the "***Cisco Bylaw***") adopted by the board of directors on July 28, 2016, which was described in Cisco's Current Report on Form 8-K filed with the Commission on July 29, 2016.

In responding to the Request Letter, the Proponent focuses on a phrase included in the Proposal as differentiating the Proposal from the precedent letters cited in the Request Letter. The Proposal contains this introductory resolution:

> "RESOLVED: Shareholders of Cisco Systems, Inc. (the "Company") ask the board of directors (the "Board") to adopt, and present for shareholder approval, a "proxy access" bylaw with *essential elements* for *substantial implementation* as follows:"

The Proponent asserts that because this resolution explicitly states that specified elements are essential to achieve substantial implementation, the Proposal cannot be excluded on the basis provided in the no-action letters cited in the Request Letter. The Proponent cites in particular the fact that the Cisco Bylaw attaches a twenty-shareholder limit on the size of a nominating group, while the Proposal would impose no such limit, and goes on to argue that because the Proposal has specified this component of the Proposal as one of the "essential elements for substantial implementation" the Proposal has not been substantially implemented under Rule 14a-8(i)(10).

Through this argument, the Proponent seems to be seeking to establish a new standard for determining whether a company has substantially implemented a shareholder proposal – one under which specified "essential elements" must be followed exactly in order to conclude that a company's actions have satisfied the essential objective of the proposal. As we explain in the Request Letter, the Staff's position on the ability to exclude proposals on the basis of substantial implementation does not hinge upon implementation of a proposal in full or exactly as presented.

For the Rule 14a-8(i)(10) basis for exclusion to have any reasonable meaning, the Staff must be able to apply a holistic analysis to the proposal presented and the implementing measures adopted. If a proponent can simply identify any one element (or multiple elements) of a proposal as "essential" to his or her proposal, and thereby preclude the Staff from evaluating the broader objectives of the proposal and whether the actions of the company satisfy those broader objectives, the rationale of Rule 14a-8(i)(10) would be lost and we would essentially be in a position of returning to the early days of the exclusion, when a proposal had to have been "fully effected" to be excludable as substantially implemented. *See Release No. 34-20091* (Aug.16, 1983, p. 19-20) ("As with Rule 14a-8(c)(7), the Commission did not propose to change Rule 14a-8(c)(10), but did propose a change in the staff interpretation of the provision. In the past, the staff has permitted the exclusion of proposals under Rule 14a-8(c)(10) ***only*** in those cases where the action requested by the proposal has been ***fully effected***. The Commission proposed an interpretative change to permit the omission of proposals that have been 'substantially implemented by the issuer'. While the new interpretative position will add more subjectivity to the application of the provision, ***the Commission has determined that the previous formalistic application of this provision defeated its purpose.*** Accordingly, the Commission is adopting the proposed interpretative change." (emphasis added)); *see also Release No. 34-40018* (May 21, 1998, n. 30).[1] If the Proponent's argument is successful in upending Staff interpretations that have been in place for over thirty years, this would enable proponents of any future proposals to simply label all of the identified components of the proposal as "essential" and thus escape application of Rule 14a-8(i)(10) entirely.

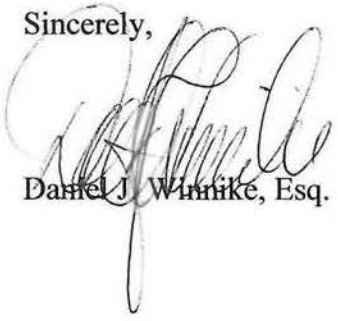
In the Request Letter, we provided a comprehensive discussion and analysis of the Cisco Bylaw as compared to the Proposal, in which we detailed the ways in which the Cisco Bylaw

[1] As an example, in *Johnson & Johnson* (Feb. 17, 2006), which we cited in the Request Letter, the Staff concurred with exclusion of a proposal to verify the employment legitimacy of all current and future employees because the company was already required to comply under U.S. law, even though the proponent specifically stated in her response to the company's no-action letter request that "JNJ has not 'substantially implemented' my proposal by refusing to utilize" certain additional methods of identity verification. We believe this demonstrates that the Staff recognizes that the proponent's subjective views of the essential objectives of his or her proposal are not dispositive of the matter.

achieves the essential objective of the Proposal, namely to provide a meaningful proxy access right for Cisco's shareholders. As part of our discussion and analysis, we identified numerous no-action letters regarding proxy access proposals where the Staff determined that the respective companies had substantially implemented proxy access as presented in the respective proposals and that, accordingly, the proposal could be excluded. We continue to believe our circumstances are indistinguishable from those at issue in these prior no-action letters, notwithstanding the attempt by the Proponent to distinguish the Proposal, as described above. This view is supported by a newly-issued no-action letter, in which the Staff concurred in exclusion of a substantially identical proxy access shareholder proposal submitted to Oracle Corporation, which included the same "essential elements" language that is included in the Proposal and on which the Proponent relies to distinguish the Proposal from the circumstances in the no-action letters cited in the Request Letter. *Oracle Corp.* (Aug. 11, 2016). In responding to Oracle, the Staff concurred with the company's view that it could exclude the proxy access shareholder proposal on the basis that the company's recently-adopted proxy access bylaw satisfied the proposal's essential objective, despite the fact that Oracle's bylaw did not track precisely, the "essential elements" of the proposal at issue (including with regard to inclusion of a twenty-shareholder cap on aggregation). In a manner consistent with Oracle and the proxy access no-action letters cited in the Request Letter in which exclusion was upheld, the essential objective of the Proposal has been satisfied with the adoption of the Cisco Bylaw.

Accordingly, we respectfully reiterate our request that the Staff confirm that it will not recommend any enforcement action to the Commission if Cisco excludes the Proposal from the Proxy Materials. Should the Staff disagree with our conclusions regarding the omission of the Proposal, or should the Staff have questions or desire any additional information in support of our position, we would appreciate an opportunity to confer with the Staff concerning these matters prior to the issuance of its Rule 14a-8(j) response. In this case, please contact me by telephone at (650) 335-7657, my partner, Bill Hughes, at (415) 875-2479 or Evan Sloves of Cisco at (408) 525-2061. Please direct any correspondence regarding this letter via e-mail to CorporateSecretary@cisco.com.

Sincerely,



Daniel J. Winnike, Esq.

Enclosures

cc: Evan Sloves, Cisco Systems, Inc.
James McRitchie
John Chevedden
William L. Hughes, Fenwick & West LLP

Corporate Governance
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Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

August 9, 2016

Re: Cisco Systems, Inc
Shareholder Proposal submitted by James McRitchie
SEC Rule 14a-8

To Whom It May Concern:

This is in response to the August 5, 2016 letter submitted to the Securities and Exchange Commission (SEC) on behalf of Cisco Systems, Inc. ("Cisco" or the "Company"), which seeks assurance that Staff of the Division of Corporation Finance (the "Staff") will not recommend an enforcement action if the Company excludes my shareholder proposal (the "Proposal") from its proxy statement for the 2016 annual meeting.

The Proposal may not be excluded under Rule 14a-8(i)(10) because Cisco has failed to demonstrate substantial implementation of the 2016 proposal.

Rule 14a-8(i)(10) Background

Companies seeking to establish the availability of subsection (i)(10) have the burden of showing both the insubstantiality of any revisions made to the shareholder proposal and the actual implementation of the company alternative.[1]

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[1] The exclusion originally applied to proposals deemed moot. See Exchange Act Release No. 12999 (Nov. 22, 1976) (noting that mootness "has not been formally stated in Rule 14a- 8 in the past but which has informally been deemed to exist."). In 1983, the Commission determined that a proposal would be "moot" if substantially implemented. Exchange Act Release No. 20091 (August 16, 1983) ("The Commission proposed an interpretative change to permit the omission of proposals that have been 'substantially implemented by the issuer.' While the new interpretative position will add more subjectivity to the application of the provision, the Commission has determined that the previous formalistic application of this provision defeated its purpose."). The rule was changed to reflect this administrative interpretation in 1997. See Exchange Act Release No. 39093 (Sept. 18, 1997) (proposing to alter standard of mootness to "substantially implemented").

Where the shareholder specifies a range of percentages (10% to 25%), Staff has generally agreed the company "substantially" implements the proposal when it selects a percentage within the range, even if at the upper end.[2] Likewise the Staff has found substantial implementation when the shareholder proposal includes no percentage[3] or merely "favors" a particular percentage.[4]

Proxy Access Background

The right to pursue proxy access at any given company was uncontroversial prior to 1990. In 1980 Unicare Services included a proposal to allow any three shareowners to nominate and place candidates on the proxy. Shareowners at Mobil proposed a "reasonable number," while those at Union Oil proposed a threshold of "500 or more shareholders" to place nominees on corporate proxies. One company argued that placing a minimum threshold on access would discriminate "in favor of large stockholders and to the detriment of small stockholders," violating equal treatment principles.

Early attempts to win proxy access through shareowner resolutions met with the same fate as most resolutions in those days – they failed. But the tides of change turned. A 1987 proposal by Lewis Gilbert to allow shareowners to ratify the choice of auditors won a majority vote at Chock Full of O'Nuts Corporation and in 1988 Richard Foley's proposal to redeem a poison pill won a majority vote at the Santa Fe Southern Pacific Corporation.

However, in 1990, without public discussion or a rule change, the Staff began issuing a series of no-action letters on proxy access proposals. The SEC's about-face may have been prompted by powerful boards and CEOs who feared that "private

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[2] In cases where the staff allowed for the exclusion of a proposal, the shareholder proposal provided a range of applicable percentages and the company selected a percentage within the range. See Citigroup Inc. (Feb. 12, 2008) (range of 10% to 25%; company selected 25%); Hewlett-Packard Co. (Dec. 11, 2007) (range of 25% or less; company selected 25 %). In General Dynamics, the proposal sought a bylaw that would permit shareholders owning 10% of the voting shares to call a special meeting. The management bylaw provided that a single 10% shareholder or a group of shareholders holding 25% could call special meetings. As a result, the provision implemented the proposal for a single shareholder but "differ[ed] regarding the minimum ownership required for a group of stockholders." General Dynamics Corp. (Feb. 6, 2009).

[3] Borders Group, Inc. (Mar. 11, 2008) (no specific percentage contained in proposal; company selected 25%); Allegheny Energy, Inc. (Feb. 19, 2008) (no percentage stated in proposal; company selected 25%).

[4] Johnson & Johnson (Feb. 19, 2009) (allowing for exclusion where company adopted bylaw setting percentage at 25% and where proposal called for a "reasonable percentage" to call a special meeting and stating that proposal "favors l0%"); 3M Co. (Feb. 27, 2008) (same).

ordering," through shareowner proposals, was about to begin in earnest. That about-face was temporarily halted with the decision in AFSCME v AIG (2006). The court found the prohibition on shareowner elections contained in Rule 14a-8 applied only to proposals "used to oppose solicitations dealing with an identified board seat in an upcoming election" (also known as contested elections).

The more recent about-face by Staff on what constitutes substantial implementation for purposes of Rule 14a-8(i)(10) is similar to the reversal in 1990, which denied proxy access proposals altogether. Before February 12th Staff concurred that companies, when substantially implementing a shareholder proposal, can address aspects of implementation on which a proposal is silent. However, Staff did not concur that substantial implementation could be accomplished with provisions that directly conflict with those included in the shareholder proposal.

Since the batch of SEC no-action letters issued on February 12th contain no explanation of why SEC Staff suddenly decided to reverse its long-standing interpretation, we can only speculate as to the reasons. However, many of those seeking the no-action letters granted beginning February 12th argued that since their company had adopted proxy access bylaws similar to proxy access bylaws adopted by most other companies, the shareholder's "essential purpose" had been achieved and substantial implementation had occurred.

As the person who drafted the specific terms of the template used in each of the proposals where Staff granted no-action letters on February 12th, I assure you the essential purpose was not to obtain watered-down versions of proxy access. An earlier proxy access proposal template was revised to ensure the forms of proxy access obtained would more closely align with the essential elements defined by the SEC's vacated Rule 14a-11 and best practices as outlined by the Council of Institutional Investors (CII), whose members hold more than $3 trillion in assets, (Proxy Access: Best Practices, August 2015).

Proxy Access Proposal Complexities

It would be a lot easier and clearer if proponents could just reference the SEC's vacated Rule 14a-11 and request boards implement proxy access as close a practical to that vacated rule, within the limitations of the existing regulatory framework. In California, all regulations must meet the "clarity" standards of the Procedure Act and are reviewed by the Office of Administrative Law for compliance to those standards. Apparently federal regulations are too vague to be cited in proposals, even regulations that have not been vacated.

For example, on March 30, 2012 Staff issued a no-action letter on Dell, which included the following:

> There appears to be some basis for your view that Dell may exclude the proposal under rule 14a-8(i)(3), as vague and indefinite. In arriving at this position, we note that the proposal provides that Dell's proxy materials shall include the director nominees of shareholders who satisfy the "SEC Rule 14a-

> 8(b) eligibility requirements." The proposal, however, does not describe the specific eligibility requirements. In our view, the specific eligibility requirements represent a central aspect of the proposal. While we recognize that some shareholders voting on the proposal may be familiar with the eligibility requirements of rule 14a-8(b), many other shareholders may not be familiar with the requirements and would not be able to determine the requirements based on the language of the proposal. As such, neither shareholders nor Dell would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. Accordingly, we will not recommend enforcement action to the Commission if Dell omits the proposal from its proxy materials in reliance on rule 14a-8(i)(3). (Dell, March 30, 2012)

If proponents cannot cite federal rules for something as simple as eligibility requirements, we certainly cannot cite a vacated Rule 14a-11 to describe the features that should be contained in proxy access bylaws. Instead, for the 2015 proxy season most proxy access advocates filed fairly generic proposals, describing little more in the way of specifics than that shareholders must hold 3% of the company's common stock for at least three years.

The primary objective last year of many shareholder advocates was to begin a tidal wave of proxy access adoptions, even flawed adoptions, to get the process rolling. Quality was not as important as quantity. At many early adopting companies I was willing to withdraw proposals even where boards limited access to 20% of the board seats.

After we knew we had significant momentum, we tried to get back to the provisions of the vacated Rule 14a-11 when negotiating with companies. However, knowing the history of no-action decisions under Rule 14a-8(i)(10) and especially after Staff granted no-action relief to General Electric, it was obvious that proposals with little specificity were vulnerable to being watered down.

In the case of General Electric, the company implemented proxy access with the same ownership threshold, holding period, and cap on shareholder nominees as requested by the proposal but added a group limit of 20 shareholders. That was consistent with prior decisions under Rule 14a-8(i)(10) because the shareholder proposal was silent on the issue of group size limits.

To remedy the situation, several of us began submitting proposals with greater specificity, including provisions to deny group caps, ensuring twenty-five percent of the board and a minimum of two directors, and ensuring that restrictions that do not apply to other board nominees should not be imposed on shareholder nominees. This strengthened our hand in negotiations and we were able to win better terms for an agreement to withdraw.

Staff Drops a Bomb, Reinterpreting Rule 14a-8(i)(10)

The positive negotiating position that came with greater specificity of terms in proxy access proposals largely evaporated after February 12th when Staff issued no-action

letters that appear to have found that the only essential provisions to initial proxy access bylaws are 3% of shares held for 3 years. Contrary to prior no-action opinions, Staff ignored the fact that shareholder proposals specified various other terms: 25% of the board, no group limitations, etc.

One Step Forward; Two Steps Back

Last year the SEC took a small step in the right direction after my appeal of a no-action decision involving Whole Foods Market, and howls of protest from more influential shareholders, led the SEC Chair White to call for a review of (i)(9) and an end to "gaming" the system. After seeking comment and suspending no-action opinions on that subdivision, Staff Legal Bulletin No. 14H (CF) was issued to clarify the exclusion under subdivision (i)(9) applied only "if a reasonable shareholder could not logically vote in favor of both proposals."

Now Staff is apparently 'protecting' shareholders from having to compare bylaws adopted by boards of directors, in response to shareholder proposals, with the terms requested by the shareholder. Would that task be too confusing for shareholders? Staff declared 'substantial implementation' of proxy access even where dramatic differences occur between what is specifically requested and what has been granted. This appears to be the same 'gaming the system' that Chair White warned against last year.

Before the suspension and clarification of (i)(9) last year, Staff had begun allowing issuers to omit shareholder proposals from the proxy and include their own, if their proposals were on the same subject. At least shareholders got to vote on the changes proposed by management.

Since SLB 14H and the February 12th no-action letters, SEC Staff has essentially announced a new game in town. Boards are now advised that when their company receives a proxy access proposal, they can simply adopt language on their own. Boards do not need approval from shareholders.

If a board adopts proxy access that allows shareholders with 3% of common stock held for three years to nominate a director, they have met their "essential" purpose. Therefore, a shareholder proposal requesting proxy access bylaws can be omitted. Since most boards do not have to put bylaws up to a vote by shareholders, any remnant of direct democracy is eliminated. Gaming the system has become even easier after February 12th than it was before SLB 14H.

If Chair White were to suspend no-action opinions based on Rule 14a-8(i)(10) and call for a review of the history of that subdivision, Staff would find a very similar situation to what they found in investigating the evolution of how (i)(9) was interpreted. Starting out narrowly, Staff gradually widened the exemption far beyond its original intent. J. Robert Brown, a former member of the SEC's Investor Advisory Committee, has already done much of this review in his Comment Letter on Rule 14a-8(I)(10), Securities & Exchange Commission, June 18, 2015 (June 18, 2015). See U Denver Legal Studies Research Paper No. 15-26, available at SSRN at

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2620417.

The Way Forward Without Gaming the System

There is an easy remedy to restore some semblance of accountability to shareholders. Go back to Staff's interpretation of Rule 14a-8(i)(10) as it existed before February 12th.

No-action letters "reflect only informal views" and are do not set precedent. Included with some no-action letters is the following statement: "SEC staff reserves the right to change the positions reflected in prior no-action letters."

However, in the current case Staff need not repudiate any prior no-action letters to allow the Proposal to move forward, since the proposal in question actually calls out what the proponent believes to be "essential elements for substantial implementation," whereas the proposals cited by the Company as no-action precedents may have listed desirable features of proxy access bylaws but did not call out any as "essential elements."

Since no specific elements were called out by previous proponents as essential elements, SEC staff could reasonably assume that a company adopting proxy access bylaws had met the essential objective of providing proxy access and could, therefore, assume such proposals were substantially implemented. That is not the case at Cisco

"Substantially Implemented" the Proposal

According to the Company letter,

> The Proposal, in its supporting statement, states that "[l]ong-term shareholders need a meaningful voice in nominating directors." We believe that this essential objective of the Proposal – meaningful proxy access – is satisfied by the Bylaw Amendment.

Apparently, the Company missed the first paragraph of the resolved portion of the proposal [emphasis in the original]:

> Shareholders of Cisco Systems, Inc. (the "Company") ask the board of directors (the "Board") to adopt, and present for shareholder approval, a "proxy access" bylaw with *essential elements* for *substantial implementation* as follows:

To my knowledge, Staff has not weighed in on proxy access proposals explicitly stating what elements are essential to achieve substantial implementation. since before the unprecedented no-action letters issued on February 12th. Staff now has an opportunity to clarify the meaning of its interpretation of Rule14a-8(i)(10). Ignore proposal elements specifically labeled by shareholder proponents as essential to the objective of the proposal, as requested by the Company, or allow shareholders to

vote on what the proponent has identified as essential elements to meaningful proxy access bylaws.

Of course, if Staff grants the no-action requests, it simply postpones voting until next year when these and additional amendments will be requested per H&R Block (July 21, 2016). Would such a postponement serve the interests and rights of shareholders or would such a postponement simply allow the Company to game the system, delaying the inevitable?

I will focus on only the most essential element below but similar arguments might be made for others.

Shareholder Aggregation

Here the Company argues that its provision, which places a twenty-shareholder limit on the size of a nominating group, is similar to language included in other proposals excluded where Staff has granted no-action relief. Rule14a-8(i)(10) says a proposal can be excluded from the proxy if it has been "substantially implemented," not because a company has chosen language similar to that found in other proposals where companies were granted no-action relief.

No-action "relief" in this case is not predicated on an arbitrary notion of whether or not an element is essential to the proponent's objective when such essential elements have not been called out, as was the case in prior no-actions cited. Granting no-action relief in this case would be an unprecedented instance where a shareholder specifies specific elements as essential to their objective and Staff overrules them with a finding that they know the proponent's objective better than the proponent does. It would be similar to a court substituting its own business judgment for that of a board of directors.

If Staff decides to substitute its own judgment for that of the proponent, it must find that removing the cap would have insubstantial consequences. However, the Company has made no such argument. The Company's sole argument appears to be,

> Based on our review, we believe that the inclusion of a 20 shareholder aggregation limit has not impacted the Staff's prior analysis of substantial implementation under Rule 14a-8(i)(10) with respect to proxy access shareholder proposals, even when the shareholder proposals called for unlimited or unrestricted group aggregation.

Yet, as indicated above, in none of those prior cases was the group limitation called out as an essential element.

The Council of Institutional Investors (CII) researched the evidence and found the following (Proxy Access: Best Practices, August 2015):

> We note that without the ability to aggregate holdings even CII's largest

members would be unlikely to meet a 3% ownership requirement to nominate directors. Our review of current research found that even if the 20 largest public pension funds were able to aggregate their shares they would not meet the 3% criteria at most of the companies examined.

CII's position is generally consistent with the view of the SEC. In 2010, the SEC considered, but rejected imposing a cap on the permitted number of members in a nominating group. The SEC found that individual shareowners at most companies would not be able to meet the minimum threshold of 3% ownership for proxy access unless they could aggregate their shares with other shareowners.

In contrast to the Company's adopted bylaws, the Proposal seeks to allow nomination by "a shareholder or an unrestricted number of shareholders forming a group." There is obviously an infinite difference between limiting shareholder groups to 20, instead of an unlimited number.

Is twenty dollars substantially the same as an unlimited number of dollars? Of course it is not. Similarly, limiting the number of nominating shareholders is not substantially the same as allowing an unlimited number of shareholders to aggregate their shares.

The Company provides no substantive evidence that a standard limiting nominating groups meets the essential purposes of the Proposal, which includes allowing shareholders to combine together in groups of unlimited number to achieve the required holdings. Nor has the Company argued that limiting nominating groups would have insubstantial consequences.

The Company has not met the burden of proof required by Rule 14a-8(g).

Conclusion

The series of no-action letters issued by Staff on February 12 and subsequently are anomalous with prior interpretations by Staff of what constitutes substantial implementation and what constitutes the essential elements of a proxy proposal. Proponents must be able to call out the essential elements of a proposal in the proposal, just as anyone could in a contract.

If I am building a house and specify in the contract that the furnace must meet an annual fuel-utilization-efficiency (AFUE) rating of 95% but the contractor installs one with an 80% AFUE rating, they have not met the essential terms of the contract. Based on the anomalous no-action letters of February 12th, if Staff were issuing an informal opinion on substantial implementation, it would apparently argue the quality of the furnace does not matter. It is as if Staff arbitrarily deems only a roof and walls to be essential elements of a house.

Under Rule 14a-8(i)(10) boards are free to adopt elements that do not conflict with those requested in a shareholder proposal. If a proposal specifies a range, boards can select a percentage at the high end. Unless specified, boards can round down to

the nearest whole number instead of rounding up to arrive the appropriate number of shareholder nominees for a specified percentage of the board. However, boards should not be entitled under Rule 14a-8(i)(10) to round an infinite number of shareholders forming a group down to 20. That is not substantial implementation.

The anomalous no-action letters issued on February 12 and subsequently provide no evidence why 3% of shares is considered an essential element to proxy access but having no cap on the number allowed to form a group is not. There is a world of difference between a group of twenty, which research by the Council of Institutional investors concludes cannot be reached by its members at most companies, and an unlimited group. One set of bylaws can actually be implemented; the other cannot. Proxy access bylaws that cannot be implemented serve no purpose other than to provide an illusion.

Although I hope Staff will change the position reflected in prior no-action letters of what constitutes the essential elements of proxy access, in the current case Staff need not repudiate any prior no-action letters to allow the Proposal to move forward, since the proposal in question called out essential elements required for substantial implementation, whereas previous proposals where no-action relief was granted did not.

The Proposal calls out essential elements with the purpose of meeting best practices specified by the Council of Institutional Investors. Bylaws that specify more burdensome requirements than those requested and called out in the Proposal as essential cannot be said to "substantially" implement this purpose

Based on the facts, as stated above, Cisco has not met the burden of demonstrating objectively that the Company has substantially implemented the Proposal. The SEC must therefore conclude it is unable concur that Cisco may exclude the Proposal under Rule 14a-8(i)(10).

Sincerely,

James McRitchie
Shareholder Advocate

cc: Evan Sloves, Cisco, CorporateSecretary@cisco.com

[CSCO – Rule 14a-8 Proposal, June 1, 2016]
Proposal 4* - Shareholder Proxy Access

RESOLVED: Shareholders of Cisco Systems, Inc. (the "Company") ask the board of directors (the "Board") to adopt, and present for shareholder approval, a "proxy access" bylaw with *essential elements* for *substantial implementation* as follows:

Require the Company to include in proxy materials prepared for a shareholder meeting at which directors are to be elected the name, Disclosure and Statement (as defined herein) of any person nominated for election to the board by a shareholder or an *unrestricted number of shareholders forming a group* (the "Nominator") that meets the criteria established below.

Allow shareholders to vote on such nominee on the Company's proxy card.

The number of shareholder-nominated candidates appearing in proxy materials shall be *one quarter of the directors then serving or two, whichever is greater.* This bylaw should supplement existing rights under Company bylaws, providing that a Nominator must:

a) have beneficially owned *3%* or more of the Company's outstanding common stock, including recallable loaned stock, continuously for at least *three years* before submitting the nomination and pledges to hold that stock through the annual meeting;
b) give the Company, within the time period identified in its bylaws, written notice of the information required by the bylaws and any Securities and Exchange Commission (SEC) rules about (i) the nominee, including consent to being named in proxy materials and to serving as director if elected; and (ii) the Nominator, including proof it owns the required shares (the "Disclosure"); and
c) certify that (i) it will assume liability stemming from any legal or regulatory violation arising out of the Nominator's communications with the Company shareholders, including the Disclosure and Statement; (ii) it will comply with all applicable laws and regulations if it uses soliciting material other than the Company's proxy materials; and (iii) to the best of its knowledge, the required shares were acquired in the ordinary course of business, not to change or influence control at the Company.

The Nominator may submit with the Disclosure a statement not exceeding 500 words in support of the nominee (the "Statement"). The Board should adopt procedures for promptly resolving disputes over whether notice of a nomination was timely, whether the Disclosure and Statement satisfy the bylaw and applicable federal regulations, and the priority given to multiple nominations exceeding the one-quarter limit. *No additional restrictions shall be imposed on re-nominations when nominees fail to receive a specific percentage of votes.*

Supporting Statement: Long-term shareholders need a meaningful voice in nominating directors. The SEC's proxy access Rule 14a-11 (https://www.sec.gov/rules/final/2010/33-9136.pdf) was vacated, in part, for inadequate cost-benefit analysis. *Proxy Access in the United States* (http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2014.n9.1), a CFA Institute cost-benefit analysis, found proxy access would "benefit both the markets and corporate boardrooms, with little cost or disruption," raising US market capitalization by up to $140.3 billion. A similar proposal won 64% support at the Company in 2015.

Enhance shareholder value. Vote for Shareholder Proxy Access – Proposal 4*

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August 5, 2016

BY E-MAIL

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Omission of Shareholder Proposal Submitted by James McRitchie

Ladies and Gentlemen:

We are writing on behalf of our client Cisco Systems, Inc., a California corporation ("***Cisco***"), to inform you that Cisco intends to omit from its proxy card and other proxy materials (the "***Proxy Materials***") for Cisco's 2016 Annual Meeting of Shareholders (the "***Annual Meeting***"), the following proposal (the "***Proposal***") submitted to Cisco by James McRitchie (the "***Proponent***"):

> RESOLVED: Shareholders of Cisco Systems, Inc. (the "Company") ask the board of directors (the "Board") to adopt, and present for shareholder approval, a "proxy access" bylaw with *essential elements* for *substantial implementation* as follows:
>
> Require the Company to include in proxy materials prepared for a shareholder meeting at which directors are to be elected the name, Disclosure and Statement (as defined herein) of any person nominated for election to the board by a shareholder or an *unrestricted number of shareholders forming a group* (the "Nominator") that meets the criteria established below.
>
> Allow shareholders to vote on such nominee on the Company's proxy card.
>
> The number of shareholder-nominated candidates appearing in proxy materials shall be *one quarter of the directors then serving or two, whichever is greater*. This bylaw should supplement existing rights under Company bylaws, providing that a Nominator must:
>
> a) have beneficially owned 3% or more of the Company's outstanding common stock, including recallable loaned stock, continuously for at least *three years* before submitting the nomination and pledges to hold that stock through the annual meeting;

b) give the Company, within the time period identified in its bylaws, written notice of the information required by the bylaws and any Securities and Exchange Commission (SEC) rules about (i) the nominee, including consent to being named in proxy materials and to serving as director if elected; and (ii) the Nominator, including proof it owns the required shares (the "Disclosure"); and

c) certify that (i) it will assume liability stemming from any legal or regulatory violation arising out of the Nominator's communications with the Company shareholders, including the Disclosure and Statement; (ii) it will comply with all applicable laws and regulations if it uses soliciting material other than the Company's proxy materials; and (iii) to the best of its knowledge, the required shares were acquired in the ordinary course of business, not to change or influence control at the Company.

The Nominator may submit with the Disclosure a statement not exceeding 500 words in support of the nominee (the "Statement"). The Board should adopt procedures for promptly resolving disputes over whether notice of a nomination was timely, whether the Disclosure and Statement satisfy the bylaw and applicable federal regulations, and the priority given to multiple nominations exceeding the one-quarter limit. *No additional restrictions shall be imposed on re-nominations when nominees fail to receive a specific percentage of votes*.

On behalf of Cisco, pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended, Cisco requests confirmation that the staff (the "***Staff***") of the Securities and Exchange Commission (the "***Commission***") will not recommend enforcement action if Cisco excludes the Proposal from its Proxy Materials for the reasons discussed below. The Annual Meeting is scheduled for December 12, 2016, and Cisco currently expects that it will file definitive copies of the Proxy Materials with the Commission on or around October 24, 2016. Pursuant to Rule 14a-8(j), this letter is being submitted not less than 80 days before Cisco files its definitive copies of the Proxy Materials with the Commission.

Copies of the letter from the Proponent to Cisco submitting the Proposal and related correspondence are attached as Exhibit A to this letter.

Pursuant to Rule 14a-8(j) and *Staff Legal Bulletin No. 14D* (Nov. 7, 2008) ("***SLB 14D***"), we have submitted this letter, together with the Proposal, to the Staff via e-mail at shareholderproposals@sec.gov in lieu of mailing paper copies. Rule 14a-8(k) and SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit

additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently via e-mail to CorporateSecretary@cisco.com pursuant to Rule 14a-8(k) and SLB 14D.

REASON FOR EXCLUSION OF PROPOSAL

We believe that the Proposal may be excluded from the Proxy Materials pursuant to Rule 14a-8(i)(10) because Cisco has substantially implemented the Proposal.

On July 29, 2016, Cisco filed a Form 8-K with the Commission to announce that its board of directors adopted an amendment to its bylaws, effective July 28, 2016 (the "***Bylaw Amendment***") allowing for shareholders to directly nominate candidates to the board of directors. As described below, Article 2, Section 2.14 was added to Cisco's bylaws to permit a shareholder or a group of up to 20 shareholders, who have owned at least 3% of Cisco's outstanding common stock continuously for three years, to nominate and include in Cisco's proxy materials up to the greater of two directors or 20% of the total number of Cisco's directors serving as of the proxy access nomination deadline. See Exhibit B.

The Proposal, in its supporting statement, states that "[l]ong-term shareholders need a meaningful voice in nominating directors." We believe that this essential objective of the Proposal – meaningful proxy access – is satisfied by the Bylaw Amendment. As such, Cisco believes that excluding the Proposal from its Proxy Materials is proper under Rule 14a-8(i)(10) because Cisco has substantially implemented the Proposal by adopting the Bylaw Amendment.

Rule 14a-8(i)(10)

Rule 14a-8(i)(10) allows a company to exclude a shareholder proposal if the company has already substantially implemented the proposal. The Staff's interpretation of the rule acknowledges that "substantial" implementation of a proposal under the rule does not require implementation in full or exactly as presented. *See Commission Release No. 34-40018* (May 21, 1998, n. 30). Instead, the question of whether a company "has substantially implemented" a shareholder proposal turns on whether the adopted "policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (Mar. 28, 1991). The Staff has issued no-action letters in situations where the essential objective of the proposal – as opposed to its exact details – has been satisfied. *See, e.g., General Motors Corp.* (Mar. 4, 1996). In addition, the Staff has found substantial implementation when a company addresses aspects of implementation in which a proposal is silent or which differ from the manner in which the shareholder proponent would implement the proposal. *See, e.g., Bank of America Corp.* (Dec. 15, 2010) (concurring in the exclusion under Rule 14a-8(i)(10) of a proposal requesting that the board amend the company's governing documents to give holders of 10% of the company's stock the power to call a special meeting, where the board had adopted a bylaw giving holders of at least 10% of the company's stock to call a special meeting but imposed additional

informational and other requirements not outlined in the proposal); *Hewlett-Packard Co*. (Dec. 11, 2007) (concurring with the exclusion under Rule 14a-8(i)(10) of a proposal requesting that the board permit stockholders to call special meetings where the company proposed a bylaw amendment to permit stockholders to call a special meeting unless the board determined that the business to be addressed at such special meeting had been addressed recently or would soon be addressed at an annual meeting); *Johnson & Johnson* (Feb. 17, 2006) (concurring with the exclusion under Rule 14a-8(i)(10) of a proposal requesting the company to verify employment legitimacy because the company was already required to do so under U.S. law). The Staff has also determined that a bylaw amendment has satisfied the essential objective of a proposal, and therefore been substantially implemented, despite the fact that the bylaw amendment addressed issues that the shareholder proposal either did not address, or that the proposal addressed in a different way. *See, e.g., AGL Resources, Inc.* (Mar. 5, 2015) (concurring with the exclusion under Rule 14a-8(i)(10) of a proposal requesting that the board amend its governing documents to give holders of 25% of the company's common stock the power to call special meetings where the board adopted a bylaw amendment, subject to stockholder approval, providing holders of 25% of the company's common stock in a net long position for at least one year the power to call a special meeting); *General Dynamics Corp.* (Feb. 6, 2009) (concurring with the exclusion under Rule 14a-8(i)(10) of a special meeting proposal with a 10% ownership threshold, where the company had adopted a special meeting bylaw with an ownership threshold of 10% for special meetings called by one stockholder and 25% for special meetings called by a group of stockholders); *Chevron Corp.* (Feb. 19, 2008) (concurring with the exclusion under Rule 14a-8(i)(10) of a special meeting stockholder proposal requesting that "holders of 10% to 25%" of the company's outstanding common stock be given such power where the company had adopted a provision allowing holders of 25% of the company's outstanding stock to call a special meeting).

More specifically, the Staff has determined that a substantially identical shareholder proposal submitted to numerous other companies could be excluded under Rule 14a-8(i)(10) because in each case the company had adopted proxy access bylaws that "addressed the proposal's essential objective." *See, e.g., Leidos Holdings, Inc.* (May 4, 2016); *Equinix, Inc.* (Apr. 7, 2016); *General Motors Co.* (Mar. 21, 2016); *Quest Diagnostics Inc*. (Mar. 17, 2016); *Eastman Chemical Co. (*Mar. 9, 2016); *Newell Rubbermaid, Inc. (*Mar. 9, 2016); *Amazon.com, Inc.* (Mar. 3, 2016); *Anthem, Inc*. (Mar. 3, 2016); *McGraw Hill Financial, Inc*. (Mar. 3, 2016); *PG&E Corp.* (Mar. 3, 2016); *Baxter International Inc.* (Feb. 12, 2016); *Capital One Financial Corp.* (Feb. 12, 2016); *General Dynamics Corp.* (Feb. 12, 2016); *Northrop Grumman Corp.*(Feb. 12, 2016); *Target Corp.* (Feb. 12, 2016); *Time Warner Inc*. (Feb. 12, 2016); *UnitedHealth Group Inc.* (Feb. 12, 2016) (collectively, the "***Proxy Access No-Action Letters***"). In *Leidos Holdings, Inc.*, the Staff recently concurred in the exclusion of a shareholder proposal substantially similar to the Proposal where the company had already adopted proxy access bylaw amendments nearly identical to the Bylaw Amendment. In order to nominate candidates to the board of directors, the proposal required that a shareholder or a group of shareholders own 3% or more of the company's outstanding common stock continuously for at least three years and that such

nominees should not exceed the greater of two directors or 25% of the board of directors then serving. The Staff allowed the exclusion of this proposal even though, as is the case with the Bylaw Amendment, the bylaw adopted by the company included a 20% cap on such nominees. In particular, the Staff confirmed that Leidos Holdings, Inc. had substantially implemented the shareholder proposal because "the board has adopted a proxy access bylaw that addresses the proposal's essential objective."

The Staff has not always concurred with exclusion under Rule 14a-8(i)(10) of proxy access proposals under similar circumstances. In those few instances where the Staff has declined to provide no-action relief under Rule 14a-8(i)(10) with respect to such proxy access proposals, the ownership threshold percentage differed between the bylaw adopted by the company (5%) and percentage requested in the proposal (3%). *See Flowserve Corp.* (Feb. 12, 2016); *NVR, Inc.* (Feb. 12, 2016) (no-action request granted upon reconsideration on March 25, 2016, following the company's amendment of the ownership threshold in its proxy access provision to 3%); and *SBA Communications Corp.* (Feb.12, 2016). In one instance where the ownership threshold of adopted bylaws matched the percentage requested in the proposal the Staff did not concur with the exclusion under Rule 14a-8(i)(10), but in that instance the proponent sought the amendment of an *existing* proxy access bylaw. *See H&R Block, Inc.* (Jul. 21, 2016). In that situation the company had adopted proxy access bylaws and the proponent subsequently proposed that those bylaws be amended to revise the maximum number of shareholder-nominated candidates, eliminate the requirement that loaned securities, to count against the threshold, be recallable within a specified number of days, eliminate the cap on the number of shareholders that could be aggregated to meet the ownership threshold and eliminate the limitation on the renomination of nominees. Cisco, as was the case in each of the Proxy Access No-Action Letters, had not previously adopted a proxy access bylaw at the time that the shareholder proposal to adopt proxy access was submitted, which we believe is a key distinguishing characteristic from the *H&R Block, Inc*. letter.

The Board of Directors' Adoption of the Bylaw Amendment Substantially Implements the Essential Objective of the Proposal by Offering Meaningful Proxy Access to Shareholders

The comparison below demonstrates that the terms of the Bylaw Amendment "compare favorably with the guidelines of" the Proposal and address the essential objective of the Proposal, and therefore substantially implement the Proposal within the meaning of established precedent under Rule 14a-8(i)(10).

Ownership Threshold

The Proposal. The Proposal requires that a nominating shareholder (the "***Nominating Shareholder***") "beneficially [must own] 3% or more of the Company's outstanding common stock, including recallable loaned stock, continuously for at least three years" before submitting

the nomination.

The Bylaw Amendment. Article 2, Section 2.14(c)(iii) of the Bylaw Amendment requires that a Nominating Shareholder beneficially own at least 3% of Cisco's outstanding common stock, including, as specified in Article 2, Section 2.14(c)(iv), loaned stock recallable on five business days' notice. Article 2, Section 2.14(c)(ii) requires the Nominating Shareholder have continuous ownership of those shares for at least three years prior to submitting the nomination.

Article 2, Sections 2.14(c)(iii) and (iv) of the Bylaw Amendment meet the intent of the Proposal that the Nominating Shareholder must have beneficially owned 3% or more of Cisco's outstanding common stock, including loaned stock recallable on five business days' notice. Based on our review, the requirement that the loaned stock be recallable within five business days' notice has not impacted the Staff's prior analysis under Rule 14a-8(i)(10) with respect to proxy access shareholder proposals. *See, e.g., PG&E Corp.* (finding that a five business day requirement substantially implemented the shareholder proposal); *Target Corp.* (finding that a three business day requirement also substantially implemented the shareholder proposal). Accordingly, we believe the Bylaw Amendment substantially implements this aspect of the proposal.

Number of Nominees

The Proposal. The Proposal states that the number of shareholder-nominated candidates shall be "one quarter of the directors then serving or two, whichever is greater."

The Bylaw Amendment. Article 2, Section 2.14(b)(i) of the Bylaw Amendment states that Cisco shall not be required to include in the proxy statement more nominees than that number of directors constituting the greater of two or 20% of the total number of directors serving as of the proxy access nomination deadline, rounded down to the nearest whole number (the "***Maximum Number***").

While these provisions of the Bylaw Amendment and the Proposal differ slightly in that the Proposal references "one quarter of the directors…or two, whichever is greater" and the Bylaw Amendment provides for "the greater of two or 20%", both provisions would allow for no fewer than two nominees, which Cisco believes is the key aspect of this limitation. As noted above, for a company to substantially implement a shareholder proposal, it is not necessary that the company implement every provision in full or exactly as presented as long as the variations do not undermine the "essential objective" of the proposal. Cisco believes the Bylaw Amendment's limitation of the nominees to the Maximum Number compares favorably with the guidelines suggested in the Proposal in that at least two candidates may be nominated by shareholders, and does not undermine the Proposal's essential objective of providing "meaningful proxy access." Further, the Bylaw Amendment limiting nominees to the greater of two or 20% of the board of directors is identical to the limitations of other companies that the

Staff has found to have substantially implemented proxy access in their respective bylaws. *See, e.g.*, *Leidos Holdings, Inc.; PG&E Corp.*; *Target Corp*.

Timeliness; Disclosure; Priority of Multiple Nominations

The Proposal. The Proposal states that the board of directors must adopt procedures for resolving disputes regarding "whether notice of a nomination was timely, whether the Disclosure and Statement satisfy the bylaw and applicable federal regulations, and the priority given to multiple nominations exceeding the one-quarter limit."

The Bylaw Amendment. Article 2, Sections 2.14(d) and (e) of the Bylaw Amendment, in conjunction with the second paragraph under Article 2, Section 2.14(a), provide that the nomination notice for a nominee must consist of the timely submission of written notice containing information, agreements, representations and warranties in a form deemed satisfactory by the board of directors. We believe these provisions effectively fulfill the Proposal's requirement that the board of directors adopt procedures for resolving disputes over whether a notice of nomination was timely by establishing clear deadlines that the Nominating Shareholder must meet and providing that notice must come in a form acceptable to Cisco's board of directors. *See, e.g.*, *Time Warner Inc.* (submitting that its board of directors' authority to determine compliance with requirements met the proponent's requirement that "[t]he Board should adopt procedures for promptly resolving disputes over" timeliness of notice).

Article 2, Sections 2.14(c) and (d) of the Bylaw Amendment, in conjunction with the second paragraph under Article 2, Section 2.14(a), provide that Cisco's board of directors has ultimate authority to determine compliance with the Nominating Shareholder's stock ownership eligibility requirements and whether the nomination notice has met all requirements under Cisco's bylaws. In addition, Article 2, Section 2.14(e) permits Cisco to omit nominees and information, such as the supporting statement, from its proxy statement for a variety of reasons, including Cisco's board of directors' determining the inclusion of such information would violate Commission rules or any other applicable law, rule or regulation. We believe that the provisions described above fulfill the Proposal's requirement that the board of directors adopt procedures for resolving disputes over whether the disclosure provided about the Nominating Shareholder, its nominee and the supporting statement satisfy the standards described therein by establishing that Cisco's board of directors will determine whether such information satisfies Cisco's bylaws and applicable federal regulations. *See, e.g.*, *Time Warner Inc.* (submitting that its board of directors' authority to determine compliance with requirements met the proponent's requirement that "the Board should adopt procedures for promptly resolving disputes over whether the Disclosure and Statement satisfy the bylaw and applicable federal regulations").

Article 2, Section 2.14(b)(ii) of the Bylaw Amendment provides that each Nominating Shareholder will select one nominee for inclusion in the proxy statement until the Maximum Number is reached, going in order of the amount (largest to smallest) of the ownership position

as disclosed in each Nominating Shareholder's Nomination Notice (as defined in the Bylaw Amendment). We believe this provision fulfills the Proposal's requirement that the bylaws describe the procedures for the priority given to multiple nominations exceeding the limit set forth therein.

Aggregation of Shareholders as the Nominating Shareholder

The Proposal. The Proposal calls for a "shareholder or an unrestricted number of shareholders" to form a group for the purposes of satisfying the ownership threshold for nominations.

The Bylaw Amendment. The Bylaw Amendment, in Article 2, Section 2.14(a), states that a group of up to 20 eligible shareholders may form for the purposes of satisfying the ownership threshold for nomination. Based on our review, we believe that the inclusion of a 20 shareholder aggregation limit has not impacted the Staff's prior analysis of substantial implementation under Rule 14a-8(i)(10) with respect to proxy access shareholder proposals, even when the shareholder proposals called for unlimited or unrestricted group aggregation. *See, e.g., Leidos Holdings, Inc.; Quest Diagnostics Inc.*; *Amazon.com, Inc.*; *McGraw Hill Financial, Inc.*; *PG&E Corp.*; *Baxter International Inc.*; *Capital One Financial Corp.*; *General Dynamics Corp.*; *Northrop Grumman Corp.*; *Target Corp.*; *Time Warner Inc.*; *UnitedHealth Group Inc.* Accordingly and consistent with the Staff's interpretation that substantial implementation does not require implementation in full or exactly as presented, we believe the differences between the Proposal and the Bylaw Amendment in this regard are inconsequential as the essential objective of the Proposal has been met.

Required Shareholder Representations

The Proposal. Subsection (c) of the Proposal would require that a Nominating Shareholder certify: "(i) it will assume liability stemming from any legal or regulatory violation arising out of the Nominating Shareholder's communications with the Company shareholders, including the Disclosure and Statement; (ii) it will comply with all applicable laws and regulations if it uses soliciting material other than the Company's proxy materials; and (iii) to the best of its knowledge, the required shares were acquired in the ordinary course of business, not to change or influence control at the Company."

The Bylaw Amendment. Article 2, Section 2.14(d)(iii) of the Bylaw Amendment requires that the Nominating Shareholder agree (A) to comply with all applicable laws, rules and regulations in connection with the nomination, solicitation, and election, (B) to file any written solicitation or other communication with Cisco's shareholders relating to one or more of Cisco's directors or director nominees or any nominee with the Commission, and (C) to assume all liability stemming from an action, suit or proceeding, whether legal, administrative, or investigative, against Cisco or any of its directors arising from the nomination. The requirements

described in clauses (C) and (A) are the same requirements as set forth in subsections (c)(i) and (c)(ii) in the Proposal, respectively.

Article 2, Section 2.14(d)(ii), clause (C) of the Bylaw Amendment requires that the Nominating Shareholder provide "a representation and warranty that the Nominating Shareholder acquired the securities of [Cisco] in the ordinary course of business and did not acquire, and is not holding, securities of [Cisco] for the purpose or with the effect of influencing or changing control of [Cisco]." The requirement described in clause (C) is the same requirement as set forth in subsection (c)(iii) in the Proposal.

Information Requirements

The Proposal. The Proposal requires a nominating shareholder to give Cisco, "within the time period identified in its bylaws, written notice of the information required by the bylaws and any [Commission] rules about (i) the nominee, including consent to being named in the proxy materials and to serving as director if elected; and (ii) the [Nominating Shareholder], including proof it owns the required shares."

The Bylaw Amendment. Article 2, Section 2.14(a) of the Bylaw Amendment requires that, if requested by the Nominating Shareholder, Cisco will include in its proxy statement for any annual meeting a "disclosure about each Nominee and the Nominating Shareholder required under the rules of the [Commission] or other applicable law." In addition, Article 2, Section 2.14(d) requires the Nominating Shareholder to provide by a deadline a variety of information about the nominee and the Nominating Shareholder, including information required by Commission rules. In particular, Article 2, Section 2.14(d)(ii) requires evidence that the Nominating Shareholder satisfies the stock ownership eligibility requirements by holding the required shares and has provided evidence of ownership and Article 2, Section 2.14(d)(iv) requires the nominee to agree, "if elected, to serve as a member of the Board of Directors."

Statement of Support

The Proposal. The Proposal allows the Nominating Shareholder to submit a statement not exceeding 500 words in support of the nominee.

The Bylaw Amendment. Article 2, Section 2.14(a) of the Bylaw Amendment allows the Nominating Shareholder to submit a statement of support in favor of the nominee, provided that the statement does not exceed 500 words.

Inclusion in Proxy Card

The Proposal. The Proposal requires that shareholders be allowed "to vote on [the Nominating Shareholder's] nominee on the Company's proxy card."

The Bylaw Amendment. Article 2, Section 2.14(a) of the Bylaw Amendment provides that the Nominating Shareholder's nominee "shall also be included on the Corporation's form of proxy and ballot."

Other Restrictions

The Proposal. The Proposal states that "no additional restrictions shall be imposed on re-nominations when nominees fail to receive a specific percentage of votes."

The Bylaw Amendment. Article 2, Section 2.14(e) of the Bylaw Amendment does not place any restrictions on the re-nomination of nominees who may have failed to receive a specific percentage of votes at a previous shareholder meeting.

As demonstrated above, the Bylaw Amendment, when viewed in its totality, compares favorably with the proxy access terms presented in the Proposal. Cisco believes that the Bylaw Amendment advances the goal of providing meaningful proxy access for long-term shareholders and is consistent with prevailing corporate governance standards. Because the Bylaw Amendment compares favorably and implements the essential objective of the Proposal – meaningful proxy access – Cisco believes that it has substantially implemented the proposal. As such, consistent with Rule 14a-8(i)(10) and long-standing precedent thereunder, the minor variations or additional terms that extend beyond the Proposal's provisions should not prevent Cisco from excluding the Proposal on the basis that it has been substantially implemented. Moreover, we believe the Proxy Access No-Action Letters – several of which[1] allowed companies that adopted proxy access bylaw amendments nearly identical to Cisco's to exclude from their proxy statements shareholder proposals nearly identical to the Proponent's – supports a finding by the Staff that Cisco has substantially implemented the Proposal and may exclude the Proposal from the Proxy Materials.

CONCLUSION

For the foregoing reasons, we request your confirmation that the Staff will not recommend any enforcement action to the Commission if Cisco excludes the Proposal from the Proxy Materials. Should the Staff disagree with our conclusions regarding the omission of the Proposal, or should the Staff have questions or desire any additional information in support of our position, we would appreciate an opportunity to confer with the Staff concerning these matters prior to the issuance of its Rule 14a-8(j) response. In this case, please contact me by telephone at (650) 335-7657 or my partner, Bill Hughes at (415) 875-2479 or Evan Sloves of Cisco at (408) 525-2061. Please direct any correspondence regarding this letter via e-mail to CorporateSecretary@cisco.com.

[1] See *Equinix, Inc.*; *Leidos Holdings, Inc.*; *McGraw Hill Financial, Inc.*; and *PG&E Corp*.

Sincerely,

Daniel L. Winnike, Esq.

Enclosures

cc: Evan Sloves, Cisco Systems, Inc.
James McRitchie
John Chevedden
William L. Hughes, Fenwick & West LLP

EXHIBIT A

From: *** FISMA & OMB Memorandum M-07-16 ***
Sent: Thursday, June 02, 2016 3:36 PM
To: corporatesecretary(mailer list)
Cc: John Platz (joplatz); Suresh Bhaskaran Nair (surbhask)
Subject: Rule 14a-8 Proposal (CSCO)``
Attachments: CCE02062016.pdf

Mr. Chandler,
Please see the attached rule 14a-8 proposal to enhance long-term shareholder value.
Sincerely,
John Chevedden

*** FISMA & OMB Memorandum M-07-16 ***

Cisco Systems, Inc.
Attn: Secretary
170 West Tasman Drive
San Jose, California 95134-1706
CorporateSecretary@cisco.com
Phone: 408 526-4000
Fax: 408 853-3683
Fax: 408-526-4100

June 1, 2016

Dear Corporate Secretary,

I am pleased to be a shareholder in Cisco Systems, Inc. and appreciate the leadership our company has shown on numerous issues. Our company has unrealized potential that can be unlocked through low or no cost measures by making our corporate governance more competitive.

The attached shareholder proposal is submitted for a vote at the next annual shareholder meeting. The proposal meets all Rule 14a-8 requirements, including the continuous ownership of the required stock value for over a year, and I pledge to continue to hold the required stock until after the date of the next shareholder meeting. My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

This letter confirms I am delegating John Chevedden and/or his designee to act as my agent regarding this Rule 14a-8 proposal, including its submission, negotiations and/or modification, and presentation at the forthcoming shareholder meeting. Please direct all future communications regarding my rule 14a-8 proposal to John Chevedden *** FISMA & OMB Memorandum M-07-16 ***
*** FISMA & OMB Memorandum M-07-16 ***
facilitate prompt communication. Please identify me as the proponents of the proposal exclusively.

This letter does not cover proposals that are not rule 14a-8 proposals. This letter does not grant the power to vote. Your consideration and the consideration of the Board of Directors is appreciated in responding to this proposal. Please acknowledge receipt of my proposal promptly by email to *** FISMA & OMB Memorandum M-07-16 ***

Sincerely,

June 1, 2016

James McRitchie — Date

cc: John Platz <joplatz@cisco.com> Senior Corporate Counsel
Penelope Bruce <pebruce@cisco.com> Cisco Investor Relations, PH: 408.527.2088
John Chevedden

[CSCO – Rule 14a-8 Proposal, June 1, 2016]
Proposal 4* - Shareholder Proxy Access

RESOLVED: Shareholders of Cisco Systems, Inc. (the "Company") ask the board of directors (the "Board") to adopt, and present for shareholder approval, a "proxy access" bylaw with *essential elements* for *substantial implementation* as follows:

Require the Company to include in proxy materials prepared for a shareholder meeting at which directors are to be elected the name, Disclosure and Statement (as defined herein) of any person nominated for election to the board by a shareholder or an *unrestricted number of shareholders forming a group* (the "Nominator") that meets the criteria established below.

Allow shareholders to vote on such nominee on the Company's proxy card.

The number of shareholder-nominated candidates appearing in proxy materials shall be *one quarter of the directors then serving or two, whichever is greater.* This bylaw should supplement existing rights under Company bylaws, providing that a Nominator must:

a) have beneficially owned *3%* or more of the Company's outstanding common stock, including recallable loaned stock, continuously for at least *three years* before submitting the nomination and pledges to hold that stock through the annual meeting;
b) give the Company, within the time period identified in its bylaws, written notice of the information required by the bylaws and any Securities and Exchange Commission (SEC) rules about (i) the nominee, including consent to being named in proxy materials and to serving as director if elected; and (ii) the Nominator, including proof it owns the required shares (the "Disclosure"); and
c) certify that (i) it will assume liability stemming from any legal or regulatory violation arising out of the Nominator's communications with the Company shareholders, including the Disclosure and Statement; (ii) it will comply with all applicable laws and regulations if it uses soliciting material other than the Company's proxy materials; and (iii) to the best of its knowledge, the required shares were acquired in the ordinary course of business, not to change or influence control at the Company.

The Nominator may submit with the Disclosure a statement not exceeding 500 words in support of the nominee (the "Statement"). The Board should adopt procedures for promptly resolving disputes over whether notice of a nomination was timely, whether the Disclosure and Statement satisfy the bylaw and applicable federal regulations, and the priority given to multiple nominations exceeding the one-quarter limit. *No additional restrictions shall be imposed on re-nominations when nominees fail to receive a specific percentage of votes.*

Supporting Statement: Long-term shareholders need a meaningful voice in nominating directors. The SEC's proxy access Rule 14a-11 (https://www.sec.gov/rules/final/2010/33-9136.pdf) was vacated, in part, for inadequate cost-benefit analysis. *Proxy Access in the United States* (http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2014.n9.1), a CFA Institute cost-benefit analysis, found proxy access would "benefit both the markets and corporate boardrooms, with little cost or disruption," raising US market capitalization by up to $140.3 billion. A similar proposal won 64% support at the Company in 2015.

Enhance shareholder value. Vote for Shareholder Proxy Access – Proposal 4*

From: *** FISMA & OMB Memorandum M-07-16 ***
Sent: Monday, June 06, 2016 12:57 PM
To: corporatesecretary(mailer list)
Cc: John Platz (joplatz); Suresh Bhaskaran Nair (surbhask)
Subject: Rule 14a-8 Proposal (CSCO) blb
Attachments: CCE06062016_6.pdf

Mr. Chandler,
Please see the attached broker letter.
Sincerely,
John Chevedden

TD Ameritrade

CSCO

Post-it® Fax Note 7671	Date 6-6-16	# of pages ▶
To Mark Chandler	From John Chevedden	
Co./Dept.	Co.	
Phone #	Phone *** FISMA & OMB Memorandum M-07-16 ***	
Fax # 408-526-4100	Fax #	

06/04/2016

James McRitchie

*** FISMA & OMB Memorandum M-07-16 ***

Re: Your TD Ameritrade Account Ending in *** FISMA & OMB Memorandum M-07-16 ***

Dear James McRitchie,

Pursuant to your request, this letter is to confirm that as of the date of this letter, James McRitchie held, and had held continuously for at least thirteen months, 200 shares of Cisco Systems, Inc. (CSCO) common stock in his account ending in *** FISMA & OMB Memorandum M-07-16 *** TD Ameritrade. The DTC clearinghouse number for TD Ameritrade is 0188.

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Client Services at 800-669-3900. We're available 24 hours a day, seven days a week.

Sincerely,

William Walker
Resource Specialist
TD Ameritrade

EXHIBIT B

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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of report (Date of earliest event reported): July 28, 2016

CISCO SYSTEMS, INC.

(Exact name of registrant as specified in its charter)

California

(State or other jurisdiction of incorporation)

0-18225	**77-0059951**
(Commission File Number)	(IRS Employer Identification No.)
170 West Tasman Drive, San Jose, California	**95134-1706**
(Address of principal executive offices)	(Zip Code)

(408) 526-4000

(Registrant's telephone number, including area code)

Not Applicable

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*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))

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

On July 28, 2016, the Board of Directors (the "Board") of Cisco Systems, Inc. ("Cisco") adopted amendments to Cisco's Amended and Restated Bylaws (the "Bylaws") to implement proxy access. As amended, the Bylaws include a new Section 2.14 permitting a shareholder, or a group of up to 20 shareholders, owning continuously for at least three years a number of Cisco shares that constitutes at least 3% of Cisco's outstanding shares, to nominate and include in Cisco's proxy materials director nominees constituting up to the greater of two individuals or 20% of the Board, provided that the shareholder(s) and the nominee(s) satisfy the requirements specified in the Bylaws. The amended Bylaws also reflect certain conforming and clarifying changes in Sections 2.04, 2.11, 2.12 and 2.13 of the Bylaws.

In addition, Section 2.12 of the Bylaws, regarding advance notice of shareholder proposals and director nominations, was amended to enhance the disclosure requirements with respect to the ownership of Cisco securities, including disclosure about the direct or indirect ownership of derivative instruments, short positions and performance-related fees.

The foregoing description of the amendments to Cisco's Bylaws is qualified in its entirety by reference to the amended and restated Bylaws, a copy of which is filed as Exhibit 3.1 to this Current Report on Form 8-K and incorporated by reference herein.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	**Description**
3.1	Amended and Restated Bylaws of Cisco Systems, Inc., as currently in effect.

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.

CISCO SYSTEMS, INC.

Dated: July 29, 2016

By: /s/ Evan Sloves
Name: Evan Sloves
Title: Secretary

EXHIBIT INDEX

Exhibit No.	Description
3.1	Amended and Restated Bylaws of Cisco Systems, Inc., as currently in effect.

AMENDED AND RESTATED BYLAWS

OF

CISCO SYSTEMS, INC.

(AS AMENDED MARCH 10, 1985, DECEMBER 10, 1987,

OCTOBER 11, 1988, DECEMBER 20, 1989, JULY 31, 1996,

JUNE 8, 1998, NOVEMBER 10, 1999, JANUARY 9, 2001, SEPTEMBER 23, 2003,

NOVEMBER 15, 2006, MARCH 22, 2007, OCTOBER 3, 2012 and JULY 28, 2016)

Article 1.

- OFFICES

Section 1.01 The principal executive offices of Cisco Systems, Inc. (the "Corporation") shall be at such place inside or outside the State of California as the Board of Directors may determine from time to time.

Section 1.02 The Corporation may also have offices at such other places as the Board of Directors may from time to time designate, or as the business of the Corporation may require.

Article 2.

- SHAREHOLDERS' MEETINGS

Section 2.01 Annual Meetings. The annual meeting of the shareholders of the Corporation for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting shall be held each year on the second Thursday in November at 10:00 a.m. at the principal office of the Corporation, or at such other time and place as may be determined by the Board of Directors.

Section 2.02 Special Meetings. Special meetings of the shareholders may be called at any time by the Chairman of the Board, by the Chief Executive Officer, by a President, by the Board of Directors, or by one or more shareholders holding not less than ten percent (10%) of the voting power of the Corporation on the record date established pursuant to Article 5, Section 5.01 of these Bylaws. The person or persons calling any such meeting shall concurrently specify the purpose of such meeting and the business proposed to be transacted at such meeting. In connection with any special meeting called in accordance with the provisions of this Article 2, Section 2.02, upon request in writing sent by registered mail to the Chairman of the Board, the Chief Executive Officer, a President, a Vice President or the Secretary of the Corporation, or delivered to any such officer in person, by the person or persons calling such meeting (such request, if sent by a shareholder or shareholders, to include the information required by Article 2, Section 2.12 of these Bylaws), it shall be the duty of such officer, subject to the immediately succeeding sentence, to cause notice of such meeting to be given in accordance with Article 2, Section 2.04 of these Bylaws as promptly as reasonably practicable and, in connection therewith, to establish the place and, subject to Section 601(c) of the California Corporations' Code, the

date and hour of such meeting. Within five (5) business days after receiving such a request from a shareholder or shareholders of the Corporation, the Board of Directors shall determine whether such shareholder or shareholders have satisfied the requirements for calling a special meeting of the shareholders and notify the requesting party or parties of its finding.

Section 2.03 Place. All meetings of the shareholders shall be at any place within or without the State of California designated by the Board of Directors, the Chief Executive Officer or a President of the Corporation. In the absence of any such designation, shareholders' meetings shall be held at the principal executive office of the Corporation.

Section 2.04 Notice. Notice of meetings of the shareholders of the Corporation shall be given in writing to each shareholder entitled to vote personally, by electronic transmission by the Corporation or by first-class mail (unless the Corporation has 500 or more shareholders determined as provided by the California Corporations Code on the record date for the meeting, in which case notice may be sent by third-class mail) or other means of written communication, charges prepaid, addressed to the shareholder at his address appearing on the books of the Corporation or given by the shareholder to the Corporation for the purpose of notice. Notice of any such meeting of shareholders shall be sent to each shareholder entitled thereto not less than ten (10) days (or, if sent by third-class mail, thirty (30) days) nor more than sixty (60) days before the meeting. Said notice shall state the place, date and hour of the meeting and, (1) in the case of special meetings, the purpose of the meeting and the business proposed to be transacted, or (2) in the case of annual meetings, those matters which the Board of Directors, at the time of the mailing of the notice, intends to present for action by the shareholders, and (3) in the case of any meeting at which directors are to be elected, the names of the nominees intended at the time of the mailing of the notice to be presented by the Board of Directors for election and the names of the nominees to be included in the Corporation's proxy statement for such annual meeting in accordance with Article 2, Section 2.14.

Section 2.05 Adjourned Meetings. Any shareholders' meeting may be adjourned from time to time by (1) the vote of the holders of a majority of the voting shares present at the meeting either in person or by proxy or (2) the presiding officer of the meeting. Written notice of the place, date and hour of any adjourned meeting need not be given if such place, date and hour are announced at the meeting at which the adjournment is taken; provided, however, that if the adjournment is for more than forty-five (45) days or, if after the adjournment, a new record date is fixed for the adjourned meeting, written notice of the place, date and hour of the adjourned meeting must be given in conformity with Article 2, Section 2.04 of these Bylaws. At any adjourned meeting, any business may be transacted which properly could have been transacted at the original meeting.

Section 2.06 Quorum. The presence in person or by proxy of the persons entitled to vote a majority of the shares entitled to vote at any meeting constitutes a quorum for the transaction of business. The shareholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum or, if required by the California Corporations Code or the Articles of Incorporation of the Corporation, the vote of a greater number or voting by classes.

In the absence of a quorum, any meeting of shareholders may be adjourned from time to time by the vote of a majority of the shares, the holders of which are either present in person or represented by proxy thereat, but no other business may be transacted, except as provided above.

Section 2.07 Consent to Shareholder Action. Any action which may be taken at any meeting of shareholders may be taken without a meeting and without prior notice, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding shares on the record date established pursuant to Article 5, Section 5.01 of these Bylaws having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted; provided, however, that (1) unless the consents of all shareholders entitled to vote have been solicited in writing, notice of any shareholder approval without a meeting by less than unanimous written consent shall be given as required by the California Corporations Code, and (2) directors may not be elected by written consent except by unanimous written consent of all shares entitled to vote for the election of directors.

Any written consent may be revoked by a writing received by the Secretary of the Corporation prior to the time that written consents of the number of shares required to authorize the proposed action have been filed with the Secretary.

Section 2.08 Waiver of Notice. The transactions of any meeting of shareholders, however called and noticed, and whenever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy, and if, either before or after the meeting, each of the persons entitled to vote, not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of the meeting, or an approval of the minutes thereof. All such waivers, consents, or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 2.09 Voting. At any meeting of the shareholders, every shareholder having the right to vote shall be entitled to vote in person, or by proxy appointed in a writing subscribed by such shareholder and bearing a date not more than eleven (11) months prior to said meeting, unless the writing states that it is irrevocable and satisfies Section 705(e) of the California Corporations Code, in which event it is irrevocable for the period specified in said writing and said Section 705(e). The voting at meetings of shareholders need not be by ballot, but any qualified shareholder before the voting begins may demand that voting be by ballot, each of which shall state the name of the shareholder or proxy voting and the number of shares voted by such shareholder or proxy.

Section 2.10 Record Dates. In the event the Board of Directors fixes a day for the determination of shareholders of record entitled to vote as provided in Article 5, Section 5.01 of these Bylaws, then, subject to the provisions of the General Corporation Law of the State of California, only persons in whose name shares entitled to vote stand on the stock records of the Corporation at the close of business on such day shall be entitled to vote.

If no record date is fixed:

The record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the business day next preceding the day notice is

given or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held;

In order that the Corporation may determine the shareholders entitled to consent to corporate action in writing without a meeting or request a special meeting of the shareholders, the Board of Directors shall fix a record date, which record date shall not precede the date upon which the resolution fixing such record date is adopted by the Board of Directors. Any shareholder of record seeking to have the shareholders authorize or take corporate action by written consent or request a special meeting of the shareholders shall, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in no event later than twenty-eight (28) days after the date on which such request is received, adopt a resolution fixing the record date; and

The record date for determining shareholders for any other purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto, or the sixtieth (60th) day prior to the date of such other action, whichever is later.

A determination of shareholders of record entitled to notice of or to vote at a meeting of shareholders shall apply to any adjournment of the meeting unless the Board of Directors fixes a new record date for the adjourned meeting, but the Board of Directors shall fix a new record date if the meeting is adjourned for more than forty-five (45) days.

Section 2.11 Order of Business.

The Chairman of the Board, or such other officer of the Corporation designated by a majority of the Board of Directors, will call meetings of the shareholders to order and will act as presiding officer thereof. Unless otherwise determined by the Board of Directors prior to the meeting, the presiding officer of the meeting of the shareholders will also determine the order of business and have the authority in his or her sole discretion to regulate the conduct of any such meeting, including without limitation by (i) imposing restrictions on the persons (other than shareholders of the Corporation or their duly appointed proxies) who may attend any such shareholders' meeting, (ii) ascertaining whether any shareholder or his proxy may be excluded from any meeting of the shareholders based upon any determination by the presiding officer, in his or her sole discretion, that any such person has unduly disrupted or is likely to disrupt the proceedings thereat, and (iii) determining the circumstances in which any person may make a statement or ask questions at any meeting of the shareholders.

At an annual meeting of the shareholders, only such business will be conducted or considered as is properly brought before the meeting. To be properly brought before an annual meeting, business must be (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (ii) otherwise properly brought before the meeting by the presiding officer or by or at the direction of a majority of the Board of Directors, or (iii) otherwise properly requested to be brought before the meeting by a shareholder of the Corporation in accordance with the immediately succeeding sentence. For business to be properly requested by a shareholder to be brought before an annual meeting, the shareholder must (i) be a shareholder of record at the time of the giving of the notice of such annual meeting by or at the direction of the Board of Directors, (ii) be entitled to vote at such meeting, and (iii) have given timely written notice thereof to the Secretary in accordance with Article 2, Section 2.12 or Article 2, Section 2.14, as the case may be, of these Bylaws.

Nominations of persons for election as Directors of the Corporation may be made at an annual meeting of shareholders only (i) by or at the direction of the Board of Directors, (ii) by any shareholder who is a shareholder of record at the time of the giving of the notice of such annual meeting by or at the direction of the Board of Directors, who is entitled to vote for the election of directors at such meeting and who has given timely written notice thereof to the Secretary in accordance with Article 2, Section 2.12 of these Bylaws, or (iii) by any Eligible Holder (as defined in Article 2, Section 2.14) who has satisfied the requirements of Article 2, Section 2.14 . Only persons who are nominated in accordance with this Article 2, Section 2.11 will be eligible for election at a meeting of shareholders as Directors of the Corporation.

At a special meeting of shareholders, only such business may be conducted or considered as is properly brought before the meeting. To be properly brought before a special meeting, business must be (i) specified in the notice of the meeting (or any supplement thereto) given by or at the direction of the Chairman of the Board, the Chief Executive Officer, a President, a Vice President or the Secretary or (ii) otherwise properly brought before the meeting by the presiding officer or by or at the direction of a majority of the Board of Directors.

The determination of whether any business sought to be brought before any annual or special meeting of the shareholders is properly brought before such meeting in accordance with this Article 2, Section 2.11, and whether any nomination of a person for election as a Director of the Corporation at any annual meeting of the shareholders was properly made in accordance with this Article 2, Section 2.11, will be made by the presiding officer of such meeting. If the presiding officer determines that any business is not properly brought before such meeting, or any nomination was not properly made, he or she will so declare to the meeting and any such business will not be conducted or considered and any such nomination will be disregarded.

Notwithstanding the provisions of Sections 2.11, 2.12 and 2.14 of this Article 2, a shareholder must also comply with all applicable requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations thereunder with respect to the matters set forth in Sections 2.11, 2.12 and 2.14 of this Article 2. Nothing in Sections 2.11, 2.12 and 2.14 of this Article 2 will be deemed to affect any rights of shareholders to request inclusion of proposals in the Corporation's proxy statement in accordance with the provisions of Rule 14a-8 under the Exchange Act.

For purposes of these Bylaws, "public announcement" means disclosure in a press release reported by the Dow Jones News Service, Associated Press, or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act, or furnished to shareholders.

Section 2.12 Advance Notice of Shareholder Proposals and Director Nominations. To be timely for purposes of Article 2, Section 2.11 of these Bylaws, a shareholder's notice (other than a notice by an Eligible Shareholder (as defined in Article 2, Section 2.14) who seeks to include a Nominee (as defined in Article 2, Section 2.14) in the Corporation's proxy statement for an annual meeting of shareholders pursuant to Article 2, Section 2.14) must be addressed to the Secretary and delivered or mailed to and received at the principal executive offices of the Corporation not less than sixty (60) nor more than ninety (90) calendar days prior to the anniversary date of the date (as specified in the Corporation's proxy materials for its immediately

preceding annual meeting of shareholders) on which the Corporation first sent its proxy materials for its immediately preceding annual meeting of shareholders; provided, however, that in the event the annual meeting is called for a date that is not within thirty (30) calendar days of the anniversary date of the date on which the immediately preceding annual meeting of shareholders was called, to be timely, notice by the shareholder must be so received not later than the close of business on the tenth (10th) calendar day following the day on which public announcement of the date of the annual meeting is first made. In no event will the public announcement of an adjournment of an annual meeting of shareholders commence a new time period for the giving of a shareholder's notice as provided above.

In the case of a request by a shareholder for business to be brought before any annual meeting of shareholders, a shareholder's notice to the Secretary must set forth as to each matter the shareholder proposes to bring before the annual meeting (i) a description in reasonable detail of the business desired to brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and address, as they appear on the Corporation's books, of the shareholder proposing such business and the beneficial owner, if any, on whose behalf the proposal is made, (iii) the class and number of shares of the Corporation that are owned beneficially and of record by the shareholder proposing such business and by the beneficial owner, if any, on whose behalf the proposal is made, (iv)(A) a description of any agreement, arrangement or understanding (including any derivative instruments, swaps, warrants, short positions, profit interests, options, hedging transactions, borrowed or loaned shares or other transactions, such as those involving direct or indirect opportunities to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation, or partnership interests in a partnership that directly or indirectly hold any of the foregoing) that has been entered into as of the date of such notice by such shareholder and beneficial owner, if any, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of each such person or any of its affiliates or associates with respect to shares of stock of the Corporation, and any performance-related fees to which each such party is directly or indirectly entitled based on any increase or decrease in the value of shares of the Corporation, and (B) a representation that the shareholder will notify the Corporation in writing of any of information required to be disclosed in clause (iv)(A) that is in effect as of the record date for the meeting not later than five (5) business days following the later of the record date or the date notice of the record date is first publicly disclosed, and (v) any material interest of such shareholder proposing such business and the beneficial owner, if any, on whose behalf the proposal is made in such business.

In the case of a nomination by a shareholder of a person for election as a director of the Corporation at any annual meeting of shareholders pursuant to this Article 2, Section 2.12, a shareholder notice to the Secretary must set forth (i) the shareholder's intent to nominate one or more persons for election as a director of the Corporation, the name of each such nominee proposed by the shareholder giving the notice, and the reason for making such nomination at the annual meeting, (ii) the name and address, as they appear on the Corporation's books, of the shareholder proposing such nomination and the beneficial owner, if any, on whose behalf the nomination is proposed, (iii) the class and number of shares of the Corporation that are owned beneficially and of record by the shareholder proposing such nomination and by the beneficial owner, if any, on whose behalf the nomination is proposed, (iv) the information and representation described in clause (iv) of the immediately preceding paragraph, (v) any material

interest of such shareholder proposing such nomination and the beneficial owner, if any, on whose behalf the proposal is made, (vi) a description of all arrangements or understandings between or among any of (A) the shareholder giving the notice, (B) each nominee, and (C) any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the shareholder giving the notice, (vii) such other information regarding each nominee proposed by the shareholder giving the notice as would be required to be included in a proxy statement filed in accordance with the proxy rules of the Securities and Exchange Commission had the nominee been nominated, or intended to be nominated, by the Board of Directors, and (viii) the signed consent of each nominee proposed by the shareholder giving the notice to serve as a director of the Corporation if so elected.

Any shareholder or shareholders seeking to call a special meeting pursuant to Article 2, Section 2.02 of these Bylaws shall provide information comparable to that required by the preceding paragraphs, to the extent applicable, in any request made pursuant to such Article and Section.

Section 2.13 Election of Directors. In any uncontested election, candidates receiving the affirmative vote of a majority of the shares represented and voting at a duly held meeting at which a quorum is present (which shares voting affirmatively also constitute at least a majority of the required quorum) shall be elected. In any election that is not an uncontested election, the candidates receiving the highest number of affirmative votes of the shares entitled to be voted for them up to the number of directors to be elected by those shares shall be elected; votes against a director and votes withheld shall have no legal effect.

For purposes of these Bylaws, "uncontested election" means an election of directors of the Corporation in which, at the expiration of the later of (i) the time fixed under Section 2.12 of this Article 2 requiring advance notification of director candidates, and (ii) the time fixed under Section 2.14 of this Article 2 for the inclusion of a Nominee (as defined in Article 2, Section 2.14) in the Corporation's proxy statement, the number of candidates for election does not exceed the number of directors to be elected by the shareholders at that election.

Section 2.14 Shareholder Nominations Included in the Corporation's Proxy Materials.

(a) Inclusion of Nominees in Proxy Statement. Subject to the provisions of this Article 2, Section 2.14, if expressly requested in the relevant Nomination Notice (as defined below), the Corporation shall include in its proxy statement for any annual meeting of shareholders: (i) the name or names of any person or persons nominated for election (each, a "Nominee"), which shall also be included on the Corporation's form of proxy and ballot, by any Eligible Holder (as defined below) or group of up to twenty (20) Eligible Holders that has (individually and collectively, in the case of a group) satisfied, as determined by the Board of Directors, all applicable conditions and complied with all applicable procedures set forth in this Article 2, Section 2.14 (such Eligible Holder or group of Eligible Holders being a "Nominating Shareholder"), (ii) disclosure about each Nominee and the Nominating Shareholder required under the rules of the Securities and Exchange Commission or other applicable law to be included in the proxy statement, (iii) any statement included by the Nominating Shareholder in the Nomination Notice for inclusion in the proxy statement in support of each Nominee's election to the Board of Directors (subject, without limitation, to Article 2, Section 2.14(e)(ii)), if such statement does not exceed five hundred (500) words and fully complies with Section 14 of

the Exchange Act, and the rules and regulations thereunder, including Rule 14a-9 (the "Supporting Statement"), and (iv) any other information that the Corporation or the Board of Directors determines, in their discretion, to include in the proxy statement relating to the nomination of each Nominee, including, without limitation, any statement in opposition to the nomination, any of the information provided pursuant to this Article 2, Section 2.14 and any solicitation materials or related information with respect to a Nominee.

For purposes of this Article 2, Section 2.14, any determination to be made by the Board of Directors may be made by the Board of Directors, a committee of the Board of Directors or any officer of the Corporation designated by the Board of Directors or a committee of the Board of Directors, and any such determination shall be final and binding on the Corporation, any Eligible Holder, any Nominating Shareholder, any Nominee and any other person so long as made in good faith (without any further requirements). The presiding officer of any annual meeting of shareholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall have the power and duty to determine whether a Nominee has been nominated in accordance with the requirements of this Article 2, Section 2.14 and, if not so nominated, shall direct and declare at the meeting that such Nominee shall not be considered.

(b) Maximum Number of Nominees. (i) The Corporation shall not be required to include in the proxy statement for an annual meeting of shareholders more Nominees than that number of directors constituting the greater of (i) two (2) or (ii) twenty percent (20%) of the total number of directors of the Corporation on the last day on which a Nomination Notice may be submitted pursuant to this Article 2, Section 2.14 (rounded down to the nearest whole number) (the "Maximum Number"). The Maximum Number for a particular annual meeting shall be reduced by: (1) Nominees who the Board of Directors itself decides to nominate for election at such annual meeting, (2) Nominees who cease to satisfy, or Nominees of Nominating Shareholders that cease to satisfy, the eligibility requirements in this Article 2, Section 2.14, as determined by the Board of Directors, (3) Nominees whose nomination is withdrawn by the Nominating Shareholder or who become unwilling to serve on the Board of Directors, and (4) the number of incumbent directors who had been Nominees with respect to any of the preceding two annual meetings of shareholders and whose reelection at the upcoming annual meeting is being recommended by the Board of Directors. In the event that one or more vacancies for any reason occurs on the Board of Directors after the deadline for submitting a Nomination Notice as set forth in Article 2, Section 2.14(d) below but before the date of the annual meeting, and the Board of Directors resolves to reduce the size of the board in connection therewith, the Maximum Number shall be calculated based on the number of directors in office as so reduced.

(ii) If the number of Nominees pursuant to this Article 2, Section 2.14 for any annual meeting of shareholders exceeds the Maximum Number then, promptly upon notice from the Corporation, each Nominating Shareholder will select one Nominee for inclusion in the proxy statement until the Maximum Number is reached, going in order of the amount (largest to smallest) of the ownership position as disclosed in each Nominating Shareholder's Nomination Notice, with the process repeated if the Maximum Number is not reached after each Nominating Shareholder has selected one Nominee. If, after the deadline for submitting a Nomination Notice as set forth in Article 2, Section 2.14(d), a Nominating Shareholder or a Nominee ceases to satisfy the eligibility requirements in this Article 2, Section 2.14, as determined by the Board of Directors, a Nominating Shareholder withdraws its nomination or a Nominee becomes unwilling to serve on the Board of Directors, whether before or after the mailing or other distribution of the

definitive proxy statement, then the nomination shall be disregarded, and the Corporation: (1) shall not be required to include in its proxy statement or on any ballot or form of proxy the disregarded Nominee or any successor or replacement nominee proposed by the Nominating Shareholder or by any other Nominating Shareholder and (2) may otherwise communicate to its shareholders, including without limitation by amending or supplementing its proxy statement or ballot or form of proxy, that a Nominee will not be included as a nominee in the proxy statement or on any ballot or form of proxy and will not be voted on at the annual meeting.

(c) Eligibility of Nominating Shareholder. (i) An "Eligible Holder" is a person who has either (1) been a record holder of the shares of common stock used to satisfy the eligibility requirements in this Article 2, Section 2.14(c) continuously for the three-year period specified in Subsection (ii) below or (2) provides to the Secretary of the Corporation, within the time period referred to in Article 2, Section 2.14(d), evidence of continuous ownership of such shares for such three-year period from one or more securities intermediaries in a form that the Board of Directors determines would be deemed acceptable for purposes of a shareholder proposal under Rule 14a-8(b)(2) under the Exchange Act (or any successor rule).

(ii) An Eligible Holder or group of up to twenty (20) Eligible Holders may submit a nomination in accordance with this Article 2, Section 2.14 only if the person or group (in the aggregate) has continuously owned at least the Minimum Number (as defined below) of shares of the Corporation's common stock throughout the three-year period preceding and including the date of submission of the Nomination Notice, and continues to own at least the Minimum Number through the date of the annual meeting. Two or more funds that are (A) under common management and investment control, (B) under common management and funded primarily by the same employer or (C) a "group of investment companies," as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended, shall be treated as one Eligible Holder if such Eligible Holder shall provide together with the Nomination Notice documentation reasonably satisfactory to the Corporation that demonstrates that the funds meet the criteria set forth in (A), (B) or (C) hereof. For the avoidance of doubt, in the event of a nomination by a group of Eligible Holders, any and all requirements and obligations for an individual Eligible Holder that are set forth in this Article 2, Section 2.14, including the minimum holding period, shall apply to each member of such group; provided, however, that the Minimum Number shall apply to the ownership of the group in the aggregate. Should any shareholder cease to satisfy the eligibility requirements in this Article 2, Section 2.14, as determined by the Board of Directors, or withdraw from a group of Eligible Holders, at any time prior to the annual meeting of shareholders, the group of Eligible Shareholders shall only be deemed to own the shares held by the remaining members of the group.

(iii) The "Minimum Number" of shares of the Corporation's common stock means three percent (3%) of the number of outstanding shares of common stock as of the most recent date for which such amount is given in any filing by the Corporation with the SEC prior to the submission of the Nomination Notice.

(iv) For purposes of this Article 2, Section 2.14, an Eligible Holder "owns" only those outstanding shares of the Corporation as to which the Eligible Holder possesses both (A) the full voting and investment rights pertaining to the shares and (B) the full economic interest in (including the opportunity for profit and risk of loss on) such shares; provided, however, that the number of shares calculated in accordance with clauses (A) and (B) shall not include any shares:

(1) purchased or sold by such Eligible Holder or any of its affiliates in any transaction that has not been settled or closed, (2) sold short by such Eligible Holder, (3) borrowed by such Eligible Holder or any of its affiliates for any purpose or purchased by such Eligible Holder or any of its affiliates pursuant to an agreement to resell or subject to any other obligation to resell to another person, or (4) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such Eligible Holder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding shares of the Corporation, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of: (x) reducing in any manner, to any extent or at any time in the future, such Eligible Holder's or any of its affiliates' full right to vote or direct the voting of any such shares, and/or (y) hedging, offsetting, or altering to any degree, gain or loss arising from the full economic ownership of such shares by such Eligible Holder or any of its affiliates.

An Eligible Holder "owns" shares held in the name of a nominee or other intermediary so long as the Eligible Holder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. An Eligible Holder's ownership of shares shall be deemed to continue during any period in which the Eligible Holder has delegated any voting power by means of a proxy, power of attorney, or other similar instrument or arrangement that is revocable at any time by the Eligible Holder. An Eligible Holder's ownership of shares shall be deemed to continue during any period in which the Eligible Holder has loaned such shares provided that the Eligible Holder has the power to recall such loaned shares on five (5) business days' notice. The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. Whether outstanding shares of the Corporation are "owned" for these purposes shall be determined by the Board.

(v) No Eligible Holder shall be permitted to be in more than one group constituting a Nominating Shareholder, and if any Eligible Holder appears as a member of more than one group, it shall be deemed to be a member of the group that has the largest ownership position as reflected in the Nomination Notice.

(d) Nomination Notice. To nominate a Nominee, the Nominating Shareholder must, not less than one hundred twenty (120) nor more than one hundred fifty (150) calendar days prior to the anniversary date of the date (as specified in the Corporation's proxy materials for its immediately preceding annual meeting of shareholders) on which the Corporation first sent its proxy materials for its immediately preceding annual meeting of shareholders, deliver or mail to the Secretary at the principal executive offices of the Corporation all of the below information and documents (collectively, the "Nomination Notice"), and the Nomination Notice must be received by the Secretary within such period of time; provided, however, that in the event the annual meeting is called for a date that is not within thirty (30) calendar days of the anniversary date of the date on which the immediately preceding annual meeting of shareholders was called, the Nomination Notice shall be given in the manner provided herein by the later of the close of business on the date that is one hundred eighty (180) days prior to the date of the annual meeting or the close of business on the tenth (10th) calendar day following the day on which public announcement of the date of the annual meeting is first made. In no event will the public announcement of an adjournment of an annual meeting of shareholders commence a new time period for the giving of the Nomination Notice as provided above. For the purposes of these bylaws, the Nomination Notice shall include the following:

(i) A Schedule 14N (or any successor form) relating to each Nominee, completed and filed with the SEC by the Nominating Shareholder as applicable, in accordance with SEC rules,

(ii) A written notice, in a form deemed satisfactory by the Board of Directors, of the nomination of each Nominee that includes the following additional information, agreements, representations and warranties by the Nominating Shareholder (including each group member) (A) the information required with respect to the nomination of directors pursuant to Article 2, Section 2.12 of these Bylaws, (B) the details of any relationship that existed within the past three (3) years and that would have been described pursuant to Item 6(e) of Schedule 14N (or any successor item) if it existed on the date of submission of the Schedule 14N, (C) a representation and warranty that the Nominating Shareholder acquired the securities of the Corporation in the ordinary course of business and did not acquire, and is not holding, securities of the Corporation for the purpose or with the effect of influencing or changing control of the Corporation, (D) a representation and warranty that each Nominee's candidacy or, if elected, Board membership would not violate applicable state or federal law or the rules of any stock exchange on which the Corporation's securities are traded, (E) a representation and warranty that each Nominee: (1) does not have any direct or indirect relationship with the Corporation that would cause the Nominee to be considered not independent pursuant to the Corporation's Corporate Governance Policies as most recently published on its website and otherwise qualifies as independent under the rules of the primary stock exchange on which the Corporation's shares of common stock are traded, (2) meets the audit committee and compensation committee independence requirements under the rules of the primary stock exchange on which the Corporation's shares of common stock are traded, (3) is a "non-employee director" for the purposes of Rule 16b-3 under the Exchange Act (or any successor rule), (4) is an "outside director" for the purposes of Section 162(m) of the Internal Revenue Code (or any successor provision), and (5) is not and has not been subject to any event specified in Rule 506(d)(1) of Regulation D (or any successor rule) under the Securities Act of 1933, as amended or Item 401(f) of Regulation S-K (or any successor rule) under the Exchange Act, without reference to whether the event is material to an evaluation of the ability or integrity of such Nominee, (F) a representation and warranty that the Nominating Shareholder satisfies the eligibility requirements set forth in Article 2, Section 2.14(c) and has provided evidence of ownership to the extent required by Article 2, Section 2.14(c)(i), (G) a representation and warranty that the Nominating Shareholder intends to continue to satisfy the eligibility requirements described in Article 2, Section 2.14(c) through the date of the annual meeting, (H) details of any position of a Nominee as an officer or director of any competitor (that is, any entity that produces products or provides services that compete with or are alternatives to the products produced or services provided by the Corporation or its affiliates) of the Corporation, within the three (3) years preceding the submission of the Nomination Notice, (I) a representation and warranty that the Nominating Shareholder will not engage in a "solicitation" within the meaning of Rule 14a-1(l) (without reference to the exception in Section 14a-1(l)(2)(iv)) (or any successor rules) with respect to the annual meeting, other than with respect to a Nominee or any nominee of the Board, (J) a representation and warranty that the Nominating Shareholder will not use any proxy card other than the Corporation's proxy card in soliciting shareholders in connection with the election of a Nominee at the annual meeting, (K) if desired, a Supporting Statement, and (L) in the case of a nomination by a group, the designation by all group members of one group member that is authorized to act on behalf of all group members with respect to matters relating to the nomination, including withdrawal of the nomination,

(iii) An executed agreement, in a form deemed satisfactory by the Board of Directors, pursuant to which the Nominating Shareholder (including each group member) agrees (A) to comply with all applicable laws, rules and regulations in connection with the nomination, solicitation and election, (B) to file any written solicitation or other communication with the Corporation's shareholders relating to one or more of the Corporation's directors or director nominees or any Nominee with the Securities and Exchange Commission, regardless of whether any such filing is required under rule or regulation or whether any exemption from filing is available for such materials under any rule or regulation, (C) to assume all liability stemming from an action, suit or proceeding concerning any actual or alleged legal or regulatory violation arising out of any communication by the Nominating Shareholder or any of its Nominees with the Corporation, its shareholders or any other person in connection with the nomination or election of directors, including, without limitation, the Nomination Notice, (D) to indemnify and hold harmless (jointly with all other group members, in the case of a group member) the Corporation and each of its directors, officers and employees individually against any liability, loss, damages, expenses or other costs (including attorneys' fees) incurred in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers or employees arising out of or relating to a failure or alleged failure of the Nominating Shareholder or any of its Nominees to comply with, or any breach or alleged breach of, its or their obligations, agreements or representations under this Article 2, Section 2.14, (E) in the event that any information included in the Nomination Notice, or any other communication by the Nominating Shareholder (including with respect to any group member), with the Corporation, its shareholders or any other person in connection with the nomination or election ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made not misleading), or that the Nominating Shareholder (including any group member) has failed to continue to satisfy the eligibility requirements described in Article 2, Section 2.14(c), to promptly (and in any event within forty-eight (48) hours of discovering such misstatement, omission or failure) notify the Corporation and any other recipient of such communication of (x) the misstatement or omission in such previously provided information and of the information that is required to correct the misstatement or omission or (y) such failure, and

(iv) An executed agreement, in a form deemed satisfactory by the Board of Directors, by each Nominee (A) to provide to the Corporation such other information and certifications, including completion of the Corporation's director questionnaire, as it may reasonably request, (B) at the reasonable request of the Nomination and Governance Committee, to meet with the Nomination and Governance Committee to discuss matters relating to the nomination of such Nominee to the Board of Directors, including the information provided by such Nominee to the Corporation in connection with his or her nomination and such Nominee's eligibility to serve as a member of the Board of Directors, (C) that such Nominee has read and agrees, if elected, to serve as a member of the Board of Directors, to adhere to the Corporation's Corporate Governance Policies and Code of Business Conduct and any other Corporation policies and guidelines applicable to directors, and (D) that such Nominee is not and will not become a party to (i) any compensatory, payment or other financial agreement, arrangement or understanding with any person or entity in connection with his or her nomination, service or action as a director of the Corporation that has not been disclosed to the Corporation, (ii) any agreement, arrangement or understanding with any person or entity as to how such Nominee would vote or act on any issue or question as a director (a "Voting Commitment") that has not

been disclosed to the Corporation or (iii) any Voting Commitment that could limit or interfere with such Nominee's ability to comply, if elected as a director of the Corporation, with its fiduciary duties under applicable law.

The information and documents required by this Article 2, Section 2.14(d) to be provided by the Nominating Shareholder shall be: (i) provided with respect to and executed by each group member, in the case of information applicable to group members and (ii) provided with respect to the persons specified in Instruction 1 to Items 6(c) and (d) of Schedule 14N (or any successor item) in the case of a Nominating Shareholder or group member that is an entity. The Nomination Notice shall be deemed submitted on the date on which all the information and documents referred to in this Article 2, Section 2.14(d) (other than such information and documents contemplated to be provided after the date the Nomination Notice is provided) have been delivered to or, if sent by mail, received by the Secretary of the Corporation.

(e) Exceptions. (i) Notwithstanding anything to the contrary contained in this Article 2, Section 2.14, the Corporation may omit from its proxy statement any Nominee and any information concerning such Nominee (including a Nominating Shareholder's Supporting Statement) and no vote on such Nominee will occur (notwithstanding that proxies in respect of such vote may have been received by the Corporation), and the Nominating Shareholder may not, after the last day on which a Nomination Notice would be timely, cure in any way any defect preventing the nomination of such Nominee, if (A) the Corporation receives a notice pursuant to Article 2, Section 2.12 of these Bylaws that a shareholder intends to nominate a candidate for director at the annual meeting, whether or not such notice is subsequently withdrawn or made the subject of a settlement with the Corporation, (B) the Nominating Shareholder or the designated lead group member, as applicable, or any qualified representative thereof, does not appear at the meeting of shareholders to present the nomination submitted pursuant to this Article 2, Section 2.14, the Nominating Shareholder withdraws its nomination or the presiding officer of the annual meeting declares that such nomination was not made in accordance with the procedures prescribed by this Article 2, Section 2.14 and shall therefore be disregarded, (C) the Board of Directors determines that such Nominee's nomination or election to the Board of Directors would result in the Corporation violating or failing to be in compliance with the Corporation's bylaws or articles of incorporation or any applicable law, rule or regulation to which the Corporation is subject, including any rules or regulations of the primary stock exchange on which the Corporation's common stock is traded, (D) such Nominee was nominated for election to the Board of Directors pursuant to this Article 2, Section 2.14 at one of the Corporation's two preceding annual meetings of shareholders and either withdrew or became ineligible, (E) such Nominee has been, within the past three years, an officer or director of a competitor, as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914, as amended, or (F) the Corporation is notified, or the Board of Directors determines, that the Nominating Shareholder or the Nominee has failed to continue to satisfy the eligibility requirements described in Article 2, Section 2.14(c), any of the representations and warranties made in the Nomination Notice ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made not misleading), such Nominee becomes unwilling or unable to serve on the Board of Directors or any material violation or breach occurs of the obligations, agreements, representations or warranties of the Nominating Shareholder or such Nominee under this Article 2, Section 2.14.

(ii) Notwithstanding anything to the contrary contained in this Article 2, Section 2.14, the Corporation may omit from its proxy statement, or may supplement or correct, any information, including all or any portion of the Supporting Statement or any other statement in support of a Nominee included in the Nomination Notice, if the Board of Directors determines that (A) such information is not true in all material respects or omits a material statement necessary to make the statements made not misleading, (B) such information directly or indirectly impugns the character, integrity or personal reputation of, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation, with respect to, any person, or (C) the inclusion of such information in the proxy statement would otherwise violate the Securities and Exchange Commission proxy rules or any other applicable law, rule or regulation.

The Corporation may solicit against, and include in the proxy statement its own statement relating to, any Nominee.

Article 3.

- BOARD OF DIRECTORS

Section 3.01 Powers. Subject to any limitations in the Restated Articles of Incorporation or these Amended and Restated Bylaws and to any provision of the California Corporations Code requiring shareholder authorization or approval for a particular action, the business and affairs of the Corporation shall be managed and all corporate powers shall be exercised by, or under the direction of, the Board of Directors. The Board of Directors may delegate the management of the day-to-day operation of the business of the Corporation to a management company or other person provided that the business and affairs of the Corporation shall be managed, and all corporate powers shall be exercised, under the ultimate direction of the Board of Directors.

Section 3.02 Number and Qualification of Directors. The number of authorized directors of this Corporation shall be not less than eight (8) nor more than fifteen (15), the exact number of directors to be fixed from time to time within such range by a duly adopted resolution of the Board of Directors or shareholders.

Directors shall hold office until the next annual meeting of shareholders and until their respective successors are elected. If any such annual meeting is not held, or the directors are not elected thereat, the directors may be elected at any special meeting of shareholders held for that purpose. Directors need not be shareholders. Notwithstanding the foregoing, if an incumbent director fails, in an uncontested election, to receive the vote required to be elected in accordance with Section 2.13 of Article 2, then, unless the incumbent director has earlier resigned, the term of such incumbent director shall end on the date that is the earlier of ninety (90) days after the date on which the voting results are determined pursuant to Section 707 of the California Corporations Code or the date on which the Board of Directors selects a person to fill the office held by that director in accordance with the procedures set forth in these Bylaws and, except to the extent otherwise provided in these Bylaws, Section 305 of the California Corporations Code.

Section 3.03 Regular Meetings. A regular annual meeting of the Board of Directors shall be held without other notice than this Bylaw provision immediately after, and at the same place as,

the annual meeting of shareholders. The Board of Directors may provide for other regular meetings from time to time by resolution.

Section 3.04 Special Meetings. Special meetings of the Board of Directors may be called at any time by the Chairman of the Board, the Chief Executive Officer of the Corporation, or any two (2) directors. Written notice of the time and place of all special meetings of the Board of Directors shall be delivered personally or by telephone, including a voice messaging system, or by telegraph or electronic transmission by the Corporation to each director at least forty-eight (48) hours before the meeting, or sent to each director by first-class mail, postage prepaid, at least four (4) days before the meeting. Such notice need not specify the purpose of the meeting. Notice of any meeting of the Board of Directors need not be given to any director who signs a waiver of notice, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such director.

Section 3.05 Place of Meetings. Meetings of the Board of Directors may be held at any place within or without the State of California, which has been designated in the notice, or if not stated in the notice or there is no notice, the principal executive office of the Corporation or as designated by the resolution duly adopted by the Board of Directors.

Section 3.06 Participation by Telephone. Members of the Board of Directors may participate in a meeting through use of conference telephone or similar communications equipment, so long as all members participating in such meeting can hear one another.

Section 3.07 Quorum. A quorum at all meetings of the Board of Directors shall be a majority of the authorized directors. In the absence of a quorum, a majority of the directors present may adjourn any meeting to another time and place. If a meeting is adjourned for more than twenty-four (24) hours, notice of any adjournment to another time or place shall be given prior to the time of the reconvened meeting to the directors who were not present at the time of adjournment.

Section 3.08 Action at Meeting. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for such meeting.

Section 3.09 Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, are as valid as though had at a meeting duly held after regular call and notice if a quorum is present and if, either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 3.10 Action Without Meeting. Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, if all members of the Board of Directors individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board of Directors. Such action by written consent shall have the same force and effect as a unanimous vote of such directors.

Section 3.11 Removal. The Board of Directors may declare vacant the office of a director who has been declared of unsound mind by an order of court or who has been convicted of a felony.

The entire Board of Directors or any individual director may be removed from office without cause by a vote of shareholders holding a majority of the outstanding shares entitled to vote at an election of directors; provided, however, that unless the entire Board of Directors is removed, no individual director may be removed when the votes cast against removal, or not consenting in writing to such removal, would be sufficient to elect such director if voted cumulatively at an election at which the same total number of votes cast were cast (or, if such action is taken by written consent, all shares entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected.

In the event an office of a director is so declared vacant or in case the Board of Directors or any one or more directors be so removed, new directors may be elected at the same meeting.

Section 3.12 Resignations. Any director may resign effective upon giving written notice to the Chairman of the Board, a President, the Secretary or the Board of Directors of the Corporation, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective.

Section 3.13 Vacancies. Except for a vacancy created by the removal of a director, all vacancies in the Board of Directors, whether caused by resignation, death or otherwise, may be filled by a majority of the remaining directors, though less than a quorum, or by a sole remaining director, and each director so elected shall hold office until his successor is elected at an annual, regular or special meeting of the shareholders. Notwithstanding the foregoing, if a director so elected is an incumbent director in an uncontested election who has failed to receive the vote required to be elected in accordance with Section 2.13 of Article 2, the term of his or her office as a director shall expire in accordance with Section 3.02 of these Bylaws. Vacancies created by the removal of a director may be filled only by approval of the shareholders.

Section 3.14 Compensation. Directors and members of committees may receive such compensation, if any, for their services as may be fixed or determined by resolution of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefore.

Section 3.15 Committees. The Board of Directors may, by resolution adopted by a majority of the authorized number of directors, designate one or more committees, each consisting of two (2) or more directors, to serve at the pleasure of the Board of Directors. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent member at any meeting of the committee. The appointment of members or alternate members of a committee requires the vote of a majority of the authorized number of directors. Any such committee, to the extent provided in the resolution of the Board of Directors, shall have all the authority of the Board of Directors in the management of the business and affairs of the Corporation, except with respect to (a) the approval of any action requiring shareholders' approval or approval of the outstanding shares, (b) the filling of vacancies on the Board of Directors or any committee, (c) the fixing of compensation of directors for serving on the Board

of Directors or a committee, (d) the adoption, amendment or repeal of Bylaws, (e) the amendment or repeal of any resolution of the Board of Directors which by its express terms is not so amendable or repealable, (f) a distribution to shareholders, except at a rate or in a periodic amount or within a price range determined by the Board of Directors, and (g) the appointment of other committees of the Board of Directors or the members thereof.

Article 4.

- OFFICERS

Section 4.01 Number and Term. The officers of the Corporation shall include a Chief Executive Officer and/or a President, a Secretary and a Chief Financial Officer, all of which shall be chosen by the Board of Directors. The Corporation may (or, in the event the Corporation does not have a President, shall) have a Chairman of the Board who shall be chosen by the Board of Directors. In addition, the Board of Directors may appoint such other officers (which may include, without limitation, certain Vice Presidents) as may be deemed expedient for the proper conduct of the business of the Corporation, each of whom shall have such authority and perform such duties as the Board of Directors may from time to time determine. Such officers shall be chosen in such manner and hold their offices for such terms as the Board of Directors may prescribe and shall serve at the pleasure of the Board of Directors.

Section 4.02 Inability to Act. In the case of absence or inability to act of any officer of the Corporation and of any person herein authorized to act in his place, the Board of Directors may from time to time delegate the powers or duties of such officer to any other officer, or any director or other person whom it may select.

Section 4.03 Removal and Resignation. Any officer chosen by the Board of Directors may be removed at any time, with or without cause, by the affirmative vote of a majority of all the members of the Board of Directors.
Any officer chosen by the Board of Directors may resign at any time by giving written notice of said resignation to the Corporation. Unless a different time is specified therein, such resignation shall be effective upon its receipt by the Chairman of the Board, a President, the Secretary or the Board of Directors.

Section 4.04 Vacancies. A vacancy in any office because of any cause may be filled by the Board of Directors for the unexpired portion of the term.

Section 4.05 Chairman of the Board. The Chairman of the Board shall preside at all meetings of the Board of Directors.

Section 4.06 Chief Executive Officer. The Chief Executive Officer shall be the general manager and chief executive officer of the Corporation, subject to the control of the Board of Directors, and as such shall preside at all meetings of shareholders, shall have general supervision of the affairs of the Corporation, shall sign or countersign or authorize another officer to sign all certificates, contracts, and other instruments of the Corporation as authorized by the Board of Directors, shall make reports to the Board of Directors and shareholders, and shall have all such other authority and perform all such other duties as are incident to such office or as may be delegated or assigned from time to time by the Board of Directors.

Section 4.07 President. Each President shall have all such authority and perform all such duties as are incident to such office or as may be delegated or assigned from time to time by the Chief Executive Officer or by the Board of Directors. A President (or the Presidents in the order designated by the Board of Directors) may be designated by the Board of Directors to perform the duties of the Chief Executive Officer, and to have all the powers and be subject to all restrictions upon the Chief Executive Officer, in the absence of the Chief Executive Officer, or in the event of his or her death, disability or refusal to act.

Section 4.08 Vice President. Each Vice President shall have all such authority and perform all such duties as are incident to such office or as may be delegated or assigned from time to time by the Chief Executive Officer, a President or by the Board of Directors. A Vice President (or the Vice Presidents in the order designated by the Board of Directors) may be designated by the Board of Directors to perform the duties of the Chief Executive Officer, and to have all the powers and be subject to all restrictions upon the Chief Executive Officer, in the absence of the Chief Executive Officer, or in the event of his or her death, disability or refusal to act.

Section 4.09 Secretary. The Secretary shall see that notices for all meetings are given in accordance with the provisions of these Bylaws and as required by law, shall keep minutes of all meetings, shall have charge of the seal and the corporate books, and shall have all such other authority and perform all such other duties as are incident to such office or as may be delegated or assigned from time to time by the Chief Executive Officer or by the Board of Directors.

The Assistant Secretary or the Assistant Secretaries, in the order of their seniority, shall, in the absence or disability of the Secretary, or in the event of such officer's refusal to act, perform the duties of Secretary and, when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary. Each Assistant Secretary shall have all such other authority and perform all such other duties as are incident to such office or as may be assigned or delegated from time to time by the Chief Executive Officer or by the Board of Directors.

Section 4.10 Chief Financial Officer. The Chief Financial Officer shall have all such authority and perform all such duties as are incident to such office or as may be delegated or assigned from time to time by the Chief Executive Officer or by the Board of Directors.

Section 4.11 Treasurer. The Treasurer shall have custody of all moneys and securities of the Corporation and shall keep regular books of account. Such officer shall disburse the funds of the Corporation in payment of the just demands against the Corporation, or as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the Board of Directors from time to time as may be required of such officer, an account of all transactions as Treasurer and of the financial condition of the Corporation. Such officer shall have all such other authority and perform all such other duties as are incident to such office or as may be delegated or assigned by the Chief Executive Officer or by the Board of Directors.

The Assistant Treasurer or the Assistant Treasurers, in the order of their seniority, shall, in the absence or disability of the Treasurer, or in the event of such officer's refusal to act, perform the duties and exercise the powers of the Treasurer, and shall have all such other authority and perform all such other duties as are incident to such office or as may be delegated or assigned from time to time by the Chief Executive Officer or by the Board of Directors.

Section 4.12 Salaries. The salaries of the officers shall be fixed from time to time by the Board of Directors and no officer shall be prevented from receiving such salary by reason of the fact that such officer is also a director of the Corporation.

Section 4.13 Officers Holding More than One Office. Any two or more offices may be held by the same person.

Section 4.14 Approval of Loans to Directors and Officers. The Corporation may, upon the approval of the Board of Directors alone, make loans of money or property to, or guarantee the obligations of, any director or officer of the Corporation or its parent or subsidiary, or adopt an employee benefit plan or plans authorizing such loans or guaranties provided that (i) the Board of Directors determines that such a loan or guaranty or plan may reasonably be expected to benefit the Corporation, (ii) the Corporation has outstanding shares held of record by 100 or more persons (determined as provided in Section 605 of the California Corporations Code) on the date of approval by the Board of Directors, and (iii) the approval of the Board of Directors is by a vote sufficient without counting the vote of any interested director or directors.

Article 5.

- MISCELLANEOUS

Section 5.01 Record Date and Closing of Stock Books. The Board of Directors may fix a time in the future as a record date for the determination of the shareholders entitled to notice of and to vote at any meeting of shareholders or entitled to receive payment of any dividend or distribution, or any allotment of rights, or to exercise rights in respect to any other lawful action. The record date so fixed shall not be more than sixty (60) nor less than ten (10) days prior to the date of the meeting or event for the purposes of which it is fixed. When a record date is so fixed, only shareholders of record at the close of business on that date are entitled to notice of and to vote at the meeting or to receive the dividend, distribution, or allotment of rights, or to exercise the rights, as the case may be, notwithstanding any transfer of any shares on the books of the Corporation after the record date.

In the event that no record date is fixed by the Board of Directors, the record date for determining shareholders entitled to notice of or to vote at a meeting of shareholders will be at the close of business on the calendar day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the calendar day next preceding the day on which the meeting is held. A determination of shareholders of record entitled to notice of or to vote at a meeting of the shareholders will apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

The Board of Directors may close the books of the Corporation against transfers of shares during the whole or any part of a period of not more than sixty (60) days prior to the date of a shareholders' meeting, the date when the right to any dividend, distribution, or allotment of rights vests, or the effective date of any change, conversion or exchange of shares.

Section 5.02 Certificates. Certificates of stock shall be issued in numerical order and each shareholder shall be entitled to a certificate signed in the name of the Corporation by the Chairman of the Board or a President or a Vice President, and the Chief Financial Officer, the Secretary or an Assistant Secretary, certifying to the number of shares owned by such

shareholder. Any or all of the signatures on the certificate may be facsimile. Prior to the due presentment for registration of transfer in the stock transfer book of the Corporation, the registered owner shall be treated as the person exclusively entitled to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner, except as expressly provided otherwise by the laws of the State of California.

The Secretary may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact, satisfactory to the Secretary, by the person claiming the certificate of stock to be lost, stolen or destroyed. As a condition precedent to the issuance of a new certificate or certificates, the Secretary may require the owners of such lost, stolen or destroyed certificate or certificates to give the Corporation a bond in such sum and with such surety or sureties as the Secretary may direct as indemnity against any claims that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed or the issuance of the new certificate.

Section 5.03 Representation of Shares in Other Corporations. Shares of other corporations standing in the name of this Corporation may be voted or represented and all incidents thereto may be exercised on behalf of the Corporation by the Chairman of the Board, the Chief Executive Officer, a President, or any Vice President and the Chief Financial Officer or the Secretary or an Assistant Secretary.

Section 5.04 Fiscal Year. The fiscal year of the Corporation shall end on the last Saturday of July.

Section 5.05 Annual Reports. The Annual Report to shareholders, described in the California Corporations Code, is expressly waived and dispensed with.

Section 5.06 Amendments. Bylaws may be adopted, amended, or repealed by the vote or the written consent of shareholders entitled to exercise a majority of the voting power of the Corporation. Subject to the right of shareholders to adopt, amend, or repeal Bylaws, Bylaws may be adopted, amended, or repealed by the Board of Directors, except that a Bylaw amendment thereof changing the authorized number of directors may be adopted by the Board of Directors only if these Bylaws permit an indefinite number of directors and the Bylaw or amendment thereof adopted by the Board of Directors changes the authorized number of directors within the limits specified in these Bylaws.

Section 5.07 Indemnification of Corporate Agents.

(a) The Corporation shall indemnify each of its agents against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred by such person by reason of such person's having been made or having threatened to be made a party to a proceeding to the fullest extent permissible by the provisions of Section 317 of the California Corporations Code. The terms "agent," "proceeding" and "expenses" made in this Section 7 shall have the same meaning as such terms in said Section 317.

(b) Expenses reasonably incurred by an agent of the Corporation in defending a civil or criminal action, suit or proceeding by reason of the fact that he or she is or was an agent of the Corporation (or was serving at the Corporation's request as a director or officer of another

corporation) shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such agent to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized by relevant sections of the General Corporation Law of California.

(c) Notwithstanding the foregoing, the Corporation shall not be required to advance such expenses to an agent who is party to an action, suit or proceeding brought by the Corporation and approved by a majority of the Board of Directors which alleges willful misappropriation of corporate assets by such agent, wrongful disclosure of confidential information, or any other willful and deliberate breach in bad faith of such agent's duty to the Corporation or its shareholders.